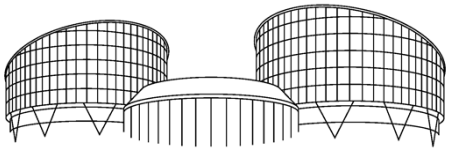

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MATTHEWS AND JOHNSON v. ROMANIA

(Applications nos. 19124/21 and 20085/21)

JUDGMENT

Art 5 § 1 (f) • Extradition • Lawful detention of applicants with a view to their extradition and surrender • No indication of bad faith or arbitrariness • Period of detention under *force majeure* domestic provision during application of Court's interim measure under Rule 39 preventing the applicants' surrender, accompanied by procedural safeguards • Detention during that specific period or overall, not unreasonably long or unjustified in the light of the authorities' diligence and their interest in the progress of the procedure
Art 3 • Extradition • No evidence showing a real risk of a sentence of life imprisonment without parole in the event of the applicants' 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

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Matthews and Johnson 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 Răduleţu*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the applications (nos. 19124/21 and 20085/21) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a New Zealand national, Mr Murray Michael Matthews ("the first applicant") and a New Zealand and British national, Mr Marc Patrick Johnson ("the second applicant"), on 14 and 19 April 2021 respectively;

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 applications inadmissible;

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

the decisions of 15 April and 5 May 2021 to indicate an interim measure to the respondent Government (Rule 39 of the Rules of Court) and the decision 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 (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court);

the decision to reject the second applicant's request to have his application relinquished to the Grand Chamber (Rule 72 of the Rules of Court);

Having deliberated in private on 19 March 2024,

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

INTRODUCTION

1. The case concerns the applicants' extradition to the United States of America ("US"), where they allege they would 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 their detention with a view to extradition, which they claimed had not been in accordance with Article 5.

THE FACTS

2. The applicants were born in 1989 and 1966 respectively. They were represented by Mr B. Cooper and Mr A. Enache, lawyers practising in London and Bucharest respectively.

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 APPLICANTS

5. The applicants are alleged to be members and/or associates of the Hells Angels transnational motorcycle gang.

6. They were 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 their 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 applicants 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 first applicant, together with his co-accused, 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 applicants' detention prior to the decisions on their extradition

10. On 19 November 2020 the applicants were detained for twenty-four hours by order of the prosecutor. On the same day the Bucharest Court of

Appeal ("the Court of Appeal") ordered their 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 applicants' detention was reviewed regularly and maintained under sections 43 and 44 of Law no. 302/2004, the former of which provides for detention whilst extradition proceedings are pending before the domestic courts.

12. Between 15 January 2021 and 1 and 5 March 2021 respectively, when the applicants' extradition was granted at first instance (see paragraph 17 below), the Court of Appeal ordered that the applicants be detained under section 43 of Law no. 302/2004.

B. Extradition decisions

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

14. The applicants' extradition requests were determined separately by the Court of Appeal (see paragraphs 17-19 below) and on appeal by the High Court of Cassation and Justice ("the High Court", see paragraphs 20-23 below).

15. The applicants argued before the domestic courts that there were several bars to their extradition under section 21 of Law no. 302/2004, including, *inter alia*, that they would not receive a fair trial in the US owing to their alleged gang membership. They also contended that their extradition to the US would breach their rights under Article 3 of the Convention because there was a real risk that they would be sentenced to life imprisonment without parole. They relied on the case of *Trabelsi v. Belgium* (no. 140/10, ECHR 2014) and submitted expert evidence from a US lawyer.

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

17. At hearings on 1 and 5 March 2021 respectively 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, and authorised the first and second applicant's extradition ("the extradition decisions").

18. In relation to the first applicant's complaint concerning the risk of a life sentence without parole, the Court of Appeal noted, on the basis of the information provided by the US authorities, that the sentence of life imprisonment for the first two counts on 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 first applicant's potential life sentence would be *de jure* and de *facto* reducible. The court also held that, on the facts of the case, a sentence of life imprisonment did not appear to be grossly disproportionate.

19. As to the second applicant, the Court of Appeal held that *Trabelsi* had to be distinguished from his case, as in that case the Court had found a violation because the Belgian courts had disregarded an interim measure which it had indicated. Referring to *Harkins and Edwards v. the United Kingdom* (nos. 9146/07 and 32650/07, 17 January 2012), it found that, on the facts of the case, a sentence of life imprisonment was fully justified, and that there was no requirement for the extraditing State to request any guarantees that such a sentence would be commuted.

20. On 25 and 26 March 2021 respectively the High Court dismissed appeals lodged by the second and first applicants.

21. As regards the first applicant's grounds of appeal under Article 3, the High Court held that there was uncertainty as to whether he would be found guilty at trial and that, in any event, he had failed to prove he would be sentenced to life imprisonment without parole if convicted. After extensively quoting the information provided by the US authorities concerning the risk of life imprisonment (see paragraph 16 above), it concluded that those authorities had offered sufficient guarantees that a potential life sentence would be *de jure* and *de facto* reducible. As to the expert evidence submitted on behalf of the applicants (see paragraph 79 below), the High Court found that it did not contradict the information provided by the US authorities. On this point, it noted that the Court's case-law on the issue of life sentences without parole addressed the "impossibility" of release, whereas the expert evidence merely indicated that the applicant's chances of release were reduced.

22. As regards the second applicant's appeal, the High Court held that, as the offences of which he had been accused existed in US law, the criminal proceedings against him, together with a potential conviction, could not be regarded as a risk that he would be subjected to inhuman or degrading treatment contrary to Article 3.

23. Following exchanges with the US authorities, the applicants' final surrender date was set for 12 May 2021.

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

24. On 14 and 19 April 2021 the applicants requested the Court, under Rule 39 of the Rules of Court, to prevent their extradition to the US.

25. On 15 April 2021 (granted until 6 May 2021 in respect of the first applicant) and 5 May 2021 (granted in respect of both applicants) the Court decided, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government as an interim measure that they should not be extradited for the duration of the proceedings before the Court.

