Neutral Citation Number: **[2024] EWHC 761 (Admin)**

Case No: AC-2023-LON-001252

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT
ON APPEAL FROM THE SENIOR DISTRICT JUDGE
WESTMINSTER MAGISTRATES' COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/04/2024

Before :

LORD JUSTICE LEWIS
MR JUSTICE JAY

- -

Between :

DUSKO KNEZEVIC	**Applicant**
- and -	
THE GOVERNMENT OF THE REPULIC OF MONTENEGRO	**Respondent**

- -
- -

Edward Fitgerald KC and Émilie Pottle (instructed by **Stokoe Partnership Solicitors**) for the **Applicant**
Rachel Barnes KC and Amanda Bostock (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date: 21 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 4 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Judgment Approved by the court for handing down.

Lord Justice Lewis handed down the following judgment of the court:

INTRODUCTION

1. This matter concerns a decision of the Senior District Judge, the Chief Magistrate for England and Wales, ("the Judge"), that there were no barriers to the extradition of the applicant, Mr Dusko Knezevic, and sending the case to the Secretary of State for him to determine whether to extradite the applicant to Montenegro to stand trial for various offences.

2. In brief, the government of Montenegro seeks the extradition of the applicant to stand trial in respect of a number of different offences which include, amongst other allegations, allegations of fraud, money laundering, and misuse of authority in a business. Following a six-day hearing, the Judge ordered that:

> "Having found that the request is not politically motivated, that he faces no risk of prejudice at trial on political grounds, that the Montenegrin authorities' assurance as to Article 3 compliant detention is to be trusted, that there is no risk of a flagrant denial of justice and the request is not an abuse of process I am obliged to send the case to the Secretary of State pursuant to section 87(3) of [the Extradition Act 2003]".

3. The applicant seeks permission to appeal on three grounds, namely that the Judge erred in finding that:

   (1) the conduct in respect of one of the indictments, referred to as the Airports case, did not amount to an extradition offence pursuant to section 78(4) of the Extradition Act 2003 ("the 2003 Act");

   (2) extradition was not barred by reason of extraneous considerations under section 81 of the 2003 Act, i.e. that the request was not made for the purpose of prosecuting or punishing the applicant on account of his political opinions (section 81(a) of the 2003 Act) and he would not be prejudiced at his trial, punished or have his personal liberty restricted on account of his political opinion (section 81(b) of the 2003 Act); and

   (3) extradition would be compatible with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention).

4. The applicant initially sought permission to appeal on a fourth ground, namely that the Judge was wrong to find that the requests for extradition were not an abuse of the court's process. Mr Fitzgerald KC who appeared together with Ms Pottle for the applicant, confirmed at the hearing before us that that ground of appeal was no longer pursued. For completeness, we record that we refuse permission to appeal on ground 4.

5. The applicant also applies by an application dated 19 March 2024 to admit new evidence, that is, evidence which was not before the court below. He also applied on the afternoon of the hearing on 21 March 2024 to admit further new evidence. He also made a further application to admit new evidence after the hearing had concluded but

before judgment was given. We deal with those applications at the end of this judgment.

6. On 20 December 2023, Mr Justice Julian Knowles ordered that there be a "rolled-up hearing", that is a hearing at which permission to appeal would be considered and, if granted, the appeal would be heard immediately afterwards. In fact, we heard full argument on the three proposed grounds of appeal at the hearing on 21 March 2024 and heard full argument on whether any or all of the applications to admit new evidence should be granted. For completeness, we note that in his order of 20 December 2023, Mr Justice Julian Knowles also gave detailed directions for preparation of the bundles of material for the hearing and the filing of skeleton arguments. The order provided that the bundles containing the evidence needed for the hearing must be agreed and filed not less than 14 days before the hearing. He directed that the parties were under a duty to comply with the directions and that failure to do so may lead to the appeal being determined on the material before the court at the date of the hearing and may have cost consequences.

THE BACKGROUND

7. The facts are fully set out in the comprehensive judgment of the Judge which runs to 326 paragraphs. That judgment should be read together with this judgment. It is not necessary for present purposes to do more than identify some of the material facts and the findings of the Judge. Paragraph references are to the judgment of the Judge unless otherwise indicated.

