



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF LAZĂR v. ROMANIA

(Application no. 20183/21)

JUDGMENT

Art 5 § 1 (f) • Extradition • Detention of applicant with a view to his extradition and surrender • Due diligence • First period of detention following initial arrest not excessive in length and carried out in good faith • Domestic courts' interpretation of relevant legal provisions and time-limits not unreasonable or arbitrary and proceedings accompanied by procedural safeguards • Second period of detention with a view to surrender after applicant's rearrest "in accordance with a procedure prescribed by law" • Domestic courts faced with a *sui generis* situation following amendment of relevant domestic law without transitional provisions • Applicant's rearrest for the purpose of his surrender not unforeseeable after lifting of Court's interim measure under Rule 39 • No indication of bad faith, deception or manipulation in respect of that period of detention

Art 3 • Extradition • No evidence showing a real risk of a sentence of life imprisonment without parole in the event of the applicant's extradition to, and conviction in, the USA • First stage of the test set out in *Sanchez-Sanchez v. the United Kingdom* [GC] not fulfilled • Manifestly ill-founded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 April 2024

FINAL

23/09/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Lazăr v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Armen Harutyunyan,

Anja Seibert-Fohr,

Ana Maria Guerra Martins,

Sebastian Rădulețu, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 20183/21) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 19 April 2021 by a Romanian national, Mr Marius Lazăr, (“the applicant”);

the decision to give notice of the complaints set out below (see paragraph 1 below) to the Romanian Government (“the Government”), and to declare the remainder of the application inadmissible;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decisions of 5 May 2021 to indicate an interim measure to the respondent Government (Rule 39 of the Rules of Court) and of 12 December 2022 to lift the interim measure indicated;

the parties’ observations;

the comments submitted by the United Kingdom Government and two non-governmental organisations, The Aire Centre and Hands off Cain, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 19 March 2024,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant’s extradition to the United States of America (“US”), where he would allegedly be at risk of receiving a sentence of life imprisonment without the possibility of parole, in violation of Article 3 of the Convention, as well as his detention with a view to extradition, which he claimed had not been in accordance with Article 5.

THE FACTS

2. The applicant was born in 1973 and lived in Bucharest before his extradition to the US on 16 January 2023. He was represented by Ms E. Lazăr, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, Ms O. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. EXTRADITION REQUEST CONCERNING THE APPLICANT

5. The applicant is a member of Hells Angels Romania, which is part of the Hells Angels transnational motorcycle gang.

6. He was arrested on 19 November 2020. On 14 January 2021, pursuant to the Extradition Treaty of 10 September 2007 (“the Extradition Treaty”) between Romania and the US, the US authorities submitted a request for his extradition.

7. The extradition request related to the following three offences:

(1) Conspiracy to commit racketeering involving: (i) acts relating to the laundering of monetary instruments; (ii) acts involving murder; and (iii) acts involving trafficking in controlled substances (maximum sentence of life imprisonment);

(2) Conspiracy to import and export cocaine into and from the US (maximum sentence of life imprisonment, with a mandatory minimum sentence of ten years’ imprisonment);

(3) Conspiracy to commit money laundering (maximum sentence of twenty years’ imprisonment, with a mandatory minimum fine).

8. The charges were brought following an undercover operation that took place between May and November 2020 in the US and Romania, during which the applicant, together with his co-conspirators, attempted to purchase 400 kg of cocaine from a US Drug Enforcement Administration agent posing as a drug dealer. The cocaine was to be smuggled into the US from Peru and then transported via cargo ship containers from Texas to Romania and New Zealand.

9. The first charge on the indictment indicated that the applicant had asked the undercover agent to kill two members of a rival motorcycle club in Romania and had taken various steps in that respect.

II. EXTRADITION PROCEEDINGS

A. The applicant’s detention prior to the decision on his extradition

10. On 19 November 2020 the applicant was detained for twenty-four hours by order of the prosecutor. On the same day the Bucharest Court of Appeal (“the Court of Appeal”) ordered his arrest and provisional detention for thirty days under section 44 of Law no. 302/2004 concerning international judicial cooperation in criminal matters (“Law no. 302/2004”), which provides for provisional arrest in urgent cases prior to an extradition request being submitted by the requesting State.

11. Between 19 November 2020 and 14 January 2021, when the extradition request was submitted by the US authorities (see paragraph 6 above), the applicant's detention was reviewed regularly.

12. Between 15 January and 1 March 2021, when the extradition was granted at first instance (see paragraph 19 below), the Court of Appeal ordered that the applicant be detained under section 43 of Law no. 302/2004, which provides for detention whilst extradition proceedings are pending before the domestic courts.

B. Extradition decision

13. On 14 January 2021 the prosecutor's office attached to the Court of Appeal lodged an application seeking authorisation to extradite the applicant on the basis of the above-mentioned extradition request (see paragraph 6 above).

14. The applicant argued before the Court of Appeal that his extradition would be in breach of Article 3 of the Convention because there was a real risk that he would be sentenced to life imprisonment without parole. He relied on the case of *Trabelsi v. Belgium* (no. 140/10, ECHR 2014).

15. Relying on section 21(1)(a) of Law no. 302/2004, which concerns mandatory bars to extradition, the applicant contended, *inter alia*, that he would not receive a fair trial in the US owing to the fact that he had not been informed of the charges against him and that the US arrest warrant, which had been issued *in absentia*, lacked essential information about him.

16. During the proceedings, the US authorities provided the Court of Appeal with information regarding the possibility of the applicant being sentenced to life imprisonment without parole if found guilty and whether such a sentence could be reduced or commuted.

17. An extradition hearing took place on 1 March 2021. In relation to the applicant's complaint concerning the risk of a life sentence without parole, the Court of Appeal held, on the basis of the information provided by the US authorities (see paragraphs 64 and 67 below), that the sentence of life imprisonment for the first two counts of the indictment (see paragraph 7 above) was "discretionary" and that a fixed-term sentence could be imposed. It also found that, unlike in the *Trabelsi* case, the applicant's potential life sentence would be *de jure* and *de facto* reducible. The court also found that in view of the seriousness of the charges against him, life imprisonment would not be grossly disproportionate.

18. As to the allegation that the applicant would not receive a fair trial, the court held that, as the criminal trial against him was pending before the US courts, it could not be assessed, and that his attendance was sought precisely to uphold his defence rights.

19. At the same hearing of 1 March 2021 the Court of Appeal, satisfied itself that the requirements of the Extradition Treaty and Law no. 302/2004

were met and that none of the mandatory or optional bars to extradition applied, granted the applicant's extradition ("the extradition decision").

20. The applicant appealed to the High Court of Cassation and Justice ("the High Court"). Although the grounds for the appeal were not provided to the Court, it appears from the High Court's decision of 11 March 2021 (see paragraph 21 below) that the applicant reiterated the same complaints as those raised before the Court of Appeal (see paragraphs 14-15 above).

21. The High Court, which heard the applicant's appeal on 11 March 2021, upheld the Court of Appeal's extradition decision of 1 March 2021.

22. Following exchanges with the US authorities, the applicant's date of surrender, which was first envisaged to be 7 May 2021, was eventually agreed on by both States' authorities for 12 May 2021.

C. Interim measure indicated by the Court in respect of the applicant

23. On 19 April 2021 the applicant requested the Court, under Rule 39 of the Rules of Court, to prevent his extradition to the US.

24. On 5 May 2021 the Court decided, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government that he should not be extradited for the duration of the proceedings before the Court.

25. On 12 December 2022, following a request by the Government who referred to the adoption by the Court of the judgment in the case of *Sanchez-Sanchez v. the United Kingdom* ([GC] no. 22854/20, 3 November 2022), the Court lifted the interim measure indicated on 5 May 2021.

D. The applicant's detention with a view to surrender

26. In the extradition decision of 1 March 2021 (see paragraph 19 above) the Court of Appeal, under sections 52(3) and 57 of Law no. 302/2004, maintained the applicant's detention until his surrender to the US authorities.

