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Case Nos: CO/2937/2020 & CO/3172/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
IN AN APPEAL UNDER SECTION 103
OF THE EXTRADITION ACT 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 May 2021

Before:

LORD JUSTICE STUART-SMITH
and
MR JUSTICE HOLGATE

- -

Between:

(1) ADRIANE TABUNCIC
(2) IGOR IGOR COEV (aka IGOR KOEV)

Appellants

- and -

GOVERNMENT OF MOLDOVA

Respondent

- -

David Josse QC and **Ben Keith** (instructed by **Bindmans Solicitors LLP)** for the **First Appellant**
David Josse QC and **Louisa Collins** (instructed by **Saunders Solicitors)** for the **Second Appellant**
Helen Malcolm QC and Hannah Hinton (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 20 April 2021

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Approved Judgment

Stuart-Smith LJ:

1. This is the judgment of the Court to which both members have contributed.

2. The Respondent Government of Moldova has submitted requests for the extradition of the Appellants. The Appellants appeal against the decision made by a District Judge sitting at the Westminster Magistrates' Court on 3 July 2020 to send their cases to the Secretary of State. By the time of the hearing before us, the Respondent had withdrawn its opposition to the appeals. However, in accordance with the provisions of CPR PD52A at [6.4] and the principles laid down in *Rochdale MBC v KW (no. 2)* [2015] EWCA Civ 1054, [2016] 1 WLR 198, the hearing took place with a view to the Appellants satisfying the Court that the decision of the lower court was wrong and, if so, on what grounds. The main issues in the appeal were (a) Article 3 ECHR and (b) prison conditions. A subsidiary but important issue was whether, and if so to what extent, assurances provided by the Respondent could be relied upon.

3. At the conclusion of the hearing, the Court gave its decision. We ordered that the appeals be allowed, the Appellants discharged, the orders for extradition be quashed and that there should be no order for costs but that there should be detailed assessment of the Appellants' legal aid costs. This judgment provides our reasons for making allowing the appeals and making those orders.

4. The Appellants were represented before us by Mr David Josse QC, Mr Ben Keith and Ms Louisa Collins. The Respondent was represented by Ms Helen Malcolm QC and Ms Hannah Hinton. We are grateful to all Counsel for their submissions.

The factual background

Extradition Request in respect of Mr Tabuncic

5. Moldova is designated a Part 2 Territory. On 20 October 2018 it requested Mr Tabuncic's extradition pursuant to s. 70 of the Extradition Act 2003 ("the Act"). The extradition request stated that he was wanted to face trial in respect of an offence of theft, for which the maximum sentence would be 4 years in custody, and an offence of hooliganism (elsewhere described as an offence of assault), for which the maximum sentence would be 5 years in custody. The request was certified as valid by the Secretary of State on 20 November 2018. He was arrested in the United Kingdom on 19 December 2018, appeared before the Westminster Magistrates' Court the same day, and was granted conditional bail.

Extradition request in respect of Mr Coev

6. On 7 September 2018 the Respondent requested Mr Coev's extradition pursuant to s. 70 of the Act. The original request stated that his return was sought to serve a sentence of imprisonment of five years for the theft of a mobile phone, two sim cards and a flash card. Although described as an offence of robbery, there is no evidence of the use of violence.

7. There was and is a distinct lack of clarity about the status of his sentence. It appears that the convicting court on 30 November 2015 imposed a suspended sentence order of 3 years and 4 months' custody, suspended for two years. A subsequent

prosecutor's appeal based on his having committed another offence was allowed on 5 February 2016, with the result that the sentences for the two offences were combined to reach a total of 5 years' imprisonment. However, during the course of the extradition proceedings, the second conviction appears to have fallen away with the result that the sentence for the index offence relied upon as the basis for the extradition request was amended on 8 October 2020 (after the decision of the lower court now being appealed) to one of 3 years 4 months suspended for a 2 year probationary period.

