Neutral Citation Number: [2025] EWHC 336 (Admin)

Case Nos: AC-2022-LON-002281
AC-2022-LON-003403
AC-2024-LON-000280
AC-2022-LON-002952

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 February 2025

Before:

LORD JUSTICE LEWIS
MR JUSTICE GRIFFITHS
- -

AC-2022-LON-002952

Between:

SABAH ZEKA **APPELLANT**

- and –

PROSECUTOR GENERAL'S OFFICE IN ANTWERP, BELGIUM

RESPONDENT

AC-2024-LON-002281

Between:

JULIO DANIEL DA SILVA FERREIRA **APPELLANT**

- and –

TRIBUNAL DE PREMIERE INSTANCE DE BRUXELLES, BELGIUM **RESPONDENT**

AC-2024-LON-000280

Between:

CONSTANTIN BOGDAN **APPLICANT**

PROSECUTOR GENERAL'S OFFICE IN ANTWERP, BELGIUM **RESPONDENT**

Between:

AC-2022-LON-003403

THOMAS SALTON **APPLICANT**

- and –

ANTWERP COURT OF FIRST INSTANCE, BELGIUM **RESPONDENT**

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AC-2022-LON-002952

Jonathan Hall KC and **Jonathan Swain** (instructed by **Taylor Rose MW Solicitors**) for the **Appellant**

Joel Smith KC and **Amanda Bostock** (instructed by **Crown Prosecution Service**) for the **Respondent**

AC-2024-LON-002281

Jonathan Hall KC and **Jonathan Swain** (instructed by **Taylor Rose MW Solicitors**) for the **Appellant**
Joel Smith KC and **Amanda Bostock** (instructed by **Crown Prosecution Service**) for the **Respondent**

AC-2024-LON-000280

Jonathan Hall KC and **George Hepburne Scott** (instructed by **Shah Law Chambers**) for the **Appellant**

Joel Smith KC and **Amanda Bostock** (instructed by **Crown Prosecution Service**) for the **Respondent**

AC-2022-LON-003403

Jonathan Hall KC and **George Hepburne Scott** (instructed by **Rustem Guardian Solicitors**) for the **Applicant**
Joel Smith KC and **Amanda Bostock** (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 21 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 18 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE LEWIS handed down the following judgment of the court.

INTRODUCTION

1. This judgment concerns four cases. Two are appeals brought by Mr Zeka and Mr Da Silva Ferreira against decisions of district judges ordering their extradition to Belgium. Mr Zeka is the subject of a European Arrest Warrant ("EAW") seeking his return to serve a sentence of 12 years' imprisonment for smuggling human beings. Mr Ferreira is the subject of an EAW seeking his extradition to stand trial for fraud and money laundering offences.

2. The third case concerns Mr Bogdan. He renews his application for permission to appeal against a decision of a district judge who ordered his extradition to Belgium. Mr Bogdan is the subject of an EAW seeking his extradition to serve a sentence of 3 years and 4 months' imprisonment for commercial burglaries.

3. In each case, the principal complaint is that there is now evidence available which, it is said, demonstrates that there is overcrowding in Belgian prisons which gives rise to substantial grounds for believing that there is a real risk that the individuals, if extradited there, would be placed in cells where they would each have less than $3m^2$ of floor space available to them. There is a strong presumption that imprisonment in such circumstances would give rise to a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), applying the decision of the European Court of Human Rights in *Mursic v Croatia* (2017) EHRR 1.

4. In the fourth case, Mr Salton was ordered to be extradited to Belgium, along with Luke Parish and one other person, to stand trial for two offences of importation of drugs and membership of a criminal organisation. Mr Salton was refused permission to appeal following an oral hearing, by Farbey J. He applies to re-open the refusal of permission to appeal principally on the basis that an assurance as to the conditions of detention in Belgium, given to his co-accused, Mr Parish, was breached when Mr Parish was extradited to Belgium.

THE LEGAL FRAMEWORK

5. Belgium is a Part 1 territory for the purposes of the Extradition Act 2003 ("the Act") and extradition to Belgium is governed by the provisions of that Part of the 2003 Act. Extradition may not be ordered if that would be incompatible with the Convention rights of the individual concerned (see section 21 and 21A of the Act). Article 3 of the Convention provides that:

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

6. The relevant legal principles governing Article 3 are not in dispute and can be stated shortly. Article 3 imposes an obligation on a state not to remove a person to a country where there are substantial grounds for believing that the person would face a real risk of being subjected to ill-treatment contrary to Article 3 in that country. In order to fall

within Article 3, the ill-treatment must attain a minimum level of severity, which depends upon all the circumstances of the case including the duration of the treatment, its physical and mental effects and, in appropriate cases, the sex, age and health of the victim. In the context of prison conditions, there is a strong presumption that there will be a violation where a prisoner in a multi-occupancy cell has less than $3m^2$ of personal space (calculated by excluding the floor area of any in-cell sanitary facilities but including space occupied by furniture). That presumption may be rebutted normally by the state concerned showing that the periods of time with less than $3m^2$ of personal space available were short, occasional and minor, were accompanied by sufficient freedom of movement outside the cell and out-of-cell activities and, generally, that the facility is an appropriate detention facility (see *Mursic*, especially at paragraphs 126 and 113 to 138, and see paragraphs 146 to 173 where the European Court found that a period of 27 days with less than $3m^2$ of personal space did result in a violation of Article 3 but other shorter periods did not).

