



Neutral Citation Number: [2021] EWHC 903 (Admin)

Case No: CO/4085/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14th April 2021

Before :

MR JUSTICE FORDHAM

Between :

CATALIN-CONSTANTIN PATRUNJEL
- and -
JUDECATORIA SIGHETU MARMATIEI
(ROMANIA)

Appellant

Respondent

Rebecca Hill (instructed by Brysons Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 14.4.21

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.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 44. He is wanted for extradition to Romania. That is in conjunction with a conviction EAW (European Arrest Warrant) issued on 18 March 2020 and certified on 10 April 2020. It relates to a 15 month custodial sentence, imposed in June 2019 as a suspended sentence and activated in February 2020. Extradition was ordered by District Judge Robinson, for reasons given in a judgment dated 28 October 2020 handed down on 3 November 2020. Thornton J refused permission to appeal on the papers on 10 March 2021.
2. The mode of hearing was by BT conference call. Ms Hill was satisfied – as am I – that this mode of hearing involves no prejudice to the interests of the Appellant. The Respondent had indicated to the Court that it did not wish to participate in the hearing. A remote hearing, during what we all hope is the latter stages of the pandemic and restrictions, eliminated any risk to any person from having to travel to a court room or be present in one. The open justice principle was secured. The case and its start time were published in the cause list. Also published was an email address usable by any person wishing to observe the hearing, whether that person was associated with the parties, a member of the press, or a member of the public. Anyone observing this hearing by dialling in was made aware of the way in which the Court was dealing with the application, which in the event involved me taking time to deliberate in the light of Miss Hill’s very helpful oral submissions and to be able to reread some documents, scheduling a time for a further dialling for the purposes of delivering my ruling. The hearing was at all stages recorded and this ruling will be issued in the public domain.
3. The circumstances of the case are as follows. The Appellant was first in the United Kingdom in 2014 and 2015 (when aged 38/39) and then returned to Romania. On 19 March 2017 he collided with a bicycle while driving a car and was breathalysed and found to be substantially over the drink-driving limit. He admitted the offence at the time. He came to the United Kingdom three months later, in June 2017. In his absence, he was convicted and sentenced to the 15 month suspended sentence in June 2019 which became final in July 2019, with conditions to report to probation as required during the 3 year suspension period. Having, in his absence, been summoned and having failed to attend where required by probation on a number of occasions, a request for activation of the sentence was made on 18 November 2019 and on 4 February 2020 the 15 month sentence was activated (the activation order becoming final on 22 February 2020). The EAW was, as I have said, issued on 18 March 2020. The Appellant was arrested on 26 August 2020 in conjunction with the EAW and resisted extradition on ECHR Article 3 and Article 8 grounds. Article 3, which concerned prison conditions, was addressed by way of an assurance dated 6 October 2020, and plays no part in the application for permission to appeal before me. The Article 8 ground focused in particular on the position of the Appellant and his partner with whom he had started a relationship in about April 2020 and had moved in together in around June 2020. The partner had come to the United Kingdom from Poland in 2018. She has a disability (cerebral palsy), is not currently able to work, and had told the District Judge in her written evidence (she was not required to give oral evidence): “I am concerned that if [the Appellant] were to be extradited, the relationship would break down, and I myself could suffer a mental breakdown as

well”. That witness statement also told the Court that the partner’s UK based child (a daughter) could help her if the Appellant were extradited “but she has children so that would be difficult”. An application to adduce fresh evidence relating to the position regarding the wider family is not pursued.