27. On 11 May 2021, following an application (referred to as "objection", *contestație* in domestic law) by the department for the execution of sentences attached to the Court of Appeal (*Biroul executări penale*), that court, referring to the Court's interim measure of 5 May 2021 and Article 598 § 1 (c) of the Criminal Code of Procedure ("the CCP"), suspended the enforcement of the extradition decision whilst the applicant's case was pending before the Court. Acknowledging that his detention was a provisional measure ancillary to his extradition and the uncertainty regarding the date when the Court would determine the merits of his application, the court ordered his release and placed him under judicial supervision for sixty days.

28. Following an appeal by the prosecutor's office attached to the Court of Appeal, the High Court, in a final decision of 17 May 2021, unanimously held that the Court's interim measure (see paragraph 24 above) was an

impediment to the applicant's surrender to the US authorities. By a majority, the High Court overturned the applicant's placement under judicial supervision and remanded him in custody. In doing so, it held that, contrary to the applicant's submissions, detention in the context of extradition proceedings was mandatorily governed by Law no. 302/2004, and that its specific provisions were not to be read in conjunction with the CCP provisions concerning the revocation or replacement of pre-trial detention.

29. The High Court held that Law no. 302/2004 distinguished between detention whilst extradition proceedings were pending and detention with a view to being surrendered to the requesting State (sections 43 and 57 respectively). Accordingly, contrary to what the applicant claimed, the automatic judicial review, the maximum 180-day time-limit and the possibility of replacement with less restrictive preventive measures were only applicable to the first type of detention. The court, pointing to the mandatory nature of detention with a view to surrender once extradition had been granted by the domestic courts, concluded that the Court's interim measure has no effect upon the applicant's detention which was governed by Law no. 302/2004 and that, in any event, considering the surrender date set for 12 May 2021, the thirty-day time-limit provided for in section 43(7) as of that date had not yet been exceeded. Thus, the applicant's detention did not automatically cease *ex lege*.

30. The applicant lodged an unconstitutionality objection (see paragraphs 44-46 below) and numerous unsuccessful challenges to his detention. On 8 June 2021, upon the applicant's renewed challenge, the High Court ordered his release and placement under judicial supervision for sixty days, imposing several conditions on him pursuant to Article 215 of the CCP. Holding that the Romanian legislature had envisaged that decisions granting extradition would be enforced effectively and in a timely manner, and acknowledging the applicant's "wholly particular situation" in the absence of a date set for his surrender after the Court's interim measure, the High Court concluded that he could not be detained indefinitely. The High Court also took into account that the Court's interim measure requested the Romanian authorities not to remove the applicant until the end of the proceedings that he had lodged before the Court and that there was uncertainty as to the length of the proceedings and the date when he might be surrendered.

31. The applicant's placement under judicial supervision was extended regularly by the domestic courts until it was terminated by a final decision of the High Court on 27 September 2022. Accordingly, as of that date, the applicant was no longer subject to any preventive measures.

E. Events subsequent to notice of the case being given to the Government and the applicant's surrender

32. On 14 December 2022, after the lifting of the interim measure by the Court on 12 December 2022 (see paragraph 25 above), the department for the execution of sentences, under Article 598 § 1 (c) *in fine* of the CCP (see paragraph 48 below) and section 43(6) of Law no. 302/2004 (see paragraph 43 below), lodged an “objection” to enforcement of the applicant’s extradition decision (see paragraph 19 above). The department for the execution of sentences requested that the Court of Appeal order the applicant’s arrest, in the absence of which the final extradition decision was unenforceable as section 57(4) of Law no. 302/2004 provided that surrender to the requesting State could only be done under escort.

33. The applicant argued that Article 598 § 1 (c) *in fine* of the CCP did not apply to his case. He referred to a Constitutional Court decision (no. 359/2022, see paragraphs 44-45 below) and contended that he had already been detained for 202 days and that all possible provisional measures with a view to extradition had been used in respect of him. At the Court of Appeal’s request, the applicant’s lawyer informed the court that the applicant did not consent to surrender to the authorities voluntarily.

34. On 15 December 2022, noting that the Court’s interim measure – an impediment to the enforcement of the extradition decision – had been lifted, the Court of Appeal held that the lack of an arrest warrant to secure the applicant’s surrender impeded, within the meaning of Article 598 § 1 (c) *in fine* of the CCP, the enforcement of the extradition decision.

35. On the same point, the Court of Appeal referred to a High Court decision (no. 892/2017) finding that detention with a view to surrender, under section 43(6) of Law no. 302/2004, was a necessary measure for the enforcement of the decision to extradite, akin to the enforcement of a custodial sentence decision. The High Court had also held that detention with a view to surrender was not precluded by previous detention with a view to extradition that had reached 180 days (section 43(3) of that Law).

36. The Court of Appeal further held that the same reasoning applied to the applicant’s case, even after the amendment of section 57(6) as of 16 November 2022 (see paragraphs 46-47 below), given the distinction between provisional arrest as a procedural measure (*măsura procesuală*) and detention with a view to surrender as a procedural act (*act de procedură*) aimed at enforcing the extradition decision, which implied handing the individual concerned to the authorities of the requesting State.

37. Accordingly, under section 43(6) of Law no. 302/2004, and considering that this Law did not prescribe, as *lex specialis*, the duration of detention strictly aimed at enforcing an extradition decision, the Court of Appeal ordered the applicant’s arrest and detention for thirty days with a view to his surrender to the US authorities, by application of the general provisions

of Romanian procedural criminal law (*legii procesual penale române*). On 28 December 2022 he was arrested and remanded in custody.

38. The applicant challenged his renewed detention before the High Court, arguing that there was no legal basis for his detention and that the arrest warrant issued against him by recourse to Article 598 § 1 (c) *in fine* of the CCP – a legal “invention” created for the very purpose of arresting him, in the absence of an adequate legal framework – was unlawful. He further submitted that his surrender should be governed exclusively by sections 56 and 57 of Law no. 302/2004 and, having regard to the fact that all preventive measures provided for by this law had been exhausted and cannot be renewed outside its framework, should be carried out in the absence of an arrest warrant.

39. By a final decision of 13 January 2023, the High Court dismissed the applicant’s challenge and his arguments against the possibility of ordering, by way of an “objection” to enforcement, his detention with a view to surrender when his previous detention allegedly exceeded the maximum time-limit set by domestic law.

40. Reiterating the Court of Appeal’s reasoning, the High Court observed first that, contrary to the applicant’s thesis, the “objection” to enforcement was aimed exclusively at enforcing the extradition decision by issuing an arrest warrant with a view to his surrender. It continued that once the extradition decision had become final (11 March 2021), the applicable provisions had been sections 43(7) and 57(5) and (6) of Law no. 302/2004 with their different time-limits concerning surrender. The High Court further held that the decision to extradite the applicant had not been enforced because of the interim measure indicated by the Court following which the authorities did not set a date for surrender, so that the aforementioned time-limits had not begun to run. It concluded that, given the aim of enforcing a final extradition decision, the applicant’s detention with a view to surrender was a proportionate measure that complied with the Convention.

41. On 3 January 2023 the Court of Appeal, in a separate set of proceedings, dismissed a request by the applicant to be placed under judicial supervision on the grounds that Law no. 302/2004 did not provide for alternative preventive measures to detention, which, moreover, were not appropriate in his situation. It found that the correct interpretation of sections 43(7) and 57(6) of Law no. 302/2004, in the absence of a surrender date, required his detention until surrender. On 17 January 2023 the High Court upheld the Court of Appeal’s decision of 3 January 2023.

