

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28/02/18

Before :

**LORD JUSTICE HICKINBOTTOM**  
and  
**MR JUSTICE JEREMY BAKER**

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Between :

	<b>(1) LACHEZAR KOLEV GEORGIEV (2) ILIAN IVANOV DIMITROV (3) BISER VELIKOV GEORGIEV</b>	<b><u>Appellants</u></b>
	<b>- and -</b>	
	<b>(1) REGIONAL PROSECUTOR'S OFFICE, SHUMAN, BULGARIA (2) REGIONAL PROSECUTOR'S OFFICE, PLEVEN, BULGARIA (3) REGIONAL PROSECUTOR'S OFFICE, VARNA, BULGARIA  (BULGARIAN JUDICIAL AUTHORITIES)</b>	<b><u>Respondents</u></b>

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**Mark Summers QC and Myles Grandison (instructed by JD Spicer Zeb)**  
for the **First Appellant**

**Mark Summers QC, Florence Iveson and Saoirse Townshend (instructed by JD Spicer Zeb)**  
for the **Second Appellant**

**Mark Summers QC and David Williams (instructed by Bullivant Law)**  
for the **Third Appellant**

**Joel Smith and Julia Farrant (instructed by Crown Prosecution Service Extradition Unit)**  
for the **Respondents**

Hearing date: 20 February 2018

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# Judgment Approved Lord Justice Hickinbottom :

## Introduction

1. The Appellants have each been convicted of various crimes, and been sentenced to a term of imprisonment, in Bulgaria. The relevant Bulgarian judicial authorities have issued a European Arrest Warrant (“EAW”) in respect of each Appellant, and are seeking their extradition to serve those sentences. The magistrates’ court has ordered their extradition, and they now appeal against that decision.
2. It is uncontroversial that those held in Bulgarian prisons are generally at risk of being subjected to inhuman or degrading treatment contrary to article 3 of the European Convention on Human Rights (“the ECHR”) as a result of prison conditions there. However, in respect of the Appellants, the Bulgarian authorities have given specific assurances as to the treatment they would be accorded if they were surrendered, which will ensure that they will not be subjected to any treatment that breaches article 3. The Appellants, however, contend that we cannot be satisfied that the assurances will be fulfilled; and, because the Bulgarian authorities have had a reasonable time to satisfy this court that, should they be extradited there, there is no real risk of such treatment, this court should allow their appeals and order their discharge.
3. Before us, Mark Summers QC appeared for the Appellants, leading Myles Grandison, Florence Iveson, Saoirse Townshend, David Williams, all of Counsel. Joel Smith and Julia Farrant, both of Counsel, appeared for the Respondents. At the outset, I thank them all for their contribution.

## The Law

4. The extradition of persons to another Member State of the European Union is governed by the Council Framework Decision of 13 June 2002 (“the Framework Decision”), which has the status of a Directive.
5. Both the United Kingdom and Bulgaria are parties to the ECHR and Member States of the European Union. Article 3 of the ECHR provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 4 of the Charter of Fundamental Human Rights of the European Union (“the Charter”) is in materially the same terms. Where they are implementing EU law, as they are in the case of decisions taken by the relevant judicial authorities when applying the Framework Decision, both provisions are binding on Member States. Thus, by section 21(1) and (2) of the Extradition Act 2003 (which implements the Framework Decision), where the extradition of a convicted person is sought, the court is required to decide whether his extradition would be compatible with ECHR rights and, if it decides that it is

not, the court must generally order the person's discharge.

6. Given that the materially identical terms of article 3 of the ECHR and article 4 of the Charter each apply to both the United Kingdom and Bulgaria, and both apply to all relevant extradition decisions, in this judgment I shall simply focus on the former, unless the context otherwise requires. References to "article 3" are to article 3 of the ECHR.
7. The application of article 3 in this context has been considered in a number of cases to which we were referred, notably BB v Secretary of State for the Home Department (2006) (5 December 2006) (Appeal No SC/39/2005), Saadi v Italy (Application No 37201/06) (2009) 49 EHRR 30, Othman v United Kingdom (Application No 8139/09) (2012) 55 EHRR 1, Elashmawy v Court of Brescia, Italy [2015] EWHC 28 (Admin), Criminal proceedings against Aranyosi and Căldăraru (Case Nos C-404/15 and C-659/15PPU) [2016] QB 921 ("Aranyosi"), and The Court in Mures and the Bistrita-Nasaud Tribunal, Romania v Zagrean; Sunca v Iasi Court of Law, Romania [2016] EWHC 2786 (Admin) ("Zagrean").
8. For the purposes of these appeals, it is unnecessary either to drill down into these authorities or to quote from them at length. The following principles deriving from them are well-established and uncontroversial.
  - i) Article 3 (as reflected in section 21 of the 2003 Act) makes it unlawful for the United Kingdom to extradite an individual to a country where he is at real risk of being subjected to inhuman or degrading treatment.
  - ii) In the prison context, treatment will offend article 3 if the suffering or humiliation involved goes beyond the suffering and humiliation inherent in imprisonment as a legitimate punishment. For these purposes, the conditions of incarceration have to be looked at as a whole; but detention for more than a few days in space measuring less than 3m<sup>2</sup> is, in itself, likely to be a contravention – sometimes spoken of in terms of a strong presumption – as is a lack of proper toilet facilities that (e.g.) regularly requires the use of a bucket in a multi-occupant locked cell.
  - iii) The initial burden is upon the requested person to establish, by clear and cogent evidence, that there are substantial grounds for believing that he would, if surrendered, face a real risk of being subjected to inhuman or degrading treatment in the receiving country.
  - iv) If such grounds are established, then the legal burden shifts to the requesting state, which is required to show that there is no real risk of a violation: as it has been said, the burden upon the requesting state is "to discount the existence of a real risk" (Aranyosi at [103]) or "to dispel any doubts about it" (Saadi at [129]). Requiring a party to dispel any doubts as to a particular risk undoubtedly imposes a very heavy burden, although I am unconvinced that it is necessary or appropriate to put it formally in terms of the criminal standard of proof.

- v) The requesting state might satisfy that burden by evidence that general prison conditions are in fact article 3-compliant. However, even where it cannot show that, that does not result in a refusal to surrender, because the assessment of whether there will be a breach of human rights is necessarily fact-specific. Therefore, where the court finds that there is a real risk of inhuman or degrading treatment by virtue of general prison conditions, it must then go on to assess whether there is a real risk that the *particular individual* will be exposed to such a risk.
- vi) Given the importance of extraditing persons who face criminal charges or sentence in another jurisdiction and the principle of mutual respect, that fact-specific exercise requires the court to make requests of the requesting judicial authority under article 15(2) of the Framework Decision for information concerning the conditions in which the individual will be held that it considers necessary for the assessment of that risk, including information as to the existence of procedures for monitoring detention conditions.
- vii) The information provided may include assurances from the requesting contracting state, designed to provide a sufficient guarantee that the person concerned will be protected from treatment that would breach article 3. In the evaluation of such assurances, relevant factors include the nature of the relationship between the requesting and requested judicial authorities and the states of which they are a part, the human rights situation in that other jurisdiction, the subject matter of the assurance and the nature of the risk involved. It also has to be conducted in the light of the principle of mutual recognition and trust between those authorities and states: where the requesting state is a signatory to the ECHR and a Member State of the European Union, there is a strong presumption that it is willing and able to fulfil its human rights obligations and any assurances given in support of those obligations. An assurance given by such a state must be accepted unless there is cogent reason to disbelieve it will not be fulfilled.
- viii) In particular, assurances have to be evaluated against four conditions (identified by Mitting J in BB at [5], and approved in Zagrean at [52] as being consistent with Strasbourg jurisprudence in the form of Othman) which must generally be satisfied if the court is to rely upon them, namely:
- “(i) the terms of assurances must be such that, if they are fulfilled, the person returned will not be subjected to treatment contrary to article 3;
  - (ii) the assurances must be given in good faith;
  - (iii) there must be a sound objective basis for believing that the assurances will be fulfilled;
  - (iv) fulfilment of the assurances must be capable of being verified.”