26. 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 in respect of both applicants.

D. The applicants' detention with a view to surrender

27. In the extradition decisions of 1 and 5 March 2021 (see paragraph 17 above) the Court of Appeal, under sections 52(3) and 57 of Law no. 302/2004, maintained the applicants' detention until their surrender to the US authorities.

1. Mr Matthews' detention

28. On 7 May 2021, following an application (referred to as "objection", *contestaţie* in domestic law) by the department for the execution of sentences (*Biroul executări penale*), the Court of Appeal, referring to Article 598 § 1 (c) of the Criminal Code of Procedure ("the CCP", see paragraph 59 below), held that the Court's interim measure of 5 May 2021 was a temporary impediment to the applicant's surrender to the US authorities on 12 May 2021. In the same decision, it continued his detention and ordered the domestic authorities to follow the procedure laid down in section 57(5) of Law no. 302/2004 (see paragraph 58 below) to ensure enforcement of the extradition decision and to convene a new surrender date.

29. On 20 May 2021, following an appeal by the applicant, the High Court upheld the decision of 7 May. In reply to his submissions that his detention exceeded the maximum time-limit provided for in section 43(3) of Law no. 302/2004, the High Court held that the detention time-limits under that provision did not apply to detention with a view to surrender, for the purposes of which the applicant was being detained.

30. On 3 June 2021, following a challenge to detention lodged by the applicant on 27 May 2021, the Court of Appeal found that section 57(5) of Law no. 302/2004 only provided for the possibility of release after fifteen days from the agreed surrender date and that on the facts of the case,

the applicant's release was not appropriate. It further held that the measure of detention could not be replaced with another less restrictive preventive measure since this possibility was not provided for by Law no. 302/2004. On 10 June 2021, reiterating the Court of Appeal's reasoning, the High Court dismissed the applicant's appeal.

31. On 7 June 2021 the department for the execution of sentences, noting that the time-limit for surrendering the applicant to the US authorities was due to expire on 10 June 2021, lodged a further "objection" to his detention with the Court of Appeal, asking it to determine whether the interim measure indicated by the Court constituted a *force majeure* within the meaning of section 57(6) of Law no. 304/2022, which allowed for the applicant's continued detention.

32. On 10 June 2021 the Court of Appeal, considering the decisions rendered by the domestic courts in the applicant's case, reiterated that the interim measure of 5 May 2021 was an impediment to the applicant's surrender to the US authorities and found that the existence of such an impediment could have only been determined by the domestic courts by reference to section 57(6) of Law no. 302/2004, which recognised the concept of *force majeure*. Accordingly, as previously determined by the courts, given that the impediment representing a *force majeure* was ongoing, the applicant's detention was still required.

33. The applicant's appeal against the decision was heard on 29 June 2021 by the High Court. He submitted that *force majeure*, as defined by domestic civil law and international case-law, was an unforeseeable and inescapable event beyond a party's control. As Romania had voluntarily assumed obligations as a Council of Europe member and a State Party to the European Convention on Human Rights, the domestic authorities could not consider an interim measure unforeseeable.

34. The applicant contended that section 57(5) of Law no. 302/2004 provided for a thirty-day time-limit for detention with a view to surrender, calculated from the date set for surrendering him to the US authorities, which in his case had been exceeded. He further submitted that, even if his detention were to be considered a preventive measure within the meaning of the CCP, he had been detained for 220 days, beyond the maximum of 180 days allowed by domestic law. Accordingly, and also considering the absence in Law no. 302/2004 of provisions setting a "fully determined" maximum time-limit for detention with a view to surrender and a periodic judicial review, his detention was in breach of domestic law and Article 5 of the Convention, requiring his release.

35. The High Court confirmed that the domestic courts had previously determined the existence of a temporary impediment to surrender, which, in the absence of any changes, was *res judicata* (see paragraphs 28-30 above). Although the previous decisions did not explicitly indicate the applicability of section 57(6) of Law no. 302/2004 to the applicant's case, they

"concretely" indicated the procedural measures under that provision that were relevant given the existence of such an impediment.

36. As to the alleged absence of *force majeure*, after carrying out a detailed review of Law no. 302/2004 and various international and European instruments, the High Court held that the meaning of *force majeure* was specific to the field of international judicial cooperation in criminal matters, as enshrined in international instruments, which Law no. 302/2004 transposed into domestic legislation. Accordingly, contrary to the applicant's submissions, the concept of *force majeure* in an extradition context – described by these instruments, in their English version, as surrender prevented by circumstances beyond the member State's control – was autonomous and distinct from the concept provided for by the Romanian Civil Code.

37. The court noted that the European Court of Justice (CJEU), in the case C-640/15-*Tomas Vilkas*, had interpreted the concept of *force majeure* when it had been asked to determine a request for a preliminary ruling concerning the interpretation of Article 23 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.

38. Reiterating the CJEU's reasoning in *Vilkas* (see paragraph 63 below) and finding itself bound by the interpretation given by the CJEU to *force majeur*e, even when the requesting State was not an EU member State, the High Court concluded that an interim measure which compelled the Romanian State not to surrender an extradited person was an "unforeseeable and inescapable circumstance". The fact that such a circumstance was brought about by the application of the Convention, did not, *eo ipso*, make it foreseeable, since interim measures, although provided for by the Rules of Court, were only indicated by the Court in exceptional cases. Moreover, there was also no requirement that the circumstance be "completely unforeseeable" as long as it was beyond the control of the authorities and extrinsic to the States Parties, as was the present case. Accordingly, contrary to the applicant's submissions, the interpretation of section 57(6) was clear and predictable.

39. Lastly, the High Court held that the 180-day time-limit for pre-trial detention (under the CCP) was not applicable to detention with a view to surrender and, referring to the Court's case-law on Article 5 of the Convention, stated that the absence of domestic provisions concerning a maximum period of such detention and its periodic judicial review did not render the applicant's detention illegal or arbitrary while the extradition proceedings were ongoing and the length of detention was justified and reasonable, with the effective possibility of judicial control.