42. Following an information letter of 11 January 2023, on 16 January 2023 the applicant was surrendered to the US authorities. According to medical documents dated 12 and 16 January 2023, he attended the Sfântul Ioan Emergency Hospital complaining of pain in his abdomen (right iliac and hypogastric regions). Clinical and laboratory examinations appeared overall within normal parameters, indicating no reasons for him to be hospitalised or

given specific treatment and no emergency justifying transport by ambulance. On the latter date, he had a urinary catheter inserted, which he appeared to have been wearing when he was surrendered to the US authorities at Bucharest Henri Coandă International Airport (Otopeni).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ROMANIA

A. Law no. 302/2004 concerning international judicial cooperation in criminal matters

43. Under Romanian law, extradition proceedings are governed by Law no. 302/2004 concerning international judicial cooperation in criminal matters. The relevant provisions, which supplement the Extradition Treaty, as in force before their amendment on 20 November 2022 (see paragraphs 46-47 below), read as follows:

Section 43 Provisional arrest and referral to the court

“...

(3) Provisional arrest with a view to extradition shall be ordered and extended by the court dealing with the extradition request, by means of an interim decision, without the total duration of provisional arrest exceeding 180 days. After the judgment ordering the arrest has been issued, the judge shall immediately issue a warrant for provisional arrest with a view to extradition. The provisions of the Code of Criminal Procedure on the content and execution of an arrest warrant shall apply accordingly.

...

(5) The court shall, whilst the extradition request is pending before it, periodically review, but no later than thirty days, the need to maintain provisional arrest and may, where appropriate, maintain it or replace it by house arrest, judicial supervision or bail. Provisional arrest shall be replaced by house arrest, judicial supervision or bail only in duly justified cases and only if the court is satisfied that the extraditable person will not attempt to evade prosecution.

(6) Once the extradition request has been granted, the court, by means of a decision, shall also order the detention of the extradited person with a view to surrender.

(7) The measure of detention with a view to surrender shall cease *ex lege* if the extradited person is not taken into custody by the competent authorities of the requested State within thirty days of the agreed surrender date, except in the case referred to in section 57(6). In such a case, the court shall order the immediate release of the extradited person and inform the Ministry of Justice and the International Police Cooperation Centre of the General Inspectorate of the Romanian Police.

...”

Section 52
Determination of the extradition request

“(1) The Court of Appeal, upon examination of the extradition request, the evidence before it and the submissions made by the person sought and the public prosecutor, may:

...

(c) determine, by decision, whether the extradition requirements are met.

...

(3) In cases where the Court of Appeal concludes that the extradition requirements are met, it shall grant the extradition request, ordering at the same time that the provisional arrest of the extradited person be maintained until surrender, in accordance with section 57.

...”

Section 56
Surrender of the extradited person

“(1) An extract from the final court decision ordering extradition is required and considered a sufficient legal basis for the surrender of the extradited person.

...

(3) The surrender date shall be communicated to the Ministry of Justice and the competent court of appeal within fifteen days from the date the court decision referred to in subsection 1 is communicated. If the surrender date has not been set within fifteen days, the International Police Cooperation Centre of the General Inspectorate of the Romanian Police shall confirm the steps taken and the reasons why the surrender date could not be set within this period.”

Section 57
Deadlines for surrendering the extradited person

“...

(3) If the request for extradition is granted, the authorities of the requested State shall inform the authorities of the requesting State of the date and place of the surrender of the extradited person, as well as of the length of time the person was detained with a view to extradition.

(4) ... The extradited person shall be surrendered and taken under escort.

(5) With the exception provided under subsection (6), if the extradited person is not removed from the territory of the requested State on the agreed date, that person may be released from custody fifteen days after the agreed date; the fifteen-day period can only be extended once.

(6) In cases of *force majeure*, which prevents the surrender or reception of the extradited person, the Romanian authorities and the authorities of the requesting State shall agree on a new surrender date, the provisions of section 56(3) being applicable.”

B. Constitutional Court decision no. 359/2022 of 26 May 2022

44. By a decision of 26 May 2022, which was published in the Official Gazette of Romania on 4 October 2022, the Constitutional Court dismissed an unconstitutionality objection by the applicant concerning section 52(3) of Law no. 302/2004 on the grounds that detention “with a view to extradition” could not be classed as a preventive measure provided for by the CCP for pre-trial detention; the legislature’s choice as regards the absence of automatic periodic review of the subsequent detention “with a view to surrender”, once the extradition decision was taken, and the inability to replace detention with alternative measures was in compliance with the Constitution and Article 5 § 1 of the Convention, in the light of the short time-limits provided for surrender.

45. As regards section 57(5) and (6) of Law no. 302/2004, the Constitutional Court upheld the applicant’s objection in part and found that the section in question, in so far as it related to the expression “with the exception provided under subsection (6)” (*force majeure*), was unconstitutional because it allowed for indefinite detention in the absence of a clear and foreseeable legal framework. On this basis, it concluded that the legislature was under a duty to provide such a framework. However, the Constitutional Court observed that the domestic courts did not classify the applicant’s situation as *force majeure*, and therefore the only possibilities provided by Law no. 302/2004 with respect to his detention with a view to surrender were release after a maximum time-limit of thirty days (the rule), or the application of *force majeure* (the exception). The legislature had an obligation to identify situations which determined that an extradited person’s deprivation of liberty should be maintained after the expiry of the deadlines provided for by section 43(7) in conjunction with section 57(5) of Law no. 302/2004; it also had to establish a clear and predictable framework providing for the definition of such deprivation of liberty, the conditions underlying an order for or extension of that measure, the maximum duration of an order for or extension of that measure, the content of such an order, an appeal against such an order, and so on.

46. Following the Constitutional Court’s decision, Law no. 302/2004 was amended, and the new provisions entered into force on 20 November 2022. According to the explanatory note on the amending legislation, section 43 was modified to put an end to the confusion at domestic level as to the notions of “provisional arrest with a view to extradition” and “detention with a view to surrender”, as well as their respective detention time-limits. The amendment was enacted to reflect that detention in the context of extradition proceedings was a unique concept, allowing a person to be held for up to 180 days until surrender.

47. The relevant amended provisions read as follows:

Section 43
Provisional arrest and referral to the court

“ ...

(3) Provisional arrest with a view to extradition shall be ordered and extended by the court dealing with the extradition request, by means of an interim decision, without the total duration of the provisional arrest, until the actual surrender to the requesting State, exceeding 180 days.

...”

Section 57
Deadlines for surrendering the extradited person

“ ...

(6) In cases of force majeure, which prevents the surrender or reception of the extradited person, the Romanian authorities and the authorities of the Requesting State shall agree on a new surrender date, without the duration of the total provisional detention, until the date of surrender, exceeding 180 days.

...”

C. Code of Criminal Procedure

48. The relevant provisions of the Code of Criminal Procedure (“the CCP”), as in force at the relevant time, read as follows:

Article 236
Extending pre-trial detention during the criminal investigation

“ ...

(4) The overall duration of pre-trial detention during the criminal investigation may not exceed a reasonable length and may be no longer than 180 days.

...”

Article 598
Objection to enforcement

“(1) An objection to enforcement of a criminal judgment may be lodged in the following cases:

“ ...

(c) where there is ambiguity concerning the judgment to be enforced or any impediment to enforcement;

...”

D. Other relevant legal provisions in Law no. 302/2004 concerning enforcement and detention with a view to surrender

49. Section 104, which concerns the procedure for execution of a European arrest warrant, provides that detention of the extradited person, until actual surrender to the requesting State, may not exceed 180 days.

50. Section 113 provides that if the extradited person is not surrendered within the prescribed time-limits, that person must be released, without this constituting a ground for refusing to execute a European arrest warrant based on the same facts.

II. THE UNITED STATES OF AMERICA

51. The relevant US Sentencing Guidelines, the mechanisms to seek leniency or a reduced sentence, as well as statistical information on the imposition of life sentences in the Federal System are set out in *Sanchez-Sanchez v. the United Kingdom* ([GC], no. 22854/20, §§ 57-63, 3 November 2022).