8. At the hearing, the court asked Ms Malcolm whether Mr Coev's sentence has been suspended and whether the Respondent's extradition request was maintained in respect of him. She did not have instructions that enabled her to answer either question. On the information available to us we proceed on the basis that (a) the sentence has been suspended and (b) the request has not been withdrawn.

9. Mr Coev was arrested on 12 November 2018 having voluntarily attended the police station. He appeared before Westminster Magistrates' Court on 13 November 2018 and has been on bail since then.

The extradition proceedings

10. The Appellants' cases were originally joined with a third case, which related to a request by the Respondent for the extradition of a Mr Simionescu. They were joined because all three cases, which were otherwise unrelated, raised the issue of Article 3 ECHR and conditions in Moldovan prisons. The hearing took place over three days, from 4 to 6 February 2020. By that date Mr Simionescu had consented to his extradition on 9 December 2019, having been given the same assurances as Mr Tabuncic, to which we will return. The case against Mr Coev proceeded on the basis that he was wanted to serve a custodial sentence of 5 years.

11. In the event, the District Judge gave two judgments. The first, dated 9 March 2020, left open what the District Judge regarded as an ambiguity so as to enable the Respondent to provide further information which it did on 6 April 2020. The District Judge then concluded the proceedings in the light of the further information by giving a second judgment on 3 July 2020.

12. One of the central features of the Appellants' case was that they would be at risk of inter-prisoner violence, quite apart from their general attack on the acceptability of prison conditions. There was substantial evidence to support the Appellants' case on both fronts, which it is not necessary to set out in detail here. The Respondent sought to meet this evidence by the provision of assurances.

13. In Mr Tabuncic's case the accusation warrant request included an assurance (which was identical to that given to Mr Simionescu) that he would only be held in nominated cells in various prisons, namely: (i) Chișinău No. 13 – cells 93 and 98 (ii) Cahul No. 5 – cells 15 and 18 (iii) Balti No. 11 – cells 63 and 51 (iv) Rezina No. 17 – cells 76 and 80. It is worth noting in passing that Mr Tugushi, the experienced expert instructed on behalf of the Appellants, had visited cells 93 and 98 at Chișinău as they were the subject of specific assurances and noted that they provided markedly better conditions than elsewhere in the prison and were acceptable: his report on conditions elsewhere in the prison was that they were very poor.

14. Further information provided on 24 January 2020 was substantially in the same terms as assurances given to Mr Coev, but included for Mr Tabuncic that:

> "If the Citizen Adrian Tabuncic is exposed to inter-prisoner violence, requiring protection under the Enforcement Code, and where the perpetrator(s) shares his cell or has access to areas shared by Adrian Tabuncic, the perpetrator(s) will be moved out of the cell/vicinity while Adrian Tabuncic will remain housed in the cell(s) included in this assurance. He will be moved only to one of the other mentioned cells referred to in the assurance.
>
> In exceptional, unforeseen, circumstances where he requires protection under the Enforcement Code or for disciplinary reasons he will not be placed in solitary confinement for any period longer than strictly necessary and only in the renovated solitary confinement cells at Balti No 11."

15. Four mutually inconsistent assurances were given in relation to Mr Coev. The position under the third assurance, given on 22 January 2020, was that he would be held in cells 93 and 98 at Chișinău penitentiary 13 and cells 6 or 7 in Section 8 in Soroca penitentiary 6. It included what was framed as a guarantee in relation to inter-prisoner violence in the following terms:

> "7. The State guarantees reasonable protection against violence and the personal security of Igor Coev under Article 206 of the Enforcement Code, which in case the detainee feels in danger, he may request from the prison administration to keep him in safe custody as set out in the code:
>
> (1) The state ensures the personal security of the convicts.
>
> (2) When the danger to the personal security of the convicted person appears, he is entitled to address a request to any of the staff management of prison, regarding the assurance of personal security. In this case, the person in charge (staff management of prison) is obliged to take immediate measures to ensure the personal security of the convicted person, and depends of the case to ensure also the state protection measures.
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> (3) The prison administration shall undertake the measures to remove the danger of the personal security of the convicted person. The respective measures will be maintained for as long as the purpose requires."