40. On different dates between May and September 2021, the applicant lodged several sets of proceedings challenging the lawfulness of his

detention, including an unconstitutionality objection (see paragraphs 55–56 below), and seeking less restrictive detention measures pursuant to Article 242 of the CCP. On 14 September 2021, following such a request, the High Court confirmed the lawfulness of his detention but replaced it with house arrest for an initial renewable period of thirty days. In doing so, the High Court held that, although no maximum detention time-limit had been met, the applicant's detention was no longer necessary, and that house arrest was sufficient to ensure compliance with the Court's interim measure and to prevent him from absconding.

41. After yet another unsuccessful challenge on 9 October 2021, on 19 November 2021, referring to the Court's interim measure still in force and its case-law on Article 5 § 1, particularly as regards the reasonableness of the length of detention, the Bucharest Court of Appeal released the applicant and placed him under judicial supervision.

2. Mr Johnson's detention

42. On 7 May 2021, following an application by the department for the execution of sentences, the Court of Appeal, referring to Article 598 § 1 (c) of the CCP (see paragraph 59 below), found that the Court's interim measure of 5 May 2021 represented an impediment to the applicant's surrender to the US authorities. In the same decision, referring to section 57(5) and (6) of Law no. 302/2004 (see paragraph 58 below) as applicable to detention with a view to surrender, it continued the applicant's detention, noting that the interim measure had no bearing, at that time, on his detention, which was *res judicata*, having been ordered in the extradition decision of 5 March 2021 (see paragraph 17 above), and mandatory under section 52(3) of Law no. 302/2004.

43. The Court of Appeal held that Law no. 302/2004 distinguished between detention whilst extradition proceedings were pending before the domestic courts and detention with a view to surrender to the requesting State (sections 43 and 57 respectively), each being governed by its own legal regime. As to the maximum 180-day detention time-limit provided for in section 43(3) of Law no. 302/2004, this was only applicable to detention whilst extradition proceedings were pending before the domestic courts, which was not the applicant's case after the extradition decision of 5 March 2021.

44. An appeal by the applicant against the above-mentioned decision, by which he sought release or less restrictive detention measures, was dismissed on 17 May 2021 by the High Court, which confirmed the Court of Appeal's reasoning.

45. On 7 June 2021 the department for the execution of sentences, noting that the applicant's detention pending his surrender to the US authorities was due to expire on 10 June 2021, lodged a further "objection" to this detention with the Court of Appeal, asking it to determine whether the interim measure

of 5 May 2021 constituted *force majeure* within the meaning of section 57(6) of Law no. 304/2022, which allowed for the applicant's continued detention.

46. On 8 June 2021 the Court of Appeal decided that the Court's interim measure did not constitute *force majeure* and that the applicant's detention would end on 10 June 2021 at 12 midnight.

47. On 10 June 2021 the High Court quashed the above-mentioned decision of the Court of Appeal and held that the applicant's detention had not ended that day. As regards *force majeure*, the court found that its applicability to the applicant's case had been conclusively determined in the affirmative in the decisions of 7 and 17 May 2021 (see paragraphs 42-44 above), as those proceedings had been lodged under and determined by reference to section 57(6) of Law no. 302/2004, which recognised the concept of *force majeure*. As to the applicant's detention, the decisions of 7 May and 17 May 2021 also conclusively determined that, pursuant to section 52(3) of Law no. 302/2004, the Court's interim measure had no bearing on the applicant's continued detention with a view to surrender.

48. On different dates between May and September 2021, the applicant brought several sets of proceedings challenging the lawfulness of his detention, including an unconstitutionality objection (see paragraphs 55–56 below), and seeking to be placed under less restrictive detention measures pursuant to Article 242 of the CCP. On 14 September 2021, following a further application by the applicant, the High Court confirmed the lawfulness of his detention, but replaced it with house arrest for thirty days, which was subsequently reviewed regularly and extended, pursuant to the relevant provisions of the CCP.

49. On 9 December 2021, referring to the Court's interim measure still in force and its case-law on Article 5 § 1, particularly as regards the reasonableness of the length of detention, the Court of Appeal released the applicant and placed him under judicial supervision for sixty days, which was subsequently extended regularly.

E. Events subsequent to notice of the case being given to the Government of Romania

50. On 14 December 2022, after the lifting of the interim measure by the Court on 12 December 2022 (see paragraph 26 above), the department for the execution of sentences, under Article 598 § 1 (c) *in fine* of the CCP and section 43(6) of Law no. 302/2004, lodged an "objection" to enforcement (*contestație la executare*) of the applicants' extradition decisions (see paragraph 17 above). The department for the execution of sentences requested that the Court of Appeal order the applicants' arrest, in the absence of which the final extradition decisions were unenforceable as section 57(4) of Law no. 302/2004 provided that surrender to the requesting State could only be done under escort.

51. 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 applicants' surrender impeded, within the meaning of Article 598 § 1 (c) *in fine* of the CCP, the enforcement of the extradition decisions. Accordingly, under section 43(6) of Law no. 302/2004, the Court of Appeal ordered the applicants' arrest and detention for thirty days, with a view to their surrender to the US authorities.

52. The decisions of 15 December 2022 were amenable to appeal. It does not appear that the applicants appealed against them.

53. According to the Government, as of 3 March 2023, the arrest warrants have not been enforced, and the applicants are listed on the Romanian Police website as wanted persons.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ROMANIA

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

54. 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 57-58 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

55. On 22 May 2022 the Constitutional Court dismissed an unconstitutionality objection by the applicants 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 the surrender.

56. As regards section 57(5) and (6) of Law no. 302/2004, the Constitutional Court upheld the first 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.

57. 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.

58. 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

59. 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

60. 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.