I shall refer to these as “the Zagrean criteria”.

- ix) Where the further information (including any assurances given) satisfy the court that, should the individual be extradited, there is no real risk of him being subjected to inhuman or degrading treatment, then the court will order his surrender. Where it is not satisfied, generally, the individual will still not be discharged: the execution of the EAW and extradition will be postponed until the requesting state is able to satisfy the court that the risk can be discounted by, e.g., providing further information, including further assurances.
- x) However, where the risk is not (or, prospectively, cannot) be discounted within a reasonable time, then the court may be bound to discharge.

### **The Factual Background**

- 9. Prison conditions in Bulgaria have been the source of criticism and complaint for many years.
- 10. In its reports following ten visits to inspect places of detention in Bulgaria in the period 1995 to 2015, the Council of Europe Committee for the Prevention of Torture (“the CPT”) reported very poor conditions: problems of overcrowding (described as “outrageous” in the 2012 report), poor staffing levels, routine use of force and ill-treatment of prisoners by prison officers, inter-prisoner violence and general dilapidation and lack of maintenance and cleaning of prison buildings, wholly inadequate and filthy sanitation facilities (including specific criticism of the use of buckets in locked multi-occupation cells at night), and infestation by (amongst other creatures) cockroaches and vermin. Particular concern was expressed about “endemic” corruption in the Bulgarian prison system (see, e.g., paragraph 45 of the 2014 report, repeated in the 2015 report), attempts to mislead the CPT delegation, by (e.g.) producing false witness statements and taking other steps to conceal problems (see, e.g., paragraphs 6 and 14 of the 2012 report); and pressure having been put on prisoners not to report problems. In the 2015 report, it was reported that, in Varna Prison, many prisoners said that complaining to staff “entailed a danger of being beaten up in revenge”. In report after report, concern was expressed about the lack of progress towards acceptable conditions and prison reform, and the failure of the Bulgarian authorities to address the fundamental concerns raised and recommendations made by the CPT (see, e.g., paragraph 2 of the 2015 report).
- 11. Those systemic concerns were endorsed by both the UN Committee against Torture (“the UN CAT”) in its Concluding Observations on the Sixth Periodic Report of Bulgaria (15 December 2017), and the Alternative Report on the Implementation of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment: Bulgaria (July 2017) published by the Bulgarian Helsinki Committee (“the BHC”).
- 12. Eventual official action took two forms. First, the European Court of Human Rights adopted the pilot procedure; and, in a judgment delivered on 27 January 2015 and becoming final on 1 June 2015, it condemned the prison system in Bulgaria as non-compliant with article 3, and required both preventative and compensatory measures to be adopted by 1 December 2016 (Neshkov v Bulgaria (Application Nos 3625/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13)). Then, on 26 March 2015

(between the CPT visit of that year, and the publication of their report on that visit), the CPT took the extraordinary step of issuing a Public Statement under article 10(2) of the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, reiterating their concerns about the prison system in Bulgaria and indicating that the findings on their visit demonstrated that “little or no progress has been achieved in the implementation of key recommendations repeatedly made by the CPT” (paragraph 4). The express aim of the Public Statement was “to motivate and assist the Bulgarian authorities, and in particular the Ministries of the Interior and Justice, to take decisive action in line with the fundamental values to which Bulgaria, as a Member State of the Council of Europe and European Union, has subscribed” (paragraph 18). As it has been properly said in relation to the pilot judgment and the CPT Public Statement: “Neither the CPT nor the Strasbourg Court adopt these measures save in cases of serious, unremedied, systemic deficiencies in prison conditions in the state concerned” (Vasilev v Regional Prosecutor’s Office, Silistra, Bulgaria; Nikolev v Regional Prosecutor’s Office, Pazadjik, Bulgaria [2016] EWHC 1401 (Admin) (“Vasilev”) per Mitting J at [10]).

13. In response to the Neshkov pilot judgment, the Bulgarian Government prepared a revised Action Plan which it submitted to the Committee of Ministers of the European Union. That has been updated from time-to-time. These documents show that the steps that have been taken to address the concerns expressed include the following.
  - i) Various measures have been taken to address overcrowding in prisons, including encouraging sentences alternative to imprisonment, and introducing new rules as to allocation and transfer of prisoners. Data on prison population are to the effect that, with the possible exception of parts of Pleven Prison, each prison (and each part of each prison) referred to in the assurances given to the Appellants is now significantly below capacity. Those data are on the basis that every prisoner is entitled to at least 4m<sup>2</sup> of personal space (see (iii) below).
  - ii) Measures have also been taken against poor material conditions, including significant identified refurbishments with assured financial resources. Each of the prisons referred to in the assurances has, to a greater or lesser extent, had the benefit of some capital outlay on refurbishment. Under cover of a letter from the Director of International Legal Cooperation and European Affairs at the Bulgarian Ministry of Justice dated 15 March 2017, we have been supplied with photographs of some of the refurbished prison estate.
  - iii) Hand-in-hand with those measures to improve prison conditions, on 25 January 2017, the Bulgarian Parliament adopted the Law on Amendments in the Execution of Punishments and Pre-Trial Detention Act 2009. Section 3 of the 2009 Act as amended expressly prohibits torture, inhuman or degrading treatment, and provides that detention in materially poor conditions may amount to such treatment, giving a list of circumstances which represent such treatment. Personal space of less than 4m<sup>2</sup> is one such circumstance. The aim of this section is “to serve as clear guidance to the prison administration, the prosecutors and the relevant courts as to when conditions go beyond the normal degree of suffering inherent in detention” (paragraph 5 of the General Measures Section of the December 2017 Revised Action Plan).

- iv) The newly introduced procedures, which serve as remedies, refer to that definition. From May 2017, a new procedure has been introduced under the 2009 Act, under which detainees can directly seek relief from the Bulgarian Administrative Court for positive and negative injunctions to ensure that breaches of article 3 are promptly stopped and/or prevented. A further new procedure has been introduced for awarding compensation, under which, once a *prima facie* case has been shown, the burden of proof shifts to the prison administration.
- v) The Action Plan has also reported to the Committee of Ministers on individual cases which have caused Ministers concern.