8. The Judge set out the offences for which extradition was being sought at paragraph 1. He stated, correctly, that the proceedings governing extradition to Montenegro are governed by Part 2 of the 2003 Act.

9. In paragraph 3, he explained the background to the criminal investigations. They arose out of the collapse of two of the largest commercial banks in Montenegro which were part of the Atlas group of companies controlled by the applicant. The Judge then dealt fully with the requests for extradition that were before the court, and the offences for which extradition were sought, dividing them in effect into five groups summarised at paragraph 10 of his judgment as follows:

> "Kaspia I" – fraudulent sale of the Hotel Kaspia.
>
> "Kaspia II" – laundering the proceeds of the unlawful sale of Hotel Kaspia.
>
> "Atlas II – Carbons" – fraud in relation to fictitious sales of carbon credits alongside fraudulently managed loans.
>
> "Atlas I" – Conspiracies fraudulently to obtain funds through misrepresentation and abuse.
>
> "Airports" – fraud to retain unlawfully monies deposited at Atlas Bank by Montenegrin Airports".

10. The judgment then describes the alleged conduct in detail at paragraphs 20 to 72. In relation to the Airports' case, which forms one of the proposed grounds of appeal, the

Judge noted that the allegation related to the applicant's role in directing an officer unlawfully to retain 3 million euros in Atlas Bank's own account when those funds were owned by Montenegro Airports. The allegation was that the funds were due to be transferred to Montenegro Airports but the applicant directed the responsible official not to return the funds but instead unlawfully and dishonestly to retain those funds for the purposes of Atlas Bank.

11. The Judge considered each offence and concluded that the conduct alleged would amount to an offence under the law of England and Wales if committed here. In relation to the Airports Case, he concluded that the offence would constitute the offence of fraud by abuse of position contrary to sections 1 and 4 of the Fraud Act 2006 (and conspiracy to commit that offence) punishable with a maximum of 10 years' imprisonment.

12. In relation to section 81 and the allegation that the extradition was barred by reason of extraneous considerations, the Judge set out the provisions of section 81 at paragraph 115. He summarised the relevant principles at 116 to 139. At paragraph 132, he noted that the relevant principles included that a broad purposive interpretation should be given to the scope of the political opinion ground in section 81 and that it "is not necessary to show that the prosecutors only motive is political persecution: it is sufficient if political reasons form part of his motivation". Mr Fitzgerald for the applicant accepted that the Judge had correctly set out the relevant legal principles. The Judge then dealt with the law on when prison conditions in the state seeking extradition would breach Article 3 of the Convention so that extradition would be barred by section 21 of the 2003 Act. That relates to ground 3 of the proposed grounds of appeal. The Judge also dealt with Articles 5 and 6 of the Convention, namely unlawful detention and the right to a fair trial in Montenegro. The applicant does not seek to appeal against the conclusions on those matters.

13. The Judge summarised the evidence that he had heard and considered over the six days of the hearing. That included, but was not limited to, consideration of the expert witness, Dr Andjelic, called on behalf of the applicant. He also dealt with the evidence given by Toby Cadman, an English barrister, and what he said had happened in another case, involving prosecuting people in connection with a coup attempt, namely that the prosecutor (who was the same prosecutor in this case) had applied improper pressure in the form of threats against the accused and his family to try and force them to make statements to assist in securing convictions in that case.

14. The Judge dealt with the allegation of political motivation and injustice at trial from paragraph 243 onwards. He reminded himself what this case was about, namely that the prosecution arose out of the unauthorised sale of a particular hotel, the dishonest retention of the proceeds of sale, the failure to transfer ownership of the hotel and the applicant making the Atlas Bank liable for his dishonest act. The Judge summarised the applicant's case, namely that the prosecution was brought because he was considered to be a threat politically to the leaders in Montenegro. The Judge was well aware that one strand of the political threat was said to be that the applicant had demonstrated political activism by publishing a video in January 2019 in which the applicant handed an envelope containing money to the then mayor of Podgorica which was said to be evidence of corruption and the prosecution was brought as a result of those actions and the political threat that the applicant was thought to pose

by the risk of exposure of corruption on the part of the then government in Montenegro.