16. The third assurance was accompanied by further information dated 24 January 2020 which stated that:

> "In order to ensure the personal security of the inmate, the administration of [the] penitentiary is obliged to isolate him

> from the other inmates, using for these purposes various rooms, which corresponds to the requirements for detention of this persons. In exceptional cases, the cells of the disciplinary isolators can be used, and the restrictions on the conditions of detention in the disciplinary isolator, the basis and the mode of disciplinary isolation, in this case, do not extend to the inmate transferred for the reasons of personal security."

17. At [73] of his first judgment, the District Judge found this assurance to be ambiguous and decided to ask for more, as follows:

> "73. … Specific cells have been nominated by the Government. It is unclear whether they would be transferred to another one of the nominated cells in the same or another prison or whether it is intended that they would be transferred into another cell/room outside the assurance. If they are to remain within the same prison, what will happen to those who have threatened them and how will the defendants be practically protected from reprisals?"

18. In response to this request, the Respondent stated on 6 April 2020:

> "8. If the citizen Igor Coev is exposed to inter-prisoner violence, requiring protection under the Enforcement Code, and where the perpetrator(s) shares his cell or has access to areas shared by Igor Coev, the perpetrator(s) will be moved out of the cell/vicinity while Igor Coev will remain housed in the cell(s) included in this assurance. 9. In exceptional, unforeseen, circumstances where he requires protection under the Enforcement Code or for disciplinary reasons he will not be placed in solitary confinement for any period longer than strictly necessary and only in the renovated solitary confinement cells at Balti No.11. 10. Citizen Igor Coev will at all times be subject to a regime which will allow for at least one house of exercise in the open air every day as part of a broader programme of out-of-cell activities."

19. An assurance in similar terms was given in relation to Mr Tabuncic, which we have set out at [14] above.

20. In the first judgment, the District Judge accepted that conditions in the Respondent's male prisons remained generally poor and in Chișinău (which is where Mr Tabuncic was "likely to be detained … for a lengthy period") were very poor. He held that the specific cells nominated by the Respondent were of such a standard as would "dispel the risk of [the Appellants] being detained in conditions that would breach their Article 3 rights." He accepted the Respondent's "clear and unambiguous assurance to this court that each defendant will be provided with a minimum of 4m2 of space." Although the Respondent had contested the use of prisoners to maintain order, he held that "the evidence of a powerful criminal sub-culture is strong. … I am satisfied that such a sub-culture exists, that in practice it is tolerated and that it leads to a hierarchy where those lower down are at risk of the threats of or use of violence which offends

their article 3 rights." Having held that the Appellants would be at risk of such behaviour, the District Judge (correctly) held that the issue was "whether the assurances in this case provide clear and cogent evidence to dispel the risk of an article 3 breach by non-state actors." The District Judge identified the ambiguity in the passage we have set out above and identified the lack of clarity about whether, in the event of violence or fear of violence, "they would be transferred to another one of the nominated cells in the same or another prison or whether it is intended that they would be transferred into another cell/room outside the assurance."

21. The case was therefore effectively adjourned, which enabled the Respondent to provide the additional assurance identified above. The new assurance was contested by the Appellants as being unworkable in practice and potentially forcing the Appellants into non-conforming solitary confinement that they could not then safely leave.

22. The District Judge held:

> "11. The assurances are clear. If the defendants are exposed to inter-prisoner violence any perpetrator who shares the same cell or who has access to common areas will be moved out of the cell or vicinity. Mr Coev will remain accommodated in his same cell, Mr Tabuncic will remain in the same cell or in another cell identified in his assurance.
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> 12. In exceptional, unforeseen circumstances where Mr Coev or Mr [Tabuncic][1] require protection or where for disciplinary reasons it is necessary for him to be placed in solitary confinement, they will be detained in a renovated solitary confinement cell at Balti 11 (cells which Mr Tugushi has previously conceded are Article 3 compliant) for no longer than strictly necessary.
>
> 13. I am satisfied that these plans are clear and on the face of it are workable."