7. Where the requesting state is a signatory to the Convention and a member of the Council of Europe (as is Belgium), there is a presumption that that state will comply with its obligations under Article 3 of the Convention. That presumption may be rebutted by objective, reliable, specific and properly updated information on the conditions of detention in the requesting state which demonstrate there are systemic or generalised deficiencies affecting certain groups of persons or certain places of detention. That information may be obtained from, amongst other things, judgments of international courts or of the European Court of Human Rights, judgments of the courts of the requesting state, or other reports or documents issued by bodies of the Council of Europe or operating under the United Nations. The type of evidence required is something approaching an international consensus that there are such deficiencies in the state. If the benefit of the presumption is lost as a result of such authoritative evidence, the requesting state must show by cogent evidence that there is no real risk of a contravention of Article 3 in relation to the particular requested person in the prisons in which he is likely to serve his sentence. An assurance as to the circumstances in which the particular requested person is to be detained may be sufficient to exclude any risk. Assurances as to the treatment of individuals may be given by a non-judicial authority and those assurances will then need to be evaluated. See, generally, the decision of the Supreme Court *Zabolotnyi v Mateszalka District Court, Hungary* [2021] UKSC 14, [2021] 1 WLR 2569, especially at paragraphs 32 to 35; and the decision of the Divisional Court in *Krolik v Regional Court in Czestochowa, Poland* [2021] EWHC 2537 (Admin), [2013] 1 WLR 490 at paragraphs 4 to 7.

8. Section 26 of the Act provides for a right of appeal from a decision of a district judge ordering a person's extradition. Section 27 provides that:

> "(1) On an appeal under section 26 the High Court may—
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that—

> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
>
> (4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
>
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
>
> (c) if he had decided the question in that way, he would have been required to order the person's discharge.
>
> (5) If the court allows the appeal it must—
>
> (a) order the person's discharge;
>
> (b) quash the order for his extradition"

THE FACTUAL BACKGROUND

Mr Zeka

9. Mr Zeka is an Albanian by birth although he now has British citizenship. He was born on 24 March 1984. On 3 February 2022, an EAW was issued seeking the extradition of Mr Zeka to Belgium to serve a sentence of 12 years' imprisonment for smuggling human beings. Mr Zeka was arrested on 18 May 2022 and brought before the Westminster Magistrates' Court. He was granted conditional bail. An extradition hearing was held on 1 September 2022.

10. By a judgment given on 19 October 2022, District Judge Branston dealt with submissions that Belgian prisons remained extremely overcrowded with individuals being forced to sleep on mattresses on the floor. He considered two decisions of the Court of Amsterdam (dated 24 June 2021 and 24 March 2022). He also considered a statement from Mr Zeka's lawyer stating that it would be normal for Mr Zeka to be imprisoned in Bruges but, given the length of his sentence, it was possible that he would be imprisoned at a facility for longer term prisoners.

11. The district judge set out the terms of Article 3 of the Convention and of Article 4 of the Charter of Fundamental Rights of the European Union which is in identical terms. He referred to the presumption that Belgium would comply with its Convention obligations and that the presumption would only be rebutted by clear, cogent and compelling evidence, that is objective, reliable, specific and updated evidence demonstrating systemic or generalised deficiencies. He set out the relevant parts of the decision in *Mursic*. He concluded that he "did not find that the material provided in this

case provides clear, cogent or compelling evidence that Belgium will not comply with its Article 3 obligations. It certainly falls short of an international consensus to that effect". He referred to the fact that there had been some improvement in relation to the degree of overcrowding complained of and, in respect of a further matter of complaint, that Belgian law now guaranteed certain minimum standards when strike action occurred. The district judge considered that he was not able to be certain as to the prison in which Mr Zeka could be detained. He did not find the judgments of the Court of Amsterdam of any assistance. He ordered the extradition of Mr Zeka to Belgium.

12. Mr Zeka submits that there is evidence which, had it been available before the district judge, would have led him to reach a different decision. The new evidence which Mr Zeka relies upon includes, a report of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") published on 29 November 2022 ("the November 2022 CPT report"). That concerns a visit by the CPT to four prisons, Antwerp, Lantin, Saint-Gilles and Ypres in November 2021. He also relies upon extracts of the annual report for 2022 of the Central Prison Supervisory Council ("the Council"), its annual report for 2023, and its 2023 reports for the prisons in Bruges and Antwerp. The Council is a body established under Belgian law to provide independent monitoring of prisons and the treatment of prisoners. Mr Zeka also wishes to rely on minutes of a meeting of the Council of Ministers' deputies on 3 to 5 December 2024 supervising compliance with the judgment given by the European Court of Human Rights in the case of *Vasilescu v Belgium*. There are other miscellaneous documents on which Mr Zeka seeks to rely.

Mr Ferreira

13. Mr Ferreira is a Portuguese national who was born on 6 February 1994. He came to the United Kingdom in 2013. He is the subject of an EAW issued on 10 August 2021 which seeks his extradition to stand trial for four offences involving fraud and money laundering. Mr Ferreira was arrested on 21 October 2021 and was brought before the Westminster Magistrates' Court the next day and the case adjourned. Following an extradition hearing, District Judge McGarva gave his judgment on 16 August 2022.

14. In his judgment, the district judge outlined the allegations against Mr Ferreira. It is alleged that in 2019 and 2020 Mr Ferreira participated in a conspiracy to defraud the Belgian authorities of tax revenues and assisted the laundering of the proceeds by allowing the funds to pass through the accounts of a company of which he was the manager. The amount of money involved is said to be over one million euros. The maximum sentence is 15 years' imprisonment and the district judge indicated that it was likely that a substantial prison sentence would be imposed if Mr Ferreira were convicted.

