



Neutral Citation Number: [2024] EWHC 2351 (Admin)

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

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/09/2024

Before :

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

Between :

**THE GOVERNMENT OF THE REPUBLIC OF
TÜRKIYE**

**Appellant/
Requesting
State**

**-and-
CIHAN DEMIR**

**Respondent/
Requested
Person**

And Between:

**ERDINC UCKAC
AYKUT SAHIN**

**Appellants/
Requested
Persons**

-and-

**THE GOVERNMENT OF THE REPUBLIC OF
TÜRKIYE**

**Respondent/
Requesting
State**

**Helen Malcolm KC and Alexander dos Santos (instructed by Crown Prosecution Service)
for The Government of the Republic of Türkiye**

Edward Fitzgerald KC and Saoirse Townshend (instructed by **Sonn McMillan Walker Ltd**) on behalf of **Mr Demir**

Edward Fitzgerald KC and Benjamin Seifert (instructed by **Stephen Fidler & Co**) on behalf of **Mr Uckac**

Edward Fitzgerald KC and Graeme Hall (instructed by **Birnberg Peirce Solicitors**) on behalf of **Mr Sahin**

Hearing dates: 23rd & 24th July 2024

and applications to adduce further evidence and materials dated 6, 12, 15 and 16 August 2024

Approved Judgment

This judgment was handed down remotely at 12.00 Noon on 17th September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Dingemans and Mrs Justice Stacey:

Introduction and issues

1. This is the judgment of the Court. We heard three appeals against the judgments of District Judges (Magistrates' Court) ("DJ(MC)") in which the Government of the Republic of Türkiye ("the requesting state") sought extradition. The common issue on the appeals was whether, if extradited, there is a real risk that the rights of Cihan Demir, Erdinc Uckac and Aykut Sahin ("the requested persons") under article 3 of the European Convention on Human Rights ("ECHR") would be breached. This involved consideration of the prison conditions in which the requested persons will be held if extradited, and the extent to which there has been breach or compliance with the "Yalvac assurance" given by the requesting state in previous extradition cases. The Yalvac assurance is that the requested persons will be held, if extradited, in Yalvac T Type Closed Prison ("Yalvac") with a minimum personal space of 4 square metres. The Yalvac assurance has been provided consistently since 2019 and was provided in each of the three cases the subject of this appeal. Also in issue was the effect of any breach of the assurances and the reliability of the Yalvac assurances given in each of these cases by the requesting state; and whether this court should, at this stage of the proceedings, require further assurances from the requesting state.
2. The warrants were conviction warrants in the cases of Mr Demir and Mr Sahin. The case of Mr Uckac involved an accusation warrant. As well as the common issue relating to article 3 of the ECHR, there are issues discrete to each appeal. The requesting state appeals the finding of the DJ(MC) Heptonstall that Mr Demir was not sought for an extradition offence. Mr Sahin appeals the decision of DJ(MC) Sternberg to dismiss his claim that extradition to the requesting state would infringe his rights under article 8 of the ECHR. A challenge under article 3 of the ECHR was not raised below, but permission has been granted to raise it on appeal against the decision of DJ(MC) Sternberg and to adduce fresh evidence from Professor Morgan. Permission for Mr Uckac to appeal on any grounds other than breach of article 3 of the ECHR was refused. Mr Uckac renews the application for permission to appeal on three of the grounds on which permission was initially sought.
3. We heard oral submissions from: Mr Fitzgerald KC and Ms Malcolm KC on the article 3 issues; from Ms Malcolm KC and Ms Townshend on the extradition offence issue for Mr Demir; from Mr Hall and Mr dos Santos on the article 8 ECHR issue for Mr Sahin; from Mr Seifert and Mr dos Santos on the renewed application for permission to appeal for Mr Uckac. We are very grateful to counsel and their respective legal teams for their helpful written and oral submissions.
4. Following the hearing the requesting persons made an application to adduce fresh evidence consisting of the advanced unedited version of concluding observations on the fifth periodic report of Türkiye ("the concluding observations") by the United Nations Committee Against Torture (UNCAT). This was adopted on 25 July 2024 and published on 26 July 2024. This was therefore published just after the oral hearing before us had concluded. The requesting state brought to the Court's attention to the judgment of DJ(MC) Tempia in *The Government of the Republic of Türkiye v McCarthy (McCarthy)* which was handed down on 26 July 2024, which again was just after the conclusion of the hearing before us. In response to the requesting state's application to adduce the judgment in *McCarthy* the requested persons made an application dated 15

August 2024 to adduce a witness statement from Professor Morgan. None of the parties suggested it was necessary to have, or requested, a further oral hearing to deal with the fresh evidence and materials.

5. By the conclusion of the oral hearing, and following the making of the further applications after the conclusion of the oral hearing, it was apparent that the following issues need to be determined: (1) whether the fresh evidence and materials sought to be adduced by the parties after the hearing should be admitted; (2) whether there is a real risk that the rights of the requested persons under article 3 of the ECHR would be breached by reason of the conditions of the prisons in which they are likely to be held in Türkiye; (3) the extent to which there has been breach or compliance with the Yalvac assurance given by the requesting state in previous extradition cases and the effect of any breach of the assurances on the reliability of the Yalvac assurances in these appeals; (4) whether this court should, at this stage of the proceedings, require further assurances from the requesting state; (5) whether Mr Demir was sought for an extradition offence; (6) whether the extradition of Mr Sahin would infringe his rights under article 8 of the ECHR; and (7) whether Mr Uckac should have permission to appeal on any his renewed grounds.

The factual background

6. Türkiye is a Part 2 Territory under the Extradition Act 2003 (“the 2003 Act”) which issued separate requests for the extradition of the three individual requested persons resident in the United Kingdom on 12 April 2021 (Mr Uckac), 4 August 2022 (Mr Demir), and 16 November 2022 (Mr Sahin). The requests were challenged by each of the requested persons leading to the three judgments below.

Evidence about prison conditions in Türkiye

7. There was evidence before DJ(MC) Heptonstall hearing Mr Demir’s case on prison conditions in Türkiye. This came from further information provided by the Government of Türkiye on 30 November 2022, 13 April 2023 and May 2023 and oral evidence before the judge from Professor Rod Morgan and a written statement from Dr Karakas whose report was admitted as hearsay under section 30(2) Criminal Justice Act 1988. We had before us the fresh evidence admitted by order of Mrs Justice Heather Williams of 18 April 2024 of Fiona Haddadeen and up to date reports from Professor Morgan and Dr Karakas and further information provided by the Government of Türkiye of May 2024 about the transfer of a further prisoner with a Yalvac assurance, Hawar Abdulla Yousef.
8. Professor Morgan was accepted by DJ(MC) Heptonstall to be an expert in prison conditions with 40 years’ experience in writing about custodial conditions and he had inspected prison conditions in many countries and held many positions of responsibility. Professor Morgan had visited Turkish prisons in 1992, 1994, 2015 and 2017, but since then had been denied access by the requesting state and therefore unable to conduct any more recent visits.
9. There have been long standing concerns expressed by a range of bodies including the Committee for the Prevention of Torture (“CPT”) which is considered the most authoritative provider of evidence regarding custodial conditions in Europe. The European Convention for the Prevention of Torture (“ECPT”), of which the requesting

state has been a signatory since 1988, gives the CPT an unfettered right to inspect, firsthand and without warning, all places of detention in state parties where citizens are held on the authority of the state.

10. Overcrowding in the Turkish prison estate has been a constant concern which has been compounded by a dramatic growth in prison numbers over the last few decades. A penal building programme has not kept pace with the rise in prison numbers. In 2000 there were less than 50,000 prisoners. In August 2021 there were 291,198 prisoners in Türkiye in a prison system with a total capacity of 233,194 prisoners, representing overcrowding approaching 25%. On 5 September 2023 there were 407 prisons with a capacity for 298,314 prisoners containing a prison population of 252,683, representing 15% under occupancy. In December 2023 there were 403 prison establishments with a total capacity for 296,502 prisoners with 291,194 prisoners being held, 40,000 more than three months earlier. The most up to date figure from the Turkish authorities are that as at 2 May 2024 329,151 prisoners were being held in 403 prison establishments, which was an increase of 30,000 prisoners, which was not explained only by seasonal variations. The increased capacity of the prison system is now being outpaced by the increase in the number of prisoners.
11. The CPT report of 2020 following a visit carried in May 2019 described great overcrowding with extremely cramped accommodation, a large number of prisoners without their beds sleeping on mattresses on the floor and some obliged to share mattresses as there was no floor space left in the living units for more individual mattresses to be placed.
12. According to Professor Morgan, whose further evidence adduced pursuant to the order of Mrs Justice Heather Williams was not challenged before us, the current level of system overcrowding is significantly greater than the 11% of system overcrowding that the general statistics indicate, since no prison system is able properly to make use of all its stated capacity all of the time. A margin of 5-10% loss of capacity is always required to allow for refurbishment, decoration and repair programmes for example. It follows that there must certainly be many prisons in Türkiye that are overcrowded, possibly greatly so, as successive visits of inspection by the CPT have demonstrated.
13. We note that reports following more recent visits by the CPT have not been published. After publication of the 2019 report in 2020, the CPT's subsequent two reports following its 2021 and 2022 visits have not been published. On 26 April 2024 Dr Alan Mitchell, President of the CPT publicly criticised the Turkish government for failing to publish reports of visits by his organisation. He highlighted "Türkiye's refusal to approve the publication of reports concerning prison conditions" and referred to the need for "Türkiye's consent to enhance report transparency." The failure to allow publication of the CPT's reports of 2021 and 2022 justifies the inference that the contents of the reports are not helpful to the requesting state.

The Yalvac assurance

14. Following earlier judgments about prison conditions in Türkiye, including the judgment in *Ozbek v Government of Turkey* [2019] EWHC 3670 (Admin) (*Ozbek*) it is usual for extradition requests to the UK from the Republic of Türkiye to include the Yalvac assurance.