THE LAW

I. SCOPE OF THE CASE

52. The Court observes that, after the Government were given notice of the application, the applicant raised new complaints concerning the lawfulness of his detention prior to the surrender on 16 January 2023 and his state of health at that time (Articles 3 and 5 of the Convention). In the Court's view, these new complaints are closely related to his original complaints or represent an elaboration of the latter based on the factual developments of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 121-22, 20 March 2018). Moreover, the parties commented on these new complaints, after being invited to do so. For these reasons, the Court considers that they fall within the scope of the present case and will examine them below.

53. However, as regards additional complaints raised by the applicant of, among other things, shortcomings in the undercover operation leading to his arrest and the inability to challenge the relevant evidence (Article 6 of the Convention), which, given their subject matter and the date on which they were lodged, were registered separately under a different case reference (no. 37038/22), the Court observes that they are not an elaboration of the initial complaints in the present case. The Court therefore does not consider it appropriate to examine them in the context of this case and rejects, under Rule 42 § 1 of the Rules of Court, the applicant's request to join the present case and his above-mentioned subsequent application (see, *mutatis mutandis*,

Vadym Melnyk v. Ukraine, nos. 62209/17 and 50933/18, § 64, 15 September 2022, and *Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others, § 142, 28 January 2020).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained that his extradition to the US would violate his rights under Article 3 of the Convention, owing to the risk that he would be sentenced to life imprisonment without parole.

55. Article 3 reads as follows:

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

A. The parties’ submissions

1. The applicant

56. The applicant invited the Court to follow its approach in *Trabelsi v. Belgium* (no. 140/10, ECHR 2014 (extracts)). He submitted that he faced a real risk of an actual or *de facto* irreducible life sentence in the US. Following the adoption by the Court of the judgment in *Sanchez-Sanchez* ([GC], no. 22854/20, 3 November 2022), the applicant argued that he had adduced sufficient evidence, in the form of expert evidence, to discharge the evidential burden required by the first limb of the test set out in that case. Accordingly, the Court should examine compliance with the second limb of the test. The applicant further contended that his case was materially different from that of *Sanchez-Sanchez* (ibid.) because, among other things: (i) he faced much more serious charges; (ii) none of his co-conspirators had been convicted; and (iii) he would not “escape with impunity”, as the Romanian State could open its own investigation into the alleged criminal activity.

57. The applicant submitted expert reports dated 12 March, 3 May, 16 May, 23 October and 6 December 2021 by a US Attorney (A.C.), who claimed to be an expert in sentencing law and procedure.

58. In his report dated 3 May 2021, A.C. stated that, on the basis of the allegations against the applicant and the indictment, he believed that the scale of the operation and the quantity of drugs involved would trigger a base offence level of 36. Moreover, the Sentencing Guidelines required the addition of a number of enhancements, which would lead to an offence level of 44 and require the imposition of a life sentence, as follows: (i) a dangerous weapon was possessed (2-point increase); (ii) the defendant used violence, made a credible threat to use violence or directed the use of violence (2-point increase); (iii) the defendant played an aggravating role in the offence as a leader (4-point increase). A.C. further submitted that the sentencing judge could add a further 2-point enhancement on account of the applicant’s challenge to his extradition, raising the offence level to 46.

59. In the report dated 16 May 2021, A.C. revised his previous calculation and argued that the sentencing judge could find a further 2-point enhancement on account of the applicant using an aircraft to transport controlled substances, raising the offence level from 46 to 48. He concluded that based on this calculation, even if the latest enhancement were not applied and the applicant were given a 3-point downward adjustment for pleading guilty, the offence level would still be 43 or more, for which the Sentencing Guidelines recommended life imprisonment.

60. On the issue of sentencing statistics, A.C. submitted that the relevant figures were not the national averages relied on by the US authorities (see paragraph 66 below), but those that pertained to the Eastern District of Texas, where the applicant's case was pending. According to the latter statistics, between 2018 and 2020 approximately 70% of the sentences imposed were within the range recommended by the Sentencing Guidelines, whereas the national average for the same reference period was approximately 50%. As to the statistics provided by the US Department of Justice (see paragraph 66 below), as the "real gravamen" of the charges against the applicant was racketeering conspiracy, it was "misleading" to consider the drug-trafficking sentencing statistics.

61. Lastly, A.C. stated that the US authorities' request for examples of sentencing in cases involving similar conduct was "disingenuous" because it would require comparison to a case tried in the Eastern District of Texas with the same particularities as the present case (international drug trafficking, murder scheme, arms trafficking and outlaw club membership).

2. The Government

62. The Government argued that, as in *Findikoglu v. Germany* ((dec.), no. 20672/15, 7 June 2016), the applicant had failed to show that there was a real risk of a breach of his Article 3 rights because of his likely sentence if he were convicted. Contrary to the applicant's submissions, the information provided by the US Department of Justice (see paragraphs 64-66 below), which had been duly examined by the domestic courts, indicated that the applicant was "exceedingly unlikely to receive a life sentence or its functional equivalent if convicted". In any event, as the applicant had not yet been tried, as the domestic courts had pointed out, there was no certainty that he would be convicted.

63. The Government submitted letters from the US Department of Justice dated 9 February, 26 April, 12 July and 24 September 2021.

64. Relying on a February 2015 report by the US Sentencing Commission entitled "Life Sentences in the Federal System", the Department of Justice stated that life imprisonment was rare in the Federal System, and that in the applicant's case, it was a discretionary sentence for the first two counts on the indictment (see paragraph 7 above).

65. According to the calculation provided by the US Department of Justice, which treated the charges primarily as drug-trafficking offences, given the quantity of drugs involved, the base offence level for count 1 (racketeering conspiracy) would be 36, to which two enhancements would be added: (i) a dangerous weapon was possessed (2-point increase), and (ii) the defendant used violence, made a credible threat to use violence, or directed the use of violence (2-point increase). In accordance with the calculation prescribed by the Sentencing Guidelines for “grouping” the three offences charged under racketeering conspiracy, the final offence level would be 42, which carried a sentence ranging from thirty years to life imprisonment.

66. The Department of Justice provided a survey of sentences imposed in the previous ten years for drug offences in the Eastern District of Texas (where the applicant had been charged), which showed that out of 353 drug-trafficking cases that had involved a potential life sentence, only six had resulted in a life sentence. Accordingly, in the previous ten years, less than 2% of all life-eligible drug cases had resulted in a life sentence. Furthermore, according to the US Sentencing Commission’s Interactive Sourcebook, the US courts rarely imposed sentences above the range recommended by the Sentencing Guidelines and often imposed sentences below the recommended range. During the fiscal years 2015 to 2020, courts across the US had imposed sentences above the range recommended by the Sentencing Guidelines in only 1.55% of drug-trafficking cases (the applicant’s case could be expected to be treated primarily as a drug-trafficking offence for sentencing purposes). During the same reference period, the US courts had imposed sentences below the recommended range in approximately 63% of drug-trafficking cases.

67. The Department of Justice also submitted that, if a life sentence were to be imposed, the applicant would have several opportunities to seek leniency or a reduced sentence, for example cooperation with the prosecution, a statutory right of appeal, an application for executive clemency and a request for compassionate release. If the applicant were to plead guilty or be convicted at trial, the judge would have a broad discretion to determine the appropriate sentence after a fact-finding process in which he would have the opportunity to offer evidence. A probation officer employed by the US courts would conduct an independent investigation and prepare a report containing information about the applicant’s offences, criminal history and background information, as well as a calculation of the recommended sentencing range under the US Sentencing Guidelines, and the applicant and his attorneys could participate in this process and would have the right to object to information and conclusions in the report. After the probation officer completed the report, the applicant would be able to present to the judge evidence regarding any mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines.

68. Lastly, the Department of Justice stated that as far as it was aware, the applicant did not have any prior convictions, and that if he were to be convicted and the court asked the parties for a sentence recommendation, the Attorney's Office in charge of the prosecution would not recommend a life sentence for any of the charged offences.