15. The Judge held that the prosecutions were not motivated by political opinion. He held that the chronology demonstrated that the criminal investigations arose out of the collapse of the two banks, not the political activism (and in particular not because of the release of the video disclosing the handing over of the envelope containing money in 2019) which emerged afterwards. He considered that the chronology of events fatally undermined the applicants case "but it goes much further, there is no evidence of him ever having been any sort of real political force, less still any threat to President Dukanovic" (paragraph 248).

16. In relation to prison conditions, the Judge recorded that the complaint made by the applicant, in the light of evidence called on his behalf, concerned only the remand prisons (not the prisons in which, if convicted, any sentence would be served). He considered the presumption that, as a signatory of the Convention, Montenegro would comply with its obligations under the Convention, there was nothing to indicate any kind of consensus identifying systemic issues in Montenegrin prisons and the Montenegrin authorities had gone further and given a specific assurance. He found that there would be no breach of Article 3 of the Convention if the applicant were extradited to Montenegro.

THE FIRST GROUND OF APPEAL – THE AIRPORTS CASE

17. Ms Pottle, who dealt with this proposed ground on behalf of the applicant, submitted that the conduct in the Airports case did not amount to an extradition offence within the meaning of section 78(4)(b) of the 2003 Act as the conduct would not amount to a criminal offence if it had been committed in the relevant part of the United Kingdom and the applicant could not therefore be extradited for the offences in the Airport Case. She submitted first, that it could not be inferred from the provisions of the relevant Montenegrin law referred to in the request for extradition that the offences required establishing dishonesty on the part of the applicant and secondly that the conduct described in the extradition request did not impel the inference that the applicant was acting dishonestly, relying on the observations of the then President of the Queen's Bench Division at paragraph 57 of his judgment in *Assange v Sweden* [2011] EWHC 2849. Ms Pottle submitted that the conduct involved essentially a breach of contract, in that the Airports had lodged money with Atlas Bank, there had been a background of commercial negotiation over the extension of the period during which the money would remain in the Bank, and if the money had not been returned when requested, there was no inevitable inference that involved dishonesty and could be explicable by reference to other matters such as the fact that the Bank did not have funds available.

18. Ms Barnes KC, with Ms Bostock, for the respondent submitted first that it was clear from the terms of the offence that dishonesty was required. The applicant was charged with instigating another person to misuse her position of trust to obtain an illicit pecuniary gain. Article 24 of the Criminal Code of Montenegro provided that a person instigates an act if he acts with wrongful intent. Secondly, Ms Barnes submitted that the conduct alleged did compel the inference that the applicant was accused of dishonesty.

Discussion

19. First, we consider that there is considerable force in the submission that the offence as described in the request for extradition does require dishonesty. The request refers to articles 24 and 272 of the Criminal Code of Montenegro which require a wrongful intent on the part of the accused. Here, the provisions require a "wrongful intent" on the part of the applicant in instigating another person to misuse a position or trust for "illicit pecuniary gain". We would be minded to find that the request does seek the extradition of the applicant because his conduct involved a wrongful, i.e. criminal intent, essentially dishonesty.

20. Secondly, and in any event, the conduct of which the applicant is accused impels the inference that he is alleged to have acted dishonestly. The request for extradition says that the applicant "intentionally instigated the accused Dijana Zecevic to commit the criminal offence of abuse of office in business operations". The factual summary says that the applicant, as the majority owner of Atlas Bank, together with the chief executive director, acted with wrongful intent and instigated the responsible officer to abuse her office with respect to property owned by others (i.e. the money owned by Montenegro Airports) and not to discharge her duties "in order to obtain illicit property gain in favour of Atlas Bank". Put simply, the Bank had 3 million euros which should have been transferred to the Airports account as it was the Airports' money. The applicant is alleged to have told the responsible officer not to pay to the Airports the money which belonged to them but instead to retain the money in the Bank's account for the Bank's own benefit. That is, put simply, an allegation of dishonest conduct. Ground 1 discloses no ground of appeal and we refuse permission on ground 1.