61. 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. EUROPEAN UNION

A. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

62. The relevant provision of the Framework Decision reads as follows:

Article 23
Time-limits for surrender of the person

"(1). The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

(2). He or she shall be surrendered no later than ten days after the final decision on the execution of the European arrest warrant.

(3). If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within ten days of the new date thus agreed.

(4). The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within ten days of the new date thus agreed.

(5). Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released."

B. Vilkas (C-640/15, EU:C:2017:39)

63. The relevant paragraphs from the CJEU's judgment of 25 January 2017 in the case of *Vilkas* are as follows:

"It is apparent from settled case-law, established in various spheres of EU law, that the concept of *force majeure* must be understood as referring to abnormal and unforeseeable circumstances which were outside the control of the party by whom it is pleaded and the consequences of which could not have been avoided in spite of the exercise of all due care (see, to that effect, judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 23; of 18 March 2010, *SGS Belgium and Others*, C-218/09, EU:C:2010:152, paragraph 44; and of 18 July 2013, *Eurofit*, C-99/12, EU:C:2013:487, paragraph 31).

...

However, it is also settled case-law that, since the concept of *force majeure* does not have the same scope in the various spheres of application of EU law, its meaning must be determined by reference to the legal context in which it is to operate (judgments of 18 December 2007, *Société Pipeline Méditerranée et Rhône*, C-314/06, EU:C:2007:817, paragraph 25; of 18 March 2010, *SGS Belgium and Others*, C-218/09,

EU:C:2010:152, paragraph 45; and of 18 July 2013, *Eurofit*, C-99/12, EU:C:2013:487, paragraph 32).

...

Article 23(3) of the Framework Decision must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, the executing and issuing judicial authorities agree on a new surrender date under that provision where the surrender of the requested person within ten days of a first new surrender date agreed on pursuant to that provision proves impossible on account of the repeated resistance of that person, in so far as, on account of exceptional circumstances, that resistance could not have been foreseen by those authorities and the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities, which is for the referring court to ascertain."

III. THE UNITED STATES OF AMERICA

64. 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. JOINDER OF THE APPLICATIONS

65. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court) and to examine them in a single judgment.

II. SCOPE OF THE CASE

66. The Court observes that, after the Government were given notice of the application, the second applicant raised new complaints, in substance under Articles 3 and 5 of the Convention, concerning the risk of receiving a grossly disproportionate sentence in the US and the lawfulness of the second arrest warrant issued on 15 December 2022 (see paragraph 51 above). 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). For these reasons, the Court considers that they fall within the scope of the present case and will examine them below.

67. However, as regards additional complaints raised by the second 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. 12870/23), the Court observes that they are not an elaboration of the complaints of the present case and does not consider it appropriate to examine them in the context of the present case. Similar reasons being applicable to the first applicant's subsequent application (no. 37211/22), the Court rejects, under Rule 42 § 1 of the Rules of Court, the applicants' requests to join the present case and their above-mentioned subsequent applications (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).

III. THE GOVERNMENT'S PRELIMINARY OBJECTION

68. The Government criticised the fact that, shortly after the Court had lifted the interim measure in respect of the applicants on 12 December 2022, they had evaded enforcement of the decisions of 15 December 2022 of the Court of Appeal ordering their rearrest with a view to their surrender to the US authorities (see paragraph 53 above).

69. Pointing out, with respect to the first applicant, that such "unprincipled conduct" leading to the severing of all contact was indicative of his failure to cooperate with the national authorities and the Court and to participate effectively in the proceedings (Rules 44A and 44C § 1 of the Rules of Court), the Government invited the Court to examine it from the perspective of an abuse of the right of individual application (Article 35 § 3 (a) of the Convention). Considering, as regards the second applicant, that a letter which was "challenging to read and understand" sent by his lawyer claimed that he had been arrested on 16 January 2023, which was inaccurate, the Government asked the Court to examine such "misleading information" from the perspective of Rule 36 § 4 (b) of the Rules of Court and as an abuse of the right of individual application (Article 35 § 3 (a) of the Convention).

70. The first applicant's lawyer indicated that, although he had last been in personal contact with his client on 14 December 2022, the latter had confirmed on 5 April 2023 to another duly appointed representative that he wished to pursue his application with the Court and be represented by the same lawyer as before. Moreover, referring to *S.A.S. v. France* ([GC], no. 43835/11, § 67, ECHR 2014 (extracts)), the first applicant's lawyer put forward that failure to surrender to the domestic authorities did not fall within the four categories identified in that case as situations in which the Court applied Article 35 § 3 (a) of the Convention and added that he had complied with the requests and deadlines set by the Court. The second applicant's lawyer, who also submitted a recent power of attorney in his favour dated 7 December 2022 to confirm his client's wish to pursue his application with

the Court, considered that the Government had no reason to give such an interpretation to his letter of 16 January 2023, in which he had provided accurate information as regards the second applicant's detention ordered on 15 December 2022.

71. Taking note of the information provided by the Government, the Court first observes, on the basis of the information provided by the applicants, that while they evaded enforcement of the decisions of 15 December 2022 of the Court of Appeal for their rearrest, they clearly demonstrated their wish to pursue their application with the Court (contrast *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 36, 17 November 2016). Secondly, with respect to the Government's preliminary objection, the Court reiterates that the implementation of Article 35 § 3 (a) of the Convention is an "exceptional procedural measure" and that in order for such "abuse" to be established on the part of an applicant, it requires not only manifest inconsistency with the purpose of the right of application but also some hindrance to the proper functioning of the Court or to the smooth conduct of the proceedings before it (see *S.A.S. v. France*, cited above, § 66).

72. The Court notes with particular concern that, having been released by the domestic courts and placed under judicial supervision to enable compliance with the interim measures indicated by the Court under Rule 39 of the Rules of Court and in application of the Court's case-law under Article 5 § 1, the applicants – who are sought by the US authorities to stand trial on very serious charges – had absconded with a view to evading enforcement of the extradition decision. Such "unprincipled conduct" referred to by the Government does not, however, fall into any of the four types of situations summarised by the Court in the above-mentioned case (ibid., § 67). In particular, the first applicant's conduct, in the circumstances, does not appear to be indicative of a failure to cooperate with the Court, even less of an abuse of the right of individual application, within the meaning of Article 35 § 3 (a) of the Convention. The information presented by the second applicant's lawyer on 16 January 2023, particularly in the form acknowledged by the Government themselves (see paragraph 69 above), cannot be unequivocally interpreted as misleading relevant information.