3. The third-party interveners

(a) The Government of the United Kingdom

69. The Government of the United Kingdom argued that it was not the Court's task to carry out a detailed analysis of the mechanism for seeking release from a sentence of life imprisonment in the US. In any event, the evidence before the Court showed that the US Federal System did have a review mechanism to address whether a prisoner had changed and progressed to such an extent that continued detention could no longer be justified on penological grounds.

(b) The AIRE Centre and Hands Off Cain

70. Both the AIRE Centre and Hands Off Cain provided information about the routes to obtain a sentence reduction or commutation in the US.

B. The Court's assessment

1. General principles

71. In *Sanchez-Sanchez* (cited above, §§ 95-97 and 100), the Court indicated that a two-stage approach was called for when assessing the risk, upon extradition, of a violation of Article 3 of the Convention by virtue of the imposition of an irreducible life sentence. First of all, a preliminary question has to be asked: namely, whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, in the event of conviction, there is a real risk of a sentence of life imprisonment without parole. It is for the applicant to demonstrate that such a penalty would be imposed without due consideration of all the relevant mitigating and aggravating factors, and such a risk will more readily be established if he faces a mandatory – as opposed to a discretionary – sentence of life imprisonment. The second stage will only come into play if the applicant establishes such a risk; only then will it be necessary to consider whether, as from the moment of sentencing, there would be a review mechanism in place allowing the domestic authorities to consider a prisoner's progress towards rehabilitation or any other ground for release based on his behaviour or other relevant personal circumstances.

2. *Application of the above principles to the present case*

72. As the applicant has not yet been convicted, he must first demonstrate that, in the event of his conviction, there exists a real risk that a sentence of life imprisonment without parole would be imposed without due consideration of all the relevant mitigating and aggravating factors (*ibid.*, § 100).

73. In carrying out this exercise, and taking into account the applicant's extradition in January 2023, the Court would normally assess the existence of the risk primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Iskandarov v. Russia*, no. 17185/05, § 126, 23 September 2010). Although, in the present case, it does not appear that the situation in the receiving State developed significantly during the limited amount of time that passed between the adoption of the extradition decision assessing the risk and the applicant's surrender (contrast with *Khasanov and Rakhmanov v. Russia* [GC], nos. 28492/15 and 49975/15, §§ 106 and 109, 29 April 2022), the Court observes nonetheless that the national courts' findings for the purposes of the "real risk" assessment focused primarily on the comparison with *Trabelsi* (cited above). As *Trabelsi*, on which the applicant relied, was expressly overruled in *Sanchez-Sanchez* (cited above, § 98 *in fine*) and the parties' more recent evidence on the issue of a "real risk" (see paragraphs 57 and 63 above) and the elements of comparison with *Sanchez-Sanchez* could not be assessed by the domestic courts at the time when the applicant's extradition was granted, the Court must examine the evidence before it.

74. The Court observes that the applicant was charged in the Eastern District of Texas with racketeering, drug trafficking and money laundering offences, the first two carrying a maximum discretionary sentence of life imprisonment (see paragraph 7 above). Despite A.C.'s later submissions to the contrary (see paragraph 60 *in fine* above), it is clear from the copious material submitted by the parties that the applicant's criminal activity was treated for the purposes of sentencing primarily as a drug-trafficking case (see paragraph 65 above).

75. The Court notes the US Department of Justice's submission (see paragraph 64 above) that life sentences are rare in the Federal System and that the evidence adduced shows that in the past ten years less than 2% of all life-eligible drug cases tried in the Eastern District of Texas resulted in a life sentence (see paragraph 66 above).

76. In *Sanchez-Sanchez* the Court, having reviewed the same report referred to by the US Department of Justice (see paragraph 64 above), acknowledged that a sentence of life imprisonment – while rare – could be imposed in drug-trafficking cases in which large quantities of drugs were involved, or where the court applied other sentence enhancement provisions relating to drug trafficking (see *Sanchez-Sanchez*, cited above, § 63 and §§ 104-06). According to the above-mentioned report, the drug-trafficking

guidelines specifically provide for a sentence of life imprisonment for drug-trafficking offences where death or serious bodily injury resulted from the use of the drug and the defendant had been convicted previously of a drug-trafficking offence (*ibid.*, § 105). In the present case, although the charges against the applicant are undoubtedly serious, there is nothing in the indictment to suggest that he was the head of a drug-trafficking organisation or that the acts for which he is charged led to anyone's death or injury (compare *Sanchez-Sanchez*, cited above, § 106). Furthermore, the evidence before the Court suggests that the applicant has no prior convictions (see paragraph 68 above).

77. The Court further notes the significant divergence between the US Department of Justice and the applicant's expert on what the relevant offence level would be if the applicant were to be convicted of the charges against him (see paragraphs 58 and 65 above). That being said, it is not the Court's role to seek to address every conceivable permutation that could occur or every possible scenario that might arise in the sentencing process (see *López Elorza v. Spain*, no. 30614/15, § 118, 12 December 2017; see also *Sanchez-Sanchez*, cited above, § 108 *in fine*), all the more so in the present case, where the parties' conclusions are so strikingly different.

78. As the Court noted in *Findikoglu* (cited above, § 39), the length of the applicant's prison sentence might be affected by pre-trial factors, such as agreeing to cooperate with the US Government. Moreover, if the applicant were to plead guilty or be convicted at trial, the judge would have a broad discretion to determine the appropriate sentence after a fact-finding process in which he would have the opportunity to offer evidence regarding any mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines. Moreover, the applicant would have the right to appeal against any sentence imposed (see paragraph 67 above) and would enjoy the same procedural safeguards referred to by the Court in *Sanchez-Sanchez* (cited above, § 108).

79. The Court notes that the applicant sought to distinguish *Sanchez-Sanchez* (cited above) on several grounds (see paragraph 56 above). However, limited assistance can be derived from those grounds for the purpose of establishing the existence of a real risk of life imprisonment. This is primarily because at the same time as notice of the present case was given to the respondent Government, the applicant was asked to submit examples of sentencing practices of the US trial courts in similar proceedings. However, the applicant has not adduced any evidence of any defendants with similar records to himself being found guilty of similar conduct and sentenced to life imprisonment without parole (see *Sanchez-Sanchez*, cited above, § 108). Secondly, the alleged material differences cannot be interpreted, *a contrario*, as an indicator that the applicant faces a higher risk compared with Mr Sanchez-Sanchez. Hence, for example, the fact that none of his

co-conspirators has been tried or sentenced yet in the US is immaterial (see *Carvajal Barrios v. Spain* (dec.), no. 13869/22, § 93 *in fine*, 4 July 2023).

80. In the light of the foregoing, the applicant cannot be said to have adduced evidence capable of showing that his extradition to the US would expose him to a real risk of treatment reaching the Article 3 threshold on account of a risk that he would be sentenced to life imprisonment without parole (compare *McCallum v. Italy* [GC] (dec.), no. 20863/21, § 55, 21 September 2022). That being so, it is unnecessary for the Court to proceed in this case to the second stage of the analysis (see paragraph 71 above; see also *Sanchez-Sanchez*, cited above, § 109, *Hafeez v. the United Kingdom* (dec.) no. 14198/20, § 55, 28 March 2023, and *Carvajal Barrios*, cited above, §§ 96-97).

81. The applicant's complaint under Article 3 of the Convention must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

82. The applicant complained, under Article 5 of the Convention, that his detention for the purposes of extradition had been unlawful. The Court considers that this complaint falls to be examined under Article 5 § 1 (f) of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

...”

A. Admissibility

83. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) *The applicant*

84. The applicant submitted that Law no. 302/2004, as in force during his first period of detention from 19 November 2020 to 8 June 2021, did not meet

the “quality-of-law” requirements of Article 5 of the Convention. In particular, after extradition was granted by the domestic courts, domestic law did not contain precise legal provisions for ordering and extending detention with a view to surrender and for setting “fully determined” detention time-limits. His detention for 202 days with a view to surrender had been in breach of the Constitution and the CCP, which provided for a maximum detention period of 180 days and which Law no. 302/2004 should have correlated with.