23. In the light of this finding, the District Judge concluded that:

> "16. It is impossible to eradicate all risks of inter prisoner violence in any prison. I have previously found that there is evidence of a powerful prison sub-culture that is tolerated by the prison authorities. However, I am satisfied that the assurances provided in this case provides the defendants with reasonable protection against violence by non-state agents. I am satisfied that if the terms of the assurances are fulfilled there is no real risk of the defendants being subjected to violence that would violate Article 3.

[1] The judgment below refers to Mr Tugushi both here and 3 lines later. Here it is plain that the reference should be to Mr Tabuncic; the later reference is not quite so clear.

> 17. I am satisfied that it is compatible with the defendants Article 3 rights to send the case to the Secretary of State but only on the basis of the assurances of 6 April 2020."

The appeals

24. By his detailed Grounds of Appeal Mr Tabuncic raised two issues, of which we are only concerned with the first: that the judge was wrong to find that extradition would be compatible with his Human Rights under Article 3 ECHR because of the inhumane and degrading prison conditions to which he would be subject. In briefest outline, he submitted that the judge had not analysed the conditions in Chișinău prison so that there had been no analysis of whether the Respondent could comply with the various assurances it had given. More specifically, it alleged that the assurances merely described how the authorities would react *after* the threat of or actual violence had occurred and did not offer any method of prevention in advance. There being no legal basis for the enforcement of the assurances, it was argued that there was no effective sanction even if monitoring were to disclose the threat or actuality of violence. Furthermore, the assurances were alleged to indicate that, in the event of violence, the victim Appellant would be committed to a regime of solitary confinement for their own protection, from which they were unlikely to emerge again during their term of imprisonment.

25. Similar submissions were made as grounds for Mr Coev's appeal. In addition, by amended Grounds of Appeal dated 21 September 2020, Mr Coev applied for permission to rely upon a newly released report of the European Council for Protection Against Torture ["CPT"] after its periodic visit to Moldova carried out between 28 January and 7 February 2020. The application to adduce the new CPT report as fresh evidence was allowed by order of the Court dated 27 January 2021. The Respondent therefore knew of the substance of the Appellants' submissions by September 2020 and knew that the CPT Report would be admitted in the Appeal on 27 January 2021, well before the hearing of these appeals.

The CPT Report and the Respondent's response

26. For present purposes, the main significance of the CPT Report is that it supports the Appellants' submissions that the District Judge underplayed the risk of inter-prisoner violence and overstated the ability of the Respondent to cope with it in a way that would avoid infringement of the Appellants' Article 3 Human Rights. The gist of the evidence is sufficiently indicated by the following extracts:

> "48. The problem of inter-prisoner violence and intimidation in Moldovan prisons has long been a source of serious concern for the CPT. In the report on its 2018 ad hoc visit, the Committee called upon the Moldovan authorities to take determined action to address this problem, in particular by taking effective measures to tackle the related phenomenon of an informal prison hierarchy.
>
> The findings of the CPT's delegation during the 2020 visit showed that the problem of inter- prisoner intimidation and violence among the adult male inmate population remained as

