Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: DA/00219/2017**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 13th November 2017	**On 21st November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EFB
(ANONYMITY DIRECTION MADE)

Claimant/Respondent

Representation:

For the Appellant: Mr Diwyncz, Home Office Presenting Officer
For the Claimant/Respondent: Miss Khan of Counsel instructed by Parker Rhodes
Hickmotts

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Bagral made following a hearing at Bradford on 26th May 2017.

Background

2. The claimant is a national of Romania born on 27th July 1954. He appealed against a decision to make a deportation order in respect of him on

account of his offending in Romania on the basis that his deportation was justified on the grounds of public policy and public security by virtue of Regulation 23(6)(b) and Regulation 27 of the Immigration (EEA) Regulations 2016.

3. The judge allowed the appeal on the basis that, if returned to Romania, there was a real risk that, as a convicted criminal sentenced to a term of imprisonment, the claimant would be exposed to Article 3 ill-treatment.

4. The Secretary of State sought permission to appeal on the grounds that the judge had erred in relying on ECHR extradition authorities in finding that there would be a real risk of Article 3 mistreatment if the claimant were imprisoned in Romania. The authorities were not referred to in the appeal hearing and therefore that the Presenting Officer had not had the opportunity to respond.

5. Furthermore, reliance on the recent authority of Rezmives and Others v Romania [2017] ECHR 378 failed to take into account that the Romanian authorities had six months from the date of decision to address the matters in the decision primarily to reduce overcrowding. During this period all similar applications to the Court of European Human Rights on the issue had been adjourned. Given that Romania is a signatory to the Convention it is likely that it will comply with its Convention obligations and in these circumstances the judge made an error in finding that there would be a breach of Article 3.

6. At the hearing Mr Diwyncz relied on his grounds. He said that he had no further information to offer.

7. Miss Khan defended the decision, stating that all of the authorities referred to by the judge were within the claimant's bundle and arguing that the judge had made a decision open to her.

Findings and Submissions

8. The grounds are quite wrong to argue that the Presenting Officer had been deprived of an opportunity to make submissions on the case law. As Miss Khan pointed out, the relevant cases cited in the judge's decision are all within the Appellant's bundle and were all served upon the claimant.

9. No application was made at the hearing before the judge for the case to be adjourned so that Romania would have an opportunity to comply with its obligations. It cannot be an error for the judge to proceed when no adjournment application was made.

10. The judge concluded as follows:-

> "93. I do recognise, however, that I am dealing with a country which has been a Convention state since 1993 and a member of the European Union since 2006, and that the courts have recognised that there is a strong presumption that Romania is both willing and able to fulfil its human rights obligations relating to

extraditees from the UK in the absence of clear, cogent and compelling evidence to the contrary – Krolik v Poland [2012] EWHC 2357 (Admin). Thus, the Appellant's case may well turn on the reliance which can be placed on the assurances, given the consensus in the authorities that UK extraditions are permissible if there is an assurance sufficient to dispel the risk in the individual case.

94. However, the test in extradition cases to establish a breach of Article 3 is a stringent one – Elashmawy v The Court of Brescia, Italy [2015] EWHC 28 – and I must remind myself that I am dealing with a case concerning international protection which is to be established on the basis that there are substantial grounds to believe or a real risk. Nevertheless, while such a claim could still be defeated by way of guarantees by the Romanian authorities that a person will be accommodated in circumstances which would not breach Article 3 of the ECHR, the difficulty in this case is that there is no evidence that in a case of deportation there has been any assurances by the Romanian authorities that a person in the Appellant's position would be accommodated and held in circumstances which would not breach Article 3."

11. In Florea v Romania [2014] EWHC 2528 the Divisional Court found that prison conditions in Romania were so overcrowded that it was not possible to extradite people to Romania without it providing guarantees about the conditions that accused and convicted persons would be held in, or there would be a breach of Article 3 of the ECHR. Following that case the Romanian Ministry of Justice, in February 2015, made an assurance that guaranteed every person surrendered from the UK to Romania, pursuant to an extradition order, would occupy the minimum space requirements laid down in both domestic and Strasbourg case law. The assurance was repeated in Romania v Zagrean [2016] EWHC 2786. However, in the most recent case of Rezmives, cited in the grounds, the court held unanimously that there had been a violation of Article 3 of the ECHR in a case which concerned the conditions of detention in Romanian prisons and in detention facilities attached to police stations.

12. In a careful and detailed decision, the judge applied the decision in Mursic v Croatia [2016] ECHR 927, finding that the claimant would be detained for a not insignificant period in conditions which remain harsh and do not meet international standards. She set out all of the background evidence which she was referred to in respect of prison conditions in Romania. She then cited the relevant case law, relying in particular on the case of Penduic v Romania [2017] ECHR 153 which found that there was a strong presumption of a violation of Article 3 of the Convention where an applicant had been detained in a cell in which she disposed of less than 3 sq m of floor surface.

13. This particular claimant suffers from Crohn's disease and from PTSD. The medical evidence was unchallenged.

14. The judge reached a conclusion plainly open to her. The Secretary of State has been unable to substantiate the claim in the grounds that there should be an assumption that Romania will comply with its Convention obligations. In the absence of evidence that it has, the judge was entitled to conclude that, for this particular claimant, bearing in mind his age, psychological and physical symptoms, there was a real risk that he will be exposed to Article 3 ill-treatment.

15. The original judge did not err in law. Her decision stands and the Secretary of State's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deborah Taylor

Signed Date 20 November 2017

Deputy Upper Tribunal Judge Taylor