85. The applicant also argued that his rearrest on 28 December 2022 and detention until 16 January 2023 had been unlawful. The authorities could not detain him anew, outside the extradition legal framework provided for by Law no. 302/2004, as amended in November 2022, and after the 202 days of prior detention and exhaustion of all possible preventive measures provided for by that Law.

(b) The Government

86. The Government argued that Law no. 302/2004 met the “quality-of-law” criteria required by Article 5 of the Convention as the relevant provisions were clear, accessible and reasonably foreseeable, even if the applicant’s particular context warranted a complex examination of the legal framework which could have required the advice of counsel. At the time of the applicant’s first period of detention from 19 November 2020 to 8 June 2021, the impugned legal provisions clearly provided that, during the examination of an extradition request, the maximum time-limit for provisional arrest “with a view to extradition” was 180 days (section 43(3) of Law no. 302/2004). During the subsequent period of detention running after the extradition decision, except in cases of *force majeure*, detention with a view to surrender ceased if the extradited person was not taken into custody by the requesting State within the prescribed thirty-day time-limit from the agreed surrender date (sections 57(6) and 43(7) of that Law). Pointing to the domestic courts’ decisions, including the decision to replace detention with judicial supervision, the Government submitted that the applicant’s detention had been carried out in good faith, in close connection with the legitimate purpose of enforcing the final extradition decision and in strict adherence to the principle of necessity and proportionality.

87. As regards the applicant’s second period of detention from 28 December 2022 to 16 January 2023, the Government submitted, referring to the domestic courts’ reasoning, that the latter had made an extensive analysis and interpretation of the relevant legislation in force, with the sole purpose of giving effect to the extradition decision while at the same time safeguarding the applicant’s fundamental rights related to his detention.

2. *The Court's assessment*

(a) *General principles*

88. The general principles concerning detention pending deportation or extradition under Article 5 § 1 (f) of the Convention are set out in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 88-92, 15 December 2016) and *Shiksaitov v. Slovakia* (nos. 56751/16 and 33762/17, §§ 53-56, 10 December 2020).

89. The Court reiterates that the words “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first place for the national authorities – notably the courts – to interpret and apply domestic law, the position is different in relation to cases where failure to comply with such law entails a breach of the Convention. This applies, in particular, to cases in which Article 5 § 1 of the Convention is at stake and the Court must then exercise a certain power to review whether national law has been observed (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 126, 1 June 2021, and *I.E. v. the Republic of Moldova*, no. 45422/13, § 60 *in fine*, 26 May 2020). When it comes to checking compliance with the aforementioned obligation, in essence the Court will limit its examination to the question of whether the interpretation of the legal provisions relied on by the domestic authorities was arbitrary or unreasonable (see *Rusu v. Austria*, no. 34082/02, § 55 *in fine*, 2 October 2008). Compliance with national law is not, however, sufficient: Article 5 § 1 additionally requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. No detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in that context extends beyond lack of conformity with domestic law: a deprivation of liberty may be lawful in terms of domestic law but still be arbitrary and thus contrary to the Convention (see *Shiksaitov*, cited above, §§ 54-55, and *Nabil and Others v. Hungary*, no. 62116/12, §§ 31-32, 22 September 2015, with further references).

90. Furthermore, the Court has, in a number of cases, unequivocally held that fixed time-limits are not a requirement of Article 5 § 1(f), and that it will deal with each complaint on a case-by-case basis in order to decide if detention has become unlawful (see *Amie and Others v. Bulgaria*, no. 58149/08, § 72, 12 February 2013, and *A.H. and J.K. v. Cyprus*, nos. 41903/10 and 41911/10, § 190, 21 July 2015). The Court has considered that factors relevant to the assessment of the “quality of law” – which are referred to in some cases as “safeguards against arbitrariness” – will include the existence of clear legal provisions for ordering detention, for extending detention, and for setting time-limits for detention; and the existence of an effective remedy by which the applicant can contest the “lawfulness” and “length” of his continued detention (see *J.N. v. the United Kingdom*,

no. 37289/12, § 77 *in fine*, 19 May 2016, and *Komissarov v. the Czech Republic*, no. 20611/17, § 47, 3 February 2022). On the other hand, where fixed time-limits exist, a failure to comply with them may be relevant to the question of “lawfulness”, as detention exceeding the period permitted by domestic law is unlikely to be considered to be “in accordance with the law” (see *Komissarov*, cited above, § 50).

91. While the Court has not previously formulated a definition as to what types of conduct on the part of the authorities might constitute “arbitrariness” for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. One such general principle established in the case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v. France*, 18 December 1986, Series A no. 111; *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I; *Saadi v. the United Kingdom* [GC], no. 13229/03, § 68 and 69, ECHR 2008; and *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 76, 22 October 2018).

(b) Application of the general principles to the facts of the present case

92. At the very outset, the Court notes that the applicant’s complaint concerns two distinct periods of detention:

(a) from 19 November 2020 (the applicant’s initial arrest) to 8 June 2021 (the applicant’s release and placement under judicial supervision); and

(b) from 28 December 2022 (the applicant’s rearrest) to 16 January 2023 (the applicant’s surrender to the US authorities).

93. Accordingly, with reference to the above-mentioned general principles, the Court will examine in turn whether each of the two periods was “lawful”, carried out in “good faith” by the domestic authorities and “justified” as regards the progress of the extradition proceedings.

(i) from 19 November 2020 to 8 June 2021

94. The Court notes, in line with the wording employed by Law no. 302/2004, duly applied by the domestic courts and upheld by the Constitutional Court in decision no. 359/2022, that the period under consideration may be further divided into two subperiods:

(a) from 19 November 2020 (his arrest) to 1 March 2021 (the date of the Court of Appeal’s extradition decision at first instance on the extradition request); and

(b) from 1 March to 8 June 2021.

95. During the first subperiod, the applicant was detained “with a view to extradition” pursuant to sections 43 and 44 of Law no. 302/2004 (see paragraph 43 above), which, at the material time, provided that detention could be ordered for a maximum time-limit of 180 days. As regards the

second subperiod, the applicant was detained “with a view to surrender” pursuant to sections 52(3) and 57 of Law no. 302/2004 (see paragraphs 26 and 43 above), which – in so far as relevant for the present case – set a fifteen-day detention time-limit (extendable once) starting from the surrender date agreed with the requesting State, if removal did not take place on that date. The Court notes that although section 56(3) of Law no. 302/2004 provided for some form of supervision by the domestic courts, no fixed time-limits were set by this Law for actual agreement on a surrender date.

96. The Court observes that Constitutional Court decision no. 359/2022 endorsed the above-mentioned categorisation of detention, respectively with a view to extradition and to surrender, each with its distinct time-limits, as well as its derogation from the general regime provided for by the CCP for pre-trial detention (see paragraphs 44-45 above). As to section 57(6) of Law no. 302/2004 and the exception of *force majeure*, the Court observes that the domestic courts were never called upon to apply the impugned provision to the applicant’s detention. Thus, the Court does not find it necessary to analyse the consequences, if any, that flow from it being declared unconstitutional.

97. Turning to the applicant’s complaint that his detention for 202 days during the relevant period was unlawful, which related particularly to the period after 1 March 2021 on account of the absence of a “fully determined” maximum time-limit, the Court notes that the provisions of section 56(3) of Law no. 302/2004 did indeed allow for his detention for an indeterminate period of time, which depended upon the setting of a surrender date agreed by the Romanian and US authorities. Only that surrender date triggered the start of the fifteen-day time-limit under section 57(5) which could be extended once (see paragraphs 22, 29 *in fine* and 43 above). However, the Court reiterates that fixed time-limits are not as such a requirement of Article 5 § 1 (f) of the Convention (see *J.N. v. the United Kingdom*, cited above, § 83). The existence of otherwise fixed time-limits cannot be considered in the abstract, but should instead be viewed in the context of a detention system taken as a whole, having regard to the particular facts of each individual case (see, *mutatis mutandis*, *J.N. v. the United Kingdom*, cited above, § 92), especially in the present case where, at the material time, the provisions concerning detention with a view to extradition and surrender contained a combination of periods with and without fixed time-limits. In any event, even where an applicant may have been kept in detention for an indeterminate period, what is decisive for the Court’s analysis is the necessity of procedural safeguards (such as an effective remedy by which to contest the lawfulness and length of his detention) (*ibid.*, § 85; *Louled Massoud v. Malta*, no. 24340/08, § 71, 27 July 2010; and, *mutatis mutandis*, *A.H. and J.K. v. Cyprus*, cited above, § 190).