> acute as ever and was, as in the past, largely linked to the well-established informal hierarchies in the country's prison system.
>
> 49. According to medical files examined by the delegation at Cahul, Chișinău and Taraclia prisons, inmates were regularly found with injuries indicative of inter-prisoner violence, such as haematomas around the eyes and, albeit to a lesser extent, with more serious injuries (e.g. a broken arm). As had been the case in the past, practically all the cases of inter-prisoner violence remained unreported, due to the climate of fear and intimidation created within the establishments by inmates who were at the top of the informal prison hierarchy, as well as a general lack of trust in the staff's ability to guarantee prisoner safety. Unsurprisingly, many of the prisoners met by the delegation were very reluctant to speak about the circumstances in which they had sustained their injuries, and some were visibly scared. On a few occasions, the delegation was followed by prisoners who tried to put pressure on other inmates in order to prevent them from talking freely with the delegation. Nevertheless, a number of inmates in each of the prisons visited did provide accounts of beatings, threats of violence and extortion by other inmates, as well as sexual assault. At Chișinău Prison, the delegation heard an allegation that a sex offender had been deliberately placed in a cell with prisoners known for violence toward sex offenders (so called "press-khata"). The prisoner concerned claimed that he had been severely beaten and raped by his cellmates, apparently as a punishment for his sex offender profile. However, the prisoner did not submit a complaint due to fear of retaliation.
>
> 50. Despite the vehement denials of the Moldovan authorities in their responses to the CPT's previous visit reports, it was again clear that there was tacit collaboration between the management of the prisons visited and the informal prisoner hierarchies as regards maintaining order among inmates and ensuring the "smooth operation" of the establishments. Most strikingly, the informal hierarchy had a say in the initial "classification" and placement in cells of newly admitted prisoners, as well as in a decision as to which prisoners were to be permitted to work. This helped the informal leaders to constantly enrol "unexperienced" prisoners into the informal community of inmates, offering protection and other support in exchange for their money and loyalty. This arrangement also meant that informal leaders were free to use intimidation and a "reasonable" level of violence against those who refused to contribute to an illegal collective fund ("obshchak") managed by the informal hierarchy's leader."

27. At [51] of its report, the CPT noted that the use of solitary confinement for victims of inter-prisoner violence was a form of self-imposed segregation which was seen as a

means of escape from the aggressors which may entail "an impoverished regime for prolonged periods (in some cases for years on end)." This contradicts the finding of the District Judge at [12] of his second judgment that the use of solitary confinement would be used only in exceptional, unforeseen circumstances and for no longer than strictly necessary; it provides direct support for the evidence of the Appellants' expert below that this form of segregation is the only means of protection from the violence threatened or carried out by the criminal subculture and that detention in such a regime can be for years on end. Similarly, at [53] the CPT reported understaffing and consequent management problems in controlling the prison population, which supports the submission that the District Judge was wrong to find that the Respondent's assurances about the management of its prisons and the enforcement of order could be relied upon.

28. [57] of the Report expressed the failure of the Respondent to ensure a safe and secure environment for prisoners in clear terms:

> " 57. In the CPT's view, the continuing failure of Moldovan authorities to ensure a safe and secure environment for prisoners is directly linked to a number of factors, notably the chronic shortage of custodial staff, reliance on informal prisoner leaders to keep control over the inmate population and the existence of large-capacity dormitories. At the same time, there is no proper risk and needs assessment of prisoners upon admission, nor a classification of inmates to identify in which prison, block or cell prisoners should be placed. The increased vulnerability of some prisoners (such as sex offenders, persons with mental health issues or drug dependencies) clearly calls for the need to identify potential risks and vulnerabilities in order to prevent these prisoners from being subject to violence and exploitation by other inmates."

29. On 14 April 2021, 6 days before the hearing, the response of the Respondent to the CPT report was published in English on the CPT website. The Court does not know when the response was in fact completed. We have read it with the same anxious scrutiny that we have given to the other materials in the case. We agree with the assessment and submission of the Appellants that, being generous, it might be conceded that the Respondent is doing its best to engage with the criticisms of the CPT as articulated in the CPT Report. However, we also agree with the assessment and submission of the Appellants that, viewed overall, the response demonstrates an almost total failure to get to grips with the problem of inter-prisoner violence and prisoner-led control of the prison estate in general and the prisons to which the Appellants might be sent in particular.