15. A request for further information was sought asking if the Yalvac assurance was to be given and the requesting state was asked to provide the current occupation statistics for Yalvac.
16. Lengthy assurances were provided in identical terms by a Judge on behalf of the Minister, Deputy Director General in each case:

“In case said person is extradited to Türkiye, considering the offence group he belongs to, he will be placed in Yalvac T Type Closed Penal Institution, which fits his status. When placing him in a cell in the prison, his offence group and personal status shall be considered and, with the exception of transfers, made with the aim of protecting the safety of the inmates, such as transfers that are due to force majeure and rare transfers due to discipline sanctions, enmity or blood feuds, covered by Article 56 of Law No. 5275, the person shall not be transferred to another prison without his consent.”

17. Details of the accommodation and facilities provided at Yalvac were set out together with information about services and facilities in the prison estate more generally for detainees. The arrangements in place for inspection, oversight and complaints about prison conditions and the prison estate were also set out. The requesting state asked for all the regional chief public prosecutors’ officers be informed if the extradition request was granted “in order to initiate the necessary procedures for his immediate transfer to Yalvac T Type Closed Penal Institution”.
18. The prison population at Yalvac was set out in each of the responses with occupancy levels recorded at 366 out of 400 places in September 2022 (in Mr Uckac’s case), 367/400 as at November 2022 (for Mr Demir) and 378/400 in February 2023 (for Mr Sahin).
19. From all the available evidence provided by the Turkish authorities since the Yalvac assurance was introduced, Yalvac has never been overcrowded and has sometimes been substantially under occupied since it opened in early 2020.

Evidence about breaches of the Yalvac assurance

20. Before DJ(MC) Heptonstall there was evidence specific to Mr Ozbek, the appellant in *Ozbek*, from Melek Sey, a Turkish lawyer based in London who had represented him, and from Katy Smart, a legal representative for Mr Demir who had spoken to Mr Ozbek on the telephone.
21. The evidence showed that the Yalvac assurance had been provided and that upon surrender Mr Demir would be detained in Yalvac with personal space of 4sq.m, 12.6sq.m or 11-16sq.m, (depending on which unit he was assigned to) with the various facilities set out in the Yalvac assurance and the mechanisms for oversight and inspection.
22. After being requested to do so, the Government of Türkiye had also provided further information about five previous requested persons who had been extradited to Türkiye with the benefit of the Yalvac assurance. The evidence showed that Ali Molla had been

transferred to Yalvac on 21 January 2020. This showed compliance with the Yalvac assurance.

23. Nesin Kaderli was accommodated in Bakirkoy/Metris No. 2 T Type Closed Prison on 09 June 2022 until his release on 23 June 2022. This showed that Mr Kaderli had not been transferred to Yalvac in accordance with the assurance, and had been detained for some 14 days in a prison other than Yalvac in breach of the assurance before his release.
24. Aydm Rayyatzadeh (also known as Adrian Mark Raymond), was taken to Maltepe No. 3 L Type Prison on 14 August 2021, and to Yalvaç on 11 September 2021. This showed that Mr Rayyatzadeh had been detained for some 28 days in a prison other than Yalvac in breach of the assurance.
25. Yunus Emre Coskuner, was taken to Bakirkoy/Metris No. 1 T Type Closed Prison on 12 November 2021. He was transferred to Yalvaç on 10 December 2021 and to Yalvaç Open Prison on 17 January 2022. He was granted Covid-19 leave on 10 February 2022. This showed that Mr Coskuner had been detained for some 28 days in a prison other than Yalvac in breach of the assurance. It also showed that these breaches of the assurance were occurring at a time when Covid-19 was an issue.
26. Ender Ozbek, was taken to Bakirkoy/Metris No. 2 T Type Closed Prison on 15 February 2020. He was transferred to Marmara No. 1 L Type Closed Prison on 20 February 2020. He was transferred to Marmara Open Prison on 09 March 2020 and released on 12 March 2020. This showed that Mr Ozbek had not been transferred to Yalvac in accordance with the assurance, and had been detained for some 20 days in a prison other than Yalvac in breach of the assurance before his release.
27. Further information about why Mr Ozbek was never transferred to Yalvaç was provided by the requesting state as follows:

“It was understood that the letter announcing the extradition of Ender Ozbek from the United Kingdom to Türkiye on 14.02.20 did not reach, due to a technical problem, the relevant unit of our Directorate General, which is responsible and authorized for following the transfer procedures of the extradited convicts; therefore, our undertaking of guarantee could not be fulfilled. As can be recalled, the persons who were previously extradited from the United Kingdom (England) to Türkiye were placed, without delay, in Yalvac T Type Closed Prison as was guaranteed. Therefore, due to a technical problem specific to this case, the request for guarantee regarding the placement of the aforementioned person in Yalvac T Type Closed Prison could not be fulfilled.”

28. When asked why Mr Ozbek had spent such a short time in prison after his extradition, we were told that, on the best information available to counsel, it was because Mr Ozbek’s extradition had been further delayed after his appeal had been dismissed because of an unsuccessful application for certification of a point of law for the Supreme Court.

29. Mr Ozbek had complained to his son and his lawyer, Ms Sey, about severe overcrowding at Metris prison in particular which he said was much worse than Silivri, which was also bad.
30. Since the Government of Türkiye has been providing the Yalvac assurance there have been six individuals extradited from England, as set out in the facts in the Demir judgment set out above, and Mr Yousef. Mr Yousef was placed in Maltepe No, 3 L Type Closed Penal Institution on 5 October 2023. The letter regarding the transfer of Mr Yousef to Yalvac was sent to the relevant Chief Public Prosecutors' offices on 10 October 2023. As a result of planning by Metris Prison Gendarmerie Command, Mr Yousef was transferred to Yalvac on 17 October 2023. This showed that Mr Yousef was detained in a prison for some 12 days in breach of the Yalvac assurance before his transfer to Yalvac.
31. Mr Demir's solicitor, Ms Haddadeen, had spoken to him about his conditions in custody on the telephone but he had not prepared a statement and when she tried to speak to him to make arrangements for a statement to be prepared his phone number was disconnected and she was unable to make further contact. Mr Yousef's account was that he was held in Wing A Cell 11 throughout his time at Maltepe. He described seven cells contained within one room containing 50 people in very cramped conditions with insufficient space for beds and mattresses so that some prisoners slept in doorways and corridors. The conditions were poor, overcrowded and dirty. He was informed on arrival that he would not be held at Maltepe for very long as he would be transferred to Yalvac. He was also critical of conditions and the food at Yalvac which consisted of a room for 10 people with mezzanine beds upstairs, a kitchen, toilet and small bathroom downstairs. Every inmate had their own bed.
32. Apart from the explanation given for Mr Yousef, beyond the vague reference to a "technical problem" specific to Mr Ozbek's case, no details have been provided why four out of the five other persons who were extradited did not go directly to Yalvac from whichever airport received them, and we have no information about their transport arrangements. Transfers were said to have been undertaken "as soon as possible" and "without delay". The periods of time were of up to four weeks and in the case of Mr Ozbek he was never transferred to Yalvac but released four weeks after his return to Türkiye.

Mr Demir

33. Mr Demir is sought by the Government of Türkiye on a conviction warrant to serve the remaining 3 years 10 months and 3 days of a sentence of 6 years and 8 months in relation to an offence of having intercourse with a minor committed in June 2011.
34. Mr Demir was convicted of a single offence of Qualified Sexual Abuse of a Child, contrary to articles 103/2, 62/1, 63 and 53 of the Turkish Penal Code 5237. The complainant, then aged 13 ½ years and her family had been staying at the Siesta Beach Apart Hotel in Bodrum Gumbet in June 2011 where Mr Demir, then aged 26, worked as a waiter. Mr Demir and the complainant had become friendly and on 17 June 2011 Mr Demir had vaginal sexual intercourse with the complainant in a shower cabin near the bar or restaurant area of the hotel. Mr Demir had been sitting at the table with the family drinking with them. He had passed the complainant a note to follow him to the toilet area at the end of the evening. When she went to the toilet some 20 minutes later

Mr Demir was waiting for her and he took her into the shower room. They were found by the complainant's mother and others a short while later. A DNA profile obtained from a semen stain on the complainant's underwear was a match with Mr Demir.

35. At the trial at the Mugla Second Assize Court ("the Assize Court") Mr Demir denied that intercourse had taken place, and the complainant claimed that she had been forced to have sexual intercourse. The Court found that there had been consensual sex with a child. At the trial Mr Demir's evidence was that he did not know that the complainant was 13, that she looked to be 17-18 years and she had told him that she was 18 years old. Other witnesses had stated that the complainant looked 17-18 years old and that she had told them that she was 18. One witness stated that she had heard that the complainant was 13-14 years, but did not know that for herself, and corrected an earlier statement that suggested that she had personally known that the complainant was 13-14 years.
36. The issues raised by Mr Demir in opposition to the extradition request were whether the conduct amounted to an extradition offence as defined by s.138(3) of the Act, whether prison conditions in Türkiye breached Mr Demir's article 3 rights, and, thirdly whether his extradition constituted a disproportionate interference with his and his family's Article 8 rights. In all other respects it was accepted that the request was valid with no irregularities or deficiencies and no other bars to his extradition. The case was heard before DJ(MC) Heptonstall on 4-5 September 2023 with judgment given on 5 October 2023.

The judgment below in Demir

37. DJ(MC) Heptonstall found that there was no interference with Mr Demir's article 8 rights but refused the extradition request on the two other grounds. First, he found that there was a real risk that Mr Demir would be placed in a significantly overcrowded prison resulting in such limited personal space that it would amount to inhuman or degrading treatment contrary to his rights under article 3 of the ECHR, and that the Yalvac assurance could not be relied upon. Secondly the judge also found that Mr Demir had not been convicted of an extradition offence.
38. So far as the issue of the extradition offence was concerned, the judge set out the facts of the offence drawn from the reasoned decision of the Assize Court and summarised the evidence of the witnesses on which the reasoned decision was based. The judge noted that the Assize Court had rejected the complainant's evidence that the act was carried out by force, and also rejected Mr Demir's evidence that there had been no sexual intercourse.
39. The judge recorded that the judicial authority asserted that the conduct specified in the request could be charged in English law as sexual activity with a child contrary to s.9(2)(a) Sexual Offences Act 2003 (the Sexual Offence Act) and that the particulars would have been that:

"Cihan Demir, a person over the age of 18 years, on 17 June 2011 at the Siesta Beach Apart Hotel in Bodrum, Gumbet, intentionally touched [the victim], the touching was sexual, [the victim] was aged under 16 years and Cihan Demir did not reasonably believe that she was of or over the age of 16 years

and the touching involved the penetration of [the victim's] vagina with Cihan Demir's penis."

