Neutral Citation Number: [2024] EWHC 799 (Admin)

Case No: AC-2022-LON-003497

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/04/2024

Before :

THE HONOURABLE MRS JUSTICE CUTTS DBE

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Between :

DANIL NICOLAE MIRIȚĂ	**Appellant**
- and -	
DAMBOVITA COUNTY COURT (ROMANIA)	**Respondent**

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Jonathan Swain (instructed by **Lloyds PR Solicitors**) for the **Appellant**
David Ball (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing dates: 20 March 2024

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Approved Judgment

This judgment was handed down remotely at 2pm on 12 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Cutts:

1. On 1 December 2022, District Judge Tempia ordered the appellant's extradition to Romania, pursuant to a European Arrest Warrant (EAW) issued by the Dambovita County Court, Romania on 20 October 2016 and certified by the National Crime Agency on 7 July 2022. The appellant was arrested on 3 August 2022. He has been on conditional bail since 10 August 2022 on production of a security in the sum of £10,000.

2. This is his appeal, brought with permission, pursuant to section 26 of the Extradition Act 2003. There remains one ground of appeal, the appellant having abandoned a ground relating to Article 3 of the European Convention on Human Rights (ECHR). The remaining ground is that the appellant's extradition would violate his rights and those of his immediate family as guaranteed by Article 8 of the ECHR.

3. This ground is based on the fact that the criminal proceedings against him in Romania took over six years to come to trial. The extradition warrant was not certified for a further five years. It his submission that he was not responsible for that long period of delay, the effect of which diminishes the public interest in extradition and has increased the impact of extradition on his family life.

4. The appellant submits that the District Judge was wrong to find that there was no domestic warrant issued and withdrawn in Romania in 2009. Her approach to delay has been affected by that error. He seeks leave to adduce fresh evidence which demonstrates that fact.

The EAW

5. The EAW relates to the appellant's conviction on 12 April 2016 for two offences. The first is a conspiracy whereby the appellant and three members of his family (his mother, stepfather and brother) between the end of 2008 and the beginning of 2009 in Romania, and not excluding Spain, conspired to form a drug trafficking organisation. The appellant is described as having a leadership and co-ordination role in procuring cannabis seeds and devices for the development of the crop and sending them to Romania. He was also involved in the development of the culture in Romania. The second offence is cultivating cannabis between the end of 2008 and the beginning of 2009 in Romania with the same individuals for commercial purposes. One co-defendant sent 20 cannabis seeds from Spain to Romania on 18 September 2008 and a further 28 seeds were sent to the appellant's house in Romania and grown. The appellant would visit to directly supervise the growth of the plants.

6. The appellant was present at the trial where the decision was made. He was sentenced to a total of two years and four months' imprisonment. He lodged an appeal in Romania which was unsuccessful. The judgment was made final on 13 October 2016.

The facts

7. The appellant's circumstances (accepted by the District Judge) were these. He was aged approximately 28 years at the time of the offending. His mother and stepfather moved to the United Kingdom in 2000. The appellant entered the UK illegally in 2001, settling with them in Slough. His mother was removed to Romania and his stepfather returned

to Romania with her. The appellant remained in the UK until 2005 when he moved to Spain to be with his family who lived there.

8. The appellant returned to the UK legally in 2010 because he needed money to pay for lawyers to represent his mother and stepfather who were being prosecuted for these drugs offences in Romania. They had been arrested in 2009. They pleaded guilty and were given custodial sentences. They were released in 2013.

9. In 2016, the appellant was contacted by his mother's lawyers and advised to return to Romania. He gave evidence that he was told the police wanted to end the case and he would be given a suspended sentence. He attended court and pleaded guilty. He returned to the UK the next day; sentence having been adjourned. He later learned from his lawyers that he had been sentenced to two years and four months' imprisonment. He lodged an appeal which was unsuccessful in October 2016.