73. Accordingly, the Court dismisses the Government's objection.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

74. The applicants complained that owing to the risk that they would be sentenced to life imprisonment without parole, their extradition to the US would violate their rights under Article 3 of the Convention, which reads as follows:

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

75. The Court observes at the outset that the applicants' arrest ordered on 15 December 2022 by the Court of Appel in view of their surrender was not enforced and that they appear on the authorities' list of wanted persons (see paragraphs 51-53 above). It has not been alleged that, if they were arrested, they could not be detained with a view to their surrender by virtue of these court decisions. The Government have not submitted any argument to the contrary. The Court holds that the applicants can still claim to be victims with respect to the complaint raised.

A. The parties' submissions

1. The applicants

76. The applicants submitted that it was clear from all the evidence before the Court that they faced a real risk of an irreducible life sentence, which there was no mechanism to review and reduce in the future. The applicants invited the Court to follow its approach in *Trabelsi* (no. 140/10, ECHR 2014 (extracts)), which they submitted was consistent with its earlier case-law, including *Harkins and Edwards v. the United Kingdom* (nos. 9146/07 and 32650/07, 17 January 2012), and which had been confirmed in a series of subsequent judgments of the Court.

77. Following the adoption by the Court of the judgment in the case of *Sanchez-Sanchez* ([GC], no. 22854/20, 3 November 2022), the applicants argued that they had adduced sufficient evidence, in the form of expert evidence, to meet 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 applicants further contended their case was materially different from that of *Sanchez-Sanchez*, including because i) they faced much graver charges; ii) none of their co-conspirators had been convicted; and iii) they would not "escape with impunity", as the Romanian State could open its own investigation into the alleged criminal activity.

78. The applicants 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.

79. In his report dated 3 May 2021, A.C. stated that, on the basis of the allegations against the applicants 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 applicants' challenge to their extradition, raising the offence level to 46.

80. 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 applicants 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 applicants 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.

81. 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 86 below), but those that pertained to the Eastern District of Texas, where the applicants' 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 87 below), as the "real gravamen" of the charges against the applicants was racketeering conspiracy, it was "misleading" to consider the drug-trafficking sentencing statistics.

82. 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

83. The Government argued that, as in *Findikoglu v. Germany* ((dec.), no. 20672/15, 7 June 2016), the applicants had failed to show that there was a real risk of a breach of their Article 3 rights because of their likely sentence if they were convicted. Contrary to the applicants' submissions, the information provided by the US Department of Justice (see paragraphs 85-87 below), which had been duly examined by the domestic courts, indicated that the applicants were "exceedingly unlikely to receive a life sentence or its functional equivalent if convicted". In any event, as the applicants had not yet been tried, as the domestic courts had pointed out, there was no certainty that they would be convicted.

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

85. 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

applicants' case, it was a discretionary sentence for the first two counts on the indictment (see the report referred to in paragraph 64 above).

86. 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.

87. 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 applicants 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 applicants' 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.

88. The Department of Justice also submitted that, if a life sentence were to be imposed, the applicants 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 applicants 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 they 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 applicants' offences, criminal history and background information, as well as a calculation of the recommended sentencing range under the US Sentencing Guidelines, and the applicants and their 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 applicants 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.

89. Lastly, the Department of Justice stated that as far as it was aware, the applicants did not have any prior convictions, and that if they 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

90. 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

91. 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

92. 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

93. As the applicants have not yet been convicted, they must first demonstrate that, in the event of their 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).

94. In carrying out this exercise, which, extradition not yet having taken place, is *ex nunc*, the Court would normally take as its starting point the assessment by the national courts (ibid., § 101). The Court notes that the national courts' findings for the purposes of the "real risk" assessment focused primarily on the reasons why *Trabelsi* (cited above) had to be distinguished from the cases at hand. As *Trabelsi*, on which the applicants relied, was expressly overruled in *Sanchez-Sanchez* (cited above, § 98 *in fine*) and the parties' evidence on the issue of "real risk" (see paragraphs 78 and 84 above) was not before the domestic courts when the applicants' extradition was granted, the Court must examine the evidence before it.

95. The Court observes that the applicants were 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 81 *in fine* above), it is clear from the copious material submitted by the parties that the applicants' criminal activity would be treated for the purposes of sentencing primarily as a drug-trafficking case (see paragraph 86 above).

96. The Court notes the US Department of Justice's submission (see paragraph 85 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 87 above).

97. In *Sanchez-Sanchez* the Court, having reviewed the same report referred to by the US Department of Justice (see paragraph 85 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 applicants are undoubtedly serious, there is nothing in the indictment to suggest that they were the heads of a drug-trafficking organisation or that their illegal conduct led to anyone's death or injury (compare *Sanchez-Sanchez*, cited above, § 106). Furthermore, the evidence

before the Court suggests that the applicants have no prior convictions (see paragraph 89 above).

98. The Court further notes the significant divergence between the US Department of Justice and the applicants' expert on what the relevant offence level would be if the applicants were to be convicted of the charges against them (see paragraphs 79 and 86 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.

99. As the Court noted in *Findikoglu* (cited above, § 39), the length of the applicants' prison sentence might be affected by pre-trial factors, such as agreeing to cooperate with the US Government. Moreover, if the applicants 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 they would have the opportunity to offer evidence regarding any mitigating factors that might justify a sentence below the range recommended by the Sentencing Guidelines. Lastly, the applicants would have the right to appeal against any sentence imposed (see paragraph 88 above) and would enjoy the same procedural safeguards referred to by the Court in *Sanchez-Sanchez*.

