



Neutral Citation Number: [2021] EWHC 994 (Admin)

Case No: CO/3731/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21st April 2021

Before :

MR JUSTICE FORDHAM

Between :

MARIANA CORDUTA ZAMFIR
- and -
ROMANIAN JUDICIAL AUTHORITY

Appellant

Respondent

Andrew Zalewski (instructed by AM International Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 21.4.21

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 :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is 35 and is wanted for extradition to Romania. That is in conjunction with a conviction EAW (European Arrest Warrant) issued on 2 July 2020 and certified on 21 July 2020. The offences to which the EAW relates took place in October and November 2012. They involved the use of forged identity documents to obtain more than £24,000 (equivalent); and creating with others a criminal group organising a swindling operation with fictitious contests offering cash prizes. District Judge Griffiths ordered the Appellant's extradition on 9 October 2020 after an oral hearing on 22 September 2020 at which the Appellant and her partner gave oral evidence. Permission to appeal was refused on the papers by Saini J on 9 February 2021. The grounds of renewal dated 12 February 2021 sought reconsideration of the refusal of permission to appeal on Article 8 ECHR only. Applications to adduce fresh evidence were filed on 19 February 2021 and 13 April 2021. On 19 April 2021 Counsel filed a skeleton argument which contained a request for permission to amend the grounds of renewal to resurrect an Article 3 ECHR prison conditions point. Mr Zalewski today orally seeks permission to rely as fresh evidence on the Ministry letter (to which I will come), and the solicitors' letter to which it was responding. I have considered all the material before this Court for the purposes of evaluating whether there is any reasonably arguable ground of appeal.

Mode of hearing

2. The mode of hearing was by BT conference call. Mr Zalewski was satisfied, as am I, that that mode of hearing involved no prejudice to the interests of the Appellant. She has observed this hearing and we took steps to deal with a situation - should it have arisen - whereby each could attract the others attention and they could have a discussion by phone if they needed to do so. That was to ensure that there was no prejudice from the fact that had we all been present in a court room such conversation between client and counsel would always be possible, if some point arose necessitating it. The Respondent had notified the Court that it would not be participating at this oral hearing, having provided a Respondent's Notice on 9 November 2020 and a response on 22 February 2021 to the first fresh evidence application. I am satisfied in the context of the Covid pandemic and the current restrictions that the mode of hearing was justified and appropriate. The open justice principle was secured. This case and its start time were published in the cause list, together with an email address usable by any member of the press or public who wished to observe this public hearing. The hearing was recorded. This ruling will be released in the public domain.

Article 3

3. In essence, the Article 3 prison conditions point focuses in particular on what are said to be two developments, said to undermine the reliance that can be placed on an assurance dated 17 August 2020. Mr Zalewski has also submitted that that assurance in any event should be seen at least arguably as inadequate. The assurance was given in the Appellant's specific case, by reference to the specific prisons where it is envisaged that she would be detained, and stating in terms: "the National

Administration of Penitentiaries can safeguard a minimum individual space of 3m² for the entire duration of the penalty enforcement, including the bed and furniture belonging to it, however not including the lavatory”. I cannot accept Mr Zalewski’s submission that there is insufficient detail; that this is – even arguably – “general and vague”.