10. The appellant's brother was arrested in the UK in 2018 and served his sentence. The appellant did not return to Romania and ceased an application concerning his Romanian identity documents because he had a son and was the only person providing for the family.

11. The appellant had worked in various occupations and was employed at the time of the extradition proceedings as a carpenter. He obtained a National Insurance Number in 2013. He was given indefinite leave to remain in August 2021.

12. He lives in the UK with his wife, son (who was born in 2014) and his mother who had a full hip replacement in February 2022. She had continuing mobility issues and was expected to have further surgery in 2023. His stepfather and brother live in Romania. His wife worked as a cleaner before their son was born but now does not work. He is therefore the sole provider for the family. If extradited, his son would not be able to visit him in prison as minors are not allowed to do so. There may also be travel difficulties for his wife and son to go to Romania in his absence and, once there, to return.

13. There is no realistic possibility of the appellant's family moving to Romania. His son speaks only English and is in full time education here. Their lives are very much in the UK.

Proceedings in Romania in 2009

14. The appellant gave evidence in the court below that the Judicial Authority issued a domestic warrant for his arrest in 2009 but it was withdrawn as it was "unconstitutional". He was represented by the same lawyer who was representing his family. There were no restrictions on his ability to travel following the domestic warrant and he was able to travel until after the sentence was passed.

Findings of the District Judge

15. The District Judge did not find the appellant to be a fugitive. She accepted that he had been living openly in the UK since 2010 and has indefinite leave to remain. She accepted that he is the sole wage earner for his family.

16. The appellant is a man of good character in the UK and has worked since arriving here.

17. The appellant's wife had previously worked and could do so again if the appellant was extradited.

18. The appellant's mother lives with the family. Evidence provided indicates that she was doing well following her hip replacement. The District Judge reviewed the medical evidence. She did not accept the appellant's evidence that his mother was mobile for only ten minutes at a time which did not reflect the medical notes.

19. The District Judge did not find that there had been culpable delay or delay in the case. In that regard she said at [29]:

> "The conviction was on 12 April 2016 and made final on 13 October 2016. Members of [the appellant's] family were being prosecuted before him but it was only in 2016 that he was contacted by his family's lawyers and told that he should return to Romania because the police wanted to end the case. I accept that I do not have details about why this happened in 2016 but the authorities would have been investigating the case and they are cross-jurisdictional offences. The [appellant] says a domestic warrant was issued in 2009 but withdrawn because it was constitutional [sic]. I do not accept his evidence about that because it was not mentioned in his first proof and only referred to in his second. There is also no corroboration about this from his lawyers who were representing him at the time. He also did not have further contact with the Romanian authorities about his ID card after 2016 because he knew he had been sentenced and feared a warrant was issued. The warrant was issued swiftly on 20 October 2016 after the appeal."

20. Having heard submissions, the District Judge set out the factors in favour of extradition as well as those against in accordance with the well-known decision in *Polish Judicial Authority v Celinski and others* [2015] EWHC 1271 (Admin).

21. In favour of extradition, she found the following factors:

- The constant and weighty public interest in extradition and that the UK should honour its treaty obligations;
- The importance of having regard to the decisions of the Judicial Authority in making a request, which should be accorded a proper degree of mutual confidence and respect;
- That people who have been convicted of crimes should serve their sentences and there should be no safe havens to which they can flee in the belief they would not be sent back;
- The offences are serious cross-jurisdictional offences with the [appellant] said to have a leadership and co-ordinating role. The significant sentence of two years and four months remains to be served;
- There has been neither culpable delay nor delay;
- This is not a sole carer case.

22. Against extradition the District Judge found the following factors:

- The [appellant] is not a fugitive;
- He has lived openly in the UK since 2010 and is a man of good character in the UK. He has indefinite leave to remain;
- This is the only conviction recorded against him in Romania;
- He is married and the sole provider for his wife, son and mother who live with him;
- Extradition would affect the family financially and cause emotional distress;
- The impact of removal of a parent on a child;
- The child may not be able to see his father in prison and if he went to Romania may not be able to return to the UK;
- The offences are old, having been committed in 2008 and 2009.