THE SECOND GROUND – EXTRANEOUS CONSIDERATIONS

21. Mr Fitzgerald for the applicant accepted the relevant test in the present case was that set out in paragraph 26 of the judgment in *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [2018] 1 WLR 2889, namely was the Judge wrong because the overall evaluation was wrong and crucial factors should have been weighed so significantly differently as to make the decision wrong. Mr Fitzgerald identified the following factors taken individually or cumulatively as part of what he described as the mosaic of points arising in the case, which he submitted demonstrated that the Judge's conclusion on section 81(a) and (b) were wrong.

22. First, he submitted that the Judge adopted an unduly narrow approach to political opinion. It was sufficient for the applicant to show that the applicant was regarded as opposed to the DPS, the party in power at the material time, and that he was seen as a threat to that party because he was exposing, or threatening to expose, corruption on the part of the DPS or some of its members. The Judge erred in failing to accept and consider that case. Secondly, he submitted that the Judge failed to recognise that the prosecution was a continuing process. Thirdly, he submitted that the Judge erred in considering that the applicant had to show that the sole purpose of the extradition was for punishing him for his political beliefs. It was sufficient if the prosecutor was motivated in part by political opinions. Thus, he submitted, if there was evidence of possible wrong doing on the part of the applicant, but the prosecutor was motivated in part to bring the proceedings because of political reasons, that would be sufficient for the purposes of section 81(a) and (b) of the 2003 Act.

23. Fourthly, Mr Fitzgerald submitted that the Judge failed to recognise that the prosecution was a continuing process and he failed to consider the intention of the prosecutor at the time of the request for extradition. The requests for extradition were made after January 2019 when the applicant had revealed the video clip showing alleged corruption. He submitted that the scope and intensity of the investigation, and the steps taken to prosecute the applicant expanded because of the applicant's political actions or stance or the perceived threat posed by him. The Judge, it was submitted, therefore erred in considering that the chronology fatally undermined the applicant's case. Fifthly, he submitted that the Judge wrongly dismissed the relevance of the Interpol decision to withdraw the arrest warrant because the prosecution was politically motivated.

24. Sixthly, he submitted that the Judge failed to consider relevant circumstances in the Montenegrin criminal justice system including reports of the European Commission, MANS, Freedom House and the US State department. He submitted that the Judge wrongly approached the evidence of Mr Cadman as to how the prosecutor had behaved. The Judge minimised a warning (referred to as an Osman warning) and failed to take account of the attempt to try the applicant in absentia. Finally, he submitted that the Judge wrongly relied on what Mr Fitzgerald submitted was an "unqualified presumption of good faith" because Montenegro was a member of the Council of Europe with whom the United Kingdom had an extradition arrangement.

Discussion

25. We can take points 1, 2 3 together. There is no arguable basis that the Judge took an unduly narrow approach to the meaning of political opinion in section 81(a) and (b) of the 2003 Act. He set out the terms of section 81 in his judgment and identified, correctly, the relevant principles. There is no arguable basis for considering that he ignored the need to focus on the intention of the prosecutor at the time of the request. He reminded himself of the need to do so at paragraph 118. So far as the Judge considered the relevance of what had happened before the issuing of the requests for extradition, he did so as part of his consideration of what light those events threw upon the motivation for the prosecution and the requests for extradition not because he had made an error of law. Further, there is no arguable basis for considering that the Judge thought it was necessary for the applicant to show that the extradition request was solely for the purpose of punishing him for his political beliefs. As indicated above, the Judge identified at paragraph 132 the need to give a broad interpretation of political opinion and that it was sufficient if political reasons formed part of the motivation. He concluded that there was no evidence of the applicant having been any sort of real political force "less still any real threat". Reading the judgment fairly and as a whole, there is no justifiable basis for considering that the Judge made the errors identified as points 1, 2 and 3 of the submissions made on behalf of the applicant.