### **Recent Appeals against Extradition to Bulgaria**

- 14. Since Neshkov, whilst insisting that prison conditions in Bulgaria have improved significantly, the Bulgarian authorities have not sought to adduce evidence that the situation has improved to the extent that the level required by article 3 is met across the prison estate in Bulgaria. They thus continue to be in systemic breach of article 3. Therefore, the issue of whether specific individuals can be extradited to Bulgaria has been, and still is, dependent upon case-specific assurances.
- 15. That was accepted in Vasilev, the first post-Neshkov appeal to this court by persons whose extradition to Bulgaria had been requested. The assurances offered in that case evolved over time and were, in their final form, contained in a declaration made by the then Deputy Minister of Justice on 7 September 2015 in the following terms:
  - “(i) In connection to the required guarantees on the accommodation conditions for individuals wanted by the Republic of Bulgaria based on [an EAW] after their possible surrender to the Bulgarian judicial authorities, the Ministry of Justice hereby declares that in such cases the surrender of individuals will be allocated to penitentiary establishments that provide accommodation conditions in compliance with Article 3 of the [ECHR], as well as with the minimum European standards. That way, the individuals will be accommodated in prisons and prison dormitories that are in line with the minimum European standards. The sleeping places that will house the surrendered individuals shall provide a total of 4 sq m per individual, direct access to daylight, a possibility for natural ventilation, and an individual toilet. The amount of daylight, the degree of artificial lighting, heating and ventilation shall be determined according to the requirements of the respective national standards for public buildings.
  - (ii) The obligation to provide accommodation for the abovementioned individuals in penitentiary establishments under the conditions, set out in Article 3 of the [ECHR] is set out in Order JIC-04–1163 by the Minister of Justice, dated August 13, 2015.

(iii) This declaration is applicable to cases where the respective competent body in the country executing the [EAW] has made an explicit request for the provision of guarantees in relation to the accommodation of said individual under conditions that fit the minimum European standards.”

Of particular importance for the purposes of the appeals before us, are the assurances that, if surrendered and imprisoned, the requested person shall enjoy (i) at least 4m<sup>2</sup> of “personal space” in his cell, and (ii) access to a toilet, particularly at night.

16. In Vasilev, the Divisional Court (Burnett LJ, as he then was, and Mitting J) considered those assurances were sufficient and reliable, and that the presumption that Bulgaria, as a signatory of the ECHR and Member State of the European Union, would honour its assurances had not been displaced. The court noted that the assurances made no mention of violence by staff, corruption or healthcare, which had been raised as issues in the appeal before them. However, they considered that the risk of violence was most acute at three prisons (Sofia, Burgas and Varna); and, they said, “if the assurances are fulfilled, it is inconceivable that [any persons surrendered] could be housed in the near future in any of the three named prisons” (see [49]-[50]). The court held that assurances were not necessary in relation to other prisons, or in relation to matters such as corruption and understaffed medical care as the evidence did not establish a real risk of a breach of article 3.
17. On the basis of those assurances, Mr Vasilev was duly surrendered. It is uncontroversial that the assurances that were given were breached, in that he was held in a variety of multi-occupation cells in Belene Prison with space per prisoner of less than 4m<sup>2</sup> (and, at times, no more than 2.5m<sup>2</sup>), as evidenced by a report from a reporter from the BHC who had visited the prison and seen the conditions in which Mr Vasilev was detained. The details, which I need not relate again here, are set out in the judgment of Lloyd Jones LJ (as he then was) in Kirchanov, Petrov and Ivanov v District Prosecutor’s Office, Blagoevgrad, Bulgaria and Other Bulgarian Judicial Authorities [2017] EWHC 827 (Admin) (“Kirchanov No 1”) at [31]. Furthermore, immediately on his return to Bulgaria, Mr Vasilev was held in Sofia Prison for three days, which, although not a breach of any assurance, was incongruent with the Divisional Court’s view that, if the assurances were to be complied with, placing a person in Sofia Prison was “inconceivable”.
18. Other persons were surrendered to Bulgaria following the giving of similar assurances, notably Ivan Ogoyski and Plamen Asenov. In each of these two cases, as again evidenced by reports from visitors from the BHC, they were held in circumstances in which they enjoyed less than 4m<sup>2</sup> (and, at times, no more than 1.5m<sup>2</sup>) of personal space. Further, each had been detained in Sofia Prison for some days upon arrival in Bulgaria, before being transferred to Kremikovtsi Prison (Mr Ogoyski) or Burgas Prison (Mr Asenov). Mr Asenov’s cell in Burgas had no in-cell sanitation.
19. Given those breaches of assurance, which were accepted by the Bulgarian authorities, it was unsurprising that others who faced extradition to Bulgaria contended that the assurances offered to them in the same terms were insufficient to entitle the court here to discount the risk of a breach of article 3 upon their surrender. In seven cases, including

those of Metodi Ognayov Kirchanov, Ivayalo Maximov Petrov and Stanimir Georgiev Ivanov, the magistrates' court ordered extradition to Bulgaria on basis of the same assurances accepted by the Divisional Court in Vasilev. Kirchanov, Petrov and Ivanov appealed.

20. Again, there were several requests for further information, until the Divisional Court (Lloyd Jones LJ and Lewis J) were satisfied that, on the basis of the assurances given, on surrender there was no real risk of a breach of article 3. The assurances given comprised those accepted in Vasilev (quoted at paragraph 15 above), together with the response from the Director General of the Execution of Sentences General Directorate in the Bulgarian Ministry of Justice ("the Director General") to specific requests from the court. The requests, in respect of each individual whose surrender was sought, were as follows:

"(a) In which part of which institution or institutions will [name of individual] be detained for the duration of his sentence?

(b) Will [name of individual] be accommodated in a cell which (i) provides him with 4 square metres of space at all times throughout and (ii) which contains a self-contained sanitary facility?

(c) What mechanisms exist, or will be provided to monitor the conditions in which [name of individual] is detained throughout his detention?"

21. The Divisional Court considered the initial response of the Director General dated 5 May 2017 to be inadequate ([2017] EWHC 1285 (Admin) ("Kirchanov No 2")). They asked for better information about where each of the appellants would be held at each stage of his detention; and indicated that the court required to be satisfied that (i) the appellants would not be transferred to a prison where minimum standards were not met; (ii) conditions in which each would be held would comply with the minimum international provisions as to space and as to toilet facilities; and (iii) there was an effective system of monitoring those conditions

22. The Director General responded on 7 July 2017, as follows:

"... [T]he three persons sought on the basis of their EAWs will serve their sentences as follows:

Metodi Kirchanov... will be held in Bobov Dol prison;

On question 1: After his arrival Kirchanov will be initially placed in Sofia prison, during the adaptation period. Throughout this period he will be kept in accordance with the assurance provided by this letter. After the expiry of the said period in compliance with the general rule he will be placed in a prison near his permanent residence – in this case Bobov Dol prison. Even in the event of a transfer to another prison facility Kirchanov will be placed in conditions corresponding to the present assurance given;

On question 2: We give the assurance that the inmate will be kept in a cell with 4 sq m and self-contained sanitary facility. According to our national legislation, there is a possibility for him to serve the remaining part of his sentence in a prison facility (i.e. prison hostel). In this case we will monitor that the person will be kept under the conditions described above in accordance with the assurance.

Ivaylo Petrov... will be held in Vratsa prison;

On question 1: After his arrival Petrov will be initially placed in Sofia prison, during the adaptation period. Throughout this period he will be kept in accordance with the assurance given. After the expiry of the said period in compliance with the general rule he will be placed in a prison near his permanent residence - in this case Vratsa prison. Even in the event of a transfer to another prison facility Petrov will be placed in conditions corresponding to the present assurance given;

On question 2: We give the assurance that the inmate will be kept in a cell with 4 sq m and self-contained sanitary facility. According to our national legislation, there is a possibility for him to serve the remaining part of his sentence in a prison facility (i.e. prison hostel). In this case we will monitor that the person will be kept under the conditions described above in accordance with the assurance.

Stanimir Ivanov... will be held in Pleven prison;

On question 1: After his arrival Ivanov will be initially placed in Sofia prison, during the adaptation period. Throughout this period he will be kept in accordance with the assurance given. After the expiry of the said period in compliance with the general rule he will be placed in a prison near his permanent residence - in this case Pleven prison. Even in the event of a transfer to another prison facility Ivanov will be placed in conditions corresponding to the present assurance given;

On question 2: We give the assurance that the inmate will be kept in a cell with 4 sq m and self-contained sanitary facility. According to our national legislation, there is a possibility for him to serve the remaining part of his sentence in a prison facility (i.e. prison hostel). In this case we will monitor that the person will be kept under the conditions described above in accordance with the assurance;

On question 3: In the event extradition is ordered, the rights and interests of Kirchanov, Petrov and Ivanov will be further safeguarded by the provisions of Article 276-283 of the Law on Execution of Penalties and Remand into Custody - Part Six: Protection against Torture, Cruel, Inhuman or Degrading Treatment.

Also, in order to address this important issue, we will ensure on a

quarterly basis the obligation for the Director General of the Execution of Sentence to report to this Ministry on the conditions the inmates are kept in after the allocation, including the exact prison cell/dormitory and its conditions - i.e. 4 sq m and self-contained sanitary facility.

As an additional guarantee for the rights of the inmates, the National Ombudsman, through 'National Prevention Mechanism' Directorate part of its administration, has access to the places of deprivation of liberty in Bulgaria and may interview sentenced persons privately and to monitor the material conditions of the inmates. The Ombudsman has the power to make recommendations to the prison authorities, which are always taken into consideration.

To summarize, we express our willingness to resolve all the issues with commitment to the best interests of both Parties and fruitful cooperation in the area of mutual cooperation in criminal matters and the EAW specifically, with the full respect of the rights of sentenced persons.”

23. The Divisional Court considered that the requesting judicial authority had done sufficient to meet the court's concerns; and that the Zagrean criteria (see paragraph 8(viii) above) had been met. The court dismissed the appeals, and the three men were surrendered.

### **The Current Appeals**

24. The extradition of the First Appellant, Lachezar Kolev Georgiev, is sought pursuant to an EAW issued by the Regional Prosecutor's Office, Shuman, Bulgaria on 11 July 2013, to serve two sentences of imprisonment for grievous bodily harm in 2008 and theft in 2013, totalling three years of which two years nine months and twenty two days remain outstanding. The EAW was certified by the National Crime Agency ("the NCA") on 29 August 2014. The First Appellant was arrested on 14 September 2014, and is currently remanded on conditional bail.
25. The extradition of the Second Appellant, Ilian Ivanov Dimitrov, is sought pursuant to an EAW issued by the Regional Prosecutor's Office, Pleven, Bulgaria on 19 February 2014, to serve a sentence of eight months' imprisonment for driving without a licence. The EAW was certified by the NCA on 10 February 2015. The Second Appellant was arrested on 12 March 2016, and is currently remanded on conditional bail.
26. The extradition of the Third Appellant, Biser Velikov Georgiev, is sought pursuant to an EAW issued by the Regional Prosecutor's Office, Varna, Bulgaria on 26 September 2014, to serve a sentence of five years' imprisonment for two offences of dishonesty. The EAW was certified by the NCA on 22 April 2015. The Third Appellant was arrested on 28 December 2015, and he too is currently remanded on conditional bail.
27. Following the judgment of this court in Vasiley, and the provision of assurances akin to

those provided in Vasilev, the extradition of the First and Second Appellants was ordered by District Judge Ikram on 5 August 2016, and that of the Third Appellant by District Judge Brennan on 17 August 2016.

28. All three Appellants sought to challenge those decisions on the basis that the assurances were inadequate, and permission to appeal was granted in respect of the First and Second Appellants by Sir Stephen Silber sitting as a judge of this court on 7 November 2016, and in respect of the Third Appellant by Cranston J on 13 December 2016.
29. However, whilst awaiting a substantive hearing, evidence emerged which suggested that, in the cases in which they had been given, the assurances provided in Vasilev had been breached. Cases were chosen to be heard from those in which permission to appeal had been granted on the same basis, but none of these three cases was selected as a lead case. These appeals were stayed pending the outcome of the lead cases, namely Kirchanov, Petrov and Ivanov (see paragraph 17 above). Final judgment was given in those cases on 26 July 2017 ([2017] EWHC 2048 (Admin) (Kirchanov No 3)).
30. Following Kirchanov No 3, the three Appellants sought to proceed with their appeal, still on the basis that the assurances provided were inadequate. On 23 August 2017, the Bulgarian Deputy Minister of Justice provided the further assurances in the respect of the Appellants. In respect of clearly similar questions that had been asked in relation to Kirchanov, Petrov and Ivanov (see paragraph 20 above), the Deputy Minister gave the following information, which largely mirrors the information given in respect of Kirchanov, Petrov and Ivanov. It is unfortunately necessary to relate some information that was given in relation to other requested persons, incorporated by reference so far as the three particular men were concerned.

“Zhivko Atsanasov ZHELYAZHOV:

On question (a): After his arrival ZHELYAZHOV will be initially placed in Sofia prison, during the adaptation period. Throughout this period he will be kept in accordance with the assurance provided by this letter. After the expiry of the said period in compliance with the general rule he will be placed in a prison near his permanent address – in this case Belene Prison. As the conditions in Belene at the moment do not comply with the minimum standards, ZHELYAZHOV could be placed in Prison – Varna, where the European standards are met;

On question (b): According to Article 62, paragraph 1, p5 of the Law on Execution of Penalties and Remand into Custody, the transfer of an inmate from one prison to another can only be made in order to provide for compliance with the minimum European standards. In the event of a transfer to another prison facility ZHELYAZHOV will be placed in conditions corresponding to the present assurance given;

On question (c): We give an assurance that the inmate will be kept in a cell with 4 sq m. In regard of the self-contained sanitary facility, the prison in Varna underwent renovation works in February 2017 and it now complies with the European standards

for self-contained sanitary facilities. According to our national legislation, there is a possibility for him to serve the remaining part of his sentence in a prison facility (i.e. prison hostel). In this case we will monitor that the person will be kept under the conditions described above in accordance with the assurance.

On question (d): In the event extradition is ordered, the rights and interests of ZHELYAZHOV will be further safeguarded by the provisions of Article 276-283 of the Law on Execution of Penalties and Remand into Custody – Part 6: Protection against Torture, Cruel, Inhuman and Degrading Treatment.”

Lachezar Kolev GEORGIEV:

On question (a): After his arrival GEORGIEV will be initially placed in Sofia prison, during the adaptation period. Throughout this period he will be kept in accordance with the assurance provided by this letter. After the expiry of the said period in compliance with the general rule he will be placed in a prison near his permanent address – in this case Lovech Prison;

On question (b): According to Article 62, paragraph 1, p5 of the Law on Execution of Penalties and Remand into Custody, the transfer of an inmate from one prison to another can only be made in order to provide for compliance with the minimum European standards. In the event of a transfer to another prison facility GEORGIEV will be placed in conditions corresponding to the present assurance given;

On question (c): We give an assurance that the inmate will be kept in a cell with 4 sq m. In regard of the self-contained sanitary facility, the prison as well as the closed-type prison hostel ‘Atlant’, are in accordance with the European minimum standards in regard to sanitary facilities in every cell. According to our national legislation, there is a possibility for him to serve the remaining part of his sentence in a prison facility (i.e. prison hostel). In this case we will monitor that the person will be kept under the conditions described above in accordance with the assurance.

On question (d): In the event extradition is ordered, the rights and interests of GEORGIEV will be further safeguarded by the provisions of Article 276-283 of the Law on Execution of Penalties and Remand into Custody – Part 6: Protection against Torture, Cruel, Inhuman and Degrading Treatment.

Anton ZDRAVKOV and Biser Velikov GEORGIEV. Both should be placed in Belene Prison. Therefore the guarantees and possibility of allocation in Varna Prison provided for Zhivko Atanasov ZHELYAZHOV will be fully applicable for both inmates.

...

Ilian Ivanov DIMITROV:

On question (a): After his arrival DIMITROV will be initially placed in Sofia prison, during the adaptation period. Throughout this period he will be kept in accordance with the assurance provided by this letter. After the expiry of the said period in compliance with the general rule he will be placed in a prison near his permanent address – in this case Pleven Prison;

On question (b): According to Article 62, paragraph 1, p5 of the Law on Execution of Penalties and Remand into Custody, the transfer of an inmate from one prison to another can only be made in order to provide for compliance with the minimum European standards. In the event of a transfer to another prison facility DIMITROV will be placed in conditions corresponding to the present assurance given;

On question (c): We give an assurance that the inmate will be kept in a cell with 4 sq m. According to our national legislation, there is a possibility for him to serve the remaining part of his sentence in a prison facility (i.e. prison hostel). In this case we will monitor that the person will be kept under the conditions described above in accordance with the assurance.

On question (d): In the event extradition is ordered, the rights and interests of DIMITROV will be further safeguarded by the provisions of Article 276-283 of the Law on Execution of Penalties and Remand into Custody – Part 6: Protection against Torture, Cruel, Inhuman and Degrading Treatment.

Also, in order to address this important issue, we will ensure on a quarterly basis the obligation for the Director General of the Execution of Sentence to report to this Ministry on the conditions the inmates are kept in after the allocation, including the exact prison cell/dormitory and its conditions - i.e. 4 sq m and self-contained sanitary facility.

As an additional guarantee for the rights of the inmates, the National Ombudsman, through ‘National Prevention Mechanism’ Directorate part of its administration, has access to the places of deprivation of liberty in Bulgaria and may interview sentenced persons privately and to monitor the material conditions of the inmates. The Ombudsman has the power to make recommendations to the prison authorities, which are always taken into consideration.

Control upon implementation of penal sanctions shall be exercised by state bodies, organisations and not-for-profit legal entities registered for the pursuit of public benefit activities.

The Bulgarian prosecuting magistracy shall exercise supervision as to compliance with legality upon implementation of penal sanctions according to the Judiciary System Act.

To summarize, we express our willingness to resolve all the issues with commitment to the best interests of both Parties and fruitful cooperation in the area of mutual cooperation in criminal matters and the EAW specifically, with the full respect of the rights of sentenced persons.”

31. However, whilst waiting for the appeals to be listed, further evidence emerged suggesting that the assurances provided in the Kirchanov cases had been breached.
32. The post-Kirchanov No 3 cases were case managed by my Lord, Jeremy Baker J. On 27 November 2017, he ordered that the Appellants’ cases be listed as lead cases for the group. Thus, the appeals have come before this court.
33. Before us, the Respondent Bulgarian judicial authorities accept that, with the pilot ruling in Neshkov as to systemic breach still extant, the Appellants have discharged the burden upon them of showing that, without appropriate assurances, there are substantial grounds for believing that, if surrendered into the general Bulgarian prison estate without any case-specific assurances, they would face a real risk of being subjected to inhuman or degrading treatment. However, in Kirchanov No 3, it was held that assurances in the form of those provided in the Appellants’ cases, if fulfilled, would be sufficient to discharge the burden upon the Respondent Bulgarian requesting authorities to discount that risk.
34. There are therefore two key issues for us to determine. First, there are various factual issues as to the extent that the assurances given in the cases of Kirchanov, Petrov and Ivanov (and one further post-Kirchanov No 3 case in which the requested person was also surrendered on the basis of essentially identical assurances (Stoyan Kolev)) have been breached. Second, in the light of the history that I have described (including the recent failures to comply with assurances, as this court finds them to be), do we have confidence in the Bulgarian authorities complying with the assurances that they have given? If we have any real doubt as to that compliance – in other words, if there is a real risk that they will not comply – then we would be unable to surrender the Appellants because of the continuing real risk that, if they are surrendered, they would be the subject of inhuman or degrading treatment.
35. I will deal with those two issues in turn.

### **Breaches of the “Kirchanov” Assurances**

#### Introduction

36. As I have described, breaches of the assurances in Vasiley, and the two cases in which surrender had been made on the basis of the same assurances (Ivan Ogoyski and Plamen Asenov) was considered in Kirchanov; and I have already outlined the findings of the Divisional Court in Kirchanov No 1 as to those.
37. The first step for this court is to consider the breaches of assurances given by the

Bulgarian authorities post-Kirchanov. There are only four post-Kirchanov cases in which individuals have been extradited to Bulgaria on the basis of assurances. I will deal with them in turn.

#### Metodi Ognayov Kirchanov

38. The Appellant Mr Kirchanov has adduced no evidence in support of the proposition that the conditions in which he has been imprisoned have breached any assurance. He relies upon the quarterly report dated 21 December 2017 prepared by the Prison Governor at Bobov Dol Prison, where he is detained, in compliance with the assurance that such reports would be prepared. This confirms that he has always enjoyed at least 4m<sup>2</sup> of personal space, but it states that, in his initial reception unit, there was “no private sanitary unit but access to one [was] provided”. At an unspecified date, he was moved from that dormitory to a second floor cell of 9m<sup>2</sup>, shared with one inmate, with a sanitary unit.
39. Mr Summers suggests that this report indicates that, in the reception dormitory, Mr Kirchanov had no access to a discrete toilet. I accept that the report might have been clearer – although that might be the result of some loss of clarity in translation – but it expressly states that access to a toilet *was* provided. I do not consider that can properly be construed as meaning that access was provided only during the day.
40. I am unpersuaded that there is any evidenced breach of assurance in Mr Kirchanov’s case.