23. Having weighed these factors the District Judge observed that since 2016 the appellant knew that he had a sentence of imprisonment to serve. His life in the UK since that time has been predicated on that knowledge. She said:

> "I have found that there has not been a delay in this case because I have not accepted the [appellant's] evidence that in 2009 a domestic warrant was issued for his arrest but was deemed unconstitutional and withdrawn."

24. Having conducted the balancing exercise the District Judge did not find that it would be disproportionate to the appellant's and his family's Article 8 rights to order his extradition.

The fresh evidence

25. Following the decision of the District Judge and before the appeal, the appellant has obtained documentation from Romania entitled "procedural measures" which sets out the history of the warrants as follows:

i) On 23 November 2009, warrants were issued against [the appellant] and a co-defendant family member (his brother);

ii) On 22 December 2009 the Ploiesti Court of Appeal allowed an appeal lodged against those warrants issued by the lawyers of both individuals on the grounds that the summons procedure had not been followed;

iii) As neither person could be located, they could not be informed of their procedural rights. This was because they evaded the criminal jurisdiction;

iv) On 18 December 2015, a copy of the order changing their legal classification was served on their defence counsel and they were summoned.

26. In addition, translated copies of the publicly available court record have been provided which set out the same procedural history for the period between 11 November 2009 and 23 November 2009 culminating with the warrants issued on that date.

27. There is no dispute that this documentation corroborates the evidence given by the appellant in the court below about proceedings in 2009 and that the District Judge was therefore wrong to find that the appellant lied about the matter.

Delay

28. I am grateful to the parties for taking me to the relevant authorities on delay. For understandable reasons focus has been on the recent judgment of Fordham J in *Gomulka v Poland* [2024] EWHC 460 (Admin) in which he analysed the key points which he derived from the authorities on Article 8 and the passage of time. The most important of these in my view is the need to concentrate of the frame of reference. Delay and the passage of time may (a) diminish the weight to be attached to the public interest in extradition and/or (b) increase the impact of extradition upon private and/or family life. To treat questions of delay or unexplained or culpable delay as freestanding features may risk losing the value of that frame of reference.

29. What is of importance, therefore, is not the so much the cause of the delay but its effect.

30. With the focus on that frame of reference it is for the extradition court to consider all relevant circumstances of the case. Although other cases can be helpful in illustrating the application of the frame of reference, all cases are intensely fact-specific.

31. It is clear from the authorities cited to me that the court should not be too quick to assume culpability in any delay. In *Wolack v Poland* [2014] EWHC 2278 (Admin) Collins found it quite wrong to do so unless it is so excessive or there are factors which indicate that it really was not reasonable for the authority to fail to issue a warrant earlier than it did. In *Germany v Singh* [2019] EWHC 62 (Admin) the Divisional Court, having considered the authorities, stated that unexplained delay is not necessarily to be assumed to be culpable. Even if there is some culpability on the part of the state authorities that would not necessarily be determinative. It has to be considered, together with all other relevant factors in the article 8 proportionality balancing exercise. In other words, there must be a focus on the impact of the delay within the frame of reference.

Submissions from the parties

The Appellant

32. The appellant invites me to consider the fresh evidence *de bene esse* on the basis that, in accordance with *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin), a criterion for its admissibility is that the court must be satisfied that it would have resulted in the District Judge deciding the relevant question differently, in other words the evidence must be decisive. If I were to consider that, in light of the fresh evidence, the District Judge was wrong as regards the outcome the evidence would prima facie be admissible. If I were to decide otherwise it would not. The respondent does not disagree with this approach.

33. The appellant submits that the District Judge erred in her consideration of Article 8 of the ECHR and as a result the overall conclusion she reached was wrong. Mr Swain submits that she erred in her factual finding that there was no warrant issued in 2009. This coloured her decision on the delay in this case. Had the District Judge taken account of the warrant, as she should have done, she would have found there to have been an unexplained delay between 2009 and 2016.

34. The District Judge should have found this unexplained delay was culpable. The allegation was not a complex, multi-handed and multi-jurisdictional conspiracy but a small scale cultivation of cannabis by family members. The appellant's family were prosecuted in 2009 on the same basis. There is no explanation for the delay and it was not the fault of the appellant.

35. As recognised in *Lysiak v Poland* [2015] EWHC 3098 (Admin), delay is relevant for the purposes of Article 8 and should have been taken into account by the District Judge. There was delay between the invalid warrant in 2009 and 2015 when the appellant was summoned again by the Judicial Authority, a period of over six years. This is egregious delay for a straightforward offence, particularly where co-accused were apparently prosecuted. It is relevant that the District Judge did not find the appellant to be a fugitive and this is not a case where it would be improper to place weight on that delay.

36. Considering the principles in relation to delay distilled by Fordham J in *Gomulka v Poland (supra)* and applying them to this case Mr Swain submits:

    i) By issuing the warrant in 2009, the Judicial Authority must have been ready for trial. The warrant failed as the appellant was not properly summoned. By December 2009, the authorities knew that the appellant had counsel acting on his behalf because he had lodged an appeal.

    ii) It took them until December 2015 to carry out the procedural step of summoning the appellant again. This amounts to substantive inaction by the Romanian authorities. The appellant's parents were prosecuted. There is nothing to explain why it took six years for them to summon the appellant again. Their failure in this regard diminishes the public interest in extradition.

    iii) That delay of six years has had a substantial impact on the appellant and his family's life. It was during that time that he moved to the UK, got married and had his son. All the features of his private and family life occurred in the period of inactivity.

37. The District Judge should have taken all of this into account in conducting her balancing exercise. Had she done so she would have found that the appellant's family life, built during the period of inactivity, have been substantially impacted by the delay.

38. There has been a further period of delay from 2016, the date of the EAW, and 2022 when the appellant was arrested. Mr Swain does not assert that this is culpable delay as the authorities had to locate the appellant. However, although by then the appellant was aware of the proceedings, the public interest in extradition continued to decline and his family life became more entrenched. This further six years was not addressed by the District Judge in the factors against extradition.

39. Stepping back, extradition now for offences committed more than a decade ago is not in the public interest. This is particularly so where it would result in the appellant's wife being the sole carer of their nine year old son. There is no suggestion that the family could or would move to Romania. Their son has been born and raised here and speaks only English. There is no suggestion he could locate and change schools. The appellant's wife would have to return to work for the significant period of the sentence. The decision was wrong and it would be disproportionate now to send the appellant back to Romania.

The Respondent

40. Mr Ball accepts that the District Judge was wrong to find that there had been no domestic warrant issued and then overturned on appeal in Romania in 2009. It is his submission that this does not matter to any great extent. In her balancing act the District Judge took account of the age of the offending and the impact of extradition as factors weighing against extradition. She accepted that the appellant was not a fugitive. The fresh evidence does not change that. She was not wrong as regards the outcome.

41. The case law makes clear that the exercise of the High Court on appeal is one of review, not re-hearing; the single question being whether the District Judge was wrong with a focus on the outcome. Even if in this case she was wrong not to find delay, that does not mean the appeal must succeed. The overall picture must be considered.

42. If the fresh evidence had been before the District Judge, it does not mean that she should have found culpable delay. As Collins J said in *Wolack v Regional Court* in *Gdansk (supra)* the court should not be too quick to decide that delay is culpable. It would be wrong to assume culpability in any delay unless it is so excessive or there are factors which indicate that it really was not reasonable for the authority to fail to issue a warrant earlier than it did. If there is no culpable delay the weight to be attached to it in favour of saying that an extradition would be disproportionate will be slight.