30. The Appellants went further and submitted that the response shows the Respondent to be in denial about the problems. It is not necessary for us to go so far, though we recognise that there is material to support that submission. For our purposes, what matters is that the combined effect of the CPT Report and the Respondent's response show that the District Judge took a view of the Respondent's assurances that was over-optimistic to the point of being plain wrong.

The Simionescu breach letter

31. The assurances given in the case of Mr Simionescu before he consented to be extradited included an assurance identical to that given to Mr Tabuncic: that if housed at Chișinău No 13 penitentiary, he would only be housed in cells 93 & 98.

32. During March 2021 those representing Mr Tabuncic received information that evidence had been provided by the Respondent in another case which indicated that the assurances given to Mr Simionescu had been breached. As a result, they wrote to the CPS on 26 March 2021 requesting disclosure of material relevant to the suggested breach. On 30 March 2021 the CPS responded and disclosed a document in the form of a letter dated 16 March 2021 from the Respondent's National Prison Administration ["NPA"]. On its face, it indicates that between 20 February 2020 and the date of the letter, a period of just over 13 months, Mr Simionescu had been held in cell 93 for just over 7 months but had been held in other cells outside the terms of the assurances he had been given for the rest of the period. The CPS said that they had asked for confirmation of the authenticity of the letter on 19 March 2021: evidently confirmation had not yet been received but it was said that meetings had been arranged to obtain further information about the letter.

33. The potential significance of the letter and the need for urgent information and instructions would have been plain to anyone concerned with the present appeals.

34. Pursuant to directions of the Court, the Appellants served and filed their skeleton argument for the present hearing on 9 April 2021. The Respondent was under order to submit its skeleton argument four business days before the hearing date, which was now fixed for 21 April 2021. That did not happen. Instead, on 14 April 2021 the Respondent applied to break the fixture. The grounds for breaking the fixture that were put forward were that:

    i) On 10 February 2021 Mr Coev's team had provided the CPS with a purportedly authentic Moldovan Court document indicating that Mr Coev now faced only a suspended sentence. It was said that instructions "are being taken to check the authenticity and whether the request for his extradition will be withdrawn" and that enquiries had been made with the Moldovan MOJ, though it was not said when;

    ii) The letter relating to breach of Mr Simionescu's assurances was being investigated. It was said that meeting had taken place between the CPS and the NPA on and since 25 March 2021 and that "the CPS has not been provided with the reply to the issue of the alleged breach in an admissible and disclosable format." It was said that a state emergency in Moldova meant that "the personnel involved are working at 30% capacity." Hence the Respondent could not finalise its skeleton argument as directed;

    iii) The Appellants' skeleton had been served late, being served 7 business days before the hearing rather than 10.

35. The application to break the fixture was refused. The Court was then informed that the case had settled, with a consent order being proffered. The hearing was maintained, for the reasons set out above. The Respondent then supplied a note setting out its position which, in summary form, was that those acting on its behalf did not have instructions or information to put before the Court in admissible form that

would enable it to contest the appeal. It stated that "the Respondent does not positively admit and accept the truth of the various submissions and allegations made by the Appellants; but it is not in a position to contest the appeals."

The present hearing

36. Mr Josse submitted that dealing with inter-prisoner violence by assurances was always difficult and that the material contained in the CPT Report and the Respondent's response to it demonstrated that the Appellants had been right to submit (and the District Judge wrong to reject) that (a) the problems of inter-prisoner violence were endemic and (b) the prison authorities were not in a position to protect the Appellants from the real risk (which the District Judge had recognised) of inter-prisoner violence.

37. In support of his attack on the reliability of assurances, Mr Josse relied upon the information about the cells in which Mr Simionescu has been held since his return, in apparently substantial breach of the assurances that were given that he would be held in cells 93 and 98 while in Chișinău. He submitted that, because Mr Simionescu is thought to be the first person extradited from the United Kingdom to Moldova, it was important and incumbent upon the Moldovan authorities to ensure that they acted in compliance with the assurances their Government had given. The apparent breach of such important assurances in that first case, he submits, casts doubt on the validity of the assurances given by the Respondent in the present case.