100. Lastly, the Court finds it essential to highlight that at the same time as notice of the present case was given to the respondent Government, the applicants were asked to submit examples of sentencing practices of the US trial courts in similar proceedings. However, the applicants have not adduced evidence of any defendants with similar records to themselves who were found guilty of similar conduct and were sentenced to life imprisonment without parole (see *Sanchez-Sanchez*, cited above, § 108).

101. In the light of the foregoing, the applicants cannot be said to have adduced evidence capable of showing that their extradition to the US would expose them to a real risk of treatment reaching the Article 3 threshold on account of the risk that they 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 92 above; see also *Sanchez-Sanchez*, cited above, § 109, *Hafeez v. the United Kingdom* (dec.) no. 14198/20, § 55, 28 March 2023, and *Carvajal Barrios v. Spain* (dec.), no. 13869/22, §§ 96-97, 4 July 2023).

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

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

103. The applicants complained, under Article 5 of the Convention, that their 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

104. 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 applicants

105. The first applicant alleged that his detention after 10 June 2021 had been unlawful, there being no domestic legal basis after the expiry of the relevant detention time-limits (section 57(5) of Law no. 302/2004; see paragraph 54 above). He submitted that the Romanian courts had been inconsistent as regards the applicability of the relevant provisions of the CCP to supplement Law no. 302/2004, particularly as regards less intrusive measures than detention, which had rendered his detention arbitrary. He further contended that the imposition of an interim measure by the Court was not a *force majeure* and that, in any event, the High Court had not ruled on the question of *force majeure* until 29 June 2021, nineteen days after the thirty-day time limit had elapsed on 10 June 2021 (see paragraph 31 et seq. above). This, in itself, meant that the applicant's detention had been, at the very least, unlawful for nineteen days.

106. The first applicant also submitted that the domestic law on *force majeure* had no legal certainty as it was not expressly defined by the provisions of Law no. 302/2004 and did not provide for an express time-limit for the measure of detention subsequent to the final extradition decision, nor a periodic verification. He also referred to the relevance of the Constitutional

Court's examination of the applicants' complaint, which had been pending at the time and had led to its decision no. 359/2022 (see paragraphs 55-56 above).

107. The second applicant reiterated the arguments submitted by the first applicant and emphasised that his detention, particularly after the decision on his extradition (see paragraphs 17 and 20 above), had been arbitrary as Law no. 302/2004 did not contain precise legal provisions for ordering and extending detention with a view to surrender and for setting "fully determined" detention time-limits in such circumstances. He further argued that his detention 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 correlate with.

(b) The Government

108. The Government argued that Law no. 302/2004 complied with 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 applicants' particular context warranted a complex examination of the legal framework which could have required the advice of counsel. 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 detention, 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; see paragraph 54 above).

109. Pointing to the domestic courts' decisions, including the decisions to replace detention with house arrest and subsequently judicial supervision based on a holistic interpretation of the relevant legislation, the Government submitted that the applicants' detention had been carried out in good faith, in close connection with the legitimate purpose of enforcing the final extradition decisions and in strict adherence to the principle of necessity and proportionality.

2. The Court's assessment

(a) General principles

110. 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).

111. 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).

112. 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).

113. 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

114. At the very outset, the Court notes that the applicants' continuous detention may be divided into two distinct periods:

(a) from 19 November 2020 (the applicants' initial arrest) to 1 March 2021 and 5 March 2021 (the first and second applicant's extradition decisions); and

(b) from 1 March to 19 November 2021 (the first applicant's release and placement under judicial supervision) and from 5 March to 9 December 2021 (the second applicant's release and placement under judicial supervision).

According to the Court's case law, house-arrest is considered to amount to deprivation of liberty within the meaning of Article 5 § 1 (*Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 104, 5 July 2016). The periods during which the applicants were placed under house arrest prior to being placed under judicial supervision were therefore included in the overall periods of detention.

115. While their initial complaint concerned in substance the whole period of detention and the lack of correlation between, on the one hand, Law no. 302/2004 and, on the other, the Constitution and the CCP, in their observations the applicants focused their arguments on contesting the lawfulness of their detention after the extradition decisions in respect of them. Therefore, in its examination whether the detention was "lawful", carried out in "good faith" by the domestic authorities and "justified" as regards the progress of the extradition proceedings, the Court will briefly address the first aforementioned period of detention and examine the second period in more detail.

(i) from 19 November 2020 (the applicants' initial arrest) to 1 and 5 March 2021 (the first and second applicants' extradition decisions)

116. The Court notes that the applicants were detained "with a view to extradition" pursuant to sections 43 and 44 of Law no. 302/2004, which, at the material time, provided that detention for that purpose could be ordered for a maximum time-limit of 180 days. It further observes that the applicants' detention "with a view to extradition" until 1 and 5 March 2021 respectively lasted less than the maximum 180-day time-limit provided for in section 43(3) of Law no. 302/2004 and was reviewed by the domestic courts every thirty days, as required by section 43(5) of that Law. These provisions of Law no. 302/2004 under which the applicants were 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 and application of the relevant provisions was contrary to Law no. 302/2004, unreasonable or arbitrary for any other reason. It notes that the applicants' detention was also carried out in good faith and justified throughout these three and a half months by the actions being taken with a view to their extradition, as required by Article 5 § 1 (f) of the Convention.

In sum, the applicants' detention from their arrest on 19 November 2020 until the decision ordering of their extradition on 1 and 5 March 2021 respectively, was lawful.

(ii) from 1 March to 19 November (the first applicant) and from 5 March to 9 December 2021 (the second applicant)

117. The Court notes, in line with the wording employed by Law no. 302/2004, also reflected in the domestic decisions and in the parties' observations, that the period under consideration may be further divided into two subperiods:

(a) from 1 and 5 March to 10 June 2021 for the first and second applicant respectively; and

(b) from 10 June 2021 until their release and placement under judicial supervision on 19 November (the first applicant) and 9 December 2021 (the second applicant – see paragraph 121 below).