43. This is not a case or a period of time where culpability can be assumed. This is because the respondent had to arrange valid service for an out of jurisdiction defendant, the respondent was actively prosecuting other co-accused meanwhile and this was a multi-jurisdictional case which may have involved evidence and mutual legal assistance from Spain. It is wrong to assume that the respondent was ready for trial at the time it issued the domestic warrant in 2009.

44. As was observed in *Germany v Singh (supra)* unexplained delay is not necessarily to be assumed to be culpable. There is no basis to assume culpability for the delay in this case. The document entitled "procedural measures" from the respondent states that the appellant and his brother could not in 2009 be informed in person of their suspect or defendant status or of their procedural rights because they evaded the criminal investigation. The respondent's explanation for the delay is that they had to arrange for valid service outside the jurisdiction. The respondent acted promptly after the domestic warrant was issued in December 2015.

45. The District Judge fully weighed up the factors for and against extradition. She had fully in mind the impact of the age of the offences. She was not wrong as regards the outcome for the following reasons:

i) The fresh evidence has no transformative effect as it might have done if she had found the appellant to be a fugitive. She took the age of the offences into account in the balancing exercise.

ii) The appellant has known since 2009 that he was wanted for the offending even though the domestic warrant was then set aside for procedural reasons. He knew that his parents had served a sentence of imprisonment for the offending up to 2013. His sense of insecurity would not have evaporated between 2009 and 2015.

iii) He knew his brother had been convicted and sentenced to imprisonment in 2018. The appellant knew from 12 April 2016 that he had been sentenced to two years and four months' imprisonment. Therefore, for the vast majority of time in the thirteen years or so since he committed the offence and was arrested on the EAW he knew that he was likely to face a lengthy custodial sentence. It is no accident that he stopped engaging with Romania for a new ID card since 2016. For the last eight years he has known the time would come to serve his sentence.

iv) It was insufficient for the appellant simply to show delay or even culpable delay to establish that there was little public interest in his extradition or that such would render his extradition disproportionate. The court had to consider all of the circumstances. This is what the District Judge did. In particular, she considered that the offences were old and expressly reminded herself that they dated back to 2008/2009. She specifically took into account that extradition would affect the family and cause emotional distress. She had specific regard to the fact that the appellant had lived openly in the UK since 2010 and was a man of good character. Having regard to the frame of reference and the circumstances the decision of the District Judge was not wrong.

v) The over-arching question, in accordance with *Norris v USA* [2008] 1 AC 920, is whether the District Judge was wrong not to find that the consequences of extradition on family life were exceptionally severe. Her conclusion that they were not so was one she was entitled to reach.

46. The fact that the appellant was not validly summoned in 2009 and then validly summoned in 2015 does not eclipse the surrounding circumstances properly considered by the District Judge. The fresh evidence is neither decisive nor determinative. It was reasonable for the District Judge, even had the fresh evidence been adduced at the court below, to conclude that extradition was proportionate.

47. Whilst it is true that the offending is now a considerable time ago and that there will undoubtedly be hardship to the family upon extradition, the District Judge was entitled to find no evidence which established exceptionally severe consequences. The appellant's wife had worked before their son was born and could do so again, with her mother-in-law assisting with childcare.

Discussion

48. I am prepared to consider the fresh evidence *de bene esse* for the reasons set out by the appellant. It is clear from that evidence that the District Judge made a wrong finding of fact in the court below when she did not accept that the appellant had been summoned

in 2009 for the offences, such summons then being withdrawn because it was unconstitutional. She specifically relied on that wrong finding of fact in her conclusion at [56] that there had not been delay in the case. Lack of delay was one of the factors she weighed in the balance in favour of extradition.

49. The issue on this appeal is whether and to what extent that impacts on her conclusion that it would not be disproportionate to extradite the appellant for the offences of which he has been convicted. In other words, was she wrong as to the outcome?

