



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01868/2017

THE IMMIGRATION ACTS

Heard at Field House
On 12 June 2018

Decision & Reasons Promulgated
On 27 June 2018

Before

UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR CRISTIAN-IOAN BLAJ
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer
For the Respondent: In person

DECISION AND REASONS

1. This decision is a re-making of the protection and human rights claim of Mr Blaj. It follows a decision issued on 9 May 2018 of Deputy Upper Tribunal Judge Hill QC which found an error of law in the decision promulgated on 26 January 2018 of First-tier Tribunal Judge Herbert OBE.
2. For the purposes of this decision we refer to the Secretary of State for the Home Department as the respondent and to Mr Blaj as the appellant, reflecting their positions before the First-tier Tribunal.

3. Mr Blaj is a Romanian citizen, born on 12 October 1982.
4. The background to this matter is Mr Blaj came to the UK in 2007. On 21 November 2007 he was issued with a registration certificate reflecting his lawful presence in the UK. On 21 November 2013 the appellant was arrested under a European Arrest Warrant. The warrant concerned a conviction in Romania for causing the death of a cyclist and a sentence of imprisonment of three years. The offence is stated to have occurred on 31 March 2007.
5. After an extradition hearing at Uxbridge Magistrates' Court, extradition was ordered on 27 November 2013. The appellant challenged that order. In a decision dated 17 June 2015, after a hearing before Lord Justice Aikens and Mr Justice Simon, the Administrative Court found that the prison conditions the appellant would face on return would not breach Article 3 ECHR and that he should be extradited. The case was reported as **Blaj and Others v Court of Alesd, Romania [2015] EWHC 1710 (Admin)**.
6. On 12 August 2015 Mr Blaj made a protection and human rights claim. In a decision dated 7 February 2017 the respondent refused all of his claims. It is that decision that led to these proceedings.
7. The appeal against the refusal of the protection and human rights claim came before the First-tier Tribunal on 8 January 2018. In a decision dated 26 January 2018, First-tier Tribunal Judge Herbert OBE allowed the appeal. This was because new case law from the ECHR, in particular **Muršić v Croatia Application No 7334/13, 20 October 2016**, suggested that prison conditions in Romania for Mr Blaj might not be lawful, that case being considered and approved in **Grecu v Romania [2017] EWHC 1427**. The First-Tier Tribunal considered that the Secretary of State should reconsider the question of the prison conditions in light **Muršić** and **Grecu**. The appeal was then allowed on the basis that it was remitted to the respondent for this reconsideration to take place.
8. The respondent challenged the decision to allow and remit the appeal where remittal was no longer a power of disposal available to the Tribunal following the amendments to sections 82, 85 and 86 of NIAA 2002 by the Immigration Act 2014. The Upper Tribunal confirmed that to be so in **Charles (human rights appeal: scope) [2018] UKUT 00089 (IAC)**.
9. In a decision issued on 9 May 2018 Deputy Upper Tribunal Judge Hill QC found an error of law as to the appeal being allowed and remitted to the respondent for reconsideration. He proceeded to set aside the decision of the First-tier Tribunal. He also identified that the re-making of the appeal required an assessment of whether removal to Romania would amount to a violation of Article 3 ECHR and Article 8 ECHR. Judge Hill QC then adjourned the re-making of the decision in order for both parties to be afforded a proper opportunity to provide all relevant materials on the issue of prison conditions in Romania, including any assurances specific to Mr Blaj obtained by the respondent and for the appellant to obtain legal representation if he wished to be represented at the next hearing.
10. Thus the matter came before us on 12 June 2018.

11. The Article 3 claim here concerns the prison conditions that Mr Blaj will face on return to Romania. He maintains that they fall below minimum standards and would amount to inhuman and degrading treatment. He relies on the cases of **Muršić** and **Greco** to support this submission. At [26], **Greco** set out the minimum standard for detention identified in **Muršić**:

“26. In a critical passage, the Court [in **Muršić**] went onto say this:

‘138. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

- (1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor (see paragraph 130 above);
- (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities (see paragraph 133 above);
- (3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (see paragraph 134 above).’ ”

12. The Court of Appeal in **Greco** went on to conclude:

“46. ... It seems clear to me that the ECtHR has stated a deliberately crisp approach in *Muršić*, in the passage from paragraph 138 quoted above [26]. The Court has been careful to stipulate that the factors must be "cumulatively" met. The first "factor" cannot be met here at all, on the present state of the assurances. The assurance is that 2m² will be guaranteed. That cannot be thought a "minor" reduction from a minimum of 3m². And it is the guaranteed minimum for the overall semi-open regime: that is to say, that is the long-term and normal provision of space. It cannot be characterised as either "short" or "occasional".