40. The judge noted that article 103 of the Turkish Penal Code 5237 refers only to "children who are under the age of fifteen" without mention of the offender's belief in the child's age. He recorded that the complainant's apparent age was addressed in the evidence but that there was no finding in the reasoned decision as to either Mr Demir's belief in the complainant's age or the reasonableness of any such belief. The judge stated, at paragraph 26 of the judgment, that the "absence of a finding means that there is no determination of the accuracy of the accounts of the several witnesses who formed an opinion as to her age". The judge found that Mr Demir's lie about the fact of sexual intercourse did not necessarily mean that the judge could determine that "he was lying about what she said as to age and what he did or may have believed about her age" in the absence of a finding from the Assize Court. The judge also recorded that similar consideration applied to the subterfuge about the relationship because the conduct might be equally consistent with not seeking to display a member of staff being involved with a guest. The judge concluded "it is not an inevitable corollary of proving the matters that constitute the foreign offence that the necessary ingredient of a lack of reasonable belief in sufficient age would be satisfied, and the conduct as described in the warrant and the findings of the Second Assize Court do not lead to the inevitable inference of that ingredient." The Judge therefore found that dual criminality had not been made out and the request must be refused.
41. The judge accepted Professor Morgan's evidence and the material that he had collated and found that there has been a long-standing problem with over-crowding in the Turkish prison system and scant publication of recent reports. He concluded at paragraph 76 that "In the dynamic environment rightly observed by the judicial authority, I am driven to the conclusion that, absent an assurance as to the location, there is a real risk that Mr Demir would be placed in an establishment that was so overcrowded as to amount to inhuman or degrading treatment."
42. The judge next considered the degree of confidence that the Court could have in compliance with the Yalvac assurance. He noted that this case was the first to have before it the information as to what has happened to a requested person with the benefit of the Yalvac assurance once surrendered to Türkiye. He recorded, in paragraph 80 of the judgment, that reliability of the assurance had been examined in other cases but without the information as to what has happened once the requested person was surrendered. The judge found that the verification of compliance with assurances through diplomatic or other channels is absent on the evidence. There had been no suggestion of a checking mechanism or reporting back. It appears that the departures from the assurances in the other cases was not known about until the further information was provided in this case. The judge recorded that although Professor Morgan was surprised by the degree of openness from the Turkish authorities, examination of the correspondence did not support such a degree of voluntary candour, because it was Mr Demir's legal representatives who sought information to confirm the allegations of non-compliance in relation to Mr Ozbek. This was what had resulted in the CPS requesting further information setting out the names of the four other persons who were extradited. The judge concluded that the requesting state's record in abiding by similar assurances was plain. It had complied fully in just 1 of 5 previous cases, a 20% success rate which the judge described as woeful. The judge found that the extent

of non-compliance might be mitigated if the periods were very short, but here they were two weeks for Kaderli; four weeks for Rayyatzadeh; four weeks for Coskuner; and four weeks for Ozbek. The judge found that the explanations given did not instil confidence. The judge found Mr Ozbek was not the first person to arrive in Türkiye with the benefit of such an assurance and there had been compliance only with the first person extradited with a Yalvac assurance who seems to have been Mr Molla. The judge held that when there has been an explanation of inadvertence in the one case, the court is drawn to the inference that the remaining 75 per cent were deliberate.

43. The judge found that, save for Mr Ozbek, there had been no detail provided to suggest that the extradited persons were afforded conditions that were otherwise compliant with the assurance from which they should have been benefitting. In relation to Mr Ozbek dimensions were provided for each of the facilities in which he was housed and, for Metris, the capacity of that room, though not in relation to Marmara/Silivri. The judge found that given the concerns in this case and throughout the Turkish prison system, the omission of the actual occupancy rates to demonstrate the real space available to Mr Ozbek is most surprising. The judge concluded that “the evidence is very cogent, coming as it does from the judicial authority, that there have been multiple significant breaches. The record set out is not of a sample but the whole population of those who were afforded such assurances: it is abundantly clear that they were more honoured in the breach than the observance”. The judge found that the presumption of compliance had been displaced by the weight of past failures, and found that there was a real risk that Mr Demir would be placed in a significantly overcrowded prison resulting in such limited personal space that it would amount to inhuman or degrading treatment. The extradition request was therefore refused.

Mr Sahin

44. Mr Sahin was convicted of one offence of “trading” cannabis on 16 February 2012 at the Aegean Army Headquarters Support Group where he served as a Sergeant. Suspicions were raised from a telephone call received in the NCO café. The caller mistakenly thought he was speaking to Mr Sahin and said “A friend came here, he has 13 lira, we agreed on 10 lira, if you had goods with you, let us sell it”.
45. Mr Sahin was searched and 3.8 grammes of marijuana was found in his trouser pocket with a value of 10-13 Turkish lira (estimated at £3.59). Mr Sahin was arrested and charged and tried in his presence.
46. By the time of the announcement of the verdict which took place on 24 January 2014 in the presence of his lawyer, Mr Sahin had left the country. In fact Mr Sahin had arrived in the UK on 21 August 2013. The decision in Mr Sahin’s case became final on 11 November 2019 after the appeal process was complete and he was sentenced to 4 years and 2 months imprisonment with a further 4 days imprisonment imposed in lieu of payment of a fine. The extradition request was issued by the requesting state on 16 November 2022 and certified on behalf of the Secretary of State on 10 January 2023. Mr Sahin was then arrested and brought before the Magistrates’ Court.
47. Mr Sahin’s evidence at the court below was that his family is from the Alevi Islamic tradition and originate from a Kurdish area and have experienced discrimination in Türkiye. He had studied marketing at university for 2 years before obtaining work in a telecoms company between 2006-2011. He had completed 15 months of mandatory

military training at the time of these events. His evidence was that the case was fabricated and the evidence had been planted on him because 8 days prior he had received a commendation for reporting a group of soldiers for attempting to sell drugs near the barracks. He had twice tried to appeal his conviction unsuccessfully.

48. Mr Sahin said he had completed his military service in May 2012, but given the difficult job market at the time left Türkiye for the UK lawfully in the summer of that year. There were no restrictions in place preventing him from travelling out of the jurisdiction. He kept in regular touch with his lawyer who was conducting his appeal on his behalf. After the final appeal was unsuccessful and the conviction confirmed on 11 November 2019 he was unaware that an arrest warrant had been issued for him on 22 November 2021. His lawyer had informed him of the sentence passed. He accepted that he knew matters were outstanding but thought that provided he did not return to Türkiye after November 2019 he would not have to serve his sentence.
49. Mr Sahin said that he was granted leave to remain in the UK in 2014 and has lived here openly, paying taxes with a variety of jobs working in sales and marketing, running a shop and a successful company for the last 10 years. He is currently buying and selling Turkish rugs.
50. He met his partner, Rachelle Standage, around 2019 or a little later. Ms Standage became pregnant with their first child in February 2023. Mr Sahin was initially denied bail when he was arrested on 5 February 2023 and not released until 13 February and he and his partner were devastated that he could not be there for the birth of their child. They currently maintain separate addresses but spend 13 nights each fortnight together.
51. Mr Sahin said that he supports his partner by cooking and cleaning so that she can rest and care for their baby. He is concerned about how she will cope in his absence and he is concerned that he may not be able to return after he has served his sentence in Türkiye if he is extradited. Mr Sahin said that Ms Standage's and his plan is to get married and have a further child and to continue their lives together as a family in the UK. He is established here having lived in Oxfordshire, London and now in Hertfordshire where he and his partner have made a life with friends and colleagues. He helps his elderly neighbours with gardening.
52. In the UK Mr Sahin has one conviction for driving without a licence and drink driving. His vehicle was insured but he stated that he was unaware that his Turkish licence was no longer valid in the UK.
53. Ms Standage gave evidence to the court below that she is an accountant and she is very anxious for Mr Sahin not to return to Türkiye. She will be unable to afford both their child's nursery costs and her mortgage if they do not have Mr Sahin's income when she returns to work after maternity leave. She also lacks local support without Mr Sahin and fears she will struggle to cope as a single mother. Her father recently passed away and her mother has health and alcohol problems, including a recent diagnosis of cancer and although she lives only 10 miles away will not be in a position to help.
54. Ms Standage also considers that their child will suffer immense and permanent damage if Mr Sahin is extradited and unable to return quickly. It is important to them that their child is aware of her bi-racial identity and the plan was for her to grow up bilingual. It is personal for Ms Standage as her mother comes from a biracial family and did not

know her white father when growing up in Zimbabwe with her black mother. She does not want history to repeat itself with their daughter. Ms Standage does not speak Turkish and has never been to Türkiye. She believes that it would be difficult for her to get a job as an accountant in Türkiye. She has had her current job for 18 years.