4. The District Judge found that extradition would not be disproportionate on the basis of incompatibility with ECHR Article 8. The District Judge conducted the requisite ‘balance sheet’ assessment of the factors for and against extradition and concluded that extradition was compatible with the Article 8 rights of the Appellant and the partner. Having balanced the factors for and against extradition the District Judge concluded that the factors in favour of extradition outweighed those against it; that the negative impact of extradition on the Appellant and the partner would not be exceptionally serious and that the interference with their private and family lives was proportionate to the public interest in extradition.
5. Within the judgment of the District Judge was a finding that the Appellant had left Romania in June 2017 as a fugitive. In fact there were two findings of fugitivity. That was the first, based on findings of fact that the Appellant had been aware that he was facing prosecution and sentence for the drink-driving offence, and he had not provided an address when leaving in June 2017. The District Judge concluded that the Appellant had thus ‘deliberately put himself beyond the reach of the authorities’. Secondly, the District Judge went on to find that the Appellant had deliberately chosen not to return to face the Romanian authorities when contacted by the police, which was itself ‘knowingly placing himself beyond the reach of the authorities’. As to that second basis the Appellant, in his evidence before the District Judge, accepted that the Romanian police had been in contact with him while he was in the United Kingdom, in conjunction with his return to Romania to deal with the criminal process arising out of the drink-driving offence. The Appellant accepted that he had not returned to Romania notwithstanding that he knew he was wanted in relation to that. He gave an explanation which the District Judge rejected as not being credible and there is no challenge to that partially adverse finding of a lack of credibility.
6. As Ms Hill emphasises, these conclusions on fugitivity were notwithstanding the District Judge (a) finding that there was no prohibition on the Appellant leaving Romania in June 2017, (b) not being satisfied as to the Respondent’s contention that the Appellant had been obliged to provide an address, and (c) accepting the Appellant’s evidence that he was unaware of the suspended sentence, the conditions of that sentence and the summonses to attend probation, leading to the activation.
7. Ms Hill submits that the appeal based on Article 8 is reasonably arguable. In essence, as I see it, her submissions involve a premise and a conclusion, as follows:
8. The premise is this. Based on the District Judge’s findings of fact, it was (arguably) wrong for the District Judge to reach the conclusion that the Appellant is a fugitive. The act of leaving Romania in June 2017 did not satisfy the well-known test of ‘deliberately placing himself beyond the authorities’ reach’, notwithstanding knowledge that he stood to be sentenced for the index offence and notwithstanding the failure to provide the authorities with an address. That is because, although it was open to the Romanian authorities to impose conditions requiring the Appellant to remain in Romania or requiring the notification of any change of address, the District Judge did not find that either such requirement had in fact been imposed. The act of

remaining in the United Kingdom and not returning to Romania having had contact with the Romanian police did not make the Appellant a fugitive either. Ms Hill has reminded me of the relevant line of authorities on the issue of fugitivity. That is the premise.

9. The conclusion is this. If she is right as to her premise, Ms Hill submits that (arguably) the balancing exercise required by Article 8 would fall to be conducted in a different way, once the finding on fugitivity is stripped out of the analysis, compelling a different outcome: namely that extradition would breach the Article 8 ECHR rights of the Appellant and/or of his partner. That conclusion is based, in particular, on the following. There is the weight which would appropriately be given to the delay by the Romanian authorities, particularly in the period between March 2017 and June 2019. That delay is ‘inexplicable and unjustifiable’, particularly in circumstances where the Appellant had admitted the offence on the day it was committed (19 March 2017) and had remained in Romania for a 3 further months. In those circumstances, the delays are both ‘inexplicable and unjustifiable’. A ‘false sense of security’ was engendered on the part of the Appellant, who knew nothing of the suspended sentence or the requirement to attend probation in Romania with the consequence of a custodial sentence being activated for default. The delay, alongside the correct analysis that the Appellant is not a fugitive, substantially diminishes the public interest in favour of extradition. To this can be added the other features of the case. The index offence in March 2017 was a ‘relatively minor’ one, when viewed against the spectrum of offences seen in the extradition arena. It was a single offence. It was committed at a time of serious personal trauma (the Appellant had attended the funeral wake for his then partner). He admitted the offence and cooperated with the authorities. It is an offence that is ‘very old’. Alongside it, is to be put the Appellant’s law-abiding life both in Romania prior to March 2017 and in the United Kingdom in 2014/2015 and after returning here in June 2017. A very powerful factor in the Article 8 balance is the relationship which the Appellant has formed with his partner, since returning to the United Kingdom in 2017. The partner came to the United Kingdom in 2018; the relationship started in about April 2020; they moved in together in June 2020. The partner is dependent on the Appellant and will suffer if he is extradited. She has a disability and is not fit for work (a position which I am told continues to subsist at least as at March 2021, and which I assume continues to subsist). Finally, it is relevant to remember that the custodial sentence imposed in June 2019 was regarded as one appropriately suspended: there is a very real prospect that the Appellant would – if extradited to Romania to face the retrial to which the District Judge found that he is entitled – and if convicted, be the subject only of a further suspended sentence. In the light of those matters and in all the circumstances of the case, it is reasonably arguable that on revisiting the Article 8 balance the outcome of the appeal would be to overturn the decision of the District Judge. Those are the arguments in essence as to the conclusion.
10. Ms Hill has persuaded me that it is reasonably arguable that she is right as to her premise. Fugitivity, a concept which has an exclusionary role in relation to section 14 (passage of time) and a more nuanced role in relation to Article 8 and passage of time, is in my judgment arguably a legally inapt characterisation of the Appellant’s position based on the findings of the District Judge. For the purposes of today I proceed on the basis that Ms Hill is right and the Appellant was not a fugitive either when he left

Romania in June 2017 or when he failed to return to Romania having been in contact with the Romanian police.