(α) from 1 and 5 March to 10 June 2021 for the first and second applicant respectively

118. As regards the first subperiod, the Court observes from the relevant domestic decisions that the applicants were detained "with a view to surrender" pursuant to sections 52(3) and 57 of Law no. 302/2004. These provisions, together with section 43(7) of that Law, set the rule of 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 (see paragraphs 27 and 54 above). 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 the agreement itself on a surrender date.

119. In the present case, the applicants' extradition was ordered on 1 and 5 March 2021 respectively. Subsequently, 12 May 2021 was fixed as surrender date (see paragraph 23 above). The domestic courts held that the interim measure indicated by the Court (see paragraph 25 above) with regard to the applicants was only a temporary impediment to their surrender initially scheduled for 12 May 2021 and referred to the above-mentioned procedure allowing them to be kept in detention until 10 June 2021 (see paragraphs 28, 30 and 42 above). In examining the lawfulness of the applicants' detention with a view to surrender, the domestic courts also responded to their

arguments and, for instance, pointed to the specific regime of Law no. 302/2004, particularly clear as regards detention with a view to surrender, compared to the general regime provided for by the CCP for pre-trial detention, an interpretation that was later confirmed by the Constitutional Court in its decision no. 359/2002 (see paragraphs 29, 43 and 55 above).

120. Therefore, the Court considers that during the first subperiod in question, that is from 1 and 5 March 2021 respectively until 10 June 2021 the applicants' detention has not been unlawful, arbitrary or not carried out in "good faith" by the domestic authorities and was "justified" as regards the progress of the extradition proceedings.

(β) from 10 June 2021 until their release and placement under judicial supervision on 19 November (the first applicant) and 9 December 2021 (the second applicant)

121. As to the second subperiod of detention, the Court observes that the domestic courts based it on the exception provided for in section 57(6) of Law no. 302/2004 (see paragraphs 32, 47 and 54 *in fine* above) and the existence of *force majeure*, which prevented the applicants' surrender to the requesting authorities.

122. Aware of the amendment of the relevant domestic provisions concerning detention under *force majeure* following decision no. 359/2022 of the Constitutional Court (see paragraphs 56-58 above), the Court reiterates that it has held in cases concerning Article 5 § 1 of the Convention that it is not for it to rule *in abstracto* on the compatibility with the Convention of the national legislation as it existed at the time of the facts. In cases arising from an individual application, the Court's task is to ascertain whether the way the relevant domestic provisions has been applied to the applicants violated the Convention (see *Tercan v. Turkey*, no. 6158/18, § 131, 29 June 2021). Moreover, a legal provision is not inconsistent with the "foreseeability" requirement for the purposes of the Convention simply because it lends itself to more than one interpretation. The decision-making function entrusted to the courts serves precisely to dispel any doubts about the interpretation of legal rules, taking into account developments in daily practice (ibid., and *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 96-97, 20 January 2020). On the other hand, the Court must assess, *in concreto*, the impact of the application of this legislation and of the relevant case-law on the applicant's right to liberty, as guaranteed by Article 5 of the Convention (see *Tercan*, cited above, § 131, and, *mutatis mutandis*, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 60, ECHR 1999-II).

123. The Court observes at the outset that, in separate decisions adopted on 10 June 2021, the Court of Appeal and the High Court – for the first and second applicant respectively – held that the applicants' detention with a view to surrender, which had already been examined by the domestic courts in the context of an ongoing impediment represented by the Court's interim

measure, was still required and had its legal basis in section 57(6) of Law no. 302/2004 (see paragraphs 32 and 47 above). Therefore, the Court cannot accept the first applicant's argument that his detention between 10 and 29 June 2021 had no legal basis (see paragraph 105 above), given that the Court of Appeal had already relied on *force majeure* within the meaning of section 57(6) of Law No. 302/2004, a finding which the High Court confirmed and substantially extended in its decision of 29 June 2021 (see paragraphs 33 and 35-38 above).

124. As regards the "quality of law", the applicants complained in particular about a lack of legal certainty, pointing out that Law no. 302/2004 did not define the notion of *force majeure*, nor did that Law set a "fully determined" time-limit for the detention it covered or provide for a periodic review. The Court reiterates that, particularly where there is a legal term aimed at encompassing various exceptional situations and in the absence of relevant domestic case-law, the role played by the domestic courts to dispel any doubts which might subsist as to the interpretation of such a norm in a specific context is not by itself indicative of a lack of legal certainty of that norm (see paragraph 122 above and the case-law cited therein). In dismissing the first applicant's arguments, in its decision of 29 June 2021 the High Court provided detailed reasoning concerning the interpretation of *force majeure* provided for in section 57(6) of Law no. 302/2004, in the specific context of international judicial cooperation (extradition) and with reference to relevant international conventions and case-law (see paragraphs 36-38 above). It concluded that *force majeure* was applicable where an interim measure had been indicated by the Court, seen as an unforeseeable and inescapable circumstance outside the authorities' control.

125. The Court is mindful that, subsequent to the applicants' detention, in decision no. 359/2022 the Constitutional Court invited the legislature to amend the legal framework concerning *force majeure* in order to avoid the risk of indefinite detention with a view to surrender, following which amendments were made to the relevant provisions of Law no. 302/2004 (see paragraphs 56-58 above). However, as these events only occurred after the applicants' detention had come to an end, they did not render the procedure in their case and the measure in question retroactively void and, more generally, did not in themselves warrant the conclusion that the applicants' detention had previously been contrary to the Convention (see, *mutatis mutandis*, *Porowski v. Poland*, no. 34458/03, § 122, 21 March 2017). Moreover, the Court reiterates that, in its examination on a case-by-case basis of the lawfulness of detention, it does not focus only on the existence of fixed time-limits, which as such are not a requirement of Article 5 § 1 (f) of the Convention (see *J.N. v. the United Kingdom*, cited above, § 83), but whether there were "safeguards against arbitrariness" which allowed the applicants to have the lawfulness and reasonableness of their detention examined *in concreto* by the domestic courts.

