# HØJESTERETS KENDELSE
## afsagt tirsdag den 13. august 2024

**Sag 7/2024**

Anklagemyndigheden
mod
T
(advokat Eddie Omar Rosenberg Khawaja, beskikket)

I tidligere instanser er afsagt kendelse af Retten på Frederiksberg den 20. september 2023 (2681/2023) og af Østre Landsrets 16. afdeling den 6. november 2023 (S-2609-23).

I påkendelsen har deltaget tre dommere: Oliver Talevski, Lars Apostoli og Kristian Korfits Nielsen.

**Påstande**
T har nedlagt påstand om stadfæstelse af byrettens kendelse om ikke at tage anmodningen om udlevering af ham til strafforfølgning i Moldova til følge.

Anklagemyndigheden har påstået stadfæstelse af landsrettens kendelse om, at T skal udleveres til strafforfølgning i Moldova.

**Sagsfremstilling**
T indrejste i Danmark den 19. eller 20. september 2022. Den 5. december 2022 blev T antruffet i Danmark af politiet, som blev opmærksom på, at T var internationalt efterlyst af Moldova. Som følge heraf blev han anholdt og den efterfølgende dag fremstillet i grundlovsforhør ved Retten på Frederiksberg, hvor han blev varetægtsfængslet.

Den 13. december 2022 gennemførtes en afhøring af T i arresten i Vestre Fængsel til belysning af hans personlige forhold. T forklarede efter det oplyste følgende:

> ”Afhørte forklarede at han ikke havde nogle problemer i Moldova, udover at han var blevet dømt til 14 års fængsel for noget han ikke havde begået. Afhørte forklarede at der i 2020 skete en tragedie i Soroca hvor en tidligere politimand døde, og at det var afhørte som blev gjort til syndebuk. Afhørte forklarede at der ikke var noget retfærdighed tilstede i Moldova, og afhørte vidste fra start, at han ikke ville få en retfærdig rettergang. Afhørte forklarede at han blev fængslet og efter mange måneder overført til husarrest. Her blev han konstant overvåget og chikaneret af gamle venner til afdøde. Inden sagen var afgjort blev afhørte bedt om at betale 120.000 euro til afdødes familie. Afhørte forklarede at han ikke havde så mange penge, han havde heller ikke tænkt sig at betale, da han ikke var skyldig i det som var sket. Afhørte forklarede at han ikke var fysisk tilstede i retten i Soroca den dag dommen faldt, han oplyste at han valgte ikke at møde op, da der ikke var retfærdighed tilstede.
>
> Afhørte forklarede at han ville modsætte sig udlevering til Moldova. Han forklarede at han ikke kunne tage tilbage dertil, da han ville blive slået ihjel af pårørende/familie til den afdøde. Den afdøde havde mange venner i politistyrken i Moldova og nye forbindelser til mafiaen i Moldova. Han var blevet for fulgt og chikaneret af disse mennesker under sin husarrest. Afhørte forklarede at han ikke ville overleve at blive sendt retur, han var overbevist om at han ville blive slået ihjel i Moldova”

Den 29. december 2022 anmodede de moldoviske myndigheder om udlevering af T til strafforfølgning. Af det vedlagte anklageskrift af 22. januar 2021 fremgik, at T var tiltalt for hooliganisme og forsætlig vold med døden til følge ved den 4. november 2020 at have tildelt to forskellige personer et slag i ansigtet med knyttet hånd, hvorved den ene pådrog sig hævelse, et blåt øje samt en hævet og blødende underlæbe. Den anden faldt og pådrog sig alvorlige skader og afgik senere ved døden. Af den vedlagte dom af 29. april 2022 afsagt af Distriktsretten i Sorrocca i Moldova i 1. instans fremgik, at T blev idømt 14 års fængsel for overtrædelse af den moldoviske straffelovs artikel 151, stk. 4. Retten lagde i sin afgørelse vedrørende skyldsspørgsmålet navnlig vægt på vidneforklaringerne samt de retsmedicinske erklæringer. For så vidt angår hooliganisme traf retten afgørelse om, at strafforfølgningen blev afsluttet i henhold til amnestilov af 24. december 2021.

Som følge heraf indledte Rigsadvokaten en udleveringssag. Ved brev af 30. december 2022 anmodede Rigsadvokaten de moldoviske myndigheder om oplysninger om, hvilke forhold T ville blive undergivet under varetægtsfængsling og afsoning, såfremt han måtte blive udleveret til Moldova. Af brevet til de moldoviske myndigheder fremgik bl.a.:

> "2. In the assessment of the Moldovan request for extradition the Danish authorities takes into account all available information in the request and publicly available information, including CPT-report to the Republic of Moldova dated 15 September 2020.
>
> Against this background, the Director of Public Prosecutions finds it necessary to request supplementary information, and therefore kindly requests the Moldovan authorities to provide the following information:
>
> 1) Information about the current status in Moldovan prisons regarding the problems with overcrowding, physical ill-treatment and inter-prisoner violence and intimidation as described in CPT-report to the Republic of Moldova dated 15 September 2020.
>
> 2) Information about in which prison T will serve the sentence and the current information about these facilities under which he will be imprisoned:
>    a) square metres of personal space in the cell
>    b) the possibility of physical activity and rec-reation
>    c) access to natural light, ventilation and heating,
>    d) overcrowding,
>    e) sanitary facilities, hygiene, and
>    f) medical treatment and control of medical health.
>
> 3) A specific guarantee that T, if surrendered to Moldova, will not be exposed to prison conditions that are in breach of Article 3 of the European Convention on Human Rights."

Rigsadvokaten har ved brev dateret den 10. januar 2023 modtaget en udtalelse fra Justitsministeriet i Moldova. Ministeriet henviste i sin udtalelse til en vedlagt garanti af 4. januar 2023 udstedt af "The National Administration of Penitentiaries". Endvidere oplyste ministeriet bl.a., at dommen af 29. april 2023 afsagt af Retten i Sorocca af T er anket til Appelretten i Bălţi.

Det fremgår af den vedlagte garanti, at såfremt T udleveres til Moldova, vil han kortvarigt blive indsat i fængsel nr. 13 i Chişinău, hvor han garanteres et personligt rum på mindst 4 m2. Eventuel afsoning vil skulle ske i fængsel nr. 3 i Leova, hvor han garanteres et personligt rum på mindst 4 m2. Om forholdene i de to fængsler fremgår bl.a.:

> "The detention regime in the given institution presupposes the detention of persons in rooms completely insulated, which are permanently locked. Detainees are detained in the common cells of the criminal detention facility, in compliance with the main requirements of the detention regime on the isolation, guarding and permanent supervision of detainees, as well as the rules of separate detention.

The following detention cells / spaces have been identified in the above-mentioned penitentiary institution, which guarantee the assurance of the detention conditions as fol-lows: Regime block no. I, cells no. 10; 11; 12; 93; 96; 98; 103, Regime block no. Ill, cells no. 106; 106A; 110; 111; 112; 113; 114; 114A; 127; 133; 137; 141; 156; 157; salons no. 06; 07; 08; 09; 10; 13; 15; 18; 19; 20.

With reference to the request of the Danish party regarding the problems of overcrowding, we inform that, given the fact that the Penitentiary No. 13-Chisinau is still overcrowded, the premises identified as state guarantees in case of possible extradition from abroad, will ensure adequate conditions of detention with respect to a minimum of 4 m2 of detention excluding the area occupied by annexes / sanitary block. In this regard, in the event of Ts possible extradition and placement in Penitentiary No. 13-Chisinau, he will be detained in one of the identified premises that have been presented as State guarantees, both alone and jointly with other detainees, provided that this will not endanger his safety.

All the specified spaces were subjected to the capital repair, which consisted of changing the windows, bars, separating the sanitary installations through a wall to the ceiling and installing the door, plastering the walls, ceiling and floors, drawing the engineering networks (electricity, sewerage, aqueduct and supply with thermal agent), endowment with new furniture. Ventilation and airiness are pro-vided through the windows of the cell, as well as through the window above the front door. The institution has autonomous heating, which ensures the heating of the rooms during the cold period of the year, so that the temperature in the detention areas is on average 19 °C - 22 °C.

Subsequently, within 15 days from the receipt of the enforcement order, the citizen T will be transferred to Penitentiary no. 3-Leova in order to serve the criminal sentence of deprivation of liberty.

