Neutral Citation Number: [2023] EWHC 449 (Admin)

Case No: CO/1063/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

1st March 2023

Before :

MR JUSTICE FORDHAM

- -

Between :

NICOLAE-FILIP UCA	**Appellant**
- and -	
ARAD COURTHOUSE, ROMANIA	**Respondent**

- -
- -

Tihomir Mak (instructed by Wells Burcombe Solicitors) for the **Appellant**
Miriam Smith (instructed by CPS) for the **Respondent**

- -

Hearing date: 1.3.23

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

Decision

1. The decision at which I have arrived in the present case is as follows. I am going to grant the Respondent permission to adduce and rely on the 12 January 2023 Further Information concerning the Appellant's own proceedings in Romania, including English translations. I am going to refuse the application to adjourn today's hearing. I am going to include within my Order that the 10 day removal period is to take place no earlier than 15 March 2023. I am going to refuse permission to appeal on the only remaining issues in this case, namely Article 3 ECHR and Article 8 ECHR. When I come to make my Order, after giving this Judgment, I am going to order that at that stage the Appellant's solicitors have the Court's permission to come off the record in these proceedings.

2. I make clear that the purpose of the 14 day period to 15 March 2023 is so that the Appellant can pursue the opportunity, if he wishes, to instruct new lawyers to make an application to reopen the appeal under the Criminal Procedure Rules rule 50.27. That is a safety net provision in all extradition appeal cases. But I make very clear that that is not a course that I am encouraging. It is not one which I am able to see or have any utility in this case. I say that, having regard to all the points that have been raised, including one raised extremely belatedly today which referred to a medical procedure which the Appellant says he is due to undergo in just a few days' time.

3. The situation that has arisen in this case has required me to give careful thought to the interests of justice and the public interest. I am satisfied that the Order which I have just described is the appropriate one in all the circumstances. I will now explain the reasoning pathway that has taken me to that position.

Introduction

4. This is the oral hearing of an application for permission to appeal in an extradition case on Article 3 and Article 8 grounds. A separate argument based on section 25 and health was rejected by May J on the papers on 14 July 2022 and then rejected at an oral renewal hearing by Sir Ross Cranston on 13 September 2022. May J also refused permission to appeal on Article 8, the renewed hearing in relation to which was adjourned by Sir Ross Cranston. May J stayed the application for permission to appeal on Article 3 pending the judgment in Marinescu v Romania which was handed down on 12 September 2022: see [2022] EWHC 2317 (Admin). The Appellant's representatives filed post-Marinescu submissions on Article 3 on 26 September 2022 and Swift J directed on 27 January 2023 that Article 3 and Article 8 be considered together at this oral hearing.

Adjournment

5. The application made today on behalf of, and by, the Appellant is for an adjournment to allow him to instruct new legal representatives. The legal representatives – who are present today, on the record, and have assisted me today – are asking the Court's permission to come off the record. I have already indicated that permission will ultimately will be part of my Order today. But I was not prepared to make any such Order until I had been able to consider all of the parameters including the legal

representatives' responses to questions which I raised. It is right to say that Mr Mak of Counsel and his instructing solicitor have today given me the maximum assistance that I could have expected, in the circumstances in which they find themselves, circumstances which I fully appreciate.

6. At one stage during the hearing I was invited to hear from the Appellant himself. That was a course which I was anxious, in any event, to take. He addressed me. His position was that he wished to be given a period of time to find other lawyers to assist him.

7. What happened in the present case, which led to the lawyers' request to come off the record, was this.

    i) Two key points have been raised on the Appellant's behalf. On Article 3 there was a point about inadequate assurances in relation to prison conditions. On Article 8 there was a point about a period on conditional bail with a tagged-curfew and whether that period would or could have the effect that the sentence in Romania is treated there as having been served.

    ii) On both of those key points there are important documents which are being relied on by the Respondent. On Article 3 there is a bespoke assurance dated 30 September 2020 which, I am told, was received by the CPS on 21 October 2022.

    iii) The position of the Appellant's legal representatives and his position is that that assurance had not been seen until yesterday. Having seen it, Mr Mak and his instructing solicitor have taken the position that they are not able to advance a positive case on the Appellant's behalf which would resist that assurance being adduced in these proceedings before this Court; and that they are not able to adduce a positive case on his behalf on Article 3 in the light of that assurance.

    iv) Ms Smith for the Respondent advances the position that the Respondent believes the assurance was served after 21 October 2022; but having searched yesterday and today they cannot find any email sending it to the Appellant's solicitors; nor can Ms Smith point to anything before yesterday which drew attention to that assurance in correspondence between the parties relating to the preparation for today; nor is she inviting me to adjourn for any further enquiry. I proceed on the basis that that assurance was provided and seen only for the first time yesterday. It would not, in my judgment, be fair in the circumstances to the Appellant – or to his lawyers – to proceed on any other basis.