26. Dealing with point 4, the Judge did not wrongly direct himself as to the significance of the chronology. The chronology showed that the alleged offending in respect of a number of the offences – the Global Carbons Case, Atlas I and Kaspia I and Kaspia II – occurred between 2008 and 2017. Criminal investigations began in October 2017. In June 2018, the Central Bank of Montenegro commenced a targeted examination into Atlas Banks and the Special State Prosecutor's Office ordered Atlas to block all e-commerce accounts and requested a temporary suspension of payments and transfers

of funds held by Atlas Bank. A guarantee in the Kaspia I cases relating to the sale of the hotel was enforced and Atlas Bank suffered a 12.5 million euro loss and a liquidity crisis in July 2018. The alleged offending in the Airports Case occurred between August and December 2018. The applicant left Montenegro on 8 December 2018. On different dates in December 2018, the Special State Prosecutor's Office requested the High Court in Podgorica to freeze the accounts of Atlas Bank and an investigation was ordered into the applicant and other members of an alleged criminal organisation. In December 2018 an investigation order was issued in respect of the Global Carbons case. On 16 January 2019 the High Court ordered the remand of the applicant in the carbons case. It was at that stage, on 19 January 2019, that the applicant released the video clip showing him handing an envelope to the Mayor of Podgorica. It was after that that further investigation orders were made, indictments issued and the requests for extradition made.

27. The Judge did not misdirect himself as to the significance of the chronology. Rather, he drew the inference that the underlying allegations related to the conduct of the applicant in connection with the use of funds from the Atlas Banks. The investigation into that conduct, including the criminal investigations, arose out of the problems with the banks and predated the 19 January 2019 event (which, it was said by the applicant, was evidence which showed that he was perceived as a threat by the DPS): see paragraph 270. That is an inference he was entitled to draw on the evidence. Furthermore, and in any event, he had heard the evidence submitted on behalf of the applicant and he concluded that there was no evidence that the applicant was a political force or even a political threat. Those were all conclusions that the Judge was entitled to reach on the evidence before him.

28. Dealing with point 5, the Judge considered, correctly, that he was not bound by the decision of Interpol. He had in fact heard evidence over six days and that evidence was given in part by witnesses who were the subject of cross-examination. He was entitled to reach his own view of the evidence and was not obliged to come to the same conclusion as Interpol had come on the basis of the written material before it.

29. Dealing with point 6, there is no proper basis for considering that the Judge failed to consider the criticisms of the Montenegrin criminal justice system. So far as Mr Fitzgerald relied on reports from four named bodies, the Judge made it clear that he had considered all the evidence provided and the fact that he did not refer to a particular piece of evidence did not mean that he had not considered it. In fact, it appears that the Judge did refer to reports from two of the four bodies relied upon by Mr Fitzgerald. More significantly, Mr Fitzgerald was asked to confirm in argument which parts of the reports he relied upon. He confirmed that they were the points referred to in paragraphs 5.3 to 5.6 of the applicant's written skeleton argument dated 7 March 2024. The comments from reports of two of the bodies are generalised comments on the criminal justice system and are not of specific relevance to this part of the case (and were dealt with by the Judge, it seems, in his consideration of the claim that the applicant would not receive a fair trial). The third refers to the 2019 release of the video showing the handing over of an envelope. That issue was dealt with by the Judge. The fourth referred to the Interpol notices against the applicant as an example of a credible allegation of the use of enforcement tools for politically motivated prosecutions. The Judge dealt with that matter. The reports from the four

bodies relied upon by the applicant do not, therefore, add to the issues considered by the Judge.

30. Mr Fitzgerald also criticised the findings of the Judge on the evidence given by Mr Cadman about threats made by Mr Katnic, the same prosecutor as began the prosecutions in this case. He submitted that the fact that the prosecutor had made improper, politically motivated threats in another case was relevant to the assessment of whether the prosecutions here were politically motivated. The short answer is that the Judge heard Mr Cadman give evidence and be cross-examined. He considered that Mr Cadman was not lying but was not a reliable witness and that his testimony did not, on analysis, support the view that improper motives were present in this case, for the reasons he gave at paragraphs 284 to 290. He considered that the evidence was "at best, tangentially relevant" (paragraph 258) and did not lead to the conclusion that the present prosecution was politically motivated. So far as the Osman warning was concerned, that was a warning given in 2019 by a British police officer that the applicant and his family may be a target for physical harm by unspecified criminal elements. The Judge dealt with this evidence at paragraphs 265 and 266. He did not minimise the evidence. He assessed it and considered that it had little weight in the overall consideration for the reasons he gave. Although the applicant's written documents referred to a failure to take account of an attempt to try the applicant in absentia, Mr Fitzgerald did not make oral submissions on this point. In any event, we do not consider that this factor casts any doubt upon the conclusions that the Judge reached in relation to section 81 of the 2003 Act. We are satisfied that the conclusions the Judge reached were ones that he was entitled to reach on the evidence before him.

31. Finally, it is not correct to allege that the Judge wrongly relied on an unqualified presumption of good faith because Montenegro is a member of the Council of Europe. Rather, the position is this. In his discussion on the principles of law applicable to the case, he correctly noted that there was a presumption that states who were parties to the Convention will protect an individual's Convention rights (paragraphs 120). He then expressly states that the presumption is capable of being rebutted by cogent evidence. Contrary to the submissions made, the Judge did not consider any presumption to be unqualified. In any event, the Judge did not rely on this presumption when dealing with the subject matter of the proposed ground 2. He did rely on it in relation to the proposed ground 3. This point, therefore, has no merit in relation to ground 2.

32. In conclusion, therefore, the Judge did not make any error of law in his approach to determining whether there were extraneous considerations within the meaning of section 81(a) or (b) which prevented extradition. He reached conclusions on the evidence, and the case as put on behalf of the applicant, which he was entitled to reach on the material before him. He was not wrong in respect of any of the points relied upon by the applicant in respect of the proposed ground 2. Subject to consideration of the application to adduce fresh evidence which is considered below, the points relied upon, whether considered individually, or collectively, or as part of the "mosaic of points" relied upon by Mr Fitzgerald do not begin to establish, in the words of paragraph 26 of *Love*, that the judge was wrong or that the overall evaluation was wrong or that crucial factors should have been weighed so significantly differently as to make the decision wrong. Subject to consideration of the applications to adduce new evidence, we would refuse permission to appeal on ground 2.

THE THIRD GROUND - ARTICLE 3 OF THE CONVENTION AND PRISON CONDITIONS

33. Mr Fitzgerald submitted that the Judge was wrong to find that there were no substantial grounds for believing that there was a real risk of ill-treatment contrary to Article 3 of the Convention by reason of prison conditions in Montenegro. He accepted that this argument was limited to remand prisons. He submitted that the risk of inter-prisoner violence, and general conditions in remand prisons gave rise to a risk of Article 3 ill-treatment. He submitted that there was overcrowding in remand prisons and that the Judge erred in relying on the assurance given by the Montenegrin authorities.

Discussion

34. The principles governing Article 3 of the Convention in the context, as it happens, of alleged risks of inter-prisoner violence, have been set out in a series of recent cases involving Lithuania (a country falling within Part 1 of the2003 Act whereas Montenegro is a Part 2 country). For convenience we set out a paragraph from the most recent case of *Urbonas v Lithuania* [2024] EWHC 33 (Admin):

> "4. The material provision of the Convention in the present case is Article 3 which provides that "no one shall be subjected to torture or inhuman or degrading treatment". The relevant legal principles governing Article 3 are not in dispute and can be stated shortly. Article 3 imposes an obligation on a state not to remove a person to a country where there are substantial grounds for believing that the person would face a real risk of being subjected to ill-treatment contrary to Article 3 in that country. In order to come within Article 3, the ill-treatment must attain a minimum level of severity, which depends upon all the circumstances of the case including the duration of the treatment, its physical and mental effects and, in appropriate cases, the sex, age and health of the victim. In cases such as the present, where the risk of ill-treatment is said to emanate from non-state actors (here other prisoners), such ill-treatment will not constitute a breach of Article 3 unless, in addition, the state has failed to provide reasonable protection against such ill-treatment. Where the requesting state is a signatory to the Convention and a member of the Council of Europe (as is Lithuania, the requesting state in the present case), there is a presumption that that state will comply with its obligations under Article 3 of the Convention. That presumption may be rebutted by clear, cogent and compelling evidence, amounting to something approaching an international consensus, identifying structural or systemic failings. If the benefit of the presumption is lost as a result of such authoritative evidence, the requesting state must show by cogent evidence that there is no real risk of a contravention of Article 3 in relation to the particular requested person in the prisons in which he is likely to serve his sentence. Assurances as to the treatment of individuals may be given by a non-judicial authority and those

> assurances will then need to be evaluated. See, generally, the decisions of the Supreme Court in *R (Bagdanavicius) v Secretary of State for the Home Department [2005] UKHL 38, [2005] 2 AC 668* , especially at paragraph 24; *Lord Advocate v Dean [2017] UKSC 44, [2017] 1 WLR 2721* , especially at paragraphs 25 to 27 and the decision of the Divisional Court in *Bazys and Besan v The Vilnius County Court, Republic of Lithuania and another [2022] EWHC 1094 (Admin) at paragraph 13* per Holroyde LJ (with whose judgment Swift J. agreed)."