Thus, following the evaluation of the detention conditions in Penitentiary no. 3-Leova, the following detention facilities have been identified that meet the requirements for the acceptance of extraditions, as follows:

Detention cells / spaces in which one person can be ac-accommodated - Sector no. 4 (new block) (cells 36; 40; 42; 50; 56; 60; 62; 68; 70; 76; 80; 82; 88)

Detention cells / spaces where 2 to 4 people can be ac-accommodated - Sector no. 4 (new block) (cells 33-35; 37-39; 41; 43-49; 51-55; 57-59; 61; 63-67; 69; 71-75; 77-79; 81; 83-87).

The spaces identified in Penitentiary no. 3-Leova, which are presented as state guarantees in case of possible extraditions from abroad, are located in a new detention block, recently put into operation; the conditions of detention correspond to the minimal norms.

It is worth mentioning that in all the spaces indicated above, the extradited person will be detained in one of the identified cells, which will provide at least 4 square meters excluding the area occupied by annexes / sanitary block and will be able to move freely around the furniture. Any cell occupied by the extradited person during detention will

have light provided both naturally, by means of win-dows, which correspond to the statutory norms (1.2x0.9 m) and artificially from the basic lighting system powered by the 220V mains network, mattress and clean beds, without pests. The extradited person will have outdoor activities for at least one hour a day, the duration of the walks is determined by the administration of the place of detention taking into account the daily schedule, weather conditions, completion limit and other circumstances, which are carried out in a specially arranged place on the territory of the penitentiary and are organized according to a mobile schedule. Likewise, until the distribution in the cell, the institution will ensure that it is equipped with all the provided inventory items. The extradited person will also be given the opportunity to meet their physiological needs in clean and decent conditions, the toilets being separated from the rest of the room by a wall up to the ceiling and door. At the same time, the extradited person will be provided with the possibility to take a bath or shower, at acceptable temperatures, whenever it requires general hygiene, but not less than once a week. The extradited person will have the right to wear his / her own clothes, provided that a decent and clean appearance is ensured. If he / she does not have his / her own clothes, depending on the season or sufficient financial means, the administration of the
penitentiary will provide him / her with clothes free of charge. At the same time, the extradited person will be provided with a bed and sheets, which are changed at least once a week.

At the same time, we inform that the National Administration of Penitentiaries reserves the right to transfer the prisoner to other penitentiary institutions for short periods of time in case it will be necessary for the prisoner to participate in procedural actions, which cannot be carried out in his absence or by videoconference.
…

The convicts are provided with hot food at the expense of the state budget, 3 times a day, in compliance with the minimum norms established by the Government.
…

The extradited person will receive free medical care and medicines in the volume established for the civil sector. Free medical assistance is provided in the medical unit of the penitentiary institution after prior registration and according to a schedule approved by the director of the penitentiary, except emergencies. The extradited person receives therapeutic, surgical, psychiatric, gynaecological and dental assistance. He / she can also benefit from the services of a private doctor on his / her own. Pursuant to the decision of the specialized medical commission, per-sons suffering from tuberculosis, venereal diseases, alco-holism, and drug abuse or drug addiction are subject to compulsory treatment. In case of a serious illness or the finding that the extradited person has been subjected to torture, cruel, inhuman or degrading treatment or other ill-treatment, the administration of the penitentiary shall also inform the family or other persons close to the detainee of this fact.
…

With reference to the request of the Danish party for information concerning the situation with regard to the problems of ill-treatment, violence and intimidation among detainees described in the CPT report to the Republic of Moldova, we inform you that:

- …

- In order to improve the quality of video documentation of incidents taking place in penitentiary institutions, by order of the Director of the National Administration of Penitentiaries No 616 of 28.12.2021 was approved the "Regulation on the organization and operation of the portable video surveillance system "Body camera". According to the provisions of the given regulation, video recordings are mandatory started when the employee enters in contact with the detained persons until the end of the communication, and the term of retention of recordings is 180 days. However, the period may be extended in the event of a work-related investigation, at the request of the criminal prosecution body, prosecutor or judge. Similarly, during 2021, all penitentiary institutions under the National Administration of Penitentiaries were subject to an evaluation of the functionality of the stationary video surveillance system (CCTV). As a result of the evaluation, recommendations were made on making the operation of video systems in prisons more efficient, replacing surveil-lance and storage equipment.

At the same time, the extradited person will be provided and ensured a reasonable protection against violence and negative influence from behalf of the non-formal leaders. In this regard, the prison staff will take several measures, as follows:

- detention separately from convicted persons who have previously served their prison sentences and who have a criminal record not extinguished;

- detention separately of those sentenced to life imprisonment;

- ensuring personal security at his/her request or ex officio, according to the provisions of art. 206 of the Enforcement Code;

- placement in the cell with other detainees is carried out together with the evaluation of the compatibility of the detainees and the reduction of the risks of violence.

- permanent supervision of the behaviour of convicts both during the day and at night;

- movement outside the cell during the day from waking up to sleep will be carried out controlled both by physical accompaniment from the employees and by video monitoring of the common access spaces for the detainees;

- participation in group, recreational activities take place in the presence of the employees of the penitentiary institution or video surveillance of the spaces in which it takes place.

- carrying out planned and unannounced search measures to detect and seize prohibited objects that could be used by other convicts to commit acts of violence;

- carrying out special investigation activities aimed to prevent acts of violence between convicts;

- in case of an incident, the immediate separation of the aggressor from the victim.

We also inform you that, in case T will be detained jointly with other detainees, and in the course of detention will be subject to acts of violence by one or more detainees with whom he is detained jointly, the person/persons who committed the acts of violence will be removed from the cell and placed in other detention facilities.

In case of receipt of a written request from the detainee T for his removal from the cell where the persons deprived of liberty who committed the acts of violence are held and placement in another cell where he will be detained alone or jointly with other persons deprived of liberty, he will be transferred to another cell, according to his request.
…

It is worth mentioning that in 2021, in a working group at the level of the NAP, the situation regarding the conditions of detention in all penitentiary institutions was analysed, and a separate detention sector was identified in Penitentiary No. 3-Leova that meets the requirements for accepting extraditions. Similarly, cells have been identified within Penitentiary No. l3-Chisinau which are repaired and adequately equipped. Within the same group, in order to ensure that the guarantees presented in the case of all extraditions are respected, at the level of the National Administration of Penitentiaries by the order of the Director No. 553 of 07.12.2021, the "Procedure for the reception of Moldovan citizens extradited from partner states to the Republic of Moldova for detention in penitentiary institutions, based on the guarantees presented by the national authorities" was approved. The document aims to regulate all actions of employees and processes to which the person to be extradited on the basis of guarantees is subject at all stages of detention in penitentiary institutions of the Republic of Moldova.
…"

På baggrund heraf fandt Rigsadvokaten, at betingelserne for udlevering var opfyldt, hvorfor Rigsadvokaten den 24. februar 2023 indbragte sagen i medfør af udleveringslovens § 35, stk. 1, for Retten på Frederiksberg med indstilling om, at retten traf afgørelse om udlevering af T til de moldoviske myndigheder til strafforfølgning. Under udleveringssagens behandling i Retten på Frederiksberg forklarede T bl.a. følgende:

"Han kender godt til fængsel nr. 13 i Chisinau. Det er værre end det, han sad i. Det er hovedfængslet. De fotos, der er i hans moldoviske forsvarsadvokats redegørelse, er sådan, det er. Han ved godt, hvad han i givet fald vil blive sendt til. De gode celler er til rige mennesker eller politibetjente. Han har ingen forbindelser til at skaffe sig sådanne

forhold under varetægtsfængsling eller afsoning. Han vil gerne afsone i andre lande, hvis han skal straffes, men ikke i Moldova.

Han mener ikke, at han har mulighed for en retfærdig rettergang i det moldoviske retssystem. Selve dommeren, der førte sagen, truede ham. Han kunne ikke få lov til at fortælle sin version af sagen. Hans forsvarsadvokat gjorde, hvad han kunne, men alt blev afvist.

