



Neutral Citation Number: [2025] EWHC 393 (Admin)

Case No: AC-2023-LON-002417

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/02/2025

**Before :**

**MR JUSTICE MOULD**

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**Between :**

**MARIUS BOLOGH**  
**- and -**  
**COURT OF LAW IN SIBIU (ROMANIA)**

**Appellant**

**Respondent**

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**Jonathan Swain** (instructed by **AMI Solicitors**) for the **Appellant**  
**Adam Squibbs** (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 28<sup>th</sup> November 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on Tuesday 25<sup>th</sup> February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**MR JUSTICE MOULD**

## MR JUSTICE MOULD :

### Introduction

1. The Appellant, Marius Bologh, appeals from the order of the Westminster Magistrates' Court made on 17 August 2023 that he be surrendered to Romania to serve a sentence of 8 months' imprisonment in relation to a single offence, pursuant to section 21(3) of the Extradition Act 2003 [**"the 2003 Act"**]. Romania is a Category 1 territory for the purposes of the 2003 Act. These extradition proceedings are governed by Part 1 of the 2003 Act.
2. The Appellant's extradition hearing took place before the District Judge on 4 July 2023. Both parties were represented by counsel. The Appellant gave live evidence at the hearing and was cross examined by the Respondent Judicial Authority [**"JA"**]. His partner, Antoanela Hadaranga also gave live evidence on which she was cross examined.
3. On 17 August 2023 the District Judge handed down his judgment in writing [**"the judgment"**].
4. The appeal is brought under section 26 of the 2003 Act. Permission to appeal was granted on the papers by Farbey J on 12 February 2024. The Appellant was represented before me by Mr Jonathan Swain and the Respondent by Mr Adam Squibbs. I am grateful to them both for their helpful written and oral submissions.

### Ground of appeal

5. The appeal proceeds on a single ground –
  - (1) That the District Judge was wrong to find pursuant to section 21 of the 2003 Act that the Appellant's extradition was compatible with his rights under the European Convention of Human Rights [**"ECHR"**] as it would constitute a proportionate interference with the Appellant's right to respect for his private and family life protected under Article 8 of the ECHR.

### The extradition proceedings

6. The JA seeks the Appellant's surrender pursuant to an arrest warrant [**"AW"**] issued on 14 April 2021 and certified by the National Crime Agency [**"NCA"**] on 5 August 2021.
7. On 8 March 2023 the Appellant was arrested and appeared before Westminster Magistrates' Court. He was remanded on conditional bail. He has been subject to an electronically monitored curfew between the hours of 9:00am and 11:00am since that date. Between 22 March 2023 and 28 April 2023, he was required to report to Leicester Police Station between 7:00am and 9:00am on Mondays, Wednesdays and Fridays.
8. The AW gives particulars of the following offence –

*"On 20 March 2019, around 03:19am, the [Appellant] got from the defendant G.C.M. for the taxi services provided, 4 packets of "Marlboro Gold" cigarettes,*

*about which he knew they came from committing the crime of qualified theft, after that on the same date, but around 10:00am, he helped the defendant G.C.M., in the sense that he drove her through the city of Sibiu by the car used as a taxi, and he appealed to people he knew (witness H.I.) for the defendant to capitalise several packets of cigarettes that he knew they came from committing the crime of qualified theft”.*

9. The AW states that a custodial sentence of 8 months’ imprisonment was imposed, the full term of which remains to be served.
10. On 12 April 2023, the JA provided further information. The JA had entered into a plea agreement with the Appellant under the terms of which the sentence of 8 months’ imprisonment imposed for the offence was suspended for a period of 3 years, during which period he was to be subject to supervision conditions, to attend a probation programme and to perform 90 days’ unpaid work in the community. The Appellant had not been present in court but had been represented by his lawyer.
11. The supervision conditions were as follows –
  - (1) To present himself to the probation service in Sibiu on the dates fixed by it.
  - (2) To receive visits from the probation counsellor appointed with his supervision.
  - (3) To announce in advance a change of residence and any travel that exceeds 5 days.
  - (4) To communicate a change of job.
  - (5) To communicate information and documents of a nature to allow the control of his means of existence.
12. The Appellant was required to attend the first meeting with his probation counsellor on 16 July 2019. Prior to that date, he informed the probation service in Sibiu that he intended to go to the UK to work as a driver. The meeting with his probation counsellor was re-arranged to take place on 8 August 2019. In early July 2019 he again contacted the probation service and informed them that he had not in fact left for the UK. On 9 August 2019 he presented himself to the probation service and held his initial meeting with his probation counsellor.
13. The further information states that at the meeting on 9 August 2019, the Appellant was –

*“informed about the sanction applied by the sentence of conviction, regarding the supervision measures and the obligations established by the court in his charge, which he had to respect and execute during the term of supervision, about the consequences of their compliance or non-compliance, as well as information regarding the collaboration with the community institutions and other competent bodies, about his rights and obligations during supervision, explaining to him, at the same time, the purpose and the way of carrying out the supervision... A copy of the minutes was handed over to the [appellant] based on his signature and the next meeting with the probation counsellor was set for the date of 13th August 2019”.*

14. The Appellant did not attend the meeting with his probation counsellor scheduled for 13 August 2019. Thereafter both the probation service and the police attempted without success to contact the Appellant both by telephone and by visiting his known addresses. Warrants were issued for his arrest, but he could not be found. In his absence, proceedings took place before the court in Sibiu following which with effect from 28 September 2020 the suspension of his prison sentence was revoked and full execution of his sentence of 8 months' imprisonment was ordered by the court.
15. Box 3.4 in the AW has been ticked by the JA, to indicate that the Appellant was not present for the relevant hearing but will have the right to appeal against the execution of his prison sentence following his surrender to the JA.

### **The District Judge's judgment**

16. The Appellant was born in Romania on 30 June 1984. Before the District Judge, he gave evidence that he had been aware that conditions had been imposed as part of his suspended sentence, including informing the probation service if he changed his residential address and if he found a new job. He said that he had moved to the UK to find a job. He had told the probation officer that he would move to the UK because he did not have any means to support himself in Romania. When he moved to the UK, he lost his phone with the contact numbers of the probation service and could no longer keep in contact with them.
17. The Appellant said that he had come to the UK in August 2019. Since doing so he had lived in Leicester and worked as a picker on an industrial estate. Prior to his arrest, he had lived at an address in Leicester for approximately 3 years. The tenancy agreement was in his partner's name. Both he and his partner have settled status in the UK.
18. The Appellant said that his father had died in September 2022. In November 2022 his mother joined him in the UK. His mother was 72 years old and had issues with her memory and mobility. She had moved to the UK because she no longer was able to cope by herself in Romania. She was beginning to display symptoms of Alzheimer's disease. She needed assistance with care and medication and often forgot basic normal daily things. She also had problems with her liver and was under medical care in the UK.
19. He said that he supported his mother and partner as neither of them work. He was the single breadwinner. His partner was unable to do physical work following a serious accident. She used to receive universal credit but no longer did so. Without his income, there would be no other means of financial support for his partner and mother.
20. The Appellant's partner was born in Romania on 2 January 1982. She gave evidence that she had moved to the UK in July 2020. She was in a stable relationship with the Appellant. She lived with the Appellant and his mother. She was financially dependant on him. Her state of health prevented her from doing any physical work. She looked after the Appellant's mother.
21. Ms Hadaranga said that she had lost her entitlement to universal credit when she had returned to Romania to collect the Appellant's mother. In cross examination she said that she had recently secured some work, but her health only allowed her to work

part-time for two to three days a week. She said that she had not explored whether she was now entitled to any benefits or tax credits, or to a carer's allowance.

22. The District Judge received documents relating to the Appellant's settled status, the tenancy agreement and household bills. He saw a hospital discharge letter relating to Ms Hadaranga's injuries in 2016. He also saw medical records which referred to the Appellant's mother receiving hospital treatment for hypertension, angina and gallstones.

23. In [22]-[24] of the judgment, the District Judge stated his findings of fact. He was sure that the Appellant had left Romania in August 2019 as a fugitive from justice, deliberately putting himself beyond the reach of the JA and enforcement of his sentence.

24. In [23]-[24] the District Judge made the following findings –

*“23. I accept that [the appellant] is the main provider for his household which contains his partner and mother who have their own health difficulties. There are now no other dependents. I do not accept, as yet another happy coincidence, that he was about to start providing financial support to a child within days of his final extradition hearing: that, on its own, and when combined with his concerns for the pressing financial future of his immediate household was so improbable as to be incredible: again, I did not believe him, and found that this was an attempt to bolster his otherwise weak case.*

*24. Ms Hadaranga is able to carry out some part-time work, as she volunteered. The clear inference is that she will now have the pay slips available which were said to be the only impediment to re-establishing her claim for universal credit. She has not explored other types of credit, though the job centre has previously provided interpreters so that she can access the system of support from the state; she has not explored the availability of any carer's allowance”.*

25. The District Judge addressed the impact of extradition on the Appellant's and his family's rights protected under article 8 of the ECHR in [30]-[35] of the judgment. He followed the approach to drawing the balance between the factors favouring and weighing against extradition in accordance with the guidance given by the Divisional Court at [15]-[17] in Polish Judicial Authority v Celinski [2015] EWHC 1274 (Admin); [2016] 1 WLR 551.

26. The District Judge identified the following factors as militating against extradition –

(1) The offence was not of the greatest gravity, as demonstrated both by the conduct set out and that it initially attracted a suspended sentence; even when activated, the sentence was relatively short.

(2) There had been some delay, though not great, allowing the Appellant's life to develop in the UK.

(3) The Appellant had already applied for settled status by the time the warrant was issued and he was registered with the same authority, yet there was a significant time until arrest during which he was able to build his life in the UK.

- (4) There was no suggestion that he lived anything other than an open life in the UK.
  - (5) He had developed roots in the UK since arriving in 2019, working and building a household with his mother and partner.
  - (6) The other members of the Appellant's household each had significant health issues and limited access to funds; although there had been some work and further avenues might be explored, extradition would have an impact on the viability of the household.
  - (7) Any work by his partner would affect the care available to his mother.
  - (8) The Appellant had not committed any offences in the UK.
27. The District Judge found the following factors to militate in favour of the Appellant's extradition –
- (1) There is a weighty public interest in upholding all extradition requests and treaty obligations, thereby ensuring that there are no "safe havens" to which individuals can flee in the hope they will not be sent back. This public interest is not easily displaced.
  - (2) The Appellant is a fugitive. Very strong counterbalancing factors are required in such circumstances.
  - (3) The principle of mutual confidence and respect shown by the English courts for the decisions of the Romanian judicial authority.
  - (4) Factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will have taken into account.
  - (5) Respect for the sentencing regime of the requesting state. The court should assume that the sentence reflects the gravity of the offending in all the circumstances as seen by the court with all necessary knowledge.
  - (6) The length of sentence remaining to be served is not short, but not one that should give rise to any "Brexit uncertainty" (i.e. uncertainty as to the Appellant's ability to return to the UK after serving his sentence).
  - (7) The Appellant's family life in the UK is not as the primary carer to a child.
  - (8) The state is expected to be able to provide for those in financial difficulty as a result of extradition. The Appellant's partner is now working and will have the evidence for further applications for social security.
28. In [33] of the judgment, the District Judge drew the balance between those factors as follows –
- "The balancing of those factors is not a simple matter of arithmetic, but an evaluation of the weight to be attached to each. The interest in honouring treaty obligations is very high; some weight must be attached [to his] offending as reflected in a sentence measured in several months; being a fugitive is a significant matter.*

*Those are all factors of great weight. These are relatively recent matters so the public interest is not diluted by the passage of time which allowed him to develop his family life in the UK, particularly as that was built knowing that he had evaded the enforcement of his sentence. His roots are moderate but not strong. The length of the sentence will allow his return in a reasonable time”.*

29. In [34], the District Judge judged that as the Appellant was a fugitive, the balance was “*powerfully in favour of extradition*”, as both individually and cumulatively, there were “*no very strong*” counterbalancing factors militating against extradition. He concluded that the Appellant’s extradition to Romania to serve his prison sentence would be compatible with the rights of the Appellant, his partner and mother protected by article 8 of the ECHR.

### **The powers of the court on appeal**

30. An appeal lies to this court under section 26 of the 2003 Act. The relevant powers of this court on appeal are stated in section 27 –

*“27(1) On an appeal under section 26 the High Court may –*

*(a) allow the appeal;*

*(b) dismiss the appeal.*

*(2) the court may allow the appeal only if the conditions in subsection (3)....are satisfied.*

*(3) The conditions are that –*

*(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;*

*(b) if he had decided the question in the way he ought to have done, he would have been required to order the person’s discharge.*

...

*(5) If the court allows the appeal it must –*

*(a) order the person’s discharge;*

*(b) quash the order for his extradition”.*

### **The ground of appeal – article 8 ECHR**

#### *The correct approach*

31. The approach to be adopted on an appeal to this court in relation to issues of proportionality was considered in Polish Judicial Authority v Celinski [2015] EWHC 1274 (Admin); [2016] 1 WLR 551, at [20]-[24]. At [24] the Divisional Court said –

*“The single question therefore for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong...that the appeal can be allowed. Findings of fact, especially if evidence has been heard, must ordinarily be respected. In answering the question whether the district judge, in the light of those findings of fact, was wrong to decide that extradition was or was not proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong”.*

32. In Love v USA [2018] EWHC 172 (Admin); [2018] 1 WLR 2889 at [26] the Divisional Court said –

*“The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed”.*

### *Submissions*

33. For the Appellant, Mr Jonathan Swain submitted that the outcome of the District Judge's assessment of the proportionality balance was clearly wrong in this case. The District Judge had given far too little weight to the trivial nature of the offence for which the Appellant's surrender was sought under the AW. Moreover, it was submitted, the District Judge had given far too little weight to the severe impact which would result to his family.
34. Mr Swain submitted that the Appellant's conduct in committing the offence was properly to be characterised as trivial in its criminality. In effect, he has exchanged four packs of cigarettes for taxi services. The equivalent offence in the UK would be one of handling stolen goods of small value. The Appellant had pleaded guilty to the offence. In the UK he would reasonably expect to have received a fine. It is almost inconceivable that he would have received a custodial sentence. The Appellant does not have a history of offending. He has lived a law-abiding life since moving to the UK. This was fleeting, trivial criminal behaviour.
35. It was submitted that the evidence accepted by the District Judge established that the impact of the Appellant's extradition on his partner and mother would be highly disruptive. The family would lose its principal breadwinner. His partner would no longer be available to care for his mother. The household would be likely to suffer considerable destabilization.
36. The Appellant's bail conditions had also interfered to some degree with his private life. Although not amounting to a significant curtailment of his liberty, that modest interference nevertheless carried some weight and reinforced the conclusion that the District Judge's overall evaluation of the proportionality balance was wrong and had led him to make the wrong decision under section 21 of the 2003 Act.

### *Discussion*



37. It is helpful to begin with some established principles.
38. In H(H) v Deputy Prosecutor of the Italian Republic, Genoa [2012] UHSC 25; [2013] 1 AC 338 at [8], Lady Hale of Richmond JSC identified a number of relevant principles of approach in addressing the issue of proportionality in the context of article 8 of the ECHR and extradition. Those principles include the following –
- (1) There is a constant and weighty public interest in extradition: that people convicted of crimes should serve their sentences; that the UK should honour its treaty obligations to other countries; and that there should be no "safe havens" to which such people can flee in the belief that they will not be sent back.
  - (2) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved.
  - (3) The question is always whether the interference with the private and family lives of the requested person and other members of his or her family is outweighed by the public interest in extradition.
  - (4) It is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.
39. In Celinski at [9], the Divisional Court said that the public interest in discouraging persons from seeing the UK as a state willing to accept fugitives for justice is very high. At [13], the Court added the following guidance in relation to conviction warrants –
- (1) Each Member State is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary to decide; currency conversions may tell little of the real monetary value of items stolen or of sums defrauded. For example, if a state has a sentencing regime under which suspended sentences are passed on conditions such as regular reporting and such a regime results in such sentences being passed much more readily than the UK, then a court in the UK should respect the importance to courts in that state of seeking to enforce non-compliance with the terms of a suspended sentence.
  - (2) It will therefore rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been.
40. I was referred to Lipski v Regional Court in Torin, Poland [2020] EWHC 1257 (Admin); [2020] 4 WLR 87 at [43], where whilst acknowledging that the court in extradition proceedings does not “second guess” the decision of the JA, Fordham J said that Lady Hale’s observation in H(H) remained intact: it is appropriate to weigh

in the balance the nature and seriousness of the crime or crimes involved. As Fordham J put it –

*“The appropriate comparison...is between: (i) the conduct in the present case, including the way in which it has been characterised by the Polish authorities; and (ii) other conduct on the spectrum of criminal behaviour. That is an entirely appropriate, indeed necessary, exercise for the UK court to conduct”.*

41. In the present case, in identifying the factors which I have set out in paragraph 27(1)-(5) of this judgment as weighing in favour of extradition, the District Judge directed himself correctly in accordance with the principles stated in *H(H)* and *Celinski*. It was nevertheless appropriate that he drew a comparison between the Appellant’s conduct in committing the offence, including as it was characterised in the AW, and other criminal conduct in terms of its seriousness.
42. The District Judge drew that comparison. The first factor which he identified as militating against extradition was that the Appellant’s conduct as described in the AW showed the offence to have been *“not of the greatest gravity”*. By describing the offence in that way, the District Judge was making clear that he accepted the Appellant’s conduct in committing this relatively minor offence was at the lower end of the criminal scale. In my view, the District Judge was correct not to characterise the Appellant’s offence as trivial. Although the value of the goods was obviously small, this was nevertheless an act of dishonesty in the course of the Appellant’s trade as a taxi driver.
43. There is no doubt that the impact on vulnerable family members, particularly those who are dependent upon the support of the requested person either financially or otherwise, is a factor that may weigh significantly in the balance against extradition of the requested person. However, it is important to bear in mind Lady Hale’s observation that the public interest in extradition is likely to outweigh the article 8 rights of the family unless the consequences of the interference with family life will be *“exceptionally severe”*. Whether that is the position is to be judged on the basis of the evidence in the given case.
44. In this case, the evidence before the District Judge established that the Appellant through his work in Leicester provides the financial support which pays for the family’s accommodation; and which enables his partner not to have to work and instead to care for his mother. It is obvious that if the Appellant is surrendered to Romania to serve his prison sentence, that source of financial support will dry up, even assuming that he later returns to the UK and is able to find work thereafter. The District Judge said that would have an impact on the *“viability of the household”*. In my view, he rightly recognised the disruptive effect of the Appellant’s extradition on the family life of both his partner and his mother, both in financial terms and in terms of their well-being.
45. In that regard, the evidence before the District Judge was that both the Appellant’s partner and his mother have significant health issues, as again the District Judge recognised and accepted. The Appellant’s evidence was that his mother was beginning to show symptoms of Alzheimer’s disease and that overall, her health was progressively deteriorating. The District Judge recognised the role which the Appellant’s partner was able to play in providing care to his mother, a role which, on

the evidence, she was able to play because of the financial support offered by the Appellant.

46. In the light of those findings, it is obvious that extradition of the Appellant to serve his sentence will disrupt his present family circumstances and could result in significant hardship to both his mother and his partner, both of whom are vulnerable. Nevertheless, the District Judge clearly did not consider the impact on the Appellant's family to be so severe as to outweigh the weighty public interest in his extradition.
47. Mr Swain's essential argument was that the District Judge was wrong in that evaluation. Counsel submitted that the disruption to the Appellant's family life and hardship to his partner and his vulnerable mother likely to result from his surrender was clearly disproportionate to the trivial offending behaviour which he had admitted and for which he had been sentenced.
48. I accept (as did the District Judge) that the Appellant's conduct in committing the offence was at a minor level of criminality. I accept (as did the District Judge) that extradition will have a disruptive impact on his family and that his partner's and mother's present living arrangements will have to change with the loss of his financial support which, given his mother's medical condition and dependency, is likely to be challenging for them to manage.
49. Had matters rested there, I might well have been persuaded that the District Judge's evaluation in [33] of the judgment of the factors weighing in favour and against extradition had led him to the wrong conclusion. However, in my view, there are two countervailing factors to bring into account which justify the District Judge's overall evaluation of the proportionality balance in this case.
50. Firstly, the District Judge was correct that in order to evaluate the risk of disruption and hardship to the Appellant's family resulting from his extradition, he should also consider the measures that might be available to manage that risk and to alleviate that hardship in the Appellant's absence.
51. There was evidence that the Appellant's partner had lost her entitlement to universal credit and had not been able to reinstate it. It is, however, important to bear in mind that, on the Appellant's and his partner's own evidence, at that time the family was being supported financially by the Appellant's income from his work. The District Judge clearly envisaged that the imminent loss of that source of financial support during the period of the Appellant's absence from the family would provide the basis for his partner to claim welfare support. Likewise, arrangements would be put in place to provide social care and support for his mother, given her infirmity and dependency on care and the Appellant's financial support.
52. In my view, the District Judge was correct to proceed on the expectation that, in the absence of financial support from the Appellant, welfare and social care support would be available from public services to the Appellant's partner and mother. That support would serve to mitigate the risk of disruption and hardship that was likely to result from the loss of his financial support. There was no evidence before the District Judge to displace that reasonable expectation.

53. The second countervailing factor is that the seriousness of the Appellant's criminality is not to be judged solely by reference to his conduct at the time of the offence. The JA's decision to issue the AW resulted from the Appellant's behaviour in August 2019 in breaching his supervision conditions, knowing as he did that in doing so, he faced the prospect of the suspension of his prison sentence being revoked. The District Judge found that the Appellant left Romania as a fugitive, deliberately putting himself beyond the reach of the JA and enforcement of his prison sentence for breach of the conditions on which that sentence had been suspended.
54. For the Respondent, Mr Adam Squibbs submitted that significant weight must be given to the public interest in enforcing breaches of that kind. I accept that submission. In my view, the Appellant's deliberate disobedience of his supervisory conditions means that the public interest in his extradition carries great weight, as the District Judge found. The guidance given by the Divisional Court in *Celinski* to which I have referred in paragraph 39 above is of direct relevance.
55. Drawing the balance in the light of these considerations, I am unable to conclude that the District Judge's overall evaluation of the proportionality balance was wrong or that the question whether the Appellant's extradition was compatible with his and his family's article 8 rights should have been decided differently. In my judgment, the District Judge was correct to conclude that the balance falls in favour of extradition in this case. The public interest in the Appellant's extradition carries great weight and the degree of interference with his mother's and partner's private and family lives is not so severe as to override it. That conclusion is not affected by the modest interference resulting from the Appellant's reporting conditions and limited curfew on which he was granted bail.

*Fresh evidence*

56. Shortly before the hearing of this appeal, on 13 November 2024 the Appellant applied to admit fresh evidence, in the form of an addendum witness statement signed by him on the same date and a series of documents which relate to his mother's medical treatment since the extradition hearing in early July 2023. In his addendum statement, the Appellant says that his mother's medical condition has deteriorated. She has become more forgetful. She has recently undergone an eye operation and has impaired sight. She needs daily care and assistance with medication. The Appellant states that he remains the only income provider for the family, and that his partner does not work so that she is able to stay at home to care for his mother.
57. This court applies a two-stage approach to the admission of fresh evidence in support of an appeal against an order for extradition. See *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin); [2009] 4 All ER 324. At the first stage, the court must be persuaded that evidence was no available to be adduced at the extradition hearing.
58. Much of the content of the Appellant's addendum statement and supporting documents fails that test. The District Judge was well aware of the Appellant's role as the only income provider for the family. He was aware of the progressive worsening of the Appellant's mother's health and would have anticipated that her condition was likely to deteriorate in future. The District Judge was also aware that the Appellant's partner was able to provide care and support to his mother because of his role as the principal breadwinner for the family.

59. The genuinely new evidence is that the Appellant's mother has had surgery to both her eyes during 2024, which has increased her dependency on others and her decreasing ability to manage her day-to-day living at home. The second stage which must be considered in deciding whether to admit fresh evidence is to determine whether that new evidence would have resulted in the District Judge deciding the relevant question differently. In this case, the relevant question is whether, in the light of that new evidence, the severity of interference with the Appellant's mother's article 8 rights would be such as to lead to the conclusion that the Appellant's extradition would be disproportionate to his family's article 8 rights.
60. In my view, while the genuinely fresh evidence of that the Appellant's mother has recently undergone surgery to address cataracts in both eyes which has increased her daily dependency on care and support at home does add some weight in the balance against extradition, the District Judge's overall conclusion that extradition would be compatible with her article 8 rights remains correct. Her eye operation was clearly judged necessary in order to address the deterioration in her sight resulting from her cataracts. There is nothing in the additional medical documentation to suggest that it has been unsuccessful. Nor does the additional evidence show that her situation has worsened markedly from that described in evidence before the District Judge. See paragraph 45 above. In my judgment, the fresh evidence upon which the Appellant seeks to rely does not provide the basis for a different conclusion to that reached by the District Judge on the proportionality balance in this case.

### **Disposal**

61. For the reasons I have given, I have not been persuaded that the District Judge ought to have decided the question raised by section 21 of the 2003 Act differently. Accordingly, I must dismiss this appeal.