35. There is, put shortly, simply nothing in the evidence which begins to suggest that any risk of inter-prisoner violence, or conditions generally, in remand prisons begins to approach the level at which the presumption of compliance with Article 3 of the Convention would be rebutted. Nor is there any evidence which begins to suggest that there are substantial grounds for believing that there is a real risk that the applicant, if extradited and remanded, would be subjected to treatment contrary to Article 3 of the Convention in respect of these matters.

36. In relation to overcrowding, there is some evidence from 2017 that the number of persons in remand institutions was such that there was overcrowding. It is not necessary for us to consider whether this amounts to overcrowding at a level which would violate Article 3 of the Convention, given the consistent case-law of the European Court of Human Rights as to the amount of space, and the facilities, required for each prisoner. Nor is it necessary to consider whether the position is the same now in 2024 as it was in 2017. The fact is that the Montenegrin authorities have given a specific assurance which, on this point, says:

> "It is guaranteed to the requesting state that the named person will be provided with a space allocation of a minimum of three square metres per person, in which space there will be included appropriate furniture and bedding, the sanitary facilities will not be included in that three square metres of prison unit …"

37. The Judge assessed that assurance by reference to the criteria established by the European Court of Human Rights, and was satisfied that the assurances were sufficient and would prevent any real risk of treatment contrary to Article 3 arising (paragraphs 305 to 311). He was entitled to reach those conclusions. We refuse permission on ground 3.

THE APPLICATIONS TO ADDUCE NEW EVIDENCE

38. By an application notice dated 19 March 2024, that is two days before the hearing, the applicant applied to adduce new evidence in the form of five documents. Section 106 of the 2003 Act provides that an appeal may be allowed in such circumstances if evidence is available at the appeal hearing which was not available at the extradition hearing and the evidence would have resulted in the judge deciding the relevant issue differently. The interpretation of materially analogous provisions in section 28 of the 2003 Act (dealing with appeals in cases of countries falling within Part 1 of the 2003 Act) was considered by the Divisional Court in *Fenyvesi v Hungary* [2000] EWHC 231 (Admin).

39. Two documents are a 2022 European Commission Staff Working Document published on 12 October 2022 and a similar document published on 8 November 2023 which deals with the preparedness of Montenegro to accede to membership of the European Union. We have read the documents. Mr Fitzgerald did not refer to them in oral submissions. We see nothing in those two documents which would have lead the Judge to reach a different conclusion on any of the issues he decided. We refuse to admit these two documents for that reason.

40. The third document is a supplementary report of Dr McManus dated 4 March 2024. That simply records the fact that the European Committee for the Prevention of Torture has made a visit to Montenegro and exhibits a copy of the press statement issued at the time. We have read both the supplementary report and the press statement. Neither of those documents could conceivably have led to a different decision by the Judge on the issues concerning Article 3 of the Convention. We refuse to admit this document for that reason.

41. The fourth document is a document prepared by Freedom House giving its view of the state of political rights and civil liberties in Montenegro in 2024. We have read the document. Nothing it contains could conceivably have led to a different decision by the Judge. We refuse to admit this document for that reason.