The judgment below on Mr Sahin

55. Two issues were raised in defence of the Government of Türkiye’s extradition request: (1) that the extradition was barred by the passage of time under section 82 of the 2003 Act; and (2) that his extradition was incompatible with Mr Sahin and his family’s article 8 ECHR rights. In all other respects it was accepted that there was no bar to extradition and that all procedural requirements had been complied with.
56. DJ(MC) Sternberg found that the extradition request was not barred by passage of time and this ground was not pursued on appeal. After balancing the factors both in favour of and against extradition, the Judge found that Mr Sahin’s extradition would be a proportionate interference with his and his family’s Article 8 rights.
57. The judge found that the offence of what would, in England and Wales, be possession with intent to supply cannabis in 2012 was, on its face, a serious offence. He noted the sentence that had been imposed. He found that Mr Sahin was a fugitive from justice. The judge accepted the hardship described by both Mr Sahin and Ms Standage that would follow from his extradition. Applying the balancing exercise set out in *Celinski v Polish Judicial Authority* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551 (*Celinski*) he found the factors in favour of extradition being first, “the constant and weighty public interest in extradition that those accused of crimes should be brought to trial and that the UK should honour its international obligations. The public interest in ensuring that extradition arrangements are honoured is very high”; secondly “the offence for which Mr Sahin is sought was sufficiently serious to merit a term of custody in Türkiye” recording that a term of imprisonment of in excess of 4 years has been imposed by the Turkish Court; thirdly that Mr Sahin was a fugitive from justice; fourthly that Mr Sahin had relocated to this jurisdiction and started a family life in this jurisdiction in the knowledge that he was subject to prosecution in Türkiye and that he had not served the sentence imposed; fifthly Mr Sahin was maintaining a separate address from his partner at the time of his arrest; sixthly Mr Sahin was not a man of good character in this jurisdiction, albeit his only conviction is for driving offences from 2015.
58. The judge found that the key factors against extradition were: first the underlying offence whilst serious, is not an offence of the utmost gravity; secondly there was some delay in this case, in particular by the Turkish Courts in resolving the requested person’s appeal; thirdly extradition will undoubtedly have an impact on Mr Sahin’s partner. She may struggle to cope financially without him and may have to claim benefits or curtail her parental leave. She and their child will lose his financial support as well as his emotional support to her and their child; fourthly extradition will have an impact on the daughter of Mr Sahin and Ms Standage who was an infant. The judge accepted that she relied on Mr Sahin for emotional and practical support and, although the judge did not accept his extradition would be devastating for her, it is likely that she would suffer as a result of his return to Türkiye; fifthly Mr Sahin and Ms Standage are unlikely to be able to increase the size of their family in the event of his extradition;

and sixthly Mr Sahin may face difficulties in returning to the UK if he is required to serve the entire sentence imposed in Türkiye and his leave to remain lapses.

59. The judge gave substantial weight to the public interest in those accused of crimes being brought to trial and the UK's fulfilment of its international obligations. Where, as here, the extradition of a fugitive was sought, there was a need for very strong counter-balancing factors before extradition could be disproportionate. On the facts in this case, he did not find that there were very strong counter-balancing factors, or that the evidence established that the interference in family life consequent on extradition would have exceptionally severe consequences on family life.
60. The judge concluded that it was not a trivial offence and noted that it had resulted in a sentence of 4 years imprisonment. The judge considered that the sentencing courts in this jurisdiction would be likely to impose a custodial sentence on conviction applying the Sentencing Council Guidelines. He stated that under the guidelines a person with a leading role convicted of possession with intent to supply class B drugs could expect to receive an immediate custodial sentence of 1 year's imprisonment. (In fact it was common ground at the hearing that the judge must have been referring to a person having a significant, rather than a leading role, for an offence of category 3 harm as the starting point for a person with a leading role would be 4 years. It was common ground that it would be a category 3 harm case in this country as the proposed supply was direct to users). The judge went on to find that even if an immediate custodial sentence would not be imposed in this country, it would not mean that extradition should be refused, since it is not for our Courts to impose their own views about the approach taken to sentencing in other extradition partner states.
61. The judge noted the distress and hardship that Mr Sahin's extradition would cause to Mr Sahin, his partner and their child, but did not find that Ms Standage would be unable to care for their child in the event of Mr Sahin's extradition. The delay did not assist Mr Sahin since the Judge found no culpable delay on the part of the Turkish authorities. Furthermore, Mr Sahin continued his life in the UK in the knowledge of his conviction and sentence in Türkiye. As to the concerns about the risk to Mr Sahin's ability to return to the UK, these were not supported by detailed evidence and submissions as to the likely effect of his extradition on his ability to return and did not amount to a dispositive, decisive factor that would tip the balance in Mr Sahin's favour.

Mr Uckac

62. Mr Uckac and a number of others were accused of attempting to export 2,268.84g of pure heroin (contained in powder weighing 5,402g) from Istanbul Türkiye to the UK in December 2013 contrary to article 37 of the Turkish criminal code ("the Code"). If convicted, he would receive a sentence of no less than 10 years and a judicial fine of up to 20,000 days in accordance with Article 188/1 of the Code. Alternatively it would attract a sentence of between 5 and 15 years and a fine of up to 20,000 according to Article 188/3 of the Code. The allegation was of what in England and Wales would be an allegation of being part of a drugs supply conspiracy contrary to the Misuse of Drugs Act 1971 and a conspiracy to evade the prohibition on the importation of controlled drugs contrary to section 170 Customs and Excise Management Act 1979.
63. Mr Uckac's role was said to have been the fixer in Istanbul connecting the drug dealers and those intending to import the heroin into the UK and that he had all the details of

the delivery arrangements and is alleged to have conducted “preparation actions” in telephone communications between 14 to 16 December 2013. Shortly afterwards, he left Istanbul and cut off his phone contact with the co-conspirators as he suspected surveillance by the law enforcement agencies. The drugs were seized by the law enforcement agencies on 19 December 2013. The requesting state accepted that by this time Mr Uckac may have already returned to the UK and was no longer in Türkiye.

64. Mr Uckac gave evidence to the court below that he was born in Türkiye but grew up in Northern Cyprus. He said that he came to the UK in 1989 from the Republic of Cyprus (Greek Cyprus) where he had been accused of being a spy. He has five children in the UK, two from his first wife, Nazire Uckac whom he divorced in 2006 and three with his current wife, Ms Ahmet. His first born child, now in his thirties, suffers from autism and intellectual disability and Mr Uckac is his main carer. Mr Uckac has a number of long term health difficulties – Hepatitis B, Type II diabetes, COPD, severe asthma, long covid, low heart rate, sciatica of the left leg, claustrophobia, cervical spine pain, vitiligo, gastric problems, insomnia and eye sight problems. Until his arrest he had worked as a bus driver for 18 years.
65. The Republic of Türkiye issued a request for the extradition of Mr Uckac on an accusation warrant on 12 April 2021. On 18 October 2021 the Secretary of State certified that the request was valid pursuant to section 70 of the Act.

The judgment below on Mr Uckac

66. The case came before DJ(MC) Grace Leong on 18-19 October 2022 with judgment handed down on 1 November 2022. Mr Uckac resisted his extradition on a number of grounds all of which were rejected by the judge. Mr Uckac stated that the allegations against him were wholly untrue and fabricated and he was not in Türkiye at the material time. He is half Kurdish and half Armenian and argued that the allegations are politically motivated as he is politically active involved in anti-government Kurdish organisations in the UK. His evidence was that he had been in hospital in Northern Cyprus at the time of the alleged offence with gastric pain and had undergone surgery. His evidence in chief was that he remained in hospital and had not been discharged until 19 December, but in cross examination he accepted he had been discharged on 10 December 2013.
67. DJ(MC) Grace Leong found that Mr Uckac’s extradition to Türkiye was compatible with his human rights. The interference with his life and the lives of his family members was proportionate to the public interest in his extradition. It was neither unjust nor oppressive to extradite him.
68. The Judge did not accept Mr Uckac’s evidence, finding that he was neither truthful nor honest. The judge rejected his evidence that he was not in Istanbul as alleged by the requesting state as his account had been inconsistent and there was a lack of the type of documentary evidence one would expect to see, such as flight and hotel records, if he could back up his account of being in another country at the time.
69. The judge also found that there was nothing to support his claim that he had been involved in anti-Turkish government activities in the UK, beyond a photograph of his single attendance at a rally in 2015. The judge rejected his evidence that he had also attended a rally in 2016 as that protest was heavily publicised and reported on social

media and she would have expected photographic or screen shot image evidence of his presence, had he been there. There was no evidence of wider family involvement in organisations opposed to the current regime, beyond Mr Uckac's say so. The judge found that Mr Uckac's frequent travel to Northern Cyprus was inconsistent with his account of extensive anti-government activism which she rejected as being either a gross exaggeration or a lie in order to support his fight against extradition. The judge noted that in its extradition request the Government of Türkiye had said that the charge was not related to political or military characters and in the absence of evidence beyond bald assertion by Mr Uckac, she accepted the requesting state's assurance. Mr Uckac had not shown a causal link between the issue of the accusation warrant and the "extraneous consideration" of political activity so as to bar his extradition under section 81(1)(a) of the 2003 Act.

70. In considering section 82 and the passage of time argument that it would be unjust or oppressive to extradite Mr Uckac, the judge accepted that Mr Uckac was not a fugitive, but noted that he had cut off all contact with his accomplices suspecting that the law enforcement officials were keeping him under surveillance during the negotiations regarding the supply of drugs. The judge found that Mr Uckac had knowledge of the conduct that formed the basis of the request and had knowledge of the investigation. The judge concluded that a fair trial would still be possible, notwithstanding that it was 9 years after the crime was alleged to have been committed. Mr Uckac had preserved and provided such documents that he thought necessary to present his defence and there were safeguards in place to ensure that despite the historical nature of the offence he will still receive a fair trial. The judge also found that notwithstanding the lack of explanation from the Government of Türkiye for the delay in seeking Mr Uckac's extradition, she found that given the gravity of the alleged offence – a conspiracy to import over 5kg of 42% purity heroin – this was not a borderline case where culpable delay by a requesting state could tip the balance against extradition. It was not oppressive. The hardship that would inevitably be caused by Mr Uckac's extradition given his own health and the health issues of his wife and children were not sufficient to satisfy the test of oppression.
71. On carrying out a balancing exercise, weighing up the factors in favour of extradition and those that militate against it in accordance with *Celinski* to assess whether Mr Uckac's article 8 ECHR rights were infringed, the judge found that the interference with his article 8 rights and those of his family members including his children, was not so exceptionally severe as to render extradition disproportionate.
72. In the article 3 challenge, the judge heard evidence from both Professor Rod Morgan and Dr Karakas concerning prison conditions in Türkiye. The judge accepted that there continued to be major shortcomings where medical screening of new remand prisoners was concerned and that healthcare services were poorly resourced especially at Silivri, Maltepe and Sanlıurfa prisons. There is also general overcrowding in Turkish prisons.
73. However the judge accepted the Yalvac assurance was sufficient to meet the legitimate article 3 ECHR concerns that apply to the rest of the Turkish prison estate. Yalvac was a newly built prison establishment constructed in 2019 specifically to ensure compliance with the ECHR. The judge noted that there were no known breaches of the Yalvac assurance at that time. The judge also accepted that the poor state of the Turkish prison system did not also apply to Yalvac, absent any independent verification. The fact that the committee of the CPT had not sought to visit Yalvac was not as a result of

the Turkish authorities denying access to it, but the CPT deciding to concentrate on other prisons in 2019. Finally the judge did not accept that the geographical distance from Yalvac to the court at which Mr Uckac was expected to be tried in Silivri would make it logistically impossible for him to return to Yalvac each day after trial when there were video link facilities that meant that he could participate in his hearing without leaving Yalvac.