11. However, Ms Hill has not persuaded me that it is reasonably arguable that she is right as to her conclusion.
12. One of the consequences of the more nuanced approach to passage of time, in the context of all the circumstances, under Article 8, is that circumstances capable of forming part of a factual matrix regarding the requested person's position, circumstances, knowledge and conduct, remain part of the overall evaluative assessment. It would thus be relevant that – even if not a fugitive – the Appellant did choose to come to the United Kingdom in June 2017, knowing that he faced prosecution, conviction and sentence in relation to the offence committed 3 months earlier. He had been in Romania for 2 years prior to that. He also knew that, whether or not he understood himself to be required to notify any relocation or change of address, he had not done so and the authorities were not readily able to locate him armed with any such notification. It was in that context and against that background that he came to the United Kingdom and has lived here. It is also relevant to the Article 8 evaluative exercise that – even if not a fugitive – he nevertheless was aware from contact with the Romanian police that he was being pursued, and was wanted and chose not to return to Romania. Moreover, his explanation for not doing so was rejected by the District Judge in an unassailable finding on credibility in relation to that aspect of the evidence. The continuation in the United Kingdom, including the April 2020 relationship with the partner and their moving in together in June 2020 need to be seen against that background. As the District Judge put it: “His life here was built whilst, to his knowledge, he faced proceedings in Romania for his offending and for some years whilst he knew the police wanted him to return”.
13. All of those matters are relevant parts of the evaluative exercise in considering the circumstances notwithstanding that the balance would be approached in a recalibrated way in a context in which the Court were not going further and recognising the Appellant as having been a fugitive at either of the relevant stages.
14. The other points which I have described above, all well made by Ms Hill, are all relevant parts of that evaluative balancing exercise. So far as the nature of the index offence is concerned, as the District Judge said: “The offence is not trivial and risked causing harm. The blood alcohol reading was high and more than twice the legal limit and the [Appellant] caused the road traffic collision with a cyclist. The gravity as assessed by Romania is reflected in the fact and length of the custodial sentence imposed. The sentencing imposed and time remaining to be served is significant”. That is also the context for the points made by Ms Hill about the prospects, if resentenced after a retrial, which is in principle a matter for the Romanian authorities.
15. Ms Hill is quite right to emphasise the position of the partner, and the relationship between the Appellant and the partner. The District judge rightly identified as factors against extradition: the Appellant and the partner's wish to marry; their relationship; and the partner's circumstances and dependency. As the District Judge put it: “the [Appellant] provides financial, emotional and practical support to [the partner] who suffers from cerebral palsy and related limitations to her mobility and ability to work. [The partner] fears for the relationship and that she may have a breakdown if the [Appellant] is surrendered”. As the District Judge explained: “The Article 8 rights of

the [Appellant] and [the partner] are engaged by the extradition request. Her health condition appears to have worsened. [She] may now struggle to live independently and she is currently unfit to work so would find it difficult to cope financially.” As the District Judge went on to say: “However, she would have options. She has an adult daughter in the UK with whom she lived until she moved in with the [Appellant] relatively recently. During all that time the daughter had twins to cope with; those twins being now suggested as the reason why it may be difficult for her to host her mother again. She also has a sister in the UK. If those options are unavailable or insufficient given her current state of health it may be presumed that she will be eligible for such state financial assistance and support for her needs as is necessary to allow her to maintain a basic acceptable standard of living. Emotionally she will suffer and she fears having a breakdown but it must be borne in mind that the relationship remains a relatively new one and there is no evidence that she experiences any particular mental health condition. In any event she would not be left without the family support of her sister, daughter and grandchildren. Sadly, [the partner] will most likely suffer financially, emotionally and practically if the [Appellant] were to be surrendered but some hardship is regrettably an inevitable consequence of extradition arrangements and I am satisfied that in these particular circumstances the hardship experience would not be exceptionally serious”.

16. I can see no realistic prospect of this Court at a substantive hearing, even if it revisited the balancing exercise and conducted it afresh – and even on the premise that the Appellant is not to be regarded at any time as having been a fugitive – coming to the conclusion that the outcome in this case was “wrong” and that extradition would be a disproportionate interference with Article 8 rights. In those circumstances, it has not been enough that Ms Hill was able to persuade me on her premise. Since I am not also persuaded as to the conclusion – by which I mean its arguability – permission to appeal is refused.

14.4.21