#### Ivaylo Maximov Petrov

41. Mr Petrov was extradited to Bulgaria on 1 September 2017, to serve a three year sentence imposed upon him in 2014 in his absence, for participation in an organised criminal group and possession of drugs with intent to supply. The information concerning the conditions in which he was detained derive from a BHC report following a visit on 12 October 2017.
42. Mr Petrov was initially taken to Sofia Prison, but, on 4 September 2017, he was transferred to Vratsa Prison. He told the BHC visitor that, until 26 September 2017, he was detained with five other inmates in a reception unit cell with an in-cell toilet, but the cell measured only 12m<sup>2</sup>. However, the Bulgarian authorities do not accept that. In a letter dated 18 December 2017, the Prison Head (Governor) gives detailed particulars of this period. He says that Mr Petrov was placed in dormitory 304, which is 23.67m<sup>2</sup> in size. During the period he was in the dormitory, there were only two or three other inmates in the room, except on 4 September (four other inmates) and 25 September (five other inmates). In any event, at no time was the requirement for 4m<sup>2</sup> of personal space breached. That is confirmed in the quarterly report of the Prison Governor dated 20 December 2017, prepared in accordance with the assurance concerning monitoring.
43. On 26 September 2017, Mr Petrov was transferred to an open-type prison hostel, Keramichna Fabrika, which formed part of Vratsa Prison. This had previously been used

to house workers at an adjacent brick factory. The material conditions in the hostel are extremely poor, such that, on 12 May 2017, the Deputy Ombudsman recommended its immediate closure. We have seen photographs of the cells, from which it seems to me that that recommendation was unsurprising. Mr Petrov was in a cell which was 25m<sup>2</sup> in size, which he shared with four (one document, a letter from the Deputy Minister of Justice dated 28 November 2017, says five) other prisoners, so that, on any basis, compliant with the assurances, each had over 4m<sup>2</sup> of personal space. However, none of the cells in the hostel has in-cell sanitation. As a result, from 9pm to 6am each night, when the prisoners are locked in their cells, there is no access to any toilet facility, only a communal bucket. Therefore, Mr Petrov was put in a cell which was not compliant with the assurances. Indeed, it was impossible for the assurance to be met at this facility. This breach of assurance is accepted by the Bulgarian authorities.

44. The overcrowding of Mr Petrov's cell was witnessed by the BHC representative on a visit on 12 October 2017. In the 20 December 2017 quarterly report to which I have referred, the Prison Governor records that, on 3 November 2017, Mr Petrov was offered a transfer into a room in a different part of Vratsa Prison, where he would have permanent access to a toilet and running water, but he rejected such a move. Through his solicitor to whom he has spoken, Mr Petrov accepts that such an offer was made, but he refused it because it was in materially poor condition and, when he was shown it, it did not seem to provide him with 4m<sup>2</sup> of space. He made a handwritten statement dated 3 November 2017, addressed to the Prison Director, confirming that the conditions in the alternative room at Vratsa that he had been offered "also do not comply with my perceptions of the conditions, under which I would serve my sentence", although it did not say the respect in which it failed to fulfil the assurances.
45. A few days later, on 7 November 2017, he made a request to move to Sofia Prison, where he believed he would have an assurance-compliant cell. That request was actioned the following day, when a request was made by the prison for the transfer. He was told that it would take about two weeks to approve. It was approved, and his transfer to Sofia Prison was effected on 21 December 2017. There is no evidence of any complaint of the conditions there.
46. In Mr Petrov's case, the Respondent accepts the breach of the assurance as to toilet facilities for the period 26 September to 21 December 2017, when he was housed in the Keramichna Fabrika prison hostel. It is common ground that he was offered a place in the main prison on 3 November. Insofar as it is suggested that that was non-compliant with the assurance as to personal space, the evidence is very weak, and I do not accept it: I do not accept that the Prison Governor would have sought to replace one patently non-compliant cell with another. Furthermore, it is clear that, when Mr Petrov requested a transfer to Sofia Prison, that request was actioned promptly. None of that, of course, affects the fact that the conditions in which he was imprisoned in this period were in breach of the assurance given by the Bulgarian authorities, or diminishes the seriousness of the breach; but it is relevant to the question of the approach and reliability of the Bulgarian authorities.
47. In respect of the period 4 to 26 September 2017, in support of a breach, before us, we only have the assertion of Mr Petrov as to overcrowding as relayed through the BHC delegation. On the other hand, we have detailed evidence from the Prison Governor to the effect that the personal space assurance was not breached. I accept that evidence. In

doing so, I have taken into account the openness of the Bulgarian authorities in terms of both monitoring and acceptance of breaches of assurance where breaches there have been.

48. For those reasons, I consider the only proven breach of assurance in respect of Mr Petrov was in respect of the period 26 September to 21 December 2017, when he was housed in a multi-occupation cell without a discrete toilet unit.

#### Stanimir Georgiev Ivanov

49. Mr Ivanov was extradited to Bulgaria on 25 August 2015. He spent two days in Sofia Prison, before being transferred to Pleven Prison, which is the prison nearest to his home.
50. He was visited at Pleven Prison by a BHC representative on 21 September 2017, when he was still in a reception cell on the fourth floor of the prison. The BHC reporter says that “there was not enough light in the cell”, because the sanitary unit was located next to the window, partially blocking the light: but that clearly does not amount to a breach of the assurance that there would be some daylight in the cell. The cell (Cell No 27) was 10.3m<sup>2</sup> in size, and it had a discrete toilet of just over 1m<sup>2</sup>. It had a single bed and a set of bunk beds, and, the BHC report says: “On the day of the visit, there were in total three newly arrived inmates placed together in the cell”. On that basis, the average space available to was just under 3m<sup>2</sup>. Shortly afterwards, Mr Ivanov was transferred to a non-reception cell, about which there is no evidence. There is no evidence that it is in any way non-compliant.
51. The Bulgarian authorities do not accept that Mr Ivanov shared the reception cell with two other inmates. They rely upon three documents. First, the quarterly report dated 20 December 2017 by the Prison Governor at Pleven states that: “In the reception room, the person resided with one more person in one sleeping room”. Second, a letter from the Deputy Minister of Justice dated 22 December 2017 states:

“... as of 27.09.2017 Stanimir Georgiev Ivanov is detained in a prison cell measuring 23.7 sq m with self-contained sanitary facility (1.8 sq m). The cell is occupied by Stanimir Georgiev Ivanov and one other inmate. This is also valid for the period of his detention in the admission unit, where he shared a 10.47 sq m cell. It should be pointed out that there were three beds in the cell, but Stanimir Ivanov shared with only one other person. The information cannot support the statement that Mr Ivanov ‘at any time... was afforded less than four square metres of living space’”.

Third, there is a handwritten letter dated 18 December 2017, purportedly written and signed by Mr Ivanov himself, which has been translated as follows:

“Upon arrival in the Prison of Pleven, I was placed for three days in a reception premise. After that the Commission has moved me in an Adaptation Premise No 425 on the fourth floor. The cell

was equipped with beds for three persons, but there were two of us.

I have no complaints against the size of the premise and conditions therein.