74. The judge therefore directed that the case be sent to the Secretary of State for a decision on whether to accede to the Government of Türkiye's request for the extradition of Mr Uckac.
75. On Friday 28 October 2022, one working day before the scheduled hand down for the judge's judgment, Mr Uckac's legal representatives submitted further documents in support of his case. They related to his whereabouts in December 2013 in support of his alibi defence to the offence for which his extradition is sought, documents about his brother's immigration status, and information about his employment. The judge therefore considered these documents *de bene esse* and considered whether they altered the initial findings and the judgment which was completed ready for hand down on Monday 1 November. In an addendum judgment the judge recorded that the documents showed that Mr Uckac was a frequent traveller to Northern Cyprus. He had left and returned to Northern Cyprus on 13 December 2013 and on 17 December 2013 had left and returned to Northern Cyprus 3 times during the day. The judge considered that the further evidence as to his travel and movements in December did not assist Mr Uckac. It undermined his account of convalescing after surgery and the doctor's letter that had been before at the hearing dated 9 December 2013 recommending 30 days' home rest. His presence intermittently in Northern Cyprus on 13 and 17 December 2013 did not address the requesting state's information that he was in Istanbul on 14-16 December 2013. His frequent trips to Northern Cyprus over the years were inconsistent with his assertion that he was at great risk from the Government of Türkiye because of his political activities.
76. The judge also considered two Home Office letters granting Mr Uckac's brother, Ayhan Uckac, asylum in the UK, which were adduced on behalf of Mr Uckac. The judge did not consider that these supported the assertion that his entire family had sought and been granted political asylum in the UK. The judge found that none of the new information would make any difference to her conclusions and set out her reasons in an addendum judgment handed down with the judgment itself on 1 November 2022.

Whether the fresh evidence and materials adduced by the parties after the hearing should be admitted – issue one

77. An appeal against an order for extradition can only be allowed in accordance with the provisions of the 2003 Act. There are statutory restrictions on the right of an appellant to adduce fresh evidence, see for Category 2 territories, section 104(4) of the 2003 Act and *Hungary v Fenyvesi* [2009] EHC 231 (Admin); [2009] 4 All ER 324 (*Fenyvesi*). The Court retains its inherent jurisdiction to admit fresh evidence from a respondent to an appeal, see *FK v Germany* [2017] EWHC 2160 (Admin), although relevant factors would include whether there was a good reason for not adducing the evidence below. The Court also retains a power to admit evidence after the conclusion of a hearing and before the delivery of judgment. The power to do so will be exercised in accordance with the overriding objective. It has often been said that the hearing at first instance is

the full show and not a dress rehearsal, and that also applies to appeals. It may, however, in certain circumstances be possible to show that in order to deal with an appeal justly, further evidence which only became available after a hearing and before judgment was given, ought to be admitted.

78. The advanced unedited version of concluding observations on the fifth periodic report of Türkiye by UNCAT was published on 26 July 2024, just after the hearing before us had concluded. The application to adduce the evidence was supported by a statement from Katy Smart, legal representative on behalf of Mr Demir. Ms Smart stated that the observations from UNCAT showed concerns that: the National Human Rights Institution and National Preventative Mechanism might not be independent from the executive because all members were appointed by the President; prisoners were not always provided with legal safeguards; there was overcrowding; and allegations of torture and ill-treatment had been made. UNCAT had not been provided with sufficiently detailed statistics and there were concerns about the statute of limitations. The requesting state noted that there was no explanation about which of the 50 paragraphs of the observations were relied on, but did not object to their admission.
79. The requesting state referred the court to the judgment in *McCarthy* which was handed down just after the conclusion of the oral hearing before us. DJ(MC) Tempia found that Mr McCarthy's extradition was not barred for any of the reasons put forward by him, including under article 3. Our attention was drawn in particular to DJ(MC) Tempia recording in her judgment that Professor Morgan had commented in his oral evidence that it would be reasonable to take one to two weeks to transfer a requested person to Yalvac from their arrival in Türkiye.
80. In response to the requesting state's application to adduce the judgment in *McCarthy* the requested persons made an application dated 15 August 2024 to adduce a witness statement from Professor Morgan. Professor Morgan commented on the paragraphs in the judgment in *McCarthy* and stated that he did not consider one to two weeks was a reasonable length of time to transfer a prisoner to Yalvac and that only a very small number of days would be reasonable. The notes of the hearing from both counsel confirmed that Professor Morgan had stated that it was typically taking one to two weeks to transfer a requested person to Yalvac, but he did not say that the time frame was reasonable, merely that it was reasonable not to go immediately to Yalvac, given the distances involved.
81. The appeal concerns, among other matters, prison conditions in the requesting state, and the compliance of the requesting state with assurances given in other cases. It is recognised that in such cases conditions may change and further evidence may become available. We consider that it is in accordance with the overriding objective and the interests of justice to admit the concluding observations by UNCAT, to consider the judgment in *McCarthy* and to consider Professor Morgan's comments about what was said in *McCarthy*. This is because none of these materials was available before the court below, and none of it was available before the conclusion of the hearing of the appeal before us. The parties have acted promptly and co-operated to ensure that there could be a fair consideration of the fresh evidence and materials. There is no need to have a further hearing in the light of the fresh evidence and materials because the evidence and materials were consistent with the positions and submissions already made by the parties and the materials spoke for themselves. We noted that none of the parties asked for such a hearing. We therefore admit the further materials.

Whether there is a real risk that the rights of the requested persons under article 3 of the ECHR would be breached by reason of the conditions of the prisons in which they are likely to be held in Türkiye – issue two

82. A court will not extradite a person if there is a real risk of inhuman or degrading treatment, contrary to article 3 ECHR. Domestic effect has been given to the ECHR by the Human Rights Act 1998 and in the 2003 Act.
83. In oral submissions Ms Malcolm did not make submissions against the proposition that there was a real risk of impermissible treatment in prisons in Türkiye contrary to article 3 of the ECHR of persons extradited to in prisons in Türkiye, in the absence of the Yalvac assurance. This was in circumstances where Yalvac assurances had been provided in each of the appeals, and Ms Malcolm stated that she was taking a practical approach to the real issues on the appeals. We note that there is no pilot judgment against Türkiye in the European Court of Human Rights (ECtHR) which would effectively impose the burden of showing that there was no real risk of impermissible treatment on the state. This is notwithstanding the recent judgment of the ECtHR in *Ilerde and others v Türkiye* (application nos 35614/19 and 10 others) involving Türkiye and prison conditions where the court found violations of article 3 of the ECHR in respect of certain applicants. We agree, however, that, on the materials before this court, which includes the concluding observations of the UNCAT report, the evidence shows that there is a real risk of impermissible treatment contrary to article 3 of the ECHR of persons held in prisons in Türkiye, absent effective assurances. The conditions of detention and overcrowding in the Turkish penal system remain significant as recorded in the concluding observations of the UNCAT report. The report notes that: the rate of incarceration has significantly increased during the reporting period contributing to an overcrowding rate of 110 per cent across the prison system; some inmates in S-type, Y-type and other types of high security prisons are confined in individual cells without adequate ventilation for over 22 hours per day; the penitentiary system lacks an adequate number of healthcare professionals; and there were other concerns.

The extent to which there has been breach or compliance with the “Yalvac assurance” given by the requesting state in previous extradition cases and the effect of any breach of the assurances on the reliability of the Yalvac assurances in these appeals – issue three

84. Where a real risk of inhuman and degrading treatment from imprisonment of a person to be extradited is established, the requesting state may satisfy the court that the risk can be discounted. The requesting state might show that the requested person would not be exposed to such a real risk of impermissible treatment by providing an assurance, see generally *Giese v Government of the United States of America (No.4)* [2018] EWHC 1480 (Admin); [2018] 4 WLR 103 (*Giese (No.4)*), *Government of India v Dhir and another* [2020] EWHC 200 (Admin) (*Dhir*) at paragraphs 36 and 39 and *Government of the United States of America v Assange* [2021] EWHC 3313 (Admin); [2022] 4 WLR 11 (*Assange*) at paragraphs 40 and 41.
85. In extradition proceedings there has been a long history of the United Kingdom seeking and being provided with assurances that a requested person will not be subjected to impermissible treatment. Assurances are commonly given and accepted in relation to conditions of detention, and form an important part of extradition law. The court may

consider undertakings or assurances at various stages of the proceedings, including on appeal, see *Giese (No.4)*, *Dhir* and *Assange*. The principles relating to the assessment of assurances were summarised by the European Court of Human Rights (ECtHR) in *Othman v United Kingdom* (2012) EHRR 1 (*Othman*) at paragraphs 188 to 189. The overarching question is whether the assurance is such as to mitigate the relevant risks sufficiently. That requires an assessment of the practical as well as the legal effect of the assurance in the context of the nature and reliability of the officials and country giving it.

86. If there has been a suggestion that a requesting state has breached assurances in the past, what is required is a fair assessment of all the relevant evidence, see *Zabolotnyi v Mateszalka District Court* [2021] UKSC 14; [2021] 1 WLR 2569. Assurances may still be accepted from a requesting state even where the evidence shows that past assurances have been breached, but a state's failure to fulfil assurances in the past may be a powerful reason to disbelieve that they will be fulfilled in the future. The weight to be attached to a previous breach of assurance would be likely to vary from case to case depending on all the circumstances, including how specific the previous assurance was and whether the breach was deliberate or inadvertent.
87. In this case the evidence shows that the details of six persons who have been extradited to Türkiye with the benefit of the Yalvac assurance are known. These are the five persons referred to in the Demir judgment, and Mr Yousef. One of the six persons was Mr Molla who was transferred to Yalvac in accordance with the assurance. Mr Kaderli had been kept in Bakirkoy/Metris No. 2 T Type Closed Prison for 14 days in breach of the assurance before his release. Mr Rayyatzadeh had been detained for some 28 days in a prison other than Yalvac in breach of the assurance. Mr Coskuner had been detained for some 28 days in a prison other than Yalvac in breach of the assurance. Mr Ozbek had not been transferred to Yalvac in accordance with the assurance, and had been detained for some 20 days in a prison other than Yalvac in breach of the assurance before his release. Mr Yousef had been detained for some 12 days in a prison other than Yalvac in breach of the assurance.
88. We are not in a position to make any fair evaluation about the conditions in which those persons were kept before they were transferred to Yalvac. This is, in part, because the evidence about the conditions is hearsay in circumstances where a statement could be provided (for example in relation to Mr Yousef) or is contradicted, or not provided. We are, however, able to say that, for the reasons given under issue one above, any person transferred to prisons in Türkiye will be at a real risk of impermissible treatment by reason of the prison conditions.
89. We accept that the evidence shows that some of the transfers were taking place at a time when Covid-19 was an issue, and it is well-known that this caused problems for prison authorities. It is, however, only fair to record that it is also well-known that Covid-19 increased difficulties suffered by prisoners held in prisons at the time.
90. The evidence shows that the requesting state did transfer prisoners to Yalvac after periods of 12 to 28 days, unless the prisoner had been released in the interim. The information from the replies to Further Information suggests that the requesting state did not consider itself to be in breach of the Yalvac assurances because of the delays in transferring prisoners. This is not the reality. The effect of providing an assurance that the extradited person will be imprisoned in Yalvac means that the requesting state must

imprison that person in Yalvac. It is inevitable that there will be a short period while that requested person is brought to court, and then transferred to Yalvac. The materials before us suggested that a period of up to 48 hours would be sufficient for such a transfer to be made. The judgment in *McCarthy* does not undermine that assessment because it does not appear that there was available all of the information before this court about how unnecessary delays had occurred.

91. It seems that there are three relevant branches or departments of the state dealing with the assurances. These are: the foreign department who provide the assurances; the State Prosecutors for each area in which there was a prison; and the Gendarmerie who are responsible for prison transfers. The further information strongly suggests that there was no co-ordination between these three departments, and we note that in *Othman* at paragraph 189 a potential issue when assessing assurances was to consider whether assurances by the state would be carried out by those responsible for delivering the assurance in local government. Some of the delays seem to have occurred because the relevant authorities in the relevant area of the requesting state did not know that a “Yalvac prisoner” was on the way until that prisoner arrived, there was a need to take the prisoner to court, the prisoner was sometimes subjected to assessments to determine in which prison the prisoner should be held, and transport was provided by gendarmerie and the gendarmerie delayed in making the transfer. It is apparent that the requesting state is aware of potential communication issues as the Yalvac assurance specifically asked for all regional chief public prosecutors’ officers to be informed if an extradition request is granted, “in order to initiate the necessary procedures for his [the requested person’s] immediate transfer to Yalvac”.
92. In our judgment, taking all of the further information now before us, which was not before DJ(MC) Heptonstall, and considering the evidence as a whole, there was no bad faith by the Turkish authorities in the sense of a deliberate decision on the part of the requesting state, or any of its branches, to delay transferring extradited persons to Yalvac. There was, however, a culpable failure to co-ordinate the respective branches of the state involved in giving effect to the Yalvac assurance which caused impermissible delays, being delays over 48 hours, to occur in the transfer of extradited persons who had the benefit of the Yalvac assurance. It is apparent that the requesting state did not report the delays in its transfer of extradited persons to Yalvac. This was not a deliberate breach of duties of candour, because, as already identified, the requesting state did not consider that it had acted in breach of the Yalvac assurance.

Whether this court should, at this stage of the proceedings, require further assurances from the requesting state – issue four

93. In the light of the findings which we have made above, we now turn to consider the issue of whether we should direct further assurances to be provided by the Government of Türkiye, or should order (or uphold) the discharge of the requested persons.
94. We take account of the fact that there was not a deliberate breach of the assurances, and that (unless released) the requested persons were transferred to Yalvac between 12 and 28 days after arrival in Türkiye. We also reflect that because of the breach of the assurances there was a real risk that extradited persons were held in impermissible conditions. We are not in a position, on the evidence to say whether they were.

95. We also have regard to the fact that these proceedings are long running and that the requested persons have spent periods detained and on strict bail conditions, as set out in a helpful note agreed by the parties and handed to the court during the hearing. On the other hand we note that time spent in custody will count towards the sentence to be served in Türkiye.
96. We consider that if the Yalvac assurance can be guaranteed it should be accepted. This is because of the continuing and weighty public interest in the extradition of those accused or convicted of serious crime. It is, however, obviously necessary to require more assurances to ensure that there are no further breaches of the Yalvac assurance. It is recognised that the requested person must be able to be taken to court on arrival, if it is necessary to do so in accordance with the laws of Türkiye, and then taken to Yalvac either from the airport in Türkiye at which they will arrive or from the court to which they were produced. We were shown materials in the course of the hearing suggesting that Yalvac is over a 6 hour road journey from Istanbul. In all the circumstances we will allow a period of up to 48 hours from arrival in Türkiye before delivery to Yalvac. Given the breaches of the assurances which have occurred, we will require the requesting state to give an assurance that it will monitor compliance with the assurances and report any breaches. This should ensure that one body has responsibility for compliance with the assurances, rather than the three relevant branches or departments of state assuming that responsibility lay with another branch.
97. So far as Mr Uckac is concerned, it will be necessary for an assurance to be provided that he may appear at his trial either by video-link from Yalvac, or that if he is to be held in another prison closer to the court for the purposes of the trial during any part of the trial (for example when he is giving evidence), that he will be detained in an institution with personal space of 4 square metres, mirroring that material part of the Yalvac assurance.
98. For all these reasons, we will stay the appeal advanced on the grounds related to prison conditions, pending receipt of further assurances as set out in the Annex to the judgment. We require a response from the CPS within 42 days of the date of the handing down of this judgment. We give leave to apply, on a reasoned basis, to both parties as regards the wording of the further assurances and the timing for their production.

Whether Mr Demir was sought for an extradition offence – issue five

99. A requested person may not be extradited to a requesting state for an action which is not criminal under the laws of the United Kingdom. This is often referred to as the principle of dual criminality. The requirement of dual criminality is provided for in section 78(4)(b), which requires the offence for which extradition is sought to be an extradition offence, and section 138 of the 2003 Act. Section 138 of the 2003 Act provides that conduct constitutes an extradition offence, in cases where the requested person has been convicted and sentenced, if (among other relevant subsections) the conditions in subsection (3) are satisfied. So far as is relevant the conditions include: “(a) the conduct occurs in the category 2 territory; (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom; ...”.

100. In this case it is common ground that the conduct which the Court in Türkiye found proved to have occurred, occurred in Türkiye, a category 2 territory. The issue is whether Mr Demir's conduct constituted an offence under the law of the relevant part of the United Kingdom.
101. It was also common ground that if Mr Demir had carried out the actions found proved by the court in Türkiye, he would be prosecuted in the UK with an offence contrary to section 9 of the Sexual Offences Act 2003 which is headed "sexual activity with a child". The offence under section 9 is committed when a person aged 18 or over (and Mr Demir was aged 18 or over), intentionally touches another person (and Mr Demir intentionally touched the complainant), the touching is sexual (and the touching was sexual), and, by section 9(1)(c)(i) the complainant was under 16 (and the complainant was aged about 13 ½ years) and Mr Demir did not reasonably believe that the complainant was 16 or over. That involves showing either that the defendant did not have the subjective belief that the complainant was over 16 years old, or by showing that any such belief was not reasonable, see *R v Ishaqzai* [2021] EWCA Crim 222 at paragraph 20.
102. As appears from the factual summary in paragraphs 32 to 35 above, it does not appear from the information from the Turkish authorities that the prosecution needed to prove that Mr Demir did not reasonably believe that the complainant was over 16. It seems that it was enough to prove the offence in Türkiye that the complainant was under 16 years. In the course of argument, Ms Malcolm raised an issue about article 30(1) of the Turkish Penal Code, and provided a copy of article 30(1) annexed to an opinion of the Venice Commission dated 15 February 2016. This provided that "any person who, while conducting an act, is unaware of matters which constitute the actus reus of an offence, is not considered to have acted intentionally. Culpability with respect to recklessness shall be preserved in relation to such mistake." Ms Malcolm referred to the finding of the Assize Court that Mr Demir was guilty of Qualified Sexual Abuse of a Child and submitted that, read with article 30, this must mean that Mr Demir was aware that he had committed the act on a child. This was because part of the actus reus was the abuse of a child, and Mr Demir had to be aware of that matter, otherwise he could not be found to have acted intentionally. Ms Malcolm also pointed to the evidence given about the belief of Mr Demir and other witnesses about the complainant's age, which would be irrelevant on DJ(MC) Heptonstall's assessment of what was required to be proved in Turkey.
103. It is a sufficient answer to this point to say that we had no admissible evidence about article 30(1) of the Turkish Penal Code, and that Ms Malcolm had not sought to adduce any expert evidence of Turkish law which needs to be proved. This is more than a technical failure to obtain permission. This is because, as Ms Townshend pointed out in her submissions on article 30, it was not apparent whether the article was the correct date for the offence (which was June 2011 and the copy of the Code was annexed to an opinion dated February 2016). It was also not apparent whether article 30 was directed to crimes of specific intent and issues of recklessness, as opposed to the offence for which Mr Demir's extradition was sought. We also note that it is surprising that, if the point was a good one, it had not been mentioned by the relevant authorities seeking Mr Demir's extradition after they had been asked about the elements of the offence.
104. As to the other point, although Ms Malcolm was able to say that if Mr Demir's belief in the age of the complainant was irrelevant, it was odd that he should have given

evidence about it, Ms Townshend was entitled to say that if it was an element of the offence to be proved, it was surprising that there should be no finding on the issue by the Assize Court. As it is the requesting state did not say that it was an element of the offence which was required to be proved. It is apparent from the judgment of the Assize Court that an issue about Mr Demir's belief in the age of the complainant was raised on the evidence, but there was no determination by the Assize Court about whether he held the belief, or, if he did, whether it was reasonable.