Han tror ikke på en retfærdig rettergang i anken. De fem involverede personer i sagen har nogen, der beskytter dem. De ved godt, at han er uskyldig. De har aftalt med højere instanser, højere placerede mennesker, at han skulle have skylden for drabet. Han handlede i selvforsvar. Det får man ikke 14 år for. Men han tror ikke, at det er muligt, at straffen vil blive nedsat ved appeldomstolen. Hans advokat blev afbrudt, når advokaten forsøgte at stille spørgsmål til vidnerne.
…

Fængsel nr. 3, Leova, har han hørt om. Han ønsker ikke at afsone der. Det har han ikke tillid til. Han er bange for det. Han er bl.a. bange for, at de personer, han taler om, har forbindelser. Der er mange, der bliver slået ihjel i fængslerne. Det er ikke muligt at blive ordentligt beskyttet i fængslerne. Han tror ikke, der findes et andet land som Moldova. Andre kan ikke forestille sig, hvor slemt det er.
…

De ustabile politiske forhold i Moldova vil indvirke negativt på afsoningsforholdene også. De er tæt på krigen i Ukraine. Han kan ikke se en fremtid, hvis han skal afsone 14 år i Moldova.
…

Han ønsker at tilføje, at han kom til Danmark for at søge retfærdighed og for at opnå beskyttelse fra dem, der vil slå ham ihjel i Moldova. Han kan godt forstå, hvis de ting, han siger, lyder utrolige, men forholdene er helt anderledes i Moldova, end de er her.

Hans forsvarer fik kun en times varsel til retsmødet ved appeldomstolen, så hun ikke kunne deltage. Det gjorde de med vilje. Han har ikke nogen rettigheder. Han nægtede at tage en anden advokat end sin forsvarsadvokat, men fik at vide, at han ikke havde nogen rettigheder.

Det har været svært for ham at bevise, at han er uskyldig."

Ved kendelse af 20. september 2023 traf Retten på Frederiksberg afgørelse om, at T ikke skulle udleveres til strafforfølgning i Moldova. I kendelsen hedder det bl.a.:

"*Rettens begrundelse og resultat*
…

*Spørgsmålet om, hvorvidt udlevering vil være i strid med udleveringslovens § 6, stk. 2 (Den Europæiske Menneskerettighedskonventions artikel 3)*

I "Amnesty International Report 2022/23 THE STATE OF THE WORLD'S HUMAN RIGHTS", s. 254, er om Moldova bl.a. anført:

> "No visible progress was made in reducing instances of torture and other ill-treatment in detention."

Af rapportens s. 255 fremgår endvidere:

> "No visible progress was made in addressing institutional causes of torture and other ill- treatment in detention. Overcrowding, unsanitary and otherwise inadequate detention conditions and poor health provision remained common in adult, juvenile and mixed penitentiary institutions."

Af "U.S. Department of State 2022 Country Reports on Human Rights Practices: Moldova" fremgår på s. 5 bl.a.:

> "Prison and Detention Center Conditions
>
> Conditions in most prisons and detention centers remained harsh, due to overcrowding, poor sanitation, lack of privacy, insufficient or no access to outdoor exercise, and a lack of facilities for persons with disabilities. In a June statement on the International Day in Support of Victims of Torture, several human rights organizations, including Amnesty International Moldova, Promo-Lex, and the Legal Resources Center, stated that detention conditions in the country, particularly at Penitentiary No. 13 in Chisinau, did not meet minimum standards to prevent and combat torture and inhuman or degrading treatment."

Af "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPE-AN COUNCIL AND THE COUNCIL - Commission Opinion on the Republic of Moldova's application for membership of the European Union" af 17. juni 2022 fremgår på s. 9 bl.a.:

> "More needs to be done concerning the right to fair trial and the adequate investigation and prosecutions of acts of ill treatment.
>
> People deprived of their liberty do not enjoy all the fundamental legal safeguards from the outset of their detention. The inadequate investigation of alleged cases of illtreatment leads to a sentiment of impunity. Conditions in places of detention and pretrial detention remain below international standards, notably due to overcrowding of prison facilities, lack of effective medical service or use of lengthy solitary confinement as a disciplinary measure."

Af "Report to the Moldovan Government on the ad hoc visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 13 December 2022" fremgår bl.a.:

(s. 3) “[...] it is regrettable that many key recommendations repeatedly made by the CPT in previous visit reports remain unimplemented. This concerns in particular recommendations related to the phenomenon of informal prisoner hierarchy and the resulting inter-prisoner violence and intimidation, to the poor material conditions for the majority of persons held in prison, the poor regime of activities offered to incarcerated persons and the low staffing levels in prisons insufficient to effectively control the establishments. [...]

Once again, a high number of persons held in prison described to the delegation the overall atmosphere of intimidation and violence created by the informal prison leaders and their close circles. The documentation examined by the delegation again registered numerous cases of persons held in prison who were found with injuries indicative of interprisoner violence. Due to the atmosphere of fear and the lack of trust in the staffs ability to guarantee safety, persons found by staff with injuries refused to provide a plausible explanation as to the origin of their injuries. Moreover, although all cases of inmates bearing injuries were registered and reported to the prosecutor’s office, in none of the cases was an investigation initiated.

[...]

Once again, the delegation received many complaints of frequent verbal abuse, systematic demeaning behaviour by other persons held in prison and threats of physical violence. As already stressed in previous visit reports, the CPT considers that their situation could be considered to constitute a continuing violation of Article 3 of the European Convention on Human Rights.”

(s. 4) “Material conditions in the establishments visited in general were poor, many cells/dormitories being dilapidated, dirty and poorly equipped. Although the prison system operated below its official capacity, the delegation again observed overcrowding in a number of cells and dormitories at Chisinau and Cricova Prisons.

[…]

Further, the delegation observed a strikingly uneven distribution of prisoners within the establishments visited, a situation closely linked with the phenomenon of informal prisoner hierarchy; certain privileged prisoners were dwelling in spacious rooms or even small flats consisting of several rooms, with abundant equipment. The CPT recommends, inter alia, that prisoners be fairly distributed in cells/dormitories and be provided at least 4 m2 of living space per person, and that all cells/dormitories be kept in adequate state of repair and hygiene and be suitably equipped.

[...]

The situation was even more problematic for adult remand prisoners at Chisinau Prison who continued to be locked up in their cells for up to 23

hours per day, without being offered any out-of-cell activities, apart from one or, at best, two hours of daily outdoor exercise"

(s. 5) "Ever since its first visit to Moldova in 1998, interprisoner violence and intimidation in prisons has been a matter of grave concern to the CPT. Most recently, during the January/February 2020 visit, the CPT found that this issue remained as serious as ever among the adult male inmate population and was, as in the past, largely linked to the wellestablished informal hierarchies amongst prisoners in the country's prison system."

(s. 6) "As was already stated in the reports on the 2015, 2018 and 2020 visits […] the CPT once again calls upon the Moldovan authorities to take decisive action to address the longstanding recommendations made by the Committee,"

(s. 8) "Although the prison system as a whole and most prison establishments operated below their official capacity (the most notable exception being Prison no. 13 in Chisinau (see paragraph 15)), the delegation again observed overcrowding in a number of cells and dormitories in the prisons visited, in particular at Chisinau and Cricova Prisons. This was at least partially caused by a strikingly uneven distribution of prisoners within the establishments, a situation closely linked with the phenomenon of informal prisoner hierarchy [...]"

(s. 10) "Chisinau Prison has been visited by the CPT several times in the past, most recently during the 2020 visit. The detention area consists of three interconnected blocks accommodating men and a separate block for women. At the time of the visit, this remand prison was accommodating 816 persons: 632 held on remand (including 29 women and 15 male juveniles) and 184 sentenced (including two women who worked in the establishment and eight who have been temporarily transferred therein).

[…]

In the past, the official capacity of the establishment (based on the requirement of 4 m2 of living space per person) had been 570 places and would have been exceeded by more than 40% at the time of the visit. However, it was recalculated to 818 places, based on a decreased norm for living space of 3 m2. This decreased norm only applied at Chisinau Prison.

After the visit, the Moldovan authorities informed the CPT that the official capacity of the establishment has again decreased to 570 places. This, however, was not accompanied by a decrease in the prison population and the establishment was accommodating 843 persons as of 27 March 2023, thus remaining the most overcrowded prison in the country [ ...]."

(s. 12) "As already observed during previous visits, the delegation noted in the establishments visited during the 2022 visit that persons who refused to submit to the informal prisoner hierarchy and abide by its rules were segre-

gated, upon their request, under Section 206 of the Enforcement Code. In the past, the Moldovan authorities presented this possibility as a measure to protect prisoners from threats and violence.