    v) The position in relation to the other documents is more complicated. Those documents relate to proceedings which lawyers in Romania were bringing on the Appellant's behalf. They were known to be bringing those proceedings. A Romanian Court Judgment was available to the Appellant's lawyers on Wednesday 22 February 2023, the date on which Mr Mak provided an Updating Note on the key Article 8 issue, namely the curfew and its consequences. I have been told that on that date neither his instructing solicitor nor Counsel had access to an English translation of that Romanian document;

that they were able to review it; and that they did not appreciate its contents. All that was known was that the proceedings in Romania have been "partially successful". The following day the Respondent provided an English translation which the solicitors and then Counsel's in-box had on that date. Mr Mak tells me that, although he had seen that email, he was on leave and was not in a position to review its contents until yesterday. The documents, produced from the Appellant's own Romanian proceedings, record what the outcome was on 8 December 2022 and then on 11 January 2023. In the light of those documents Mr Mak and his instructing solicitors are in a position where they are unable to advance on the Appellant's behalf any positive case, either to resist those documents being adduced in these proceedings, or to maintain the Article 8 argument in the light of those materials.

This is the context in which they asked to come off the record.

8. The Appellant's lawyers have confirmed that, beyond the point about the assurance and beyond the point about the curfew taking effect to reduce the sentence in Romania, there is no other material point of which they are aware that could assist in any viable appeal to this court. That is important. If there were any such point, they would be able to advance it at this hearing. The circumstances that I have just described would not prevent them from doing so. It follows that the idea of an adjournment does not relate to any other point or the opportunity for other lawyers to seek to find other points.

9. There is always the prospect – for which the rule 50.27 safety net exists – that it may be found that something has been missed or some new and material circumstance arises. But I am quite satisfied that the only possible basis for granting an adjournment today would be if, in relation to either of the two points which are known to be in play in this case, it were in the interests of justice having regard to the public interest that the Appellant should have an opportunity to instruct new lawyers to consider these two points.

10. I am not prepared to adjourn this case. The position in relation to the two points that have been raised on this appeal is extremely straightforward. It is patently obvious that the new materials must be admitted. And it is patently obvious that neither the assurances point (Article 3) nor the curfew point (Article 8) has any possible viability.

Context

11. The Appellant is aged 38 and is wanted for extradition to Romania. That is in conjunction with a conviction Extradition Arrest Warrant ("ExAW"), issued on 10 December 2019, certified on 10 February 2020, and on which he was arrested on 10 October 2020. The ExAW relates to a 12 month aggregated custodial sentence imposed on 18 March 2019, in respect of which an appeal was dismissed on 13 June 2019. It arose from the following offending. First, on 20 March 2014 an offence (aged 29) of driving a motorcycle without a licence, for which on 17 May 2017 the Appellant was sentenced to a 10 month custodial sentence suspended for a period of two years. Secondly, and committed a couple of months later during that suspended sentence, an offence on 9 August 2017 (aged 32) of driving a van without a licence. On 18 March 2019 the Romanian court sentenced the Appellant to a 6 month immediate custodial term in respect of the August 2017 offence, activated the

suspended sentence; and aggregated the two, with the applicable discount under the operation of Romanian law. That produced the 12 month custodial sentence which is the subject of the ExAW and these extradition proceedings. Extradition was ordered on 21 March 2022, for the reasons given in a judgment of District Judge Zani ("the Judge") after an oral hearing on 2 February 2022.

Article 3

12. So far as Article 3 is concerned, the submissions of 26 September 2022 maintained that it was arguable that a previous prison conditions assurance dated 16 December 2020 – which was before the Judge alongside an assurance dated 4 January 2022 relating to medical treatment available in prison – was legally inadequate in light of Marinescu. But the complete answer to the Article 3 point is the specific assurance dated 30 September 2022, provided in this case following the judgment in Marinescu. No viable Article 3 argument remains.

Article 8

13. So far as Article 8 is concerned, the essence of the argument was that extradition could not be justified as a proportionate interference with private and family life, because the effect of 537 days of conditional bail on tagged-curfew (between 8 January 2021 and 29 June 2022) operated so that the sentence has been served. Absent that point, there is I am satisfied no arguable viability in an Article 8 appeal. As I have explained, the Appellant's representatives in Romania have been actively pursuing that matter before the Romanian courts. The Judge did not accept that the curfew was to be treated as having this consequence, and nor did May J. Sir Ross Cranston adjourned the Article 8 application, specifically to allow the Romanian authorities to clarify whether it did or could have that consequence. An application had been made on 8 March 2022 on the Appellant's behalf in Romania, requesting that the 12 months sentence be reduced by the period of curfew, as well as by the 18 day period served on qualifying remand (between 14 November 2020 and 2 December 2020).