I have personally written the above text and affix my signature to certify the authenticity thereof.”

52. Mr Summers submitted that the evidence of the BHC report, to the effect that at the time of the BHC visit Mr Ivanov was housed in a cell of just over 10m<sup>2</sup> with two other inmates, is clear and should be accepted. He submitted that, given the history of pressure being put on prisoners to conceal breaches of human rights, we should view the statement of Mr Ivanov with considerable suspicion.
53. However, in the face of the detailed evidence from the Prison Governor as to the period, I do not accept that the evidence provided on behalf of the Bulgarian authorities is less than compelling. I do not accept that, in response to concerns expressed by this court, the statement of Mr Ivanov was the result of duress or pressure from the Bulgarian authorities. It is noteworthy that the statement of Mr Petrov produced by the same authorities notes that he refused the different cell in Vratsa Prison because he did not consider that it was assurance-compliant, which is less than helpful to the authorities’ cause.
54. I am unpersuaded that Mr Ivanov was detained in his reception cell with two other inmates; and so am unpersuaded that there was any breach of assurance in his case.

#### Stoyen Dimitrov Kolev

55. Mr Kolev is the only person extradited from the United Kingdom to Bulgaria since 2016, other than the Kirchanov appellants. He was extradited on 1 November 2017, and was initially taken to Sofia Prison from where he was transferred to Burgas Prison via Staga Zagora Prison, where he stayed just one night. He arrived at Burgas on 3 November 2017.
56. He was visited by a BHC representative on 14 December 2017. By then he had been through his reception cell (where he spent about two weeks) and had a long-term cell. The reception cell was 35m<sup>2</sup>; and, the reporter said that, at the time of the visit, it had eleven beds; but, his report says, the cell “in which Mr Kolev was initially placed had eight beds”.
57. The report does not suggest that Mr Kolev was kept in conditions which breached the personal space assurance; and, on the evidence, I cannot find that he was.

#### Conclusion

58. On the evidence before us, other than the accepted breach of assurance in respect of Mr

Petrov, I am not satisfied that any breaches of assurance have occurred post-Kirchanov No 3. The breach accepted comprised providing Mr Petrov with a multi-occupation cell without accessible sanitation at night, from 26 September to 21 December 2017.

### **The Assurances**

59. The assurances that the Bulgarian authorities have provided in respect of each of the three Appellants are materially the same as those provided in respect of the Kirchanov appellants. They include information about where it is intended to detain each man. They will all be sent to Sofia Prison initially, but then be sent to prisons near their home: Mr Lachezar Georgiev to Lovech, Mr Dimitrov to Pleven and Mr Biser Georgiev to Belene.
60. Mr Summers made a general challenge to the adequacy of the assurances, submitting that, even if the assurances were honoured, this court could not be satisfied that there would be no real risk of a breach of article 3 as a result of prison conditions in Bulgaria if the Appellants were surrendered, notably because of the poor material condition of the prison estate in Bulgaria and the risk of violence. Mr Smith argued that that was an illegitimate attempt to relitigate matters that were put forwards, and determined, in Vasilev and Kirchanov No 3. I agree. In those cases, differently constituted Divisional Courts addressed the most pressing issues concerning prison conditions in Bulgaria in the context of article 3, namely personal space and access to proper toilet facilities. The court did not consider that any other aspect of conditions required an assurance to ensure that the risk of a breach of article 3 could be discounted. Other than the breach of assurance to which I have referred, there is no evidence of a material change of circumstances in Bulgaria that could affect the determination of the Divisional Court in Kirchanov No 3 that, if the Bulgarian authorities complied with the assurances, then there is no real risk of any requested person being exposed to treatment that would breach article 3. Indeed, given the measures taken by the Bulgarian authorities generally to improve prison conditions and to establish procedures for dealing with breaches prospectively and retrospectively (see paragraph 13 above), the risk must have further retreated. In particular, there now appears to be no overcrowding of prisons. Overcrowding seems to have been a major factor in the violence of which complaint was earlier made. Save possibly for parts of Pleven Prison, none of the prisons (or particular facilities within the prisons, such as prison hostels) to which it is intended to send the Appellants, including Sofia, are close to capacity; and it is noteworthy that, although all the Kirchanov appellants were sent to Sofia Prison, there is no complaint about violence suffered there (or indeed any other complaint about conditions there).
61. The issue before us is as to the reliability of the Bulgarian authorities in complying with the assurances. In relation to prison conditions, Mr Summers submitted that, given the history of failure in compliance with their general obligations under the ECHR and as a Member State of the European Union, and their particular failures to honour the assurances they gave in respect of those extradited post-Vasilev and post-Kirchanov No 3, this court should not begin with the presumption that they will comply with the assurances they have given in relation to the Appellants. However, although this may not matter a great deal in practice, I do not consider that to be analytically correct. As a signatory to the ECHR and a Member State of the European Union, there is a strong presumption that Bulgaria is willing and able to fulfil any assurances it gives in support of its obligations as a signatory and Member State. Its assurances must be accepted

unless there is cogent reason to believe they will not be honoured. However, of course, I accept that a failure to fulfil assurances in the past may be a powerful reason to disbelieve that they will be fulfilled in the future. It is noteworthy in Vasilev, that a factor considered strong in favour of the proposition that the presumption of compliance had not been displaced was that fact that there was no evidence that Bulgaria had ever failed to fulfil a bilateral assurance about an extradited person to an EU Member State.

62. However, on the basis of all the evidence, despite the substantial and able efforts of Mr Summers, I am satisfied that the presumption that the Bulgarian authorities will honour the assurances it has given in respect of the Appellants has not been displaced; and I am satisfied that the Respondents have discounted the risk of the Appellants, after surrender, suffering inhuman or degrading treatment. I am persuaded that, on the basis of the assurances given, there is no real risk of a breach of article 3.
63. In coming to that conclusion, I have particularly taken into account the following.
64. Mr Summers made a powerful case that the breach of assurance by the Bulgarian authorities, even if limited to the single breach accepted in Mr Petrov's case, is serious. Any breach of an assurance to another Member State is serious. Any breach of an article 3 obligation to an individual is serious. Here, in the case of Mr Petrov, there was a breach in both senses. The seriousness of the breach is compounded by (i) the history of non-compliance by the Bulgarian authorities with their article 3 obligations so far as prison conditions are concerned, including evidence of attempts to conceal their failings in that regard; (ii) the failure to comply with their assurances in the case of Messrs Vasilev, Ogoyski and Asenov, and now Mr Petrov; and (iii) their failure to apologise, to explain how the breaches came to occur or to give any specific reasoned and evidenced comfort that they have put into place systems that will ensure that such a breach will not be repeated. There is no evidence that the Bulgarian authorities have even investigated why the breaches occurred. The breaches are (in Mr Summers' words) the more bewildering because it is clear on the evidence that there are many prison places in Bulgaria which are article 3-compliant, and very few persons have been surrendered on the basis of assurances. It is both a mystery and a concern that Messrs Vasilev, Ogoyski, Asenov and Petrov were put into prisons where the conditions were not compliant; and, in Mr Petrov's case, a prison hostel facility in which compliance was impossible because no cell had overnight toilet facilities.
65. However, despite the 2017 reports of the BHC and UN CAT to which I have referred which complain about the continuing problems in Bulgarian prison and the lack of progress in reform and refurbishment (see paragraph 11 above), it is clear that significant progress has been made by Bulgaria in the field of prisons since the pilot judgment in 2015. I have set out some of the measures that have been taken, in respect of improvement of material conditions in the prisons and also the national legal framework in which they operate (see paragraph 13 above). These steps will mean that there will be more prison estate in which the Appellants might be detained that is article 3- and assurance-compliant. But, perhaps more importantly, in my view, it exhibits a changing understanding within Bulgaria of the importance and need to comply with its international obligations both general and case-specific.
66. Mr Summers emphasised the lengthy history of Bulgaria's systemic failures in respect of