However, [...], this measure, as implemented at the time of the visit, cannot be regarded as an efficient solution and the findings of the visit clearly show that interprisoner violence and intimidation among the male adult prison population remains largely unaddressed, prisons still generally fail to ensure a safe environment for incarcerated persons and several recommendations made by the CPT have not been implemented."

(s. 15) "At Chisinau Prison, despite the assurances provided to the delegation by the management that persons accused or convicted of sex offences (who are typically regarded as "humiliated") were accommodated in dedicated cells and were separated from the general prison population, detailed examination of the lists of persons held in the establishment clearly showed that these persons were in fact not grouped together but accommodated one or two per cell, in amongst the general prison population, regardless of their specific vulnerability, and were thus exposed to a particularly high risk of being assaulted and exploited by other persons held in the same cells."

(s. 16) "Moreover, informal prison leaders apparently became easily aware of requests for protection which were lodged with staff, swiftly gained access to persons requesting this measure and tried to pressure them to withdraw their requests.

[…]

Furthermore, it is a matter of particular concern that in all three establishments visited, segregated persons were subjected to very impoverished regimes for prolonged periods of time (that is, for months and, in a number of cases, years on end) – they were locked up in their cells for 22 or 23 hours per day, with nothing to do except read and, for some of them, watch TV. These persons were thus de facto punished for requesting protection from the informal prisoner hierarchy."

(s. 17) "At Chisinau Prison, eight to nine members of custodial staff were in a 24-hour shift every day and were reinforced from Monday to Friday between 08:00 and 17:00 by 50 to 60 staff members who were deployed in detention areas. Most strikingly, at Cricova Prison, only five members of custodial staff were deployed in detention areas at any given time and worked in a 24- hour shift. It therefore continued to be the case that staff were not in a position to have effective control over the situation in the establishments visited and could neither be aware of, nor effectively intervene in instances of interprisoner violence."

(s. 20) "The CPT noted the continuing efforts to carry out maintenance works at Chisinau Prison and to improve material conditions. According to the management, repairs had been done in approximately 120 to 130 (of

170) cells. This concerned in particular increasing the size of cell windows, partitioning of incell sanitary annexes, provision of new beds and white-washing the walls, most notably in the cells accommodating women. Further, between 2020 and 2021, the medical unit and the kitchen for persons held in prison were refurbished and two cells in the vicinity of the medical unit were adapted for persons with physical disabilities.

Despite these efforts, material conditions in the establishment remained poor, many cells still being dilapidated, dirty and poorly ventilated. The equipment in the cells was usually limited to beds and a table but there were normally no chairs, the storage space was insufficient and there were no call bells. In several multi-pleoccupancy cells, the incell sanitary facilities were in a poor state of repair and hygiene and were only partially partitioned. Several complaints were heard about infestation with insects and rats.

Moreover, many cells were overcrowded, providing only between 2 and 3 m2 (and sometimes less than 2 m2) of living space per person. The situation in a number of other cells would be equally problematic if all available beds therein were occupied.

Particular reference should be made to several cells located in the basement of Block 2. In addition to displaying most of the aforementioned deficiencies, these cells were very narrow (approximately 1.7 m between opposite walls) and had virtually no access to natural light. During the 2020 visit, the CPT had requested that these cells either be enlarged, with a view to ensuring that there is a distance of at least two metres between the opposite walls, or withdrawn from service. Al though these cells were not occupied at the time of the 2022 visit, it became clear that they had been used until shortly prior to the visit and were also accommodating persons segregated under Section 206 of the Enforcement Code. Pending the entry into service of the new prison (see paragraph 12), the CPT once again recommends that the Moldovan authorities pursue their efforts to improve material conditions of detention in the current premises of Prison no. 13 in Chisinau."

(s. 22) "certain privileged prisoners were dwelling in spacious rooms or even small flats consisting of several rooms. Some of them were equipped with large double beds, sofas and armchairs, lockers, mirrors, kitchenettes with multidrawer fridges, coffee machines and microwave ovens, large flat screen televisions, video game consoles, stereo systems with floor standing speakers, private sports equipment, washing machines and private sanitary facilities containing a sitting toilet, a shower and a hotwater boiler. They were decorated with carpets on the floor and paintings on the walls and contained large fish tanks.

[...]

The CPT recommends that the Moldovan authorities take steps to ensure that all persons held in prison are treated equally and benefit from similar material conditions.

> [...]
>
> Persons held in the three prisons visited were neither provided with personal hygiene items (with the exception, in some cases, of a small piece of a soap), nor with cleaning products to keep their cells/dormitories and sanitary facilities in a reasonable state of hygiene. The CPT reiterates its recommendation that steps be taken in the prisons visited (and, as appropriate, in other prisons in Moldova) to ensure that incarcerated persons are provided free of charge with adequate quantities of essential personal hygiene products (including sanitary towels for women) and cleaning products."
>
> (s. 23) "[...] at the time of the visit, the programme of regime activities offered to many prisoners remained impoverished.
>
> This concerns in particular the situation of adult remand prisoners at Chisinau Prison. Despite the recommendations repeatedly made in previous visit reports, the vast majority of these persons continued to be locked up in their cells for up to 23 hours per day, without being offered any out-of-cell activities, apart from one or, at best, two hours of daily outdoor exercise, taken in small and dilapidated yards." (s. 23)

Indholdet af de seneste rapporter og tidligere rapporter, samt praksis fra Den Europæiske Menneskerettighedsdomstol, viser således entydigt, at de igennem en meget lang årrække stærkt kritisable forhold i Moldovas fængselsvæsen, der ikke lever op til kravene i Den Europæiske Menneskerettighedskonventions artikel 3, ikke ændrer sig til det bedre.

Der må i denne forbindelse lægges betydelig vægt på, at den seneste CPT-rapport er baseret på et uanmeldt ad hoc-besøg, og at det i rapporten gentagne gange påpeges, at tidligere løfter om forbedringer af forholdene ikke er blevet honoreret.

Herefter – og i øvrigt i betragtning af det i CPT-rapporten anførte om den korrupte og retsstridige forskelsbehandling (jf. herved bl.a. Den Europæiske Menneskerettighedskonventions artikel 14 og Den Europæiske Menneskerettighedsdomstols dom af 13. december 2011 i sagen Laduna v. Slovakia) af indsatte i de moldoviske fængsler, alt efter disses økonomiske forhold eller personlige forbindelser – finder retten ikke, at oplysningerne fra Justitsministeriet i Moldova kan lægges til grund og udgøre en tilstrækkelig garanti for, at Ts rettigheder efter Den Europæiske Menneskerettighedskonventions artikel 3 og artikel 3, og eventuelt artikel 8, sammenholdt med artikel 14, vil være sikret ved hans varetægtsfængsling og eventuel sidenhen afsoning i Moldova.

Retten finder det således ikke på den anførte baggrund plausibelt, at T gennem en længerevarig varetægtsfængsling, henholdsvis afsoning, i op til mere end 12 år, vil være garanteret en bedre behandling, end den generelle norm og den behandling, han ellers ville have fået, blot fordi han har unddraget sig retsforfølgning i Moldova ved at flygte til Danmark og herefter er blevet udleveret.

Baseret på det i øvrigt oplyste om Moldovas rets- og fængselsvæsen finder retten således at kunne se bort fra, at fanger, der tidligere er flygtet fra strafforfølgning eller afsoning i Moldova til et andet sted i Europa, skulle være garanteret en særlig lempelig behandling i overensstemmelse med Den Europæiske Menneskerettighedskonventions artikel 3, som "belønning" for deres unddragelse. Noget sådant er da heller ikke beskrevet i den seneste CPT-rapport, hvorefter de eneste fanger, der nyder særlige privilegier, er økonomisk stærke fanger med forbindelserne i orden.

Det er derimod understreget i rapporten (s. 3), at:

> "The cooperation received by the delegation throughout the visit, both from the national authorities and staff in the establishments visited, was excellent. However, the principle of cooperation is not limited to facilitating the work of a visiting delegation but also requires that decisive action is taken to ensure that recommendations made by the Committee are effectively implemented in practice. Although the CPT noted progress in certain areas, it is regrettable that many key recommendations repeatedly made by the CPT in previous visit reports remain unimplemented. This concerns in particular recommendations related to the phenomenon of informal prisoner hierarchy and the resulting inter-prisoner violence and intimidation, to the poor material conditions for the majority of persons held in prison, the poor regime of activities offered to incarcerated persons and the low staffing levels in prisons insufficient to effectively control the establishments."