4. The first development relied on is a letter from the Romanian Ministry dated 16 October 2020 (the Ministry letter) in response to a request from the Appellant’s solicitors (15 September 2019). The Ministry letter refers to Covid arrangements in penal institutions, specifically a specific prison known to be relevant in the present case. Covid arrangements were a question raised by the solicitors in their letter. On the question of floorspace, which was itself a question raised in the solicitors letter (“Please confirm if you can safeguard a minimum individual space of 3 m² for the entire duration of the penalty enforcement the Ministry letter says: “Regarding the provision of a minimum individual space of 3m² the competence belongs to the National Administration of Penitentiaries, the prison administration being obliged to comply with the provisions issued in this respect”. The argument advanced on the papers was – and as resurrected today is – that the Ministry letter gives rise to new cause for concern, because it declines to state a floorspace guarantee, from the prison itself, specifically sought by the solicitors from that prison, in the context of describing arrangements relating to Covid.
5. I am quite satisfied that there is nothing in this point. What the Ministry letter clearly does is to record a competence point as to source. It says that floorspace assurances, with which the prison administration are “obliged to comply”, need to emanate from the NAP. But the assurance dated 17 August 2020, itself issued during the pandemic, specifically gave an assurance in this case being safeguarded by the NAP. There is no inconsistency or lacuna in the materials in this case. Mr Zalewski says it is for the prison to “organise compliance”. But the assurance comes from NAP, and exists in this case. That is the necessary and appropriate source. The Ministry letter reinforces that the prison is “obliged to comply”. It is striking that the assurance was not sent to the prison, with the solicitors’ letter, to confirm they would comply with it. Nothing in the material before the court indicates that there would be any risk of non-compliance with the assurance that exists, can be relied on, and will need to be communicated within the relevant authorities. If the solicitors had wanted confirmation that a known assurance would be complied with they should have referred to it and they should have provided it. Their letter read as seeking an assurance, and the response rightly indicated that the source for assurances is the NAP, who in this case is known to have provided one.
6. The other development is a judgment in a Scottish case on an application for permission to appeal in Iliev [2021] HCJAC 26 on 13 March 2021, in which the Scottish appeal court discusses whether an expert report of a Dr James McManus dated 25 March 2021 undermined an express assurance given on 13 August 2019, so far as prison conditions in that case were concerned. The judgment records various concerns expressed by Dr McManus, including about whether assurances would be capable of implementation and monitoring, and including (as Mr Zalewski has emphasised today) given the added complication of the pandemic. Mr Zalewski says the judgment is ‘non-binding’ but points to the discussion in it of Dr McManus’s report, which he says the Court ‘appeared to accept’. In my judgment, this new source

does not assist the Appellant. The Scottish court considered the expert report and decided that it did not undermine the specific assurance endorsed by the appropriate authorities, relating to the individual case and to the relevant prisons: it did not “cast[] doubt on whether these assurances can be implemented and monitored” and there was no “specific basis upon which to doubt them”. Permission to appeal was refused. In my judgment, beyond argument, the same is true in this case.

7. The extremely late attempt to resurrect Article 3 and prison conditions is, in my judgment, hopeless. Nor is there any need to ensure a further opportunity to the Respondent to deal with what is now said in the skeleton argument, based on the expert report described in the Scottish case. The Ministry letter is incapable of being “decisive” – one of the points made in the Respondent’s Notice – and I refuse permission to adduce it.
8. I therefore refuse permission to appeal on the article 3 point and refuse the application made orally to adduce fresh evidence.

Article 8

9. I turn to the Article 8 point. Saini J on the papers concluded that the District Judge had conducted an impeccable Article 8 balancing exercise. I agree that the method and approach adopted by the District Judge was unimpeachable. The only prospect that the Appellant would have of succeeding on an appeal would be by persuading this Court to stand back and consider the overall outcome in this case and to conclude that – notwithstanding that the District Judge adopted the legally correct approach – the outcome was nevertheless the wrong one. I have positive for the purposes of today this Court evaluating afresh the Article 8 balancing exercise.
10. The circumstances of the case include the following (and Mr Zalewski has today emphasised certain findings by the District Judge, including those which he criticises, whether as to reasoning or in particular as to weight). The Appellant first came to the United Kingdom from Romania in April 2015, when she worked as a care assistant. In February 2016, learning that the Romanian authorities were looking for her in conjunction with the index offences (committed in 2012), she voluntarily surrendered to the authorities. She was subsequently released and went to Spain in July 2017 and then to the United Kingdom again in 2018. In the Romanian proceedings she pleaded guilty and was convicted on 5 April 2018. She was eventually resentenced on 30 May 2019, a sentence upheld on appeal on 29 June 2019 and made final on 29 June 2020. She worked in the United Kingdom as a carer from 2018, then as an office administrator from November 2018, then for a flooring company in October 2019, and finally as a carer again (and a key worker in the context of the pandemic) from April 2020. She has been fully cooperative with the Romanian authorities and engaged with the criminal and sentencing process, instructing a lawyer. When in July 2020 she learnