Neutral Citation Number: [2025] EWHC 176 (Admin)

Case No: AC-2024-LON-002319

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 30th January 2025

Before:
FORDHAM J

- -

Between:

ION AILENI	**Appellant**
- and -	
SUCEAVA COURT OF LAW	**Respondent**

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- -

Ania Grudzinska (instructed by Hollingsworth Edwards) for the **Appellant**
David Ball (instructed by CPS) for the **Respondent**

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Hearing date: 30.1.25

Judgment as delivered in open court at the hearing

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Approved Judgment

- -

FORDHAM J

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

FORDHAM J:

Introduction

1. The Appellant is aged 46 and is wanted for extradition to Romania. That is in conjunction with a conviction Extradition Arrest Warrant issued on 12 November 2020 and certified on 7 November 2023, on which he was arrested on 15 November 2023. Since his arrest he has been on an electronically-tagged curfew (1am to 5am). That would be a "non-qualifying" curfew for the purposes of any calculation of a release date of sentence were being served in this jurisdiction. But a point has, very belatedly, been raised in putative fresh evidence about what is said by a lawyer (Nicolae Miron) to be the operation of Romanian legislation. After an oral hearing at which the Appellant gave oral evidence, and for which his wife provided a witness statement, District Judge Snow ("the Judge") ordered the Appellant's extradition for the reasons set out in a 55-paragraph judgment. Permission to appeal on Article 8 grounds was refused on the papers by Garnham J and is renewed orally before me. I have looked at the question of reasonable arguability entirely afresh. The index offending took place on 3 July 2016. It involved causing death by dangerous driving and driving while over the legal limit for alcohol (being nearly twice that limit). In the end, what was imposed was a 2 year 4 month custodial sentence which became final on 16 October 2020. The Appellant was originally given a suspended sentence which the prosecution were known by him to be seeking to appeal. That was the position which he came to the United Kingdom in 2018. The Judge unassailably found as a fact that the Appellant had come to the UK having been notified of an obligation to inform the Romanian authorities of any change of address, which he knowingly failed to do.

The Paper Decision

2. In refusing permission to appeal on the papers, Garnham J characterised as arguable Ms Grudzinska's challenge to the Judge's finding of fugitivity. Adopting the position most favourable to the Appellant for the purposes of today, I will proceed on that same assumption. Garnham J found that, even if that fugitivity finding were overturned and the Article 8 evaluation were conducted afresh, the outcome would nevertheless inevitably be that the appeal would be dismissed.

My Decision

3. Having today revisited the question of reasonable arguability, with Ms Grudzinska's assistance, I agree with Garnham J's conclusion that the appeal cannot succeed. That is, moreover, my conclusion having regard to the very late putative fresh evidence being put before the Court. That fresh evidence addresses the question of the operation of Romanian legislation and how a tagged curfew would count to accelerate a release date. It also addresses another, and ultimately the primary point relied on, about early release. What is said is that the Appellant would be eligible to apply – at the 19 month point – for early release in Romania. Assuming everything in his favour, and adopting the most favourable approach both to the described effect in Romania of the tagged curfew and the described position in Romania as to early release, all this would mean the Appellant would serve 4½ months custody in Romania were he extradited.

The Andrysiewicz Stay

4. In relation to the early release point, there is a now familiar line of cases which consider whether a demonstrated clear prospect of early release can properly be considered by the extradition court as a factor in the Article 8 balancing exercise. Within those cases it has even been canvassed as a possibility that the extradition court may be under a "duty" to consider and assess the prospects of early release (see Marcisz v Poland [2024] EWHC 2441 (Admin) at §35), a bit like the specified matters of likely penalty and possible less coercive measures for statutory proportionality in accusation cases (Extradition Act 2003 s.21A(3)(c)). In Polish cases, as is well known, a certified point of law of general public importance has led to a Supreme Court permission to appeal on 17 October 2024 in Andrysiewicz (see Marcisz) and what, on the present position, is an expedited appeal hearing in March this year. Marcisz addresses the position and explains the basis on which this Court considers applications for stays. In the present appeal, there is an application for a stay dated yesterday and perfected this morning.

5. In the circumstances of the present case I am persuaded that it is appropriate, in the Appellant's favour, to assume the most favourable position regarding the law and early release; but without deciding anything. I will assume in the Appellant's favour, without deciding anything, that if extradited he would be eligible after 4½ months of custody to apply for early release. I will also assume in light of the materials put forward that he would be likely to, or indeed would, succeed in applying for early release. Built into that as, I have explained, is also a favourable assumption in his favour relating to the tagged-curfew point. The upshot, as is common ground, is that the most favourable position to the Appellant would involve early release after 4½ months custody. Mr Ball, in his written submissions in response to the applications now put forward, has adopted these same most-favourable assumptions, in order to test the viability of the appeal.

6. I agree with Mr Ball's submissions that, even on this most favourable basis, there is no reasonably arguable Article 8 appeal in the present case. I emphasise the importance of testing the position as to reasonable arguability by looking at the position, positing a substantive appeal hearing today. The test is not a "bootstraps" approach that would involve 'projecting forward', to suppose an increased period of tagged-curfew at a later hearing after a Supreme Court decision. Such an approach, in my judgment, would be plainly inappropriate. The reasons for that are the ones I gave in relation to the more hard-edged question of qualifying remand, in Molik v Poland [2020] EWHC 2836 (Admin). There must be a well-founded basis for permission to appeal, or for a stay, before consideration can properly be given to the implications of 'projecting forward'.

The Combination of Factors

7. Ms Grodzinski is quite right to emphasise that the present case is not simply a case of how much the requested person would have left to serve on extradition. She is quite right to emphasise all of the other features of the case which, in combination, are capable of counting against extradition in Article 8 terms. She is right to emphasise that the question is whether it is reasonably arguable that all of those features in combination, when put alongside the points about the curfew and early release, are capable of outweighing the public interest considerations in favour of extradition.

8. The fatal difficulty, in my judgment, is that on that approach the answer is clearly that those factors in combination do not have that capability. The index offence is one of seriousness. There are strong public interest considerations supporting extradition. There is the passage of time since 2016, but that is against the backcloth of the prosecution appeal in Romania, and then the Appellant relocating to the UK without giving an address. In the nuanced world of Article 8 evaluation, the Judge's unimpeachable finding of fact about the Appellant breaching the notified duty to communicate a change of address – whatever view is taken of fugitivity – necessarily remains a relevant feature when considering the passage of time. The Appellant, to his credit, has no other offending, including in the United Kingdom since 2018. He has physical health issues which involved a back operation in Romania in 2016 and which continue. His 20 year marriage now faces separation from his wife. There is the serious impact for her, and the hardship which she faces, including an accumulated debt. But in my judgment, it is not reasonably arguable that the factors against extradition can combine to outweigh the strong public interest factors favouring it. There is no realistic prospect that the Article 8 appeal would succeed.

Conclusion

9. In those circumstances, the renewed application for permission to appeal is refused. The putative fresh evidence is incapable in my judgment of being decisive, and there is in my judgment no basis for the stay, and I will therefore refuse both those applications.

30.1.25