47. For myself, other things being equal, I would find considerable importance in the degree of freedom of movement and the activities on offer. It seems to me that Mr Knowles overstates his proposition somewhat when he suggests one should ignore completely the period from evening lockdown until morning, on the ground that the prisoner should be asleep all of that time. Nevertheless, the regime does permit a good amount of movement and the facilities appear reasonable. In commonsense terms, this must alleviate the effects of a cramped cell to some degree. But we come back to the fact that the ECtHR has interpreted the application of Article 3 so clearly as requiring all the "factors" to be cumulative.

48. I recognise the force of the presumption of compliance by a Member State, and the requirement for "something approaching international consensus", in the language of the Court in *Owda* quoted above. However, it appears to me that it is hard to apply a "presumption" in the face of the lucid test set out in *Muršić*. Moreover, the broad and critical conclusions as to Romanian prison overcrowding and conditions in *Rezmives* must constitute an authoritative and general comment on the regime. I can find no more ambiguity in those observations as to the general

prison conditions in Romania, than in the formulation in *Muršić*. I do not see how the presumption of compliance can survive both, taken together.

49. Mr Knowles makes an ancillary submission. He says that, if the conclusion would otherwise go against the Respondents, the Court should permit a further opportunity to them to remedy the situation by giving a different undertaking: in effect to comply with a minimum requirement of space for these individuals, even if such a guarantee cannot be given generally. This is consistent with the approach taken in *Florea I* and, for example, in *Giese v Government of the USA* [2015] EWHC 2733 (Admin) (paragraph 69). This is opposed by Mr Hall, who says that the Respondent's position is of long standing, and they have had every opportunity to change it if they so desired.
 50. For myself, I would grant a final opportunity for varied undertakings. There is the greatest incentive to foster the extradition system. It will be very highly undesirable if extradition to Romania stalls, in respect of these requested persons and no doubt others to follow. There are precedents for specific provisions in custody conditions (and indeed trial arrangements) to secure continuing extradition. Any undertaking will have to satisfy the Court that prisoners extradited will, save for short periods, and to a minor extent (meaning a minor reduction below 3m²), be guaranteed at least 3m² of personal space. Moreover the guarantee would need to be in clear terms, and terms which cover the whole of the anticipated terms of detention. In other words, the assurance would have to be in compliance with the test in *Muršić*.
 51. I would not be prepared to leave an open-ended period, or indeed a long period, for decision by the Respondents. There has been a considerable passage of time already. I recognise that the Romanian authorities will now be faced with a stark choice and will need to consider their position. For myself, I would consider submissions from the Respondents as to whether the period for decisions should exceed four weeks from the date of this judgment, if so desired. The Appellants must have the opportunity to respond in writing, if desired. I would allow 14 days from the date when the Respondents' submissions are filed and served. I would suspend making an Order in this case to permit that avenue to be explored, within such time limits".
13. What we draw from this is that individuals whether facing closed, semi- or open prison conditions must be granted at least 3m² of personal space, unless the specific and cumulative, mitigating factors identified at [138], set out in [26] of **Grecu**, are shown by the issuing judicial authority to be present.
 14. Further, the court in **Grecu** identified that it is appropriate to seek individual assurances that someone being returned to prison in Romania will be treated in compliance with the **Muršić** criteria.
 15. Following the direction of Deputy Upper Tribunal Judge Hill QC, the respondent here did seek those assurances. Ms Holmes provided the Tribunal with a response dated 11 May 2018 from the Director of the International Law and Judicial Co-operation Directorate in the Ministry of Justice in Romania addressing the prison conditions to which Mr Blaj will be subject on return.

16. The Romanian Ministry of Justice response stated:

“(1) If the said detainee is surrendered to the Romanian authorities at the Henri Coanda Bucharest Airport, he will be initially taken to and placed in detention in the Bucharest Rahova Penitentiary, where he will have to spend a 21 day quarantine period.

The said facility has quarantine rooms in which a minimum 3-square-metre individual space is granted to the occupants thereof”.

17. The response goes on in the second paragraph to state as follows:

“(2) After the quarantine period has been completed, considering the length of his sentence, the detainee will most likely serve time, initially, in semi-open detention regime. At the same time, taking into account the detainee’s domicile, he will most likely begin by serving his time in the Satu Mare Penitentiary, a detention facility specialised for the service of custodial sentences in semi-open and open detention regimes”.

18. The next section of the response describes various aspects of the detention regime, the facilities in cells at Satu Mare Penitentiary and the opportunity for prisoners to spend time outside their rooms for most of the day.

19. The response indicates on page 4:

“According to the law, after having served one-fifth of the punishment, a convict shall be re-analysed in order to assess whether he/she should be transferred to another detention regime. The evolution of the detention regime may not be predicted as it mainly depends on the detainee’s conduct while serving time. If the detainee named here and above is assigned to serve time in open detention regime, he will most likely remain in the custody of the Satu Mare Penitentiary.

Considering the perspective of the implementation of the measures included in the ‘2018–2024 calendar of measures to address the problems regarding prison overcrowding and detention conditions’, the National Administration of Penitentiaries may guarantee, for the time being, that every detainee should be granted an individual minimum space of 3 square metres while serving time, space which includes the bed and the appertaining pieces of furniture”.

20. We were satisfied that the final paragraphs of the response indicated that the conditions at Satu Mare Penitentiary that the appellant will face on return to Romania are compliant with the **Muršić** criteria and would not breach Article 3 ECHR. The response indicates that he is likely to serve any remaining sentence at Satu Mare Penitentiary and that he will be provided with individual minimum space of at least 3m².

21. Further, Ms Holmes identified that the US State Department Human Rights Reports on Romania covering 2016 and 2017 showed a reduction in prison numbers from 28,278 in 2016 to 24,813 in 2017. We accepted that this showed that the conditions at Satu Mare Penitentiary were not likely to deteriorate because of increased prisoner numbers and that the use of the words “for the time being” did not suggest that the

undertaking to provide individual minimum space of 3m² would change in the foreseeable future.

22. Ms Holmes also relied on an article dated 25 October 2017 from “The Romania Journal” which stated:

“Minimum compulsory detention conditions have changed in Romania, after the Justice Minister signed an order last week which amends the basic conditions of the prisoners. According to the new order, cells must be equipped with interphones, heat and water regulators for the shower, while rooms must be minimum 2.5-metre high.

The order has been issued by Justice Minister Tudorel Toader on October 17 and was published in the Official Gazette on October 18 ...

The European Court of Human Rights has warned in April this year that detention conditions in Romanian prisons are in breach of the European human rights laws, while pointing to a ‘structural deficiency’.

So, the European Court in Strasbourg gave national authorities a six month deadline to provide ‘a precise timetable for the implementation of the general measures’”.

23. The Tribunal also had before it the final order in the case of **Greco**, that order being issued on 24 August 2017. The order indicated that in the case of Mr Greco the Divisional Court had received “further, updated, assurances from the Romanian Ministry of Justice dated 13 July 2017, guaranteeing a minimum personal space of 3 m² for the first and second appellants”.
24. We were satisfied that the materials before us showed a serious intention by the Romanian authorities to comply with international norms for detention facilities. In that context, we found that weight could be placed on the specific assurance given here for Mr Blaj.
25. Mr Blaj accepted that he did not have material which showed otherwise but remained concerned about the conditions on the ground at Satu Mare Penitentiary, expressing his subjective view that it is one of the worst facilities in Romania. It remains our conclusion that the country materials before us showed that he can expect detention on return that meets standards which will not breach his rights under Article 3 ECHR.
26. Mr Blaj also informed us at the hearing that Romanian law allowed for time under curfew in the UK to count towards the service of his sentence in Romania. With the assistance of a solicitor, he has therefore corresponded with the Romanian authorities to enable some or all of his extensive period in the UK under a curfew to count towards his extant sentence in Romania. If this is correct, there would be even less force in the argument raised under Article 3 ECHR. However, we are in respectful agreement with Aitkens LJ who in **Blaj and others** (above) stated at paragraph [56]:

The only factor that was pressed before us but (apparently not before DJ Coleman) was the fact that Blaj has been the subject of a curfew as part of his bail conditions. In our judgment this cannot swing the balance against extradition. Blaj was a fugitive from justice in Romania; it is small wonder he was made

subject to restrictive conditions of bail. Whether that should count in his favour in serving his sentence in Romania is properly a matter for the authorities of the requesting state to decide.”

We similarly consider that the possibility that the Romanian authorities may reduce Mr Blaj’s period of incarceration is not determinative of his Article 3 claim. If anything, it makes the Article 3 argument even less compelling.

27. We therefore dismiss the appeal on Article 3 ECHR grounds.
28. We turn to Mr Blaj’s Article 8 claim. It was not seriously argued before us that he could meet the provisions of Appendix FM of the Immigration Rules. At the hearing Mr Blaj informed us that he is no longer in a relationship with his Romanian partner so he cannot qualify under the partner route. She can remain in the UK to care for their child, N, born on 23 June 2016, so he cannot qualify under the parent route. Mr Blaj informed us that his daughter now lives with her mother and he tries to ensure that he sees her once a week. There is the additional matter that the appellant cannot meet the suitability requirements of Appendix FM because of his criminal conviction, paragraph S-LTR.1.4. providing:

“The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than four years but at least twelve months”.


29. We did not find Mr Blaj could meet the provisions of paragraph 276ADE(1)(vi). We found it wholly unarguable that he would face very significant obstacles to reintegration if he is returned to Romania. He lived there until the age of 25 and spent all of his formative years there. He has retained contacts with Romanian culture during his time in the UK, his parents and sister living here and his ex-partner also being a Romanian national. Mr Blaj raised concerns about his ability to resettle in Romania by way of obtaining housing and work but, given the length of time that he has spent there, his ability to speak the language and his knowledge of the culture and society, although resettling in Romania might present some difficulties, we did not find that the threshold for “very significant obstacles to reintegration” could be said to be met here. We also noted from the Romanian Ministry of Justice response that efforts are made to provide prisoners with education, professional training and therapeutic activities, which might be of benefit to Mr Blaj on his release. There is the additional factor that albeit they may wish to remain in the UK, there was no evidence before us showing that his immediate family or his ex-partner and child could not return to Romania with him on a temporary basis to assist him to resettle, continue to visit him there or even return permanently with him.
30. We considered whether expecting Mr Blaj to return to Romania amounted to a disproportionate interference with his rights under Article 8 ECHR, the first four **Razgar** questions falling to be answered in the affirmative in his favour. Section 117B of the Nationality, Immigration and Asylum Act 2002 provides that “the maintenance of effective immigration controls is in the public interest”. Here, as identified above, Mr Blaj has no basis for remaining in the UK as he cannot show that he is in need of international protection or that he meets the requirements of the Immigration Rules

set out in Appendix FM or paragraph 276ADE. The public interest weighs against him.

31. In addition to the public interest in the maintenance of effective immigration control, we also were of the view that the weight should be given to the proper operation of the European Arrest Warrant system and a convicted criminal serving a lawful sentence in another European country. That added to the weight against Mr Blaj in the proportionality assessment.
32. Mr Blaj speaks good English, has found work in the UK when permitted to do so and has been here lawfully under the registration regime for Romanian nationals. The factors in Section 117B (2) and (3) of the Nationality and Immigration Act 2002 do not weigh against him therefore. Mr Blaj's daughter does not qualify for consideration under s.117B(6) as she is Romanian, not British, and has not lived here for seven years.
33. Mr Blaj's eleven years of residence in the UK whilst here lawfully weighs in his favour in the proportionality assessment. We did not have a great deal of detail but no doubt he has formed social relationships and ties in the usual manner concomitant with residence over that period of time. We accept that he retains a parental role, albeit a limited one, with his daughter. We accept, albeit on limited evidence of the current circumstances, that it is in her best interests to be in the same country as her father whilst she grows up. As above, however, nothing indicted to us that she and her mother could not go to live in Romania so that she could continue direct contact with both parents and her best interests met there as well as they would be in the UK. There was also nothing showing that the appellant's immediate family could not return to Romania for visits or permanently. It was also our view, given the public interest considerations weighing against the appellant here, and given the limited evidence provided, that if his daughter remained in the UK with her mother, even if this was not in her best interests, the decision to return him to Romania was not disproportionate.
34. It was therefore our conclusion that the respondent's decision was proportionate and that the appeal under Article 8 ECHR also had to fail.

Notice of Decision

35. The decision of the First-tier Tribunal was set aside to be re-made.
36. We re-make the appeal as refused on all grounds.
37. No anonymity direction is made.

Signed: 

Date: 25 June 2018

Upper Tribunal Judge Pitt