14. One of the points that was advanced on instructions this morning by Mr Mak, on the Appellant's behalf, was that there had been a mistranslation of the relevant dates of the curfew. Those dates were said to have been wrongly translated as not including the correct years. There are two answers to that point. The first is that I have been able to trace through clearly the relevant dates in the annex to Sir Ross Cranston's order which was provided specifically so that clarity could be obtained from Romania. That date sequence was correct. It is faithfully recorded in the English translation of the Romanian court's Judgment on 8 December 2022. Moreover, even to the eye of one who speaks and reads only English, it can be seen that the official Romanian version of the Judgment itself of which that is the translation gives the correct dates. Therefore nothing has gone wrong in mistranslation of the curfew dates. But the second point is this. In any event, what the Romanian Courts have decided is that the period of curfew cannot – to any extent – reduce the sentence. That is by operation of Romanian law because the curfew does not constitute a deprivation of liberty. So, the point about translated dates – which is clearly unfounded – could go nowhere in any event.

15. The Further Information dated 12 January 2023 supplies the emphatic answer to the Article 8 argument. What happened is that on 8 December 2022 that March 2022 application was "partially successful". That was what the Updating Note of 23 February 2023 had understood and had told the Court. But it was "partially successful", only to the extent of the 18 days of qualifying remand. The application failed in relation to the period on curfew. Moreover, an appeal was dismissed in relation to that on 11 January 2023 (the Updating Note had mistakenly referred to that as being a deadline date for an appeal).

16. In those circumstances, the sentence remains to be served as to the 12 months, subject only to the deduction of the 18 days of qualifying remand. That is the end of the road so far as any Article 8 argument is concerned.

17. I make clear that I have considered the Article 8 position in the round and in light of all of the materials which I have read. I record that a point had been raised that the Judge had been wrong to conclude as he did that the Appellant was a fugitive. The Judge reached that finding in the light of conclusions, expressed earlier in the judgment, that the Appellant had been personally summoned in March 2019, had subsequently filed an appeal against the March 2019 sentence, and had then successfully sought an adjournment (May 2019). The Appellant, who gave oral evidence and was cross-examined, denied all of that. The Judge identified the right legal test of fugitivity, namely whether the Appellant had been shown deliberately and knowingly to have placed himself beyond the reach of the relevant legal process. The Judge had found as a fact that the Appellant had been served in March 2019 and specifically disbelieved the Appellant's denial that he had signed a receipt by way of acknowledgement of that service. On that basis, the Appellant plainly left Romania to come back to the UK, deliberately and knowingly placing himself beyond the reach of the relevant legal process. This is a classic case where findings of fact were made with the advantage of oral evidence. In my judgment it is not reasonably arguable that the finding on fugitivity made by the Judge was wrong. But in any event I accept the submission in writing from Ms Smith on behalf of the Respondent that even if the Judge was wrong about fugitivity, this – beyond argument – would have made no difference to the outcome on Article 8.

18. This was a case of limited ties to the United Kingdom, the Appellant having come here in February 2018. It was a case in which he had done so having committed the August 2017 offence and breached the May 2017 suspended sentence. Whether or not he was in Romania in March 2019, he was aware of the proceedings and he unsuccessfully attempted to appeal the March 2019 sentence, failing on that appeal in June 2019. That was the context in which he had lived in the UK, and in which the recent relationship with his partner had commenced in May 2019. There are strong public interest considerations in favour of extradition, which the Judge rightly identified. They decisively outweigh the factors capable of weighing against extradition, including the impact on the Appellant and his partner and his health conditions, and the period on non-qualifying curfew. The period of 12 months (less 18 days) is a significant one. There was, moreover, as the Judge explained "little let-up" in the Appellant's offending behaviour, after arriving in the UK. He had committed similar offences in Denmark. Here, after his arrest on 10 October 2020, he was sentenced to 10 weeks custody having been convicted of an October 2021 offence of driving while disqualified and without insurance, which followed on from a

November 2019 offence of driving while disqualified and without insurance. In all the circumstances, the Article 8 outcome is a clear one.

Conclusion

19. There is plainly no realistic prospect of success on either ground of appeal. Nor is there anything else in the case.

20. My Order will record: (1) that I grant the Respondent permission to rely on the assurance dated 30 September 2022 and the 12 January 2023 Further Information; (2) that I refuse the adjournment; (3) that I refuse permission to appeal both on Article 3 and Article 8 grounds. Since the section 25 ground of appeal has already been disposed of, that marks the final determination of these extradition appeal proceedings. I will, as I have already said, also order: (4) that the 10 day period for removal shall take effect no earlier than 15 March 2023. Having reached that position and having given this ruling, and subject to one final point, I will direct: (5) that the Appellant's solicitors have the Court's permission to come off the record. The final point is that I make clear that I wish them to assist the Court in making sure that the Order from today, and the written version of this Judgment, will make their way promptly into the Appellant's hands once they have been provided later today by the Court. Finally, I will order (6) that there be no order as to costs save that there be a detailed assessment of the Appellant's legal aid costs.

1.3.23