42. The fifth document is described as an interim report written by Dr Mark Hoare and dated 18 March 2024. Permission to rely on this evidence was sought on the basis that it was evidence provided by an expert. We have read the report carefully. We refuse to admit it. First, we do not consider that Dr Hoare is an expert in relation to the subject matter of this appeal. Dr Hoare is an historian and says that he considers himself "an expert on the history of the former Yugoslavia, in particular the modern history of Bosnia-Hercegovina (above all of the WW2 anti-fascist resistance and the 1990's conflict), the modern history of Serbia up to 1941, and the break-up of Yugoslavia and the 1990's war". We do not consider that his qualifications or experience demonstrate that he is an expert on the issues in this appeal on which he wishes to comment, namely whether prosecutions in this case, relating to conduct occurring in Montenegro from about 2008 onwards, were motivated by political considerations. We reject the submission of Mr Fitzgerald that Dr Hoare is an expert as he is an historian familiar with the region and can comment objectively as an expert on those matters. We would refuse to admit the interim report on that basis alone. Secondly, we have read the report. It consists of Dr Hoare's observations on documents including, but not limited to, documents such as documents in the case provided to him by the applicant's legal representatives and news reports. We do not consider that the observations made could even arguably have led the Judge to reach a different conclusion on the issues that arose in this case. At one stage, Mr Fitzgerald drew our attention to a comment made by Dr Hoare based on news reports (one in particular, it seems) suggesting that there was a falling out between the applicant and government figures sometime after 16 October 2016 in connection with disagreement over investment in a hospital. Dr Hoare is not being called as a witness of fact and he cannot himself give any evidence about what happened. If there were factual matters relating to disagreement about investment in a hospital, the applicant would have been able to adduce that evidence at the extradition hearing before the Judge. It was not suggested, in fact, that this was any part of his case at the time of the extradition hearing. We are satisfied that none of the observations made by Dr Hoare,

individually or collectively, could possibly have led the Judge to reach a different conclusion in this case. For that second, and separate reason, we refuse to admit the interim report of Dr Hoare.

43. At 2 p.m. on the afternoon of 21 March 2024, after Mr Fitzgerald had completed the bulk of his submissions and with about 20 minutes or so of the time allocated to him for submissions remaining, the applicant applied to admit new evidence in the form of a copy of a website dated 11 February 2024 and said to contain a report of an interview with the current Minister of Justice in Montenegro. An application dated 22 March 2024 (after the hearing had concluded) and sent, it seems, to the court on 25 March 2024 applied to admit new evidence. The first was an unofficial transcript of an interview given by the Minister of Justice on 11 February 2024. The second was a copy of a website said to contain comments made in interview by a previous minister of justice. We have read both documents. The interview, so far as one can tell, is not concerned with the issues that arise in this case and in particular do not appear to be connected to the question of whether the extradition requests in this case were politically motivated. The issue appears to be the concern of the Minister of Justice as to whether the security sector can provide adequate protection to him. He is concerned as to whether the system could adequately protect him as he considers that he is at risk given that he has proposed changes to the criminal law which will affect organised crime groups. In the course of the interview, he is asked about the applicant and says that he does not know if the security system would be able to protect him. The comments do not begin to suggest that the motives underlying the prosecution were political. We do not consider that those comments, made in the context of a political interview, would have led the Judge to reach a different conclusion on the issues that he was dealing with and which form the basis of this appeal. Mr Fitzgerald referred in oral submissions obliquely to Articles 2 and 3 of the Convention, but (save for prison conditions in remand institutions) the applicant has not based his case (or sought to amend his grounds of appeal) to allege that there are substantial grounds for believing that there is a real risk that extradition to Montenegro would amount to a breach of those Conventions rights. We do not regard the generalised comments, made in the context of an interview discussing the adequacy of the security sector, as sufficient to establish substantial grounds for believing that there is a real risk of a breach of the applicant's Convention rights. The second extract involves a former minister of justice saying that he believed that the applicant was a legitimate businessman not a criminal, that formerly there was racketeering at all levels, and that the applicant should be given a chance to defend himself. There is no conceivable basis that those generalised comments would have led the Judge to a different conclusion on the issues in this case. We therefore refuse the applications dated 19 March, 21 March 2024 and 22 March 2024 to adduce fresh evidence.

CONCLUSION

44. We refuse permission to appeal in this case. None of the proposed grounds of appeal have any prospect of succeeding. There is no arguable basis for considering that the decision of the Judge was wrong. He was entitled to conclude that the alleged conduct in the Airports case involved dishonesty. He was entitled to reach the conclusion that the extradition was not barred by virtue of section 81 (a) or (b). He was entitled to conclude that, if extradited to Montenegro and remanded in custody, there was no

substantial grounds for believing that there was a real risk that the conditions in remand institutions would breach the applicant's rights under Article 3 of the Convention.