126. The Court observes that in a recent case it took issue with the domestic authorities' decision to suspend the applicant's extradition until further notice based on a *force majeure*-type provision of the 1957 European Convention on Extradition, as in the absence of an agreed surrender date the decision in question had deprived the applicant of procedural guarantees (see *Khokhlov v. Cyprus*, no. 53114/20, §§ 58, 70 *in fine* and 101 *in fine*, 13 June 2023). It also highlighted that, in such circumstances, the necessity of procedural safeguards became decisive and pointed to the absence of such safeguards in that case (ibid.), which added to its conclusion about prior procedural delays that had affected the extradition detention of more than two years (ibid., §§ 95 and 98-99). The present case should, however, be distinguished from *Khokhlov* because the applicants did not complain about any specific delays and have benefited from procedural safeguards.

127. In that connection, the Court observes that throughout this period and despite the absence of specific legal provisions in Law no. 302/2004 itself, the domestic authorities and courts re-examined the lawfulness of the applicants' detention, either of their own motion or at the applicants' request. Also referring to the requirements of the Convention, the domestic courts applied less restrictive preventive measures pursuant to the CCP, namely house arrest and, later, namely on 19 November and 9 December 2021 respectively, ordered the applicants' release and placement under judicial supervision, holding that their detention with a view to surrender, which had lasted approximately nine months for each of them, was no longer justified in the light of their individual circumstances and from the specific perspective of surrender (see paragraphs 40-41 and 48-49 above; compare, *inter alia*, *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).

128. The Court notes in particular that it was its own interim measures, which were indicated under Rule 39 of the Rules of Court for the proper conduct of the present proceedings, that temporarily prevented the applicants' extradition to the US. The Court has previously found that where expulsion or extradition proceedings are provisionally suspended as a result of the application of an interim measure, that does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, and on condition that the detention is not unreasonably prolonged (see *Ahmed*, cited above, § 44; *H.S. and Others v. Cyprus*, nos. 41753/10 and 13 others, § 311, 21 July 2015; and *M.D. and Others v. Russia*, nos. 71321/17 and 8 others, § 125, 14 September 2021). In the present case, the Court does not consider the applicants' detention, either during this specific period or overall, to have been unreasonably long or unjustified in the light of the authorities' diligence and their interest in the progress of the procedure. Lastly, there is no indication that the authorities

acted in bad faith or that the applicants' detention – which was in accordance with section 57(6) of Law no. 302/2004 as in force at the material time – was arbitrary for any other reason, such as the domestic courts only reconsidering the possibility of alternative measures to detention pursuant to the CCP a few months after the failure of the initially scheduled surrender.

In short, the applicants' detention from 10 June 2021until their release and placement under judicial supervision on 19 November 2021 (the first applicant) and on 9 December 2021 (the second applicant) was also lawful.

(iii) The Court's conclusion on the merits of the applicants' complaint under Article 5 § 1 of the Convention

129. In the light of the above considerations, the Court considers that the applicants' detention with a view to their extradition and surrender was in accordance with Article 5 § 1 (f) of the Convention.

130. It therefore finds that there has been no violation of Article 5 § 1 (f).

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

131. Relying on Article 5 of the Convention, the applicants complained that the lawfulness of their detention had not been periodically reviewed after their 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

132. The applicants submitted that by failing to periodically review the lawfulness of their detention subsequent to the extradition decisions, the authorities had failed to comply with their obligations under Article 5. Even taking into account the decisions taken by the domestic courts in that respect during that period, the belated application of less intrusive measures than detention pursuant to the CCP in completion of *lex specialis* Law no. 302/2004 following a "holistic" analysis made by these courts called the effectiveness of any remedy into question.

133. 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 applicants, 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 their detention with a view to surrender, the judicial supervision mechanism had allowed for a review of the lawfulness of the detention, either through the applicants' own challenges or through *ex officio* requests by the judge responsible for the execution of sentences. Following an extensive analysis and interpretation, in a "holistic" manner, of the relevant legal provisions, including the CCP, and of the applicants' circumstances, the domestic courts had replaced the detention with placement under judicial supervision on account of the applicants' changing situation.

B. The Court's assessment

1. General principles

134. 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 v. Malta*, no. 24340/08, § 40, 27 July 2010). 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).

135. 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 the Court's task to enquire into what the most appropriate system in the sphere under examination would be. 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 *Reinprecht v. Austria*, no. 67175/01, § 33, ECHR 2005-XII), 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

136. Referring to the above principles, the Court observes that from 1 March to 19 November 2021 (for the first applicant) and from 5 March to 9 December 2021 (for the second applicant), particularly until the applicants were placed under house arrest, 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 in surrender (see paragraph 55 above) – the lawfulness of the applicants' detention was examined several times either at the request of the latter or the judge responsible for the execution of sentences (see paragraphs 28 et seq. and 42 et seq. above). Whether such requests were classed as "objections" to enforcement (Article 598 § 1 (c) of the CCP) or 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 applicants' 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, §§ 128-129, 3 April 2014).

137. 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 applicants and, later, after they applied the *force majeure* exception provision, the need to keep the applicants in detention or subject them to alternative, less restrictive measures (see paragraphs 28 et seq. and 42 et seq. above). The domestic courts were also particularly diligent, as their decisions on the lawfulness of the applicants' detention were adopted within a few days or within three weeks, at two levels of jurisdiction.

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

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

139. Lastly, the second applicant complained, under Articles 3 and 5 of the Convention, about the risk of receiving a grossly disproportionate

sentence in the US and of the lawfulness of the second arrest warrant issued on 15 December 2022.

140. 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. *Decides* to join the applications;

2. *Declares* the complaint under Article 5 § 1 (f) of the Convention with respect to the applicants' detention until their release and placement under judicial supervision admissible and the remainder of the applications inadmissible;

3. *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