15. At the time of the hearing, Mr Ferreira would, if extradited, have been likely to have been detained pending trial at Forest Prison in Belgium. The district judge considered submissions about the level of overcrowding at Forest Prison. He noted that Forest Prison had been significantly overcrowded in 2021 with 663 inmates against a capacity of 405. However, by 2017 Forest had a prison population just below capacity. He considered the possibility of strikes by prison staff and the likely impact on prisoners. He dealt with other matters. He considered Article 3 of the Convention, the presumption that member states of the Council of Europe would comply with their obligations and

the need for cogent and compelling evidence to rebut that presumption. He concluded that:

> "36. I have considered the evidence carefully. There is evidence of deficiencies in the Belgian prison estate. However, overcrowding has improved and steps have been taken by the Belgian Government to try and guarantee the maintenance of minimum standard which may be threatened by strike action. Covid no doubt did have an adverse impact on conditions during the pandemic, but things are improving. Some of the issues raised in the evidence are the same issues that were before the court in *Purcell* in 2017. That Court was aware of the European Court decisions of *Sylla, Nollomont* and *Vasilescu*. The English High Court was in 2017 of the opinion that there was insufficient evidence before it to rebut the presumption of compliance so the second stage of *Aranyosi* was not reached. If anything conditions in Belgium have improved since then. It is by no means certain that the requested person will be held in Forest given that it is due to close later this year. The legislation introduced by Belgium has at the very least reduced the duration of any strikes. The evidence before me is not sufficient to rebut the presumption of compliance. I am not satisfied on the evidence that there are reasonable grounds to believe that there is a real likelihood of the requested person being subjected to conditions which would contravene his rights under article 3 of the European Convention of Human Rights. In these circumstances it is not necessary for me to seek an assurance from the judicial authority. The requested person's extradition to Belgium is not incompatible with his rights under Article 3."

16. Following the decision, Forest Prison was closed. Mr Ferreira seeks to admit a witness statement of Olivia Venet, a lawyer at the Brussels Bar. In her statement, she says that Mr Ferreira would most likely be detained at Haren penitentiary. That is a brand-new prison on the outskirts of Brussels. Ms Venet says that all new warrants issued in the Brussels region are executed at Haren. An investigating judge has a discretionary power to order detention elsewhere but that happens only exceptionally for specific reasons. She says that since "the opening of Haren prison (2022), pre-trial detainees are systematically held in this prison".

17. Mr Ferreira contends that there is new evidence including the November 2022 CPT report and four decisions of the Court of Amsterdam. He contends that the district judge would have reached a different decision if that evidence had been available.

Mr Bogdan

18. Mr Bogdan is a national of Romania. He came to the United Kingdom in January 2016. He is the subject of an EAW seeking his extradition to Belgium to serve a sentence of three years and four months' imprisonment for three burglaries committed in Belgium between 28 May and 1 June 2018. He was convicted of those offences in Antwerp, in September 2022.

19. There was a hearing before District Judge Zani. He summarised the law governing Article 3 of the Convention, and the presumption that Belgium would comply with its obligations. The district judge had before him the November 2022 CPT report. He noted that it highlighted efforts that had been made to address overcrowding. He was satisfied that Belgium was seeking to maintain the guaranteed service provisions adopted in 2019 to ensure that minimum standards were met in the event of a strike by prison staff. He considered that a reasoned analysis of the November 2022 CPT report did not suggest that Article 3 rights were being breached even when the guaranteed service provisions were not met. He concluded:

> "99. The Belgian authorities have provided a full response to the report, have engaged fully and appear to be receptive to CPT's criticisms. There is no suggestion from the CPT that this response is inadequate. In my view, the CPT report does not rebut the presumption of compliance. In my opinion the Belgian authorities are aware of the deficiencies within the running of their prison estate but they are using their best endeavours to deal with and improve them.
>
> 100. Having given careful consideration to the submissions made by both parties I find that the evidence received is insufficient to rebut the presumption that Belgium will comply with its obligations under Article 3 ECHR and, accordingly, this challenge must fail."

20. Mr Bogdan applied for permission to appeal. One of the grounds was that the district judge did not properly analyse the evidence, in particular the November 2022 CPT report, when finding that there was no risk of a breach of Article 3 of the Convention. By order dated 15 March 2024, Sweeting J. refused permission having considered the application on the papers. Mr Bogdan renews the application for permission to appeal and that application was considered at this hearing.

Mr Salton

21. Mr Salton is a British national. The Court of First Instance in Antwerp in Belgium sought the extradition of Mr Salton, together with two co-accused, Luke Parish and Charlie Howard, to stand trial for offences of importation of drugs and membership of a criminal organisation connected to the importation of drugs.

22. The hearing before District Judge Sternberg took place on 29 and 30 September 2022. Following a request, further information regarding the detention circumstances of the three requested persons was provided by letter dated 14 October 2022 by the counsellor general in the Belgian Federal Public Service of Justice. The letter confirms that Mr Salton and the two co-accused will be held in Antwerp prison. It states that the Belgian authorities guarantee, amongst other things, that there will be "a sufficient individual space, a separated sanitary block and out-of-cell activities". It continues by saying that:

> "In this case, Belgium ensures that the following general safeguards after surrender with regard to the conditions of detention:

> The minimum average dimension of every cell is $9m^2$. The persons concerned will therefore not be detained in a cell with less than $3m^2$ of personal space;
>
> The persons concerned will not be required to sleep on a mattress on the floor;
>
> The cell is equipped with sanitary blocks, which include sink and toilet separated but accessible from the rest of the cell. A regular access to the shower is provided for;
>
> The living space includes fixed furniture (bed, wardrobe, desk, seat, phone, television, fridge, and a recycle bin) and sanitary blocks.
>
> Out-of-cell activities are provided for in the regular regime and include different types of activities. These activities include inter alia regular walks in the (open) court (of at last one hour and a half every day), family visits, as well as access to common spaces and extra-activities (sport, education and jobs). These activities afford possibilities to the person concerned to leave his cell and to participate in common activities."

23. District Judge Sternberg dealt with the request to extradite all three of the accused in a judgment dated 28 November 2022. The district judge considered the argument that there were substantial grounds for believing that there was a real risk that the conditions in which Mr Salton, and his co-accused, would be detained would violate Article 3 of the Convention. The district judge accepted that Mr Salton and the two co-accused were highly likely to be held at Antwerp prison. The district judge considered that there was no clear, cogent and compelling evidence to rebut the presumption that Belgium would comply with its obligations under Article 3 of the Convention. He went on to say at paragraph 76 that:

> "In any event, as I set out below, I accept the Belgian authorities have confirmed by further information of 14 October 2022 that the requested persons will each be held in a cell in which they have at least $3m^2$ of personal space and that they will not be required to sleep on a mattress on the floor."

24. The district judge ordered that Mr Salton and his two co-accused be extradited.

25. An application for permission was refused after consideration of the papers by Johnson J. by order dated 5 October 2023. He said in his reasons that it "is not arguable that the judge was wrong to find that there was no real risk of the appellant being placed in conditions that are incompatible with Article 3". Mr Salton made a renewed application for permission. There was an oral hearing before Farbey J. at which he was represented by counsel. We were not provided with a transcript of the judgment of Farbey J. but we were provided with a copy of her order dated 8 December 2023 which records that she refused permission.

26. Mr Salton now applies pursuant to rule 50.27 of the Criminal Procedure Rules for permission to reopen the decision refusing permission to appeal. The basis for that application is that one of his co-accused, Mr Luke Parish, was extradited to Belgium and was held in circumstances which were not in accordance with the assurances given on 14 October 2022.

27. Mr Parish has made a witness statement. He says in that statement that he was extradited on 20 February 2024 and spent one night in a police station. He was taken to Antwerp prison on 21 February 2024 and placed in a cell with four other men and had to sleep on the floor. He says that on the third day of his time in prison, two more inmates were added to his cell, making seven in total, and three of them slept on the floor. He says that he was moved to a different wing on day 9 of his detention. He was transported back to the United Kingdom on 2 March 2024. There is a statement from his partner but she can only say what she says Mr Parish told her. There is a response from the Belgian authorities contesting what Mr Parish said.

28. We were invited to consider hearing oral evidence from Mr Parish, together with cross-examination. That would be an unusual course to follow on an application for permission to re-open a decision refusing permission to appeal. In the event, we decided to proceed on the basis that we would assume that the material matters stated by Mr Parish in his statement were accurate and decide if, on that assumption, there was any basis for granting permission to re-open.

THE APPEAL AND THE APPLICATION FOR PERMISSION TO APPEAL

29. The essential ground of appeal in Mr Zeka's and Mr Ferreira's case is that it would be a breach of section 21 of the Act to extradite them to Belgium as there are substantial grounds for believing that there is a real risk of them being held in conditions that would violate Article 3 of the Convention. Mr Bogdan seeks permission to appeal on the same basis. It is convenient to consider the appeal of Mr Zeka first, then Mr Ferreira's appeal and then Mr Bogdan's application.

MR ZEKA'S APPEAL

30. The principal ground of complaint made by Mr Hall KC, with Mr Swain, for Mr Zeka concerns overcrowding in Belgian prisons. He submitted that there is a long-standing problem with over-crowding in prisons in the Flanders region of Belgium (it is accepted that there are no difficulties in this regard in relation to Wallonia). He relied upon the November 2022 CPT report. He relied on the figures set out in the minutes of the Council of Ministers' meeting on 3-5 December 2024 to establish that there was overcrowding. He also relied on the annual reports of the Council for 2022 and 2023 and the report on Bruges prison.

31. Mr Hall submitted that there was material from which it might be deduced that a cell originally designed for single-occupancy might have less than $9m^2$ of space once sanitary facilities were excluded. That would mean that if three men were placed in that cell, they would have less than $3m^2$ of personal space each which would give rise to a presumption that the conditions gave rise to a violation of Article 3 of the Convention.

32. Mr Hall relied on his written submissions which refer to difficulties arising from strikes by prison staff. Mr Hall indicated that he would not make further oral submissions on

that issue. He submitted that the minutes of the Council of Ministers' meeting demonstrated that there was no effective preventative remedy to avoid a person being placed in conditions in breach of Article 3 in Belgium. Finally, he submitted that the respondents had failed to comply with its duty of candour as it had not provided information on whether there were decisions of courts in states other than Holland which had declined to extradite persons because of prison conditions.