105. In circumstances where a straightforward transposition exercise between the offence committed in the requesting state and the criminal offence under UK law cannot take place, the court should take a broad conduct based approach, see *Norris v Government of the United States of America (No 1)* [2008] UKHL 16; [2008] 1 AC 920 (*Norris (No.1)*) at paragraphs 90 and 91. The House of Lords specifically rejected what was called the "offence" test, which involved examining the ingredients of the foreign offence to see if there was an exact match to the elements of the UK offence. Some issues which have arisen in the application of the broad conduct-based approach since the decision in *Norris (No.1)* were examined in *Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (Admin) (*Assange*) and *Cleveland v Government of the United States of America* [2019] EWHC 619 (Admin); [2019] 1 WLR 4392 (*Cleveland*).
106. It is apparent that some of the confusion which has arisen in this area of law has occurred because some cases have been accusation warrants, and there has been insufficient detail provided about a relevant element of the offence under the laws of England and Wales, and there has been an attempt to reconcile what has been said in those cases with cases involving conviction warrants, where findings of fact have been made by the court in the requesting state. In an accusation warrant, such as *Assange*, it is not necessary to identify in the description of the conduct the mental element required under the law of England and Wales for the offence, it is sufficient if it could be inferred from the facts of the conduct set out in the warrant. The facts, however set out in the warrant must not merely enable the inference to be drawn that the requested person did the acts alleged with the necessary mental element, they had to be such as to impel the inference that he did so. This was to avoid convicting a requested person on a basis which did not constitute an offence under the law of England and Wales, and thus did not satisfy the dual criminality requirement. In *Cleveland* it was explained that where an essential ingredient under the criminal law of England and Wales was missing from the offence for which extradition is sought, a requirement for dual criminality is nonetheless satisfied if the court concludes that that ingredient would be the inevitable corollary of proving the matters alleged to constitute the foreign offence.
107. In this case it does not follow from the findings of the Assize Court that Mr Demir's evidence that he believed that the complainant was aged over 16 years was either necessarily untrue or unreasonable. This is because the court appears to have rejected parts of the evidence of both Mr Demir and the complainant about the circumstances in which sexual intercourse took place. The rejection of part of Mr Demir's evidence did not necessarily mean that all of his evidence was unworthy of belief. Further there was evidence from others to the effect that they had believed that the complainant was aged 18 years.
108. In this case it seems, on the information before this court, it does not appear that the prosecution needed to prove that Mr Demir did not reasonably believe that the

complainant was over 16, or that there was a finding that Mr Demir did not reasonably believe that the complainant was over 16, or that it was an inevitable corollary of the findings made by the Assize Court that Mr Demir did not reasonably believe that the complainant was over 16.

109. For all these reasons we therefore find that the offence for which Mr Demir is requested is not an extraditable offence within the meaning of the 2003 Act. The requesting state's appeal against Mr Demir's discharge will therefore be dismissed.

Whether the extradition of Mr Sahin would infringe his rights under article 8 of the ECHR – issue six

110. The Court is required to determine whether the extradition of a requested person would be proportionate and compatible with rights under the ECHR. Article 8 of the ECHR provides a right to a private and family life, which is qualified. The relevant principles governing the approach to this issue have been established, see *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487 (*Norris v USA*); *H(H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25, [2013] 1 AC 338 (*H(H)*); and *Poland v Celinski* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551 (*Celinski*). Delay is a relevant factor for any article 8 assessment, see *Konecny v Czech Republic* [2019] UKSC 8; [2019] 1 WLR 1586.
111. In *H(H)* the Supreme Court reviewed the approach set out in *Norris v USA* in the light of the decision in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166, and in the light of the way the guidance in *Norris v USA* had been applied in practice, see *H(H)* at paragraphs 2 and 22. It was acknowledged in *H(H)* at paragraph 1 that the impact on younger children of the removal of their primary carers and attachment figures would be devastating. It was noted that the interests of the children were a primary consideration, as set out in article 3.1 of the United Nations Convention on the Rights of the Child but “a primary consideration” is not the same as “the primary consideration” let alone “the paramount consideration” (emphasis added), see *H(H)* at paragraph 11. The importance of paying careful attention to what will happen to the child if the sole or primary care giver is extradited was emphasised, as was the need for a court to consider whether the public interest in extradition could be met without doing serious harm to a child, see *H(H)* at paragraph 33.
112. The question before the judge was whether interference with the article 8 right is outweighed by the public interest in extradition. There is no test of exceptionality. In the balance there is a constant and weighty public interest in extradition: people should have their trials, the UK should honour treaty obligations, and the UK should not become a safe haven for fugitives. The best interests of the children are a primary consideration, and Courts need to obtain the information necessary to make the necessary determinations relating to children. Delay since the commission of the crime may diminish weight to be attached to the public interest and increase the impact on private life and likely future delay is also a relevant feature to be taken into account.
113. The question on appeal is whether the Judge was wrong, see *Celinski* at paragraph 24. If the judge below was wrong, this Court is required to undertake the balancing exercise again. Mr Hall suggested that a different test had been adopted in some later authorities, including *Hegazey v Spain* [2024] EWHC 1280 (Admin) at paragraph 27, where Saini J had referred to a judge reaching a conclusion which did not follow as a matter of logic

from the factual material before it, or revealed a fundamental error of approach, justifying the appellate court reconsidering the matter. In later submissions it was submitted that the Supreme Court had “moved away” in the case of *In re H-W* [2022] UKSC 17; [2022] 1 WLR 3243 from passages in the judgment of Lord Neuberger in *In Re B* [2013] UKSC 33; [2013] 1 WLR 1911, which was an authority relied on by the Court in *Celinksi*. The issue in *In re H-W* was whether the judge had telescoped the process from finding that threshold criteria for the making of a care order were satisfied, which meant that an issue of whether a judge was wrong was not a complete way of describing the issue for the appellate court. Comments have been made about the dangers of over-analysis in all of the judgments, and we consider that there is much force in those comments.

114. We do not consider that any of the authorities justify setting out a new and different test from that outlined in *Celinksi*. This is because if a judge below has reached a conclusion in defiance of logic, reached a conclusion by making a fundamental error of approach, or moved from finding that an order might be made to making an order without considering options (*In re H-W* at paragraph 60), this Court will find that the assessment below was wrong.
115. In our judgment the judge was right to find that the offending was serious. Although it was only a small amount of the class B drug of cannabis being supplied and Mr Sahin had a significant, not a leading, role, the offending took place in a military context where Mr Sahin had a position of responsibility and trust as a sergeant. The telephone call arranging for the supply of drugs was made on the phone in the NCO café. Supplying drugs within a military establishment, where access to weapons is likely to be available, is a serious matter. It was a commercial and not a social supply, even if the profit may have been minimal. We are mindful that we do not have as much information as the sentencing court which would have had full details of all the facts after trial, see *Celinski* at paragraph 13(i), and this was not a sentence that was so vastly different to what might have been imposed here such as to question the assessment of the requesting state, see *Celinski* at paragraphs 13(ii) and (iii). The decision in *Toleikis v Lithuania* [2015] EWHC 904, on which Mr Hall placed some reliance, is only of limited assistance, because these cases are all fact sensitive, see *Celinski* at paragraph 14(iii), and because *Toleikis* concerned an accusation, not a conviction, warrant and we have the evidence of the actual sentence imposed in Mr Sahin’s case.
116. We do not accept that the judge had mistakenly concluded that the offence was serious by a process of ex post facto rationalisation based on the severity of the sentence. This is because of the fact that this was supplying drugs in a military establishment.
117. We note the family life that Mr Sahin has built in this country and the undoubted impact that his extradition will have on both his partner and young daughter. Mr Sahin and his partner have separate homes, although they spend most of their time together with their child. We accept that there are very strong bonds and that if Mr Sahin is removed to Türkiye Ms Standage will lose practical, emotional and financial support and that it will not be feasible for her to join him in Türkiye. We note that Mr Sahin is a hands-on father and Ms Standage is concerned that there will be long term developmental damage to their child and risk of loss of her biracial identity if she is parted from her father. The evidence does not show that the consequences of the interference with Mr Sahin’s family life will reach a level of hardship such as to outweigh the countervailing

considerations. There was no evidence that there would be any communication difficulties between this country and Türkiye.

118. The judge was right to find that an important factor weighing in the balance was that Mr Sahin was a fugitive from justice. The UK is not to be seen as a safe haven for criminals fleeing from justice from countries with whom we have international treaty obligations. Mr Sahin formed a life here knowing that he was wanted in Türkiye to serve his sentence.
119. A further ground relied on by Mr Hall was delay. It took 4 years and 10 months from conviction to final appeal from January 2014 to November 2019 for his conviction and sentence to be confirmed. The offending is now 14 years old. We agree that the delays in the appellate system in Türkiye cannot be blamed on Mr Sahin for exercising his right of appeal, but the delay in the appeal process was properly weighed by the judge in the *Celinski* balancing exercise.
120. Finally the judge took into account Mr Sahin's concern that his immigration status in the UK may be precarious if he is extradited and that if he is outside the UK for longer than two years he would need to apply for leave to remain. It was a relevant factor in Mr Sahin's favour but there was little evidence about what would happen, nor the effect of his period in custody pending the final outcome of this case on the length of the custodial term he would be expected to serve in Türkiye.
121. We conclude that the judge was not wrong in his approach and the conclusion reached after conducting the *Celinski* balancing exercise. The interference with Mr Sahin and his family's article 8 rights were not outweighed by the public interest in extradition. The appeal on this ground is dismissed.

Whether Mr Uckac should have permission to appeal on any of his three renewed grounds – issue seven

122. The first renewed ground of appeal was that the judge erred in finding that extradition was not barred by reason of extraneous considerations pursuant to section 81 of the 2003 Act. The second renewed ground of appeal is that the judge erred in finding that Mr Uckac's extradition was neither unjust nor oppressive due to the passage of time since the alleged offending (section 82 of the 2003 Act). The third renewed ground is that the judge erred in failing to find breach of article 8 of the ECHR and section 87 of the 2003 Act. Permission to appeal on these grounds of appeal had been refused on the papers by Jay J.
123. Mr Seifert submitted a further file of documents of evidence which was not before either DJ(MC) Grace Leong or Jay J which we considered *de bene esse* in support of his renewed application for permission for Mr Uckac to appeal. The file of documents contained further statements from Mr Uckac, his wife Eda Ahmet, medical and school records of family members and documents concerning Mr Uckac's brothers' immigration status and information from the Kurdish People's Democratic Assembly.
124. An updating report dated 6 October 2023 by Dr Ben Weiner child psychologist had been prepared in respect of Mr Uckac's three young children born in 2006, born in 2009, and born in 2013, outlining the further deterioration in their educational and mental health difficulties since their father's arrest and the likelihood of further

deterioration in the event of their father's removal to Türkiye. The older children in particular would be devastated by the separation but it will also have a significant impact on the wellbeing of their youngest daughter. Ms Ahmet's mental health has also significantly deteriorated since her husband's arrest. Their middle child, has been under the care of Barnet CAMHS for eating disorders and self-harm. Her physical health is also being impacted by her low weight, causing her psychotherapist in the Eating Difficulties and ARFID Service at the Tavistock and Portman NHS Foundation Trust to recommend a full medical assessment at A&E paediatrics. She is being home schooled because of her anxiety and depression. She has experienced suicidal ideation and took an overdose of paracetamol in April 2022.

125. A membership card of the Kurdish People's Democratic Assembly dated 15 January 2019 was contained in the further documents provided for the hearing and a letter from that organisation dated 12 March 2024 which stated that he has supported the Kurdish Community in the UK for nearly 30 years and reminding the court that Mr Uckac is of good character and is extremely trustworthy and of the difficulties faced by Kurds in Türkiye.
126. The renewed ground one refers to section 81 of the 2003 Act. This provides that a person's extradition to a category 2 territory is barred by reason of extraneous considerations if (and only if) it appears that either the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of, among other matters, his race or political opinions, (section 81(a)) or, if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of, among other matters, his race or political opinions (section 81(b)). The burden is on the requested person to show a causal link between the arrest warrant and the particular "extraneous consideration" relied on. The burden is on the balance of probabilities, to enable the court to find that "it appears" that the request is made when considering section 81(a). Subsection 81(b) requires the court to consider what might happen to the requested person if he is returned and the requested person must show that there is a "reasonable chance" or "reasonable grounds for thinking" or a "serious possibility" that he or she will suffer prejudice at trial or thereafter by reason of extraneous considerations.
127. The nature of the alleged offence – international drug supply - is ostensibly unrelated to political activity. The evidence of political activity was scant and insubstantial. Even taking into account all of the new materials, there was insufficient evidence before us to show a causal link between the issue of the arrest warrant and any political activity of Mr Uckac. Attendance at two political rallies in London in 2015 and 2016, which post-dated by two years the alleged offence for which he was sought, is not enough to challenge the judge's findings of fact that Mr Uckac's prosecution is not politically motivated and his extradition is therefore not sought for extraneous reasons. The evidence of discrimination against Kurdish prisoners in Turkish prisons, such as it was before the judge and before this court, refers to problems encountered by politically active Kurds. Since the judge rejected Mr Uckac's evidence about his political activity in findings of fact, it follows that there is no evidence that Mr Uckac will suffer discrimination in a Turkish prison by reason of being of Kurdish origin.
128. As to the second renewed ground of appeal, section 82 of the 2003 Act which provides that a person's extradition to a category 2 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by

reason of the passage of time since he is alleged to have committed the extradition offence. We find that the judge was entitled to dismiss the submission that it would be unjust to try Mr Uckac after nine years because it would be impossible for him to mount a defence, because he had preserved and provided such documents that he thought necessary to present his defence and to demonstrate his whereabouts. The judge was also satisfied that there were safeguards to ensure that Mr Uckac receive a fair trial, despite the historic nature of the offence. The judge noted that there was no explanation from the requesting state for the delay in issuing the request, but she concluded that even if it had been blameworthy delay rather than mere inaction, a conspiracy to import diamorphine into the UK is not a borderline case where culpable delay by the requesting state can tip the balance against extradition. The judge was also correct to conclude that the other facts relied on – Mr Uckac’s Kurdish ethnicity, his comorbidities and the fact that he is not, strictly speaking, a fugitive from justice – did not establish that it would appear that the passage of time would render his extradition unjust or oppressive.

129. The third ground relates to article 8 of the ECHR. More evidence has now been provided by Dr Weiner about the mental health and wellbeing of Mr Uckac’s wife and their three young children. There is no doubt, as found by the judge, that Mr Uckac’s family including his older disabled son by a previous marriage will be affected by his extradition to Türkiye. Three of his children are under the age of 18 and are dependent on him financially and emotionally as set out in the facts above. The judge accepted that Mr Uckac is his oldest son’s primary carer and that he has significant needs and difficulties. She also accepted the various illnesses and long-standing co-morbidities from which Mr Uckac himself suffers. She did not question how he managed to maintain his fulltime job as a bus driver (until his arrest) with his health issues and caring responsibilities and weighed them all in his favour in the *Celinski* balancing exercise. The judge noted the dicta in *H(H)* and concluded, as she was entitled to do, that the effect on Mr Uckac and his family’s article 8 rights was not so exceptionally severe when balanced against the countervailing factors as to render his extradition disproportionate. The countervailing factors were the seriousness of the offence given the quantity of class A drugs involved, that Mr Uckac was alleged to have played a significant and pivotal role, the likely sentence if convicted, that the public interest in extradition was not lessened as a result of the delay and the request for extradition was not made for the purpose of prosecuting or punishing him for his political opinions or that he might be prejudiced by reason of his political opinions at trial or in punishment.
130. Mr Seifert also complained about findings of fact made by the judge. We can see no basis on which a court could set aside those findings. They were based on evidence before the judge and which were not undermined by the materials which we have considered *de bene esse*.
131. In these circumstances we conclude that the proposed grounds of appeal are not arguable and permission to appeal is refused.

Conclusion

132. For the detailed reasons set out above: (1) we consider that it is in accordance with the overriding objective and the interests of justice to admit the concluding observations by UNCAT, to consider the judgment in *McCarthy* and to consider Professor Morgan’s comments about what was said in *McCarthy*; (2) the evidence before this court shows that there is a real risk of impermissible treatment contrary to article 3 of the ECHR of

persons held in prisons in the requesting state, absent effective assurances; (3) there was no bad faith by the Turkish authorities in the sense of a deliberate decision on the part of the requesting state, or any of its branches, to delay transferring extradited persons to Yalvac. There was, however, a culpable failure to co-ordinate the respective branches of the state involved in giving effect to the Yalvac assurance so that impermissible delays in the transfer of extradited persons who had the benefit of the Yalvac assurance occurred; (4) we will stay the appeal advanced on the grounds related to prison conditions, pending receipt of further assurances as set out in the Annex to the judgment; (5) the offence for which Mr Demir is requested is not an extraditable offence within the meaning of the 2003 Act; (6) the interference with Mr Sahin and his family's article 8 rights were not outweighed by the public interest in extradition; and (7) Mr Uckac should not have permission to appeal on any of his renewed grounds.

133. Accordingly we uphold the judgment of DJ(MC) Heptonstall that Mr Demir is not sought by the requesting state in connection with an extradition offence and his order that Mr Demir is discharged pursuant to section 78(6) of the 2003 Act.
134. As to Mr Sahin and Mr Uckac we dismiss the appeal brought by Mr Sahin under article 8 of the ECHR and we refuse Mr Uckac permission to appeal on the three grounds set out above. We stay the appeal advanced on the grounds related to prison conditions, pending receipt of further assurances as set out in the annex to the judgment.
135. We require a response from the CPS within 42 days of the date of the handing down of this judgment. We give leave to apply, on a reasoned basis, to both parties as regards the wording of the further assurances, the nature of the monitoring of the Yalvac assurance and the timing for their production.

Annex to the judgment

1. The Government of Türkiye guarantees that from no later than 48 hours after his arrival in Türkiye and throughout his time in detention before trial Mr Uckac will be detained in Yalvac T Type Closed Prison or Yalvac open prison.
2. The Government of Türkiye guarantees that from no later than 48 hours after his arrival in Türkiye and throughout his time in detention for service of his sentence approved and finalised by the Court of Cassation in Türkiye on 11 November 2019, Mr Sahin will be detained in Yalvac T Type Closed Prison or Yalvac open prison.
3. The Government of Türkiye guarantees that Mr Uckac may appear at his trial by video-link from Yalvac, and that if he is to be held in another prison closer to the court for the purposes of the trial during any part of the trial (for example when he is giving evidence), that he will be detained in an institution with personal space of 4 square metres.
4. The Government of Türkiye guarantees that it will, through one of its departments, monitor regularly compliance with all the assurances set out above.
5. The Government of Türkiye guarantees that it will report to the United Kingdom Central Authority within 21 days if any extradited person who has been provided with the Yalvac assurance is not being detained in Yalvac T Type Closed Prison or Yalvac open prison and the reasons for the non-compliance.

Judgment Approved by the court for handing down.

THE GOVERNMENT OF THE REPUBLIC OF TÜRKİYE v
DEMİR, UCKAC & SAHİN