På baggrund af indholdet af rapporten og de tidligere rapporter m.v. og dommene over Moldova fra Den Europæiske Menneskerettighedsdomstol kan spørgsmålet om, hvorvidt der er reel fare for, at T vil blive udsat for umenneskelig eller nedværdigende behandling i strid med Den Europæiske Menneskerettighedskonventions artikel 3 i øvrigt på ingen måde reduceres til et spørgsmål om de kvadratmeter, eller mangel pa samme, han vil blive tildelt i hele eller væsentlige dele af den – langvarige – periode, han måtte sidde varetægtsfængslet eller være under afsoning.

Retten finder dog anledning til særligt at fremhæve om dette spørgsmål, at det fremgår af den seneste CPT-rapport, at der pr. den 27. marts 2023 sad 843 personer i fængsel nr. 13 i Chisinau, men at fængslet kun har officiel kapacitet til 570 personer, og at 818 personer er det maksimale antal, der kan være i fængslet, hvis der skal være et "living space of 3 m2."

Det fremgår endvidere af rapporten, at personer, som ønsker at blive adskilt fra øvrige fanger for at beskytte sig selv mod de massive problemer med vold og overgreb fra andre indsatte, er blevet placeret (i hvert fald indtil for nylig) i celler med en størrelse på omkring 2,89 m2 i kælderen i fængselsblok 2 i fængsels nr. 13 i Chisinau uden adgang til naturligt lys.

Udtalelsen af 4. januar 2023 fra Justitsministeriet indeholder i øvrigt ingen som helst form for tilbagevisning af den kritik af situationen i de moldoviske fængsler, som bl.a. CPT er fremkommet med i årevis. Der ligger herefter en direkte, henholdsvis en indirekte, erkendelse i rapporten af, at det er korrekt, at der er massive problemer med over-

belægning og vold og overgreb i fængslerne i almindelighed og i fængsel nr. 13 i Chisinau i særdeleshed.

Udtalelsens forsikringer om, at personalet i fængslerne vil gribe ind overfor volden og overgrebene, harmonerer ikke med de i de uafhængige rapporter gennem mange år beskrevne problemer, herunder den seneste CPT-rapport og dennes beskrivelse af massiv underbemanding af personale i fængslerne, hvilket leder CPT til konklusionen:

> "It therefore continued to be the case that staff were not in a position to have effective control over the situation in the establishments visited and could neither be aware of, nor effectively intervene in instances of inter-prisoner violence."

På denne baggrund og efter en samlet vurdering, er der – uanset det af Justitsministeriet i Moldova oplyste – ingen rimelig tvivl om, at risikoen for en krænkelse af Ts rettigheder efter Den Europæiske Menneskerettighedskonventions artikel 3 er helt reel, hvis han udleveres til strafforfølgning og dermed varetægtsfængsling og formentlig også yderligere afsoning sidenhen i Moldova.

*Spørgsmålet om, hvorvidt udlevering vil være i strid med udleveringslovens § 6, stk. 3 (Den Europæiske Menneskerettighedskonventions artikel 6)*

Af "U.S. Department of State 2022 Country Reports on Human Rights Practices: Moldova" fremgår bl.a.:

> (s. 10 f.) "While the law provides for an independent judiciary, judicial independence remained a problem due to problems stemming from corruption and selective justice, in which the law was not applied equally to all and was often selectively enforced for politically motivated reasons.
>
> Selective justice remained a problem and lawyers complained of instances in which their clients' rights to a fair trial were denied. [...]
>
> Media and judicial reform activists noted that it was common for judges to indefinitely postpone hearings for wealthy or well-connected defendants. This practice was believed to be connected to personal corruption of the judges.
>
> [...]
>
> Although the law presumes the innocence of defend-ants in criminal cases, judges' remarks occasionally jeopardized the presumption of innocence.

Af "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPE-AN COUNCIL AND THE COUNCIL – Commission Opinion on the Republic of Moldova's application for membership of the European Union" af 17. juni 2022 fremgår bl.a.:

> (s. 7) "The full functional independence of the Prosecution Service needs to be strengthened, as well as the efficiency of the General Prosecutors Office. Decisions affecting management and leadership of the Moldovan Prosecution Service are at times politically motivated, such as the removal, (temporary) replacement and arrest of the Anti-corruption Prosecutor in 2021."
>
> (s. 9) "More needs to be done concerning the right to fair trial [...]"

I forhold til behandlingen af straffesagen mod T har hans moldoviske advokat i det fremlagte notat anført en række oplysninger om processen, ligesom T under hovedforhandlingen er fremkommet med oplysninger om, at han ikke har fået en retfærdig rettergang.

Dette giver ikke i sig selv retten mulighed for at vurdere rigtigheden af oplysningerne og betydningen heraf i givet fald.

Retten finder dog anledning til at bemærke, at T, der var 22 år gammel på gerningstidspunktet, og hidtil ustraffet, er idømt en straf pa 14 års fængsel for at tildele en anden person et knytnæveslag i ansigtet, der ikke i sig selv medførte alvorlige skader, men hvorved den pågældende faldt og slog hovedet mod jorden, og derved pådrog sig de skader, der resulterede i, at den pågældende senere afgik ved døden.

Dette kan i sig selv rejse spørgsmål i forhold til, om T har fået en retfærdig rettergang, da han efter dommens indhold ikke synes at have haft det fornødne forsæt til alvorlig legemsbeskadigelse, endsige dødens indtræden, der efter den citerede bestemmelse fra den moldoviske straffelov ellers synes at være en betingelse for at bringe den bestemmelse, og den skærpede strafferamme, som T er dømt efter, i anvendelse.

Det kan endvidere også rejse et spørgsmål i forhold til om T har faet en retfærdig rettergang, at det synes at fremgå af dommens præmisser, at der ved fastsættelsen af straffen er lagt vægt på, at T ikke har ønsket at tilstå den forbrydelse, han var tiltalt for.

Efter Den Europæiske Menneskerettighedsdomstols praksis på området og dommen refereret i U 2014.423 H er kriteriet for, hvornår udlevering ikke kan ske som følge af Den Europæiske Menneskerettighedskonventions artikel 6, imidlertid formuleret som et krav om, at ''the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country", og som sagen er forelagt for retten, finder retten ikke fuldt tilstrækkeligt grundlag for at fastslå, at T ''has suffered or risks suffering a flagrant denial of a fair trial" i Moldova.

Retten bemærker herved, at eventuelle tilsidesættelser af Den Europæiske Menneskerettighedskonventions artikel 6 i underinstansen ikke i sig selv siger noget om, hvorvidt sådanne krænkelser vil blive gentaget – eller derimod udbedret – i ankeinstansen.

Retten finder imidlertid, at de ovenfor nævnte generelle oplysninger om Moldovas retssystem og de ovenfor nævnte konkrete forhold ved dommen af 29. april 2022 fra retten i Soroca samlet set også taler imod udlevering, da disse omstændigheder dog understøtter, at risikoen for, at udleveringen vil være i strid med Danmarks internationale forpligtelser, er reel.

Retten finder herefter, og efter det i øvrigt anførte ovenfor, herunder om at udlevering vil være i strid med udleveringslovens § 6, stk. 2, ikke anledning til at indhente supplerende oplysninger i medfør af udleveringslovens 35, stk. 5, med henblik på en vurdering af, hvorvidt der alligevel måtte være grundlag for at statuere, at udlevering tillige vil være i strid med udleveringslovens § 6, stk. 3.

*Konklusion*

Udlevering af T til Moldova må antages at indebære en reel risiko for tilsidesættelse af Danmarks internationale forpligtelser, og vil herunder med sikkerhed indebære en reel risiko for tilsidesættelse af Den Europæiske Menneskerettighedskonventions artikel 3.

Da udlevering af T herefter vil være i strid med udleveringslovens § 6, stk. 2, idet der er fare for, at T efter udleveringen vil blive udsat for tortur eller anden umenneskelig eller nedværdigende behandling eller straf, tages anmodningen om udlevering ikke til følge."

Den 20. september 2023 kærede anklagemyndigheden Retten på Frederiksbergs kendelse til Østre Landsret.

Den 6. november 2023 omgjorde landsretten byrettens kendelse, således at T skulle udleveres til strafforfølgning i Moldova. I kendelsen hedder det bl.a.:

"T er i Moldova tiltalt for den 4. november 2020 i forening med en medgerningsmand at have tildelt to forskellige personer et slag i ansigtet med knyttet hånd, hvorved den ene pådrog sig hævelse, et blåt øje samt en hævet og blødende underlæbe. Den anden faldt og pådrog sig alvorlige personskader og afgik senere ved døden som følge heraf. T er således tiltalt for lovovertrædelser, der efter dansk ret ville være omfattet af i hvert fald straffelovens § 244, stk. 1, om vold, hvor strafferammen er fængsel i indtil 3 år. Kravet om dobbelt strafbarhed i udleveringslovens § 19 er herefter opfyldt.

Landsretten finder, at der ikke foreligger sådanne særlige omstændigheder, der antageliggør, at tiltalen savner tilstrækkeligt bevismæssigt grundlag, jf. udleveringslovens § 23. Landsretten har herved lagt vægt på, at Distriktsretten i Soroca som første instans har fundet T skyldig på baggrund af adskillige vidneforklaringer og tekniske beviser.

Efter udleveringslovens § 6, stk. 2, kan udlevering ikke finde sted, hvis der er fare for, at den pågældende efter udleveringen vil blive udsat for tortur eller anden umenneskelig eller nedværdigende behandling eller straf. Bestemmelsen skal ses i sammenhæng med artikel 3 i den europæiske menneskerettighedskonvention, hvorefter ingen må underkastes tortur og ej heller umenneskelig eller nedværdigende behandling eller straf.

Det fremgår af præmis 84 og 87 i Den Europæiske Menneskerettighedsdomstols dom af 27. oktober 2011 i sagen Ahorugeze mod Sverige, at der ved udlevering til strafforfølgning kan rejses spørgsmål om overtrædelse af artikel 3, når vægtige grunde ("substantial

grounds") støttet af passende beviser ("appropriate evidence") giver grund til at antage, at den person, der ønskes udleveret, står over for en reel risiko for at blive behandlet i strid med artikel 3.

På baggrund af de foreliggende oplysninger om forholdene i Moldova fra Amnesty International, U. S. Department of State, Europa-Kommissionen og Europarådets Komite til forebyggelse af tortur og umenneskelig eller nedværdigende behandling eller straf (CPT) samt praksis fra Den Europæiske Menneskerettighedsdomstol, finder landsretten, at Rigsadvokaten havde anledning til at indhente yderligere oplysninger fra Moldova om fængslingsforholdene, herunder oplysninger om, hvilke konkrete forhold T vil blive undergivet, såfremt han udleveres til Moldova, således som det skete ved Rigsadvokatens brev af 30. december 2022.

Det fremgår af de moldoviske myndigheders svar herpå af 4. januar 2023, at T ved udlevering til Moldova under varetægtsfængslingen vil blive anbragt i fængsel nr. 13 i Chişinău, hvor Moldova har renoveret og indrettet særlige celler med henblik på opfyldelse af statslige garantier afgivet i forbindelse med anmodninger om udlevering af personer til Moldova. Disse celler har separat toilet, elektricitet og en temperatur på 19-22 °C, ligesom indsatte har et personligt areal på mindst 4 m2. Under den efterfølgende afsoning vil han blive overført til fængsel nr. 3 i Leova, hvor der i et nyopført fængselsafsnit ligeledes er indrettet særlige celler med henblik på opfyldelse af statslige garantier afgivet i forbindelse med anmodninger om udlevering af personer til Moldova. Disse celler har ligeledes separat toilet, ligesom indsatte har et personligt areal på mindst 4 m2. I cellerne er der både elektrisk lys og naturligt dagslys gennem vinduer på 1,2 x 0,9 meter. Cellerne er møblerede, herunder med senge og rene madrasser samt sengetøj, der skiftes mindst en gang om ugen. Indsatte i disse celler har adgang til udendørs aktiviteter i mindst en time om dagen og kan tage varmt bad mindst en gang om ugen. Der serveres et varmt måltid tre gange om dagen, og indsatte har adgang til gratis medicin og sundhedsbehandling. Fængselspersonalet går med "body-camera", der optager hver gang, fængselspersonalet er i kontakt med en indsat, hvorefter optagelsen gemmes i mindst 180 dage. Indsatte sikres endvidere rimelig beskyttelse mod vold og negativ påvirkning fra medindsatte i henhold til en række nærmere beskrevne foranstaltninger.

Landsretten finder, at de moldoviske myndigheders oplysninger om de forhold, der efter udlevering af T vil gælde for ham ved henholdsvis varetægtsfængsling og eventuel efterfølgende afsoning af fængselsstraf, må lægges til grund ved sagens afgørelse, og at disse ikke giver grundlag for at fastslå, at der er reel risiko for, at han vil blive udsat for umenneskelig eller nedværdigende behandling i strid med udleveringslovens § 6, stk. 2, eller Den Europæiske Menneskerettighedskonventions artikel 3. Det er heller ikke godtgjort, at forholdene i Moldova er sådanne, at Rigsadvokaten har været retligt forpligtet til at fremskaffe yderligere oplysninger om dem i videre omfang end sket.

Det følger af praksis fra Den Europæiske Menneskerettighedsdomstol, at spørgsmålet om brud på den europæiske menneskerettighedskonventions artikel 6 om retfærdig rettergang kun undtagelsesvis kan rejses i forbindelse med en beslutning om udlevering, nemlig i tilfælde, hvor den pågældende risikerer at blive udsat for en åbenbar tilsidesættelse af retten til en retfærdig rettergang i den anmodende stat ("would risk suffering a flagrant denial of a fair trial in the requesting country"), jf. bl.a. præmis 113 i Den Eu-

ropæiske Menneskerettighedsdomstols dom af 27. oktober 2011 i sagen Ahorugeze mod Sverige. For at der er tale om "a flagrant denial of justice", skal der foreligge et brud på principperne om retfærdig rettergang, som er så grundlæggende, at det svarer til en ''nullification, or destruction of the very essence, of the right guaranteed by that article", jf. dommens præmis 115. Det er den, som udleveres, der har bevisbyrden herfor, og han skal – i lighed med hvad der gælder efter artikel 3 – fremføre beviser, der indebærer, at der foreligger vægtige grunde til at antage, at han "would be exposed to a real risk of being subjected to a flagrant denial of justice", jf. dommens præmis 116.

Som anført i byrettens kendelse fremgår det af oplysninger fra U. S. Department of State, at der i Moldova er problemer med korruption og manglende lighed for loven, ligesom landets dommere lejlighedsvist har udtrykt sig på en måde, der har bragt uskyldsformodningen i fare. Det fremgår yderligere af oplysninger fra Europa-Kommissionen, at der er behov for at styrke anklagemyndighedens uafhængighed.

Uanset dette finder landsretten, at der ikke er grundlag for at antage, at T ved udlevering til Moldova vil få en behandling, der vil udgøre en åbenbar tilsidesættelse af retten til en retfærdig rettergang. Det forhold, at Distriktsretten i Soroca som første instans har fundet, at der i relation til overtrædelse af den moldoviske straffelovs § 157, stk. 4, jf. stk. 1, alene skal foreligge forsæt til ''the primary harmful consequences (injury to the body)", kan ikke føre til en anden vurdering af, om udlevering kan ske i anledning af den verserende ankesag. Tilsvarende gælder for den omstændighed, at Distriktsretten i Soroca ved straffastsættelsen har lagt vægt på, at T ikke har erkendt sig skyldig, smh. den danske straffelovs § 82, stk. 1, nr. 9. Det er heller ikke godtgjort, at forholdene i Moldova er sådanne, at Rigsadvokaten har været retligt forpligtet til at fremskaffe yderligere oplysninger om dem.

Da betingelserne for udlevering af T til Moldova herefter er opfyldt, tager landsretten anklagemyndighedens påstand om udlevering til strafforfølgning i Moldova til følge."

**Retsgrundlaget**

Udleveringslovens § 6, stk. 2, har følgende ordlyd:

"§ 6…

Stk. 2. Udlevering kan endvidere ikke finde sted, hvis der er fare for, at den pågældende efter udleveringen vil blive udsat for tortur eller anden umenneskelig eller nedværdigende behandling eller straf."

Bestemmelsen blev videreført ved lov nr. 117 af 11. februar 2020, som erstattede den tidligere udleveringslov, jf. lovbekendtgørelse nr. 833 af 25. august 2005 om udlevering af lovovertrædere.

I bemærkningerne til lovforslaget hedder det bl.a. (Folketingstidende 2019-20, tillæg A, pkt. 3.2.4, s. 46-48):

> ”*3.2.4. Fare for forfølgelse på grund af afstamning eller politisk opfattelse mv. samt risiko for tortur*
>
> *3.2.4.1. Gældende ret*
>
> Efter udleveringslovens § 6, stk. 1, § 10 h, stk. 1, og § 10 n, jf. § 10 h, stk. 1, må udlevering ikke finde sted, hvis der er fare for, at den pågældende efter udleveringen på grund af sin afstamning, sit tilhørsforhold til en bestemt befolkningsgruppe, sin religiøse eller politiske opfattelse eller i øvrigt på grund af politiske forhold vil blive udsat for forfølgelse, som retter sig mod den pågældendes liv eller frihed eller i øvrigt er af alvorlig karakter.
>
> Det fremgår desuden af udleveringslovens § 6, stk. 2, § 10 h, stk. 2, og § 10 n, jf. § 10 h, stk. 2, at udlevering ikke må finde sted, hvis der er fare for, at den pågældende efter udleveringen vil blive udsat for tortur eller anden umenneskelig eller nedværdigende behandling.
>
> *3.2.4.1.1. Udlevering til stater uden for Norden og Den Europæiske Union*
>
> Udleveringslovens § 6, stk. 2, der er indsat i udleveringsloven ved lov nr. 433 af 10. juni 2003 om ændring af lov om udlevering af lovovertrædere og lov om udlevering af lovovertrædere til Finland, Island, Norge og Sverige (Gennemførelse af EU-rammeafgørelse om den europæiske arrestordre m.v.) som en præcisering af gældende ret, svarer til artikel 3 i Den Europæiske Menneskerettighedskonvention, hvorefter ingen må underkastes tortur eller umenneskelig eller nedværdigende behandling eller straf. Det fremgår af forarbejderne til ovennævnte lov, at Justitsministeriet i lyset af, at det i præambelbetragtning nr. 13 i rammeafgørelsen udtrykkeligt er anført, at personer ikke må udleveres til en stat, hvor der er alvorlig risiko for, at de vil blive udsat for dødsstraf, tortur eller anden umenneskelig eller nedværdigende behandling eller straf, har fundet det naturligt at indsætte en præciserende bestemmelse, jf. Folketingstidende 2002-03, tillæg A, side 4297 (pkt. 4.1.1).
> …
>
> *3.2.4.2. Justitsministeriets overvejelser og den foreslåede ordning*
>
> Lovforslagets § 6 viderefører de gældende bestemmelser i udleveringslovens §§ 6, 10 h og 10 n, jf. § 10 h, og der er med lovforslaget ikke tilsigtet ændringer i den gældende retstilstand.
> …”

Den Europæiske Menneskerettighedskonventions artikel 3 har følgende ordlyd:

> ”Artikel 3.

> Ingen må underkastes tortur og ej heller umenneskelig eller nedværdigende behandling eller straf."

Artikel 4 og artikel 19, stk. 2, i Den Europæiske Unions Charter om grundlæggende rettigheder har følgende ordlyd:

> "Artikel 4
> Ingen må underkastes tortur, ej heller umenneskelig eller nedværdigende behandling eller straf.
>
> Art. 19. …
>
> Stk. 2. Ingen må udsendes, udvises eller udleveres til en stat, hvor der er en alvorlig risiko for at blive idømt dødsstraf eller udsat for tortur eller anden umenneskelig eller nedværdigende straf eller behandling."

Den Europæiske Menneskerettighedsdomstols dom af 25. juni 2020 i sagen Ahorugeze mod Sverige (sag nr. 37075/09) angår udlevering af en person til strafforfølgning i Rwanda. Domstolen udtalte, at det vil være i strid med den Europæiske Menneskerettighedskonventions artikel 3, såfremt der er væsentlige grunde til at antage, at der er reel risiko for, at den pågældende vil blive udsat for en behandling i strid med artikel 3. I dommen hedder det bl.a.

> "83. The Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, among other authorities, Vilvarajah and Others v. the United Kingdom, judgment of 30 October 1991, Series A no. 215, p. 34, § 102).
>
> 84. It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has – as a direct consequence – the exposure of an individual to proscribed ill-treatment (see Soering v. the United Kingdom, judgment of 7 July 1989, Series A no. 161, pp. 35-36, §§ 89-91, and Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, ECHR 2005-I, § 67).

> 85. It would hardly be compatible with the "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment or punishment (see the above-cited Soering, pp. 34-35, § 88, and Mamatkulov and Askarov v. Turkey, § 68).
>
> 86. In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained proprio motu. If the applicant has not been extradited or deported when the Court examines the case, the relevant time for the assessment of the existence of such a risk will be that of the proceedings before the Court (see Chahal v. the United Kingdom, judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, p. 1856, §§ 85-86, and Mamatkulov and Askarov v. Turkey, cited above, § 69).
>
> 87. Furthermore, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration and its physical or mental effects (see the above-cited Vilvarajah and Others, p. 36, § 107, and Mamatkulov and Askarov v. Turkey, § 70). Allegations of ill-treatment must be supported by appropriate evidence (see, mutatis mutandis, Klaas v. Germany, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30)."

Den Europæiske Menneskerettighedsdomstols dom af 17. januar 2012 i sagen Othman mod Det Forenede Kongerige (8139/09) angår anvendelsen af diplomatiske garantier i udleveringssager. I dommen hedder det bl.a.:

> "185. Third, it is well-established that expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country. Article 3 is absolute and it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (Saadi v. Italy [GC], no. 37201/06, §§ 125 and 138, ECHR 2008-...).
>
> 186. Fourth, the Court accepts that, as the materials provided by the applicant and the third party interveners show, there is widespread concern within the international community as to the practice of seeking assurances to allow for the deportation of those considered to be a threat to national security (see paragraphs 141- 145 above and Ismoilov and Others, cited above, §§ 96-100). However, it not for this Court to rule upon the propriety of seeking assurances, or to assess the long term consequences of doing so; its only task is to examine whether the assurances obtained in a particular case are sufficient to remove any real risk of ill-treatment. Before turning to the facts of the ap-

plicant's case, it is therefore convenient to set out the approach the Court has taken to assurances in Article 3 expulsion cases.

187. In any examination of whether an applicant faces a real risk of ill-treatment in the country to which he is to be removed, the Court will consider both the general human rights situation in that country and the particular characteristics of the applicant. In a case where assurances have been provided by the receiving State, those assurances constitute a further relevant factor which the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time (see Saadi, cited above, § 148).

188. In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human rights situation in the receiving State excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances (see, for instance, Gaforov v. Russia, no. 25404/09, § 138, 21 October 2010; Sultanov v. Russia, no. 15303/09, § 73, 4 November 2010; 1 Yuldashev v. Russia, no. 1248/09, § 85, 8 July 2010; Ismoilov and Others, J cited above, §127).

189. More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving State's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:

(i) whether the terms of the assurances have been disclosed to the Court (Ryabikin v. Russia, no. 8320/04, § 119, 19 June 2008; Muminov v. Russia, no. 42502/06, § 97, 11 December 2008; see also Pelit v. Azerbaijan, cited above);

(ii) whether the assurances are specific or are general and vague (Saadi, cited above; Klein v. Russia, no. 24268/08, § 55, 1 April 2010; Khaydarov v. Russia, no. 21055/09, § 111, 20 May 2010);

(iii) who has given the assurances and whether that person can bind the receiving State (Shamayev and Others v. Georgia and Russia, no. 36378/02, § 344, ECHR 2005-III; Kordian v. Turkey (dec.), no. 6575/06, 4 July 2006; Abu Salem v. Portugal (dec.), no 26844/04, 9 May 2006; cf. Ben Khemais v. Italy, no. 246/07, § 59, ECHR 2009-... (extracts); Garayev v. Azerbaijan, no. 53688/08, § 74, 10 June 2010; Baysakov and Others v. Ukraine, no. 54131/08, § 51, 18 February 2010; Soldatenko v. Ukraine, no. 2440/07, § 73, 23 October 2008);

(iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them (Chahal, cited above, §§ 105-107);

(v) whether the assurances concerns treatment which is legal or illegal in the receiving State (Cipriani v. Italy (dec.), no. 221142/07, 30 March 2010; Youb Saoudi v. Spain (dec.), no. 22871/06, 18 September 2006; Ismaili v. Germany, no. 58128/00, 15 March 2001; Nivette v. France (dec.), no 44190/98, ECHR 2001 VII; Einhorn v. France (dec.), no 71555/01, ECHR 2001-XI; see also Suresh and Lai Sing, both cited above)