33. Mr Smith KC, with Ms Bostock, for all the respondents, submitted that on analysis the evidence showed that there were problems in certain prisons with overcrowding. However, that evidence did not go so far as indicating that convicted persons serving a long sentence, such as Mr Zeka, would be held in conditions which involved less than $3m^2$ of personal space. Mr Smith submitted that the evidence shows that the aim was to provide a cell for a single occupant which had $10m^2$ of floor space. If there were two, or three, people in that cell, there would be overcrowding but there would not be a situation where each person had less than $3m^2$ of personal space. The evidence on Bruges prison did not establish overcrowding in the unit where Mr Zeka would be held. The November 2022 CPT report did not indicate that the position in relation to strikes gave rise to inhuman treatment. There was some evidence that a remedy was available. In any event, the position was that, even if there was such a remedy, courts in other states still had to assess if there was a real risk that extradition would involve a person being detained in conditions which would involve a violation of Article 3 (relying on the decision of the Court of Justice of the European Union in Case C-220/18PPU *Criminal Proceedings against ML (Generalstaatsanwaltschaft Bremen intervening)* [2019] 1 WLR 1052 at paragraphs 72 to 76). Even if there were no remedy, that would not of itself amount to a violation of Article 3 unless there was a real risk that conditions in the relevant prisons would breach Article 3. Finally, the obligation in relation to candour required the respondents to provide material which destroyed or seriously undermined the respondents' case. It did not require the respondent to carry out enquiries which might, or might not, assist a person whose extradition was sought. Here, the respondent had provided all the underlying material relevant to the Article 3 issue. The decisions of the District Court in Amsterdam were based on that issue. He submitted that the Divisional Court was able to determine for itself whether the material underlying the decisions of the District Court of Amsterdam demonstrated that there was in fact a real risk of a breach of Article 3.

Discussion

34. There is evidence that there is a degree of overcrowding in some prisons in Belgium. It is right to record that the November 2022 CPT report noted that "overcrowding remained a major (and long-standing) problem affecting the entire Belgian prison system". The CPT noted that the Belgian authorities were addressing that problem by means of legislative measures intended to reduce the number of persons sent to prison, and the time spent there, and by modernising and expanding the prison estate.

35. The most recent figures are contained in the minutes of the Council of Ministers meeting of 3 to 5 December 2024. It noted that the average prison occupancy rate fell from 121.4% in 2011-2012 to 112% on 1 October 2024. At that date,12 prisons were overcrowded by 20%, two by more than 60% (Mechelen and Dinant) and five by between 30% and 60% (Antwerp, Ghent, Hasselt, Lantin and Leuven Help). The number of prisoners had increased from around 10,400 in 2021 to 12,344 in 2024 but

the number of places had also increased to a capacity of 11,020 places on 1 October 2024. The minutes note that two prisons had opened in 2022 (Haren, with 1,190 places planned and 1,126 detainees as at 4 October 2024, and Termonde with 476 places and 484 detainees on that date). Other prisons were being extended or modernised.

36. Against that background, we accept that the evidence shows overcrowding but that there is no objective, reliable, specific, up to date evidence demonstrating that persons serving sentences are held in circumstances where they have less than $3m^2$ of personal space. We accept that the evidence demonstrates that cells have more persons in them than was intended. But that, of itself, has not led to a situation where prisoners have less $3m^2$ of personal space. The focus in this case has been on cells intended for single occupancy but used for multiple occupancy. The evidence is that such cells have, in general, $10m^2$ of floor area. They are able to accommodate two or three prisoners, thus being overcrowded and less than ideal, but without there being less than $3m^2$ of personal space for each prisoner.

37. None of the reports relied upon suggest that the overcrowding has led to circumstances where convicted prisoners are having to serve their sentences in cells with less than $3m^2$ of personal space. The November 2022 CPT does not include any such findings. Indeed, it observes that "the most dramatic situation was observed in Antwerp". It noted that "several of the $10m^2$ cells (originally designed for single occupancy) now accommodated up to three prisoners". That does not provide objective evidence, still less clear, cogent and compelling evidence, to rebut the presumption that Belgium will comply with its obligations. Furthermore, Antwerp is a prison for those on remand, not those, such as Mr Zeka, who have been convicted and sentenced.

38. None of the other material, including the Council reports, relied upon by Mr Hall provide anything like objective, specific, reliable evidence sufficient to rebut the presumption that the Belgian authorities will comply with Article 3 in any of the prisons to which Mr Zeka, as a convicted prisoner, might be sent. The 2023 annual report of the Council refers to an overcrowding rate on 31 December of 12.2% for all institutions but notes that the average varies and there is acute overcrowding particularly in remand centres. That does not establish overcrowding leading to less than $3m^2$ of personal space in remand centres but still less in prisons for those serving sentences. In relation to Bruges prison, where Mr Zeka says that it is likely he will serve his sentence, the Council report for that prison for 2023 notes that "with long-term prisoners (= Men's [unit] 1), there is hardly any or no overcrowding; the issue occurs with short-term prisoners and men awaiting sentencing (= the slightly smaller Men's 2 unit)". The evidence indicates that a sentence of three years or longer is regarded as a long-term sentence. Mr Zeka has been sentenced to 12 years. On that basis, he would be detained, if in the Bruges prison, in Men's Unit 1 where there is no overcrowding.