their prisons, and the repeated calls for reform upon which little progress was made from report to report. That submission has force. However, that historical account can be compared with the relative candour and openness with which the Bulgarian authorities have attended to monitoring, in respect of which there is not the faintest suggestion that they have not welcomed monitoring visitors, and they have prepared the quarterly reports the assurances require. Furthermore, there have been no findings of breach of assurance against them other than those breaches which they have frankly accepted, and from which clearly they have not sought to hide or distance themselves.

67. Without diminishing the seriousness of the Petrov breach accepted, there is in my view significant evidence of substantial compliance with the assurances made. Furthermore, this court has to take into account the nature of the breach, namely that Mr Petrov did not have in-cell sanitation for a period of about three months. That breach was serious for the reasons Mr Summers so forcefully puts forward; but more serious breaches of article 3 can be envisaged. This breach, serious as it was, was limited in scope; and, once the Bulgarian authorities were aware of it, they were proactive (if not, as I accept, perfect) in their response, offering to transfer Mr Petrov immediately to a compliant cell in Vratsa Prison, and promptly arranging for his transfer to Sofia at his request.
68. In respect of the individual assurances, since Kirchanov, there has been no proven breach of the personal space assurance. It is now part of the domestic law in Bulgaria that every prisoner must have at least 4m<sup>2</sup> of personal space (see paragraph 13(iii) above); and, with the decline of the prison population, there seems no problem in practice with compliance with this assurance.
69. With regard to the assurance concerning accessible sanitation, there has been one breach, namely in respect of Mr Petrov whilst in Keramichna Fabrika. It is true that efforts were taken to place him in assurance-compliant conditions only after there had been a BHC visit, but it cannot be assumed that the quarterly reports would not have identified that breach. It is the very purpose of such reports to identify such breaches. Mr Petrov was then quite promptly offered a compliant cell in the main part of Vratsa Prison of which Keramichna Fabrika forms part, and, after that had been rejected by Mr Petrov, a request by him to be moved to Sofia Prison was actioned promptly. That does not, of course, excuse or diminish the breach of assurance; but, as I have indicated, it suggests that the Bulgarian authorities now are more likely to react constructively when their conduct is identified and/or criticised. Given that Keramichna Fabrika has no cells with overnight access to a toilet, any placement of any person extradited on the basis of an assurance that such a facility would inevitably breach such an assurance. Given the recent constructive approach of the Bulgarian authorities, it is in my view inconceivable that any of the Appellants would be placed in Keramichna Fabrika, or indeed in any cell in which toilet facilities were not accessible at all times.
70. Mr Summers submitted that this court should set its face against Sofia, Burgas or Varna Prisons, because of the history of the failures there. However:
  - i) The Divisional Court in Kirchanov No 3 rejected the submission that the Bulgarian authorities should be restricted in the prisons to which the requested persons could be sent.

- ii) All three Kirchanov appellants were initially housed in Sofia Prison, without report of violence or any other deficiency in the conditions there or breach of any assurance.
- iii) Both Sofia and Varna Prisons have been refurbished.
- iv) The evidence is that overcrowding, which appears to have been the source of much of the violence, has been resolved.

We have received the information provided by the Bulgarian authorities on where it is proposed to house the Appellants for their periods of imprisonment. I do not consider it is necessary or appropriate to restrict the prisons to which the Appellants might be sent. Despite the unfortunate experience of Mr Petrov, I am satisfied that, now, any concerns about transfer are allayed and answered by the express statement in response to question (c) that, in the event that any of these Appellant being transferred, the Bulgarian authorities will monitor that the person will be kept in conditions that are compliant with the assurances.

71. Finally, Mr Summers submitted that we cannot be confident that the monitoring that is required by the assurance will prevent a breach of article 3. However, although I accept there is no evidence of the National Ombudsman playing any active role in monitoring:

- i) There is evidence of quarterly reports being prepared in accordance with the assurance. In respect of the December 2017 report on Mr Ivanov, who is detained in Pleven Prison, the questions raised by the Director General of the Prison Governor are set out, and they can only be described as comprehensive. They have been fully answered. I appreciate that the December 2017 report in Mr Petrov's case was after the BHC visit had identified the breach in his case; but this breach was identified and raised with the Director General in that report, and there is no evidence to suggest that this would not have been reported in any event. The evidence is of this monitoring being taken seriously by the Bulgarian authorities.
- ii) With regard to independent monitoring, there is no evidence of any obstacles being put in the way of any observers. The BHC have visited almost all of those who have been extradited since Vasiley. They have identified breaches, which have been remedied.
- iii) In all the circumstances, there is no evidence which undermines confidence in the Bulgarian authorities complying with their assurances so far as monitoring is concerned.

## **Conclusion**

72. For those reasons, I am satisfied that, on the basis of the assurances given (and only on that basis) there is no real risk of the Appellants or any of them suffering inhuman or degrading treatment upon surrender. In particular, I am satisfied that the assurances, if

fulfilled, will result in there being no such risk; that the assurances have been given in good faith; that there is a sound objective basis for believing that they will be fulfilled (and I consider that there is no real risk that they will not be fulfilled); and their fulfilment will be capable of being verified.

73. Consequently, subject to the agreement of my Lord Jeremy Baker J, I would dismiss each of these appeals.

### **Post-script**

74. Finally, given the failures of the Bulgarian authorities to comply with assurances in the past, I would reiterate and enforce the observations of the Divisional Court in Vasilev at [54].
75. In cases of extradition to Bulgaria, district judges should make clear in their written judgment that extradition would not have been ordered but for the assurances that have been given, which should be set out in a prominent part of the judgment. A copy of that judgment, with the assurances emphasised, should be sent by the NCA to the Bulgarian authorities on surrender, with an indication that the assurances should be brought to the attention of the governor of any prison to which the extradited person may be sent. That should be reinforced by the Crown Prosecution Service, as agent of the requesting Bulgarian judicial authority, who should make it clear that extradition would not have been ordered but for the assurances.
76. I have concluded that, on the basis of the assurances that have been given, there is no real risk of breach of article 3 on the surrender of the Appellants. If, in respect of these or any persons surrendered to Bulgaria in the future, any breach of assurance is alleged, the Bulgarian judicial authority should, in its response, not only contest any allegation which it contends is not a breach but, if it accepts any breach, also explain how, given the history and the terms of this judgment, such a breach has occurred; and, if appropriate, the steps that have been taken to ensure that such a breach will not be repeated.

### **Mr Justice Jeremy Baker:**

77. I agree.