98. The Court further observes that the provisions of Law no. 302/2004 under which the applicant was detained during this period appear to meet the “quality-of-law” requirements, in terms of both clarity and foreseeability.

Moreover, having regard to the wording of the provisions, the Court does not see any indication that the domestic courts' interpretation of the relevant provisions and time-limits – confirming the lawfulness of the detention – was contrary to Law no. 302/2004, unreasonable or arbitrary for any other reason. It notes that the applicant's detention was also carried out in good faith and justified throughout these six and a half months by the actions being taken with a view to his extradition, as required by Article 5 § 1 (f) of the Convention.

99. In that regard, the Court observes that the applicant's detention "with a view to extradition" during the first above-mentioned subperiod was less than the maximum 180-day time-limit provided for in section 43(3) of Law no. 302/2004, and the underlying proceedings were undisputedly aimed at the applicant's extradition. As regards the second subperiod of detention, the detention "with a view to surrender", the Court notes that the extradition decision of 1 March 2021 maintained the applicant's detention until his surrender to the US authorities (see paragraph 26 above). Although, in accordance with the domestic provisions in force, no maximum detention time-limit was indicated in the extradition decision, the Court observes that once the surrender date (12 May 2021) was agreed upon by the Romanian and US authorities, the applicant's detention "with a view to surrender" lasted less than the maximum time-limit of thirty days calculated from that date until 8 June 2021, when he was placed under judicial supervision (section 57 of Law no. 302/2004). It remains to be examined whether the applicant's detention during this second subperiod, from 1 March until 8 June 2021, which appears to have complied with the domestic provisions (see also paragraphs 28-29 above), was accompanied by any procedural safeguards and justified by measures taken by the authorities in relation to his extradition.

100. It is not disputed that the authorities were active following the adoption of the extradition decision on 1 March 2021, the result of their actions being the date of the applicant's surrender to the US authorities being set for 12 May 2021. As to the period following the indication of the interim measure of 5 May 2021 (see paragraph 24 above), the Court cannot but observe the domestic authorities' diligence as regards the applicant's detention. Aside from the proceedings brought by the authorities of their own motion (see paragraph 27 above), the applicant himself brought several sets of proceedings contesting the lawfulness of his continued detention (see paragraph 30 above) in the light of the Court's interim measure, and submitted that he could be subjected to less restrictive preventive measures. The Court notes that those judicial proceedings, which demonstrated procedural safeguards of which the applicant had the benefit, were conducted with the requisite diligence and resulted in the applicant's release and placement under judicial supervision on 8 June 2021 (see paragraph 99 above). The overall period of the applicant's detention, which lasted approximately six and a half months, does not therefore appear excessive

(compare, among other authorities, *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011; *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012; *Umirov v. Russia*, no. 17455/11, §§ 136 et seq., 18 September 2012; and *Ahmed v. the United Kingdom*, no. 59727/13, §§ 41 et seq., 2 March 2017).

101. In view of the above, the Court finds that there has been no violation of Article 5 § 1 (f) as regards the applicant's detention from 19 November 2020 to 8 June 2021.

(ii) *from 28 December 2022 to 16 January 2023*

102. The Court notes that the applicant's rearrest and subsequent detention was ordered by the domestic courts under section 43(6) of Law no. 302/2004, following proceedings initiated under Article 598 § 1 (c) *in fine* of the CCP (see paragraph 32 above). The Court also notes that the applicant complained that his rearrest and the procedure used by the domestic authorities to bring it about had not been in accordance with Law no. 302/2004 or the reasoning of the Constitutional Court's decision.

103. Although the applicant did not directly dwell on this particular point in his submissions, the Court, on the basis of its power to review the domestic authorities' compliance with national law, notes in particular that the issue of detention time-limits was addressed by the domestic courts (see paragraphs 35-36 and 39 above) and that at the time of the applicant's rearrest with a view to surrender, the provisions of Law no. 302/2004 with respect to detention with a view to surrender had been amended to reflect the findings of the Constitutional Court in decision no. 359/2022. The Court further notes the legislature's view under the amended law that the maximum detention period during extradition proceedings until actual surrender should not exceed 180 days (see paragraphs 46-47 above).

104. As to the nature of the applicant's detention, the Court observes that the domestic courts found, in order to uphold it, that it was a procedural act (*act de procedură*) aimed at enforcing the extradition decision once the impediment to surrender – the Court's interim measure – had been removed (Article 598 § 1 (c) *in fine* of the CCP) and that in the absence of a set date for surrender following the lifting of the interim measure indicated by the Court, the specific time-limits of Law no. 302/2004 relating to it had not started to run (see paragraph 40 above).

105. The Court reiterates that, within its power to review whether national law has been observed, it has duly taken into consideration the national authorities' interpretation and application of the relevant provisions as they are, in the nature of things, particularly qualified to settle the issues arising in this connection (compare, *mutatis mutandis*, *Mefaalani v. Cyprus*, nos. 3473/11 and 75381/11, § 80 *in fine*, 23 February 2016, and *A.H. and J.K. v. Cyprus*, cited above, §§ 53 and 190; in the latter case, after the Court indicated interim measures, detention time-limits potentially exceeded on the

basis of new legal provisions were found by the Supreme Court to be inapplicable in the applicants' case).

106. The Court also reiterates the relevance of compliance with the time-limits set by domestic law (see *Komissarov*, cited above, § 50), but notes at the same time the complex interplay between the provisions of the CCP and those of Law no. 302/2004 in the present case, with the former complementing or even replacing the latter (see paragraphs 27-30 and 40 above). In the particular circumstances, given the absence of any transitional provisions following the amendment of Law no. 302/2004 concerning cases such as the applicant's – who had already been detained for more than 180 days – and in the absence of comparable domestic case-law on this issue (compare *Denis and Irvine*, cited above, §§ 89 and 151), the domestic courts were faced with a *sui generis* situation.

107. The Court, when called upon to assess the first judicial interpretation of a new specific situation on which domestic legislation and case-law were silent, has already held, in a different context, that clarification of the relevant rules through judicial interpretation on a case-by-case basis is not to be outlawed, provided that the resultant development is consistent with the essence of the rule in question and could reasonably be foreseen (see, *mutatis mutandis*, *Huhtamäki v. Finland*, no. 54468/09, §§ 50-51, 6 March 2012, in the context of Article 7). In the particular context of the present case, the Court notes that from the outset the newly amended sections 43(3) *in fine* and 57(6) *in fine* of Law no. 302/2004 did not seem to address the applicant's pre-existing situation, on account of: the more than 180 days he had already spent in detention; the lack of a set date for his surrender in December 2022; and the non-retroactive nature of new procedural requirements. The Court does not therefore find it unreasonable in itself that, in order to identify the suitable legal framework, the domestic courts relied on the provisions of the CCP and set a thirty-day detention time-limit by virtue of general procedural criminal law to deal with the enforcement of the extradition decision (see paragraph 37 above). In that sense, considering the applicant's "wholly particular situation" and the absence of a set date for his surrender, the Court notes that the domestic courts had similarly resorted to the CCP to complete Law no. 302/2004 by judicial interpretation and order his release under judicial supervision soon after the interim measure indicated by the Court under Rule 39 (see paragraph 30 above). Moreover, in so far as the High Court, in its final decision of 17 May 2021, had already held that the Court's interim measure was an impediment to the applicant's surrender to the US authorities (see paragraph 28 above), the Court finds that the applicant's rearrest – which was mandatory for his surrender – following the lifting of that interim measure should not have been unforeseeable for the applicant, after he had taken the appropriate legal advice if necessary. The Court's interim measures have binding force on the States concerned (see *Olaechea Cahuas v. Spain*, no. 24668/03, § 81, 10 August 2006), but they are

provisional in nature and, particularly once they are lifted in the course of the proceedings, they should not be a hindrance to the ultimate exercise of the States' sovereign powers to extradite or remove the applicant. In view of the above considerations, the Court is ready to accept the domestic courts' interpretation of the applicant's *sui generis* case, and that his detention from 28 December 2022 to 16 January 2023 was "in accordance with a procedure prescribed by law".