(vi) whether they have been given by a Contracting State (Chentiev and Ibragimov v. Slovakia (dec.), nos. 21022/08 and 51946/08, 14 September 2010; Gasayev v. Spain (dec.), no. 48514/06, 17 February 2009); (vii)the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances (Babar Ahmad and Others, cited above, §§ 107 and 108; Al-Moayad v. Germany (dec.), no. 35865/03, § 68, 20 February 2007);

(viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers (Chentiev and Ibragimov and Gasayev, both cited above; cf. Ben Khemais, § 61 and Ryabikin, § 119, both cited above; Kolesnik v. Russia, no. 26876/08, § 73, 17 June 2010; see also Agiza, Alzery and Pelit, cited above);

(ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible (Ben Khemais, §§59 and 60; Soldatenko, § 73, both cited above; Koktysh v. Ukraine, no. 43707/07, § 63, 10 December 2009);

(x) whether the applicant has previously been ill-treated in the receiving State (Koktysh, § 64, cited above); and

(xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (Gasayev, Babar Ahmad and Others, § 106; Al-Moayad, §§ 66-69)."

**Anbringender**

T har anført navnlig, at det på baggrund af indholdet af diverse rapporter fra relevante organisationer mv. samt praksis fra Den Europæiske Menneskerettighedsdomstol entydigt kan lægges til grund, at fængselsforholdene mv. i Moldova i en lang årrække har været og fortsat er stærkt kritisable. Der er således holdepunkter for at antage, at der består en konkret, umiddelbar og reel risiko for, at han under varetægtsfængsling og efterfølgende eventuel afsoning i Moldova vil blive udsat for fængselsforhold, der indebærer behandling i strid med udleveringslovens § 6, stk. 2, jf. EU-chartrets artikel 4, jf. artikel 19, stk. 2, og Den Europæiske Menneskerettighedskonventions artikel 3. Denne risiko er ikke afhjulpet konkret i

lyset af de oplysninger, der er afgivet af myndighederne i Moldova som led i udleveringssagen.

Garantierne meddelt af Justitsministeriet i Moldova er heller ikke tilstrækkelige til at sikre, at der ikke konkret består en risiko for, at han vil blive udsat for umenneskelige eller nedværdigende forhold under sin tilbageholdelse og eventuelle efterfølgende afsoning. Garantierne er hovedsageligt af generel karakter, ligesom den mere konkrete del af garantierne ses at være identisk med garantier afgivet til danske myndigheder i tilsvarende sager, hvor Moldova har anmodet om udlevering. Garantierne er derudover ikke afgivet af en judiciel myndighed, men af Moldovas justitsministerium, og garantierne ses ikke at have været undergivet nærmere vurdering eller prøvelse ved domstolene i Moldova. Det er derfor usikkert, om de konkrete oplysninger om afsoningsforhold mv. er retvisende.

Det er derudover tvivlsomt, hvorvidt han i hele perioden vil være placeret i en af de "statsgaranterede celler", blot fordi han har unddraget sig retsforfølgning ved at flygte til Danmark. De statsgaranterede celler ses alene at blive stillet til rådighed på ad hoc-basis og ikke som særskilte afsoningsfaciliteter. Der foreligger ikke klare oplysninger om adgangen til, at afsoningsforholdene løbende kan verificeres af de danske myndigheder, eller om han har adgang til en uafhængig domstolsprøvelse af fængselsforholdene. De statsgaranterede celler afhjælper desuden ikke alle de kritisable forhold, herunder problemerne med overgreb fra andre indsatte.

Anklagemyndigheden har anført navnlig, at udleveringslovens § 6, stk. 2, ikke er til hinder for udlevering.

De oplysninger, som anklagemyndigheden i nærværende sag har indhentet hos de moldoviske myndigheder, må lægges til grund, jf. også U.2018.2632H. Det kan herefter lægges til grund, at T vil blive frihedsberøvet i statsgaranterede celler, der sikrer ham minimum 4 m2. Cellerne vil have elektricitet, vand og varme og vil være udstyret med nye møbler, herunder madrasser og rene senge. Derudover er der ventilation, udluftning og naturligt lys gennem vinduer i cellen samt separat toilet. Han vil derudover have mulighed for udendørs aktiviteter i mindst en time om dagen, og der vil være mulighed for bad mindst en gang om ugen, ligesom lægefaglige faciliteter vil kunne benyttes. Der serveres et varmt måltid tre gange om dagen,

og han vil have adgang til gratis medicin og sundhedsbehandling. T vil derudover modtage rimelig beskyttelse mod overgreb fra andre indsatte, herunder ved adskillelse fra livstidsfanger og permanent overvågning af fanger, ligesom indsættelse sker i fælles celler efter en evaluering af de indsatte.

Der er ikke grundlag for at betvivle den diplomatiske garanti, som de moldoviske myndigheder har givet. Garantierne er lagt frem og er meget præcise og udførlige samt indeholder detaljerede oplysninger om de konkrete forhold, som vil gælde for T. Garantierne er derudover afgivet af de moldoviske fængselsmyndigheder gennem Justitsministeriet i Moldova, og fængselsmyndighederne må derfor klart forventes at overholde dem. Moldova er medlem af Europarådet og har tiltrådt Den Europæiske Menneskerettighedskonvention og samarbejder med Europarådet via Europarådets Torturkomité om forbedringer af fængselsforholdene. Endelig har Danmark som EU-medlemsstat relativt tætte bilaterale relationer til Moldova gennem samarbejdet mellem EU og Moldova i henhold til associeringssaftalen fra 2014 og det forhold, at Moldova siden juni 2022 har haft status som EU-kandidatland, ligesom EU har indledt tiltrædelsesforhandlinger med Moldova i december 2023. De diplomatiske garantier er således tilstrækkelige til at sikre, at T kan udleveres, uden at Danmark krænker Den Europæiske Menneskerettighedskonventions artikel 3.

EU-chartrets artikel 4 og 19, stk. 2, giver ikke en anden og bedre beskyttelse end Menneskerettighedskonventionens artikel 3. EU-domstolens dom af 6. september 2016 i sag C-182/15 (Petruhhin) udelukker ikke, at der kan foretages en konkret og individuel vurdering af de forhold, den pågældende vil blive frihedsberøvet under i tredjelandet, således at diplomatiske garantier kan føre til, at der ikke er risiko for umenneskelig eller nedværdigende behandling efter EU-chartrets artikel 4 og 19, stk. 2.

**Højesterets begrundelse og resultat**

Sagen angår udlevering af T til strafforfølning i Moldova i henhold til de moldoviske myndigheders anmodning herom. Spørgsmålet er for Højesteret, om udlevering skal nægtes i medfør af udleveringslovens § 6, stk. 2, med den begrundelse, at fængselsforholdene og afsoningsvilkårene, som T i givet fald vil blive undergivet, vil være af umenneskelig eller nedværdigende karakter, sådan at udlevering vil indebære en overtrædelse af Den Europæiske

Menneskerettighedskonventions artikel 3 og af den Europæiske Unions Charter om grundlæggende rettigheder artikel 4, jf. artikel 19, stk. 2.

De moldoviske myndigheder har besvaret rigsadvokatens forespørgsel om fængselsforholdene for T, hvis han udleveres.

Af de grunde, som landsretten har anført, tiltræder Højesteret, at der ikke er grundlag for at fastslå, at der er reel risiko for, at T vil blive udsat for umenneskelig eller nedværdigende behandling i strid med Danmarks internationale forpligtelser, hvis han udleveres til Moldova. Højesteret bemærker herved, at der under hensyn til det, som anklagemyndigheden har anført, ikke er grundlag for at betvivle troværdigheden af de moldoviske myndigheders erklæring om de fængselsforhold, som konkret kan forventes for T, hvis udleveringsanmodningen tages til følge.

Der er herefter ikke grundlag for at nægte udlevering i medfør af udleveringslovens § 6, stk. 2, og Højesteret stadfæster derfor landsrettens kendelse.

Statskassen skal betale sagens omkostninger, jf. udleveringslovens § 34, stk. 2.

## Thi bestemmes:

Landsrettens kendelse stadfæstes.

Statskassen skal betale sagens omkostninger for Højesteret.