38. In response, Ms Malcolm was evidently hampered by the lack of admissible information or even instructions that would enable her to discharge the obligation of showing that the serious risk of breach of Article 3 would be averted. As we have said, she was not even in a position to confirm whether Mr Coev is now subject only to a suspended sentence and whether the Respondent would wish to maintain its request for extradition. She did, however, provide some information about Mr Simionescu on instructions. Those instructions were that Mr Simionescu had been moved from cell 93 at his own request because he did not feel safe there. Although we were told that those instructions were not available in a form that would be admissible, we accept what Ms Malcolm says about the explanation.

Discussion and Conclusions

39. We have fully taken into account the difficulties under which Ms Malcolm was labouring. However, even giving due allowance for those difficulties, the information before us satisfies us that the decision of the court below cannot stand. In relation to inter-prisoner violence, the terms of the CPT Report and the Respondent's limited response to it tip the balance firmly in favour of the Appellants. The balance tilts yet further once the information about Mr Simionescu is taken into account. It is of particular concern that in his case (a) he was fearful of violence in cell 93 at Chișinău and (b) contrary to the assurances given to him and to the Appellants, it was not the perpetrators who were moved, but Mr Simionescu who was moved from the approved cell. The fact that he may have been moved at his own request only heightens the doubts that must surround the assurances, which were predicated on the two specified cells being places of safety for the victim so that it would be the perpetrators of violence or other conduct giving rise to fear who would be moved if segregation were required. In our judgment, this lends additional strength to the concern noted by the

CPT that solitary confinement for victims of inter-prisoner violence is a form of self-imposed segregation which is seen as a means of escape from aggressors leading to an impoverished regime for prolonged periods.

40. On the information and evidence that is available to us, we are satisfied that the assurances given with a view to satisfying the Court that there was no substantial risk of inter-prisoner violence affecting these Appellants if they were to be extradited are not reliable.

41. In the case of Mr Coev there is the additional feature that, on the information now available to the Court, it seems probable that he is subject only to a suspended sentence if he were to return to Moldova. Since the request for extradition was founded on the assertion that he is subject to a significant sentence of immediate custody, this undermines the whole basis for sustaining the request.

42. The Respondent points out that the evidence before this Court is more extensive than the evidence that was available to the Court below. That is true, and we have based our decision thus far on all of the information that is available to us, including evidence that was not before the Court below. That makes it strictly unnecessary for us to decide whether the District Judge's decision was wrong on the information available to him. However, we have formed the clear view that, even on the information available to the Court below, the assurances that were given to the Court by the Respondent, including those given between the issuing of the first judgment and the second, did not meet the substantial risk that had been identified: see [15]-[23] above. The existence of a strong prisoner sub-culture was accepted by the District Judge and was not addressed by the Respondent's assurances. They offered a limited response on what would, or should, happen in the event that inter-prisoner violence or intimidation occurred: they did not provide grounds for assurance that the substantial and unacceptable risk of violence or intimidation would be obviated in the first place. For these reasons, shortly stated, we would have decided this appeal in favour of the Appellants even on the basis of the materials that were before the Court below.

43. We do not wish to add to the Respondent's difficulties in any way, and we bear in mind the difficulties of which we have been informed by Ms Malcolm; but we feel obliged to point out that the main substance of the allegations and arguments upon which these appeals were brought has been known for months, as have the contents of the CPT Report. The system of extradition as applied by the Courts of this jurisdiction is founded upon mutual trust and respect. The failure of the Respondent to provide any admissible information in reply to the matters raised by the Appellants is a matter of real concern. While these appeals have not been set up to be test or lead cases in relation to Moldova, the fact that they are, so far as is known, the first to have reached the higher courts means that assurances given and assertions made by the Respondent in future cases will have to be scrutinised with particularly anxious care.

44. For these reasons, we made the orders allowing the Appeals, as outlined earlier in this judgment.