108. As well as assessing whether the applicant's detention complied with domestic law, the Court has to satisfy itself that the deprivation of liberty was not "arbitrary" (see the relevant criteria in the case of *J.N. v. the United Kingdom*, cited above, § 80, and *Ahmed*, cited above, § 48, where the Court examined and validated the reasonableness of the applicant's two-week detention that took place after the Court rendered a leading case impacting the applicant's removal followed by the lifting of its interim measure). The applicant's rearrest, eighteen months after his initial lawful detention for 202 days that took place at a time when the amendment of Law no. 302/2004 was unforeseeable, should be seen against the background of any lack of diligence attributable to the authorities during his first period of detention (contrast *John v. Greece*, no. 199/05, §§ 29 et seq., in particular § 35, 10 May 2007).

109. The Court observes that the applicant's rearrest, ordered on 15 December 2022, which was strictly aimed at his surrender and decided before the agreement on 11 January 2023 with the US authorities on a new surrender date, was considered both mandatory and necessary by the domestic courts (see paragraphs 35 and 41 above). It reiterates that in the case of extradition, a Contracting State finds itself under an obligation to cooperate in international criminal matters, which aims to prevent the creation of safe havens for those charged with the most serious criminal offences (see *Sanchez-Sanchez*, cited above, § 94 *in fine*, and, *mutatis mutandis*, *Öcalan v. Turkey* [GC], no. 46221/99, §§ 87-88, ECHR 2005-IV).

110. In the specific context of the present case, the Court considers that the authorities' assessment does not indicate an element of bad faith, deception or manipulation on their part (contrast *Monir Lotfy v. Cyprus*, no. 37139/13, § 208, 29 June 2021; *I.E. v. the Republic of Moldova*, cited above, §§ 66-67; and *Ugulava v. Georgia*, no. 5432/15, §§ 80 and 83, 9 February 2023). Moreover, it has not been disputed that the applicant's detention was in genuine conformity with the purpose of Article 5 § 1 (f) and processed with due diligence, given his surrender to the US authorities on 16 January 2023.

111. In view of the above, the Court finds that there has been no violation of Article 5 § 1 (f) as regards the applicant's second period of detention from 28 December 2022 to 16 January 2023.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

112. Relying on Article 5 of the Convention, the applicant complained that the lawfulness of his detention had not been periodically reviewed after his extradition had been granted by the domestic courts. The Court considers that this complaint falls to be examined under Article 5 § 4, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. The parties’ submissions

113. The applicant submitted that by failing to periodically review the lawfulness of his detention subsequent to the extradition decision, the authorities had failed to comply with their obligations under Article 5.

114. The Government again highlighted the distinction between the legal regimes applicable to the two types of detention provided for by Law no. 302/2004, namely “provisional arrest with a view to extradition” and “detention with a view to surrender”. Contrary to what had been argued by the applicant, a regular review of detention was only applicable whilst an individual was held under “provisional arrest with a view to extradition” and extradition proceedings were pending before the domestic courts (section 43(3) and (5) of that Law). However, even during his detention with a view to surrender, the judicial supervision mechanism had allowed for a review of the lawfulness of the detention, either through applicant’s own challenges or through *ex officio* requests by the judge responsible for the execution of sentences. Following an extensive analysis and interpretation of the relevant legal provisions, the domestic courts had replaced the detention with placement under judicial supervision on account of the applicant’s changing circumstances.

B. The Court’s assessment*1. General principles*

115. The Court has made it clear that the Article 5 requirement that “everyone who is deprived of his liberty... shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court” does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances (see *Louled Massoud*, cited above, § 40). Nevertheless, the Court has provided some guidance on what might constitute an “effective remedy”. First, the remedy must be made available during a person’s detention to allow him or her to obtain a speedy review of its lawfulness. Secondly, that review must

have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (*ibid.*, § 40, and *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009). Thirdly, the review should also be capable of leading, where appropriate, to release. Lastly, it must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *J.N. v. the United Kingdom*, cited above, § 88).

116. The forms of judicial review satisfying the requirements of Article 5 § 4 may vary from one domain to another, and will depend on the type of deprivation of liberty in issue. It is not excluded that a system of automatic periodic review of the lawfulness of detention by a court may ensure compliance with the requirements of Article 5 § 4 (see *Aboya Boa Jean v. Malta*, no. 62676/16, § 76, 2 April 2019), if decisions on the lawfulness of detention follow at “reasonable intervals” (see, among other authorities, *Blackstock v. the United Kingdom*, no. 59512/00, § 42, 21 June 2005, and *Abdulkhakov v. Russia*, no. 14743/11, § 209, 2 October 2012). On the other hand, the Court has held that no implicit requirement of automatic judicial review is to be read into Article 5 § 1 in regard to the category of deprivation of liberty covered by paragraph (f), given that the specific safeguard as to judicial protection afforded by Article 5 § 4 is worded in terms of an “entitlement” for persons deprived of their liberty to take proceedings enabling them to contest the lawfulness of their detention (see *J.N. v. the United Kingdom*, cited above, § 94).

2. Application of the above principles to the present case

117. Referring to the above principles, the Court observes that during the relevant period from 1 March until 8 June 2021, although there was no automatic judicial review – which the Constitutional Court found to be compatible with the Constitution and the Convention given the short time-limits normally involved (see paragraph 44 above) – the lawfulness of the applicant’s detention was examined several times either at the request of the latter or the judge responsible for the execution of sentences (see paragraphs 26-31 above). Whether such requests were classed as “objections” to enforcement (Article 598 § 1 (c) of the CCP) or as requests aimed at finding that the maximum detention time-limits had expired, what matters most to the Court is that they led to a review of the lawfulness of the applicant’s detention which appears to have been fully in line with the limited scope for judicial review in extradition proceedings when the extradition request has already been granted (compare *Abdulkhakov*, cited above, §§ 214 et seq., and *Oshlakov v. Russia*, no. 56662/09, §§ 128-29, 3 April 2014).

118. During those proceedings, the domestic courts verified, among other things, that the detention complied with the time-limits governing the procedure for surrender of the applicant, disregard of which would have led to his release unless the exception of *force majeure* was found to be

applicable. In the context of the interim measure indicated by the Court, the domestic courts did not envisage such an exception, but eventually replaced the applicant's detention with judicial supervision on 8 June 2021. They were also particularly diligent, as their decisions on the lawfulness of the applicant's detention were always adopted within a couple of weeks, at two levels of jurisdiction.

119. In the light of the above, the Court considers that the applicant was thereby able to "take proceedings" by which the lawfulness of his detention was effectively reviewed by a court. His complaint under Article 5 § 4 of the Convention must therefore be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. Lastly, the applicant complained, under Articles 3 and 5 of the Convention, about the risk of receiving a grossly disproportionate sentence in the US, about his surrender to the US authorities on 16 January 2023 despite his poor state of health and lack of medical care, and of the unlawfulness of his detention on account of procedural shortcomings in the US extradition warrant.

121. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 (f) of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention.

Done in English, and notified in writing on 9 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President