50. In my view there was delay between the summons issued in 2009 and the summons issued in December 2015. The District Judge was wrong to find otherwise and to place a lack of delay in her factors favouring extradition.

51. The reason for the delay is explained in part by the document entitled "Procedural Measures" stating that the appellant could not be informed in person of his suspect or defendant status because he evaded the criminal investigation. However, whilst Mr Ball may be correct in his reasons why the investigation took time, the delay is largely unexplained. That is not to say it is culpable. True it is that the appellant's parents were prosecuted for their part in the conspiracy between 2009 and 2015, but I do not accept that of itself means that the respondent authority was ready for trial in relation to the appellant who was by that time in the UK. Evidence proving the part played by individual conspirators can vary widely in any given conspiracy. Nor do I see any basis for the assumption that the respondent authority must have been ready for trial in his case when the initial warrant was issued in 2009. I do not find the period of the delay between 2009 and 2015 so excessive or any factors which indicate that it really was not reasonable for the respondent authority to fail to issue a warrant earlier than it did. I agree with Mr Ball that there is no basis to assume culpable delay in that time frame.

52. As the appellant accepts, there can be no proper argument that the delay since 2016 was culpable. There is no explanation for the time that it took for the appellant to be arrested on the EAW but as is acknowledged the authorities had to find the appellant. The appellant was aware of his conviction and sentence in 2016. He took steps thereafter not to not come to the attention of the authorities.

53. However, whether there was delay or even culpable delay is not the ultimate question. The authorities, analysed, correctly in my view by Fordham J in *Gomulka v Poland*, lay importance on the frame of reference. Questions of delay or culpable delay are not freestanding features but must be considered in Article 8 cases by reference to whether the passage of time has diminished the weight to be attached to the public interest in extradition and/or increased the impact of extradition upon private and/or family life. What matters is not so much the cause of the delay but its effect.

54. In this regard the District Judge, whilst not specifically analysing those questions, did consider the age of the offences in her balancing exercise, placing that fact in her list of factors against extradition. She had specific regard to the fact that the appellant had lived openly in the UK since 2010 and fully considered the nature of the appellant's family life in coming to the conclusion that she did. The District Judge therefore properly considered the appellant's family life in the context of the age of the offences. As she found, the appellant's son will continue to be cared for by his mother with the assistance of the appellant's mother. The appellant's wife has worked before and can find employment again and the State will intervene to support the family financially if

need be. There will no doubt be emotional distress and disruption for the appellant and his family if extradition is ordered. However, in my view the District Judge was entitled to conclude that, notwithstanding the age of the offences, the consequences of extradition on the appellant's family life were not exceptionally severe and that extradition was not disproportionate.

55. In respect of the public interest, the District Judge rightly recognised the constant and weighty interest in extradition. There is a public interest in the state fulfilling its international obligations and in extraditing individuals to serve sentences imposed by other countries. She correctly found that the offences are serious cross jurisdictional offences with the warrant categorising the appellant as occupying a leadership and co-ordinating role. A significant sentence of two years and four months was imposed and remains to be served.

56. It is true that the appellant made the decision to marry and have a child between 2009 and 2015, the period of inactivity in Romania. However, although not a fugitive, throughout that time he was aware from the issue of the summons in 2009 (albeit that it had been withdrawn for procedural reasons) that he was wanted for the offences and that in the interim his co-conspirators had been prosecuted and imprisoned. Since 2016 he knew of his own sentence, disengaging from the Romanian authorities with regards to his new identification card so as not to attract attention. He has built his family life on those less than secure foundations.

57. Taking all of these factors into account in my view the District Judge was right to find that the balance was in favour of extradition notwithstanding the interference with the appellant's family life. Whilst she should in my view have decided the question as to whether there was delay in this case differently, I cannot accept that she was wrong as to outcome.

Conclusion

58. For these reasons the appeal is dismissed.