39. Nor do we consider that the evidence relied upon by Mr Hall provides any proper basis for concluding, as he submitted, that there may be single-cells used for multi-occupancy where the floor area, excluding the sanitary facilities, falls below $9m^2$ and so could not accommodate 3 prisoners, each having $3m^2$ of personal space. He relied on the 14 October 2022 further information set out above. But on any fair reading of the whole of the document, it is clear that the information is dealing with a situation where the sanitary facilities are excluded from the calculation of the available floor space and cells are $9m^{2.}$ Nor does a single reference in a document said to be the 2022 Council report

(but which amounts to extracts, not the whole report) to three-person cells "ranging from $6m^2$ [of personal space] to $9.9m^2$", with a footnote naming three prisons, provide anything like the kind of objective, specific, detailed evidence necessary to rebut the presumption.

40. In his written submissions, Mr Hall relied on the possibility of strikes by prison staff giving rise to conditions which constitute ill-treatment contrary to Article 3 of the Convention. It is correct that earlier decisions of the European Court have referred to periods when strikes have led to conditions in prisons which are contrary Article 3 of the Convention. The most significant of these decisions is that in *Pirjolean v Belgium* 26404/18 (16 March 2021). That case concerned a period when the person concerned was detained in Antwerp prison from 20 May 2018 to 21 September 2018 and, during that period, from 9 June 2018 to 10 July 2018 the prison was affected by strikes. The European Court noted that there was no Belgian law guaranteeing a minimum level of service in the prison environment during strikes. The European Court found that the individual had less than $3m^2$ during the relevant period, and that there were no factors alleviating the discomfort caused by the lack of space, and the Belgian government did not dispute the "cumulative effect of the continuous lack of physical activity, the repeated breaches of hygiene and the lack of contact with the outside world during the prison officers' strike". It found a breach of Article 3 of the Convention.

41. Since that period, Belgium has adopted a law providing for minimum levels of service in the event of a strike by prison officers. The latest information before this court is that strike movements are fewer in number and shorter and less serious in their consequences for prisoners (see the 2023 annual Council report). There is nothing in the November 2022 CPT report which could, properly, lead to a conclusion that strikes by prison officers in Belgium are now leading to a situation where conditions in prison give rise to a real risk of treatment contrary to Article 3 of the Convention. It refers to the fact that strikes take place and recommended action be taken to ensure that the minimum service guaranteed in prisons is effectively implemented during each strike. That falls short of evidence that strikes in Belgian prisons are giving rise to a real risk of prisoners being held in conditions that are incompatible with Article 3. In *Tincu v Public Prosecutor for Liege* [2019] EWHC 335 (Admin), Singh LJ (with whom Sweeney J agreed) referred to the enactment of the law to safeguard minimum rights of prisoners even at a time when industrial action is taking place, noting that that was one of the improvements that the CPT had called for. He concluded that, in the light of that Belgian law, the applicant in that case had not displaced the presumption that Belgium will comply with its obligations under Article 3. In our judgment, nothing has occurred since the decision in *Tincu* to cast doubt on that conclusion. Indeed, if anything, the most recent information confirms the soundness of the judgment in *Tincu.* We do not consider that there are substantial grounds for believing that there is a real risk that prison officers' strikes in Belgium will lead to conditions in prison which are contrary to Article 3 of the Convention.

42. Mr Hall relies upon certain judgments of chambers of the Amsterdam District Court. The first, dated 22 June 2021, is based to a large extent on a decision of the European Court in *Pirjoleanu v Belgium* which dealt with the position in 2018, particularly given the strikes that were then taking place. That judgment sought more information but, in the event, it appears guarantees were given that the person concerned would be detained in the Netherlands anyway. These judgments were before the district judge. He did not

consider that they assisted him. With respect to the Amsterdam District Court we agree that these two judgments do not assist, not least because they rely to a great extent on the position in relation to strikes and, as we have indicated above, the position in that regard has changed considerably.

43. Other judgments were referred to by Mr Hall including one of the Amsterdam District Court (International Lawyer's Chamber) dated 14 December 2022. That does consider the position in relation to overcrowding and the November 2022 CPT report. It did consider that the conditions were such that extradition should not be allowed. However, a decision of the Court of Amsterdam (International Aid Chamber) dated 7 February 2023 indicates that the risk of any violation of Article 3 of the Convention has been removed by a guarantee given by the Belgian authorities on 17 January which is in similar terms to the one given in Mr Salton's case. We have considered carefully the judgments concerned. Without meaning any disrespect to our colleagues in the Netherlands, we have the material before us, including the November 2022 CPT report, and other material supplied by the appellant, to enable us to carry out our own assessment of whether or not there is a general risk of ill-treatment, such that the general presumption of compliance with Article 3 is rebutted, and whether or not it is necessary to consider the adequacy of guarantees provided by the Belgian authorities. For the reasons given above, we do not consider that there is objective, reliable, specific, and properly updated information which demonstrates there are systemic or generalised deficiencies affecting certain groups of persons or certain places of detention and certainly not in relation to prisons catering for those, such as Mr Zeka, serving long sentences.

44. Mr Hall invited us to adjourn the appeal in order to seek further information from the Belgian authorities as to whether other courts in other countries have taken a similar approach to extraditions to Belgium to that taken by the District Court of Amsterdam. Alternatively, he invited us to draw adverse inferences from the fact that the respondents in the present case have not sought such information from the Belgian authorities which, he submitted, is in breach of the duty of candour referred to in *R (Gambrah) v Crown Prosecution Service* [2013] EWHC 4126 (Admin). It is not necessary to consider in detail the obligations owed by the prosecuting authorities in relation to the disclosure of information to the parties or the courts. We are satisfied that it does not extend to requiring the CPS in the present case to seek information from the Belgian authorities as to whether other states have declined to order extradition because of the assessment by the courts of those states as to whether the presumption that Belgium will comply with its obligations under the Convention has been rebutted, or whether any guarantees provided are inadequate. We have the relevant evidence, drawn from the November 2022 CPT report, and other information furnished to us by the parties, to undertake our own assessment of the position.

45. Finally, Mr Hall submitted that there was no effective preventative judicial remedy available in Belgium referring to the minutes of the Council of Ministers on 3 to 5 December 2024. We make the following observations about that matter. First and foremost, the position is that this Court must determine whether or not there are substantial grounds for considering that there is a real risk that the extradition of Mr Zeka, or any other person, would result in them being treated contrary to Article 3 of the Convention. The existence, or non-existence, of what has been described as a preventative remedy under Belgian law does not relieve this Court of the task it must

perform. Secondly, it is right to observe that the material parts of the decision of the European Court in *Vasilescu v Belgium* (application 64682/12 of 20 April 2015) were concerned with whether the applicant, Mr Vasilescu, had exhausted all domestic remedies before bringing his claim to the European Court as is required by the caselaw of that Court. It was in that context that the European Court considered whether there was an effective domestic remedy available under Belgian law, not in order to determine whether the absence of such a remedy amounted to a violation of Article 3 of the Convention.

46. Thirdly, the position as to what interim remedies are available under Belgian law does not appear clearly from the evidence before us. Mr Hall took us to parts of certain documents but they appear to offer only a partial and unclear description of Belgian law. An expert instructed on behalf of Mr Ferreira has expressed the view that it is not possible for a detainee on pre-trial detention to challenge the prison establishment determined by the judge unless a possible violation of Article 3 of the Convention is invoked. That evidence gives the distinct impression, as one would expect of a state which is a member of the Council of Europe, and the European Union, that it would have a means of providing effective interim and full remedies for breach of Article 3 (or of Article 4 of the Charter of Fundamental Rights of the European Union which is in materially similar terms). Had it been material, we would not have wanted to make a decision based on the current limited and uncertain evidence about Belgian law and its legal system. In the event, it is not necessary for us to consider this matter.

47. We note that Mr Hall referred to other documents, including newspaper articles, extracts from the website of a law firm in Germany, and a finding on a complaint in a prison in Ghent. We have considered these documents, and every document referred to by Mr Hall and every submission made by him. We do not consider that this material, considered individually or cumulatively, begins to amount to the kind of objective, reliable, specific and properly updated information on the conditions of detention in the requesting state which demonstrate there are systemic or generalised deficiencies affecting certain groups of persons or certain places of detention.

48. We also note that, in his skeleton argument, Mr Hall submitted that the district judge erred when saying that the evidence required to displace the presumption that Belgium will comply with its obligations must involve something approaching an international consensus. It is clear that there is no error in the approach of District Judge Branston when his judgment is read fairly and as a whole. He was well aware of and applied the relevant approach. In any event, as Mr Hall accepted in oral submissions, the alleged error in the present case would not have materially affected the outcome of the proceedings before the district judge and it is not necessary to say anything more.

Conclusion

49. There is no sufficient evidence to justify rebutting the presumption that Belgium will comply with its obligation under Article 3 of the Convention. There are no substantial grounds for believing that there is a real risk that those, like Mr Zeka, serving sentences of imprisonment in Belgium will be detained in conditions which involve a violation of Article 3. Mr Zeka's appeal is, therefore, dismissed.

MR FERREIRA'S APPEAL

50. We can deal with Mr Ferreira's appeal relatively shortly. The Belgian authorities seek to extradite him to stand trial for offences of fraud and money laundering. He will be detained pending trial in Haren prison on the outskirts of Brussels. That is a newly-built prison which opened in 2022. It had not, on the evidence before us, reached capacity as at October 2024. It was planned to accommodate 1,190 detainees and at that date had 1,126 detainees. There has been no criticism of the standard or quality of accommodation at Haren prison. Mr Hall, and Mr Swain, on behalf of Mr Ferreira accept that there are no substantial grounds for believing that he will be subject to conditions which are contrary to Article 3 of the Convention if Mr Ferreira is held at Haren. They submit, however, that there are substantial grounds for believing that there is a real risk that he may be moved to one of the other prisons for pre-trial detainees and made submissions about the conditions in those prisons. Further, they submit, that, if convicted, Mr Ferreira may be detained at any prison in Flanders and, repeating the submissions made on behalf of Mr Zeka, there is a real risk of a breach of Article 3 in those circumstances.

51. There is, in our judgment, no proper basis on the evidence before us upon which it could be said that there is any realistic prospect of Mr Ferreira being held in a prison other than Haren. He has submitted a report by Olivia Venet, an attorney at law and a registered lawyer at the Brussels Bar. She has been a partner in a legal firm since 2010 and focusses on criminal proceedings. She explains that as matters stand "all new warrants issued in the Brussels region are executed in Haren" and that "Since the opening of Haren prison (2022), pre-trial detainees are systematically held in this penitentiary institution". She fairly points out that the investigating judge has a discretion to decide that the person will be detained in another prison. She says that can sometimes happen, but only exceptionally and where there is some reason for doing so (such as health reasons). There is nothing in the evidence to suggest any basis as to why an investigating judge would, exceptionally, want to exercise his or her discretion to depart from the usual position that Mr Ferreira would be detained in Haren.

52. We have also considered the position if Mr Ferreira is convicted. He may be held in Haren as it is possible to serve sentences there but it is possible that he would be required to serve any sentence imposed in another prison. For the reasons given in relation to Mr Zeka, there is a presumption that Belgium will comply with its obligations under the Convention and will ensure that the conditions in which Mr Ferreira is detained if convicted will not involve any breach of Article 3 of the Convention.

53. For completeness, we note that Mr Hall submitted in his skeleton argument that the district judge misstated the relevant test in that he referred to the fact that he did not consider that there was a reasonable likelihood of Mr Ferreira being subject to conditions which would violate Article 3. Mr Hall withdrew that ground of challenge. We consider that he was right to do so. There is no tenable basis for considering that the district judge adopted the wrong test. In a clear, comprehensive and detailed review of the law, District Judge McGarva set out the relevant principles of law at paragraph 30 to 32 of his judgment. He considered carefully the evidence and the submissions made and gave his reasons for his conclusion. On any fair reading of the judgment as a whole, rather than by focussing on one phrase taken out of context, it is clear that the district judge fully understood and applied the relevant law and came to conclusions that he was entitled (indeed we would say correct) to reach on the material before him.

54. We dismiss Mr Ferreira's appeal against the order of the district judge that Mr Ferreria be extradited to Belgium in respect of the four offences set out in the EAW.

MR BOGDAN'S APPLICATION

55. We can deal with Mr Bogdan's renewed application for permission very shortly. He is a person sentenced to three years and four months' imprisonment for offences under Belgian law. That is longer than a short sentence (which, on the evidence, is generally understood to be a sentence of up to three years). The district judge in his case had before him the November 2022 CPT report. He considered that report. He concluded that that there was insufficient evidence to rebut the presumption that Belgium will comply with its obligations under the Convention, and he was not satisfied on the evidence that there were reasonable grounds for believing that there was a real risk of Mr Bogdan being subjected to conditions which would contravene his rights under Article 3. We agree for the reasons given above in relation to Mr Zeka. We refuse Mr Bogdan's application for permission to appeal.

MR SALTON'S APPLICATION TO RE-OPEN

56. Mr Salton seeks permission to re-open the decision refusing him permission to appeal against the decision of the district judge ordering that he be extradited to Belgium to stand trial for drugs offences. The basis for this submission is that there was a breach of the guarantee given to his co-accused, Mr Parish, when he was extradited. Again, we can deal with this application briefly.

57. Rule 50.27 of the Criminal Procedure Rules provide that a person must make a written application for permission to reopen a decision determining an appeal and:

> "(3) The application must:
>
> (a) specify the decision which the applicant wants the person to reopen; and
>
> (b) give reasons why –
>
> (i) it is necessary for the court to reopen the decision in order to avoid real injustice;
>
> (ii) the circumstances are exceptional and make it appropriate to reopen the decision, and
>
> (iii) there is no alternative effective remedy available."

58. The injustice that Mr Salton seeks to avoid is being held in conditions which violate Article 3 of the Convention. For that reason, he submits, it is necessary to re-open his appeal. First, the district judge found that the presumption that Belgium would comply with its obligations under Article 3 was not rebutted. On that basis, there is no reason for considering that Mr Salton would be subjected to conditions that were contrary to Article 3. There would be no injustice in extraditing him to Belgium to stand trial and, therefore, no basis for re-opening the decision refusing permission to appeal, whatever may or may not have happened to Mr Parrish when he was extradited.

59. Secondly, and assuming, without deciding, that Mr Parrish's account of what happened to him when he was extradited to Belgium is accurate, the position is this. Mr Parrish does not suggest in his evidence that he had less than $3m^2$ of personal space in his cell. Rather, his complaint is that the Belgian authorities said he would not have to sleep on a mattress and, on his account, he was required to sleep on a mattress for a number of days. Even assuming that is true, being made to sleep on a mattress for a number of days would not of itself amount to a breach of Article 3 of the Convention. That breach of the guarantee would not, of itself, provide substantial grounds for believing that there was a real risk that Mr Salton, if extradited, would be subjected to conditions of detention that would contravene Article 3 of the Convention. That would not therefore provide a basis for re-opening refusal of permission in order to avoid injustice.

60. For those reasons, there is no proper basis for considering that it is necessary to re-open the refusal of permission in order to avoid real injustice. The injustice that it is said it is necessary to avoid is the real risk that Mr Salton would be detained in conditions contravening Article 3 of the Convention. Given that the presumption is that Belgium will comply with its obligations, and given that, in any event, there is no proper evidential basis for concluding that the Belgian authorities will breach their guarantee in a way that would give rise to Mr Salton being detained in conditions that would contravene Article 3, it is not necessary to re-open the refusal of permission to appeal. For those reasons Mr Salton's application is refused.

ANCILLARY MATTERS

61. Both appellants and both applicants seek to rely on new evidence. We have considered and assessed all the material provided by all parties in deciding the outcome of these appeals and applications. In the circumstances, therefore, it is not necessary to determine whether or not they should formally be admitted. The important thing is that all the evidence and material has been fully considered by the court.

CONCLUSION

62. The appeals of Mr Zeka and Mr de Ferreira against the orders that they be extradited to Belgium are dismissed. The application by Mr Bogdan for permission to appeal against the order that he be extradited to Belgium is dismissed. The application by Mr Salton for permission to re-open the refusal of his application for permission to appeal against the order that he be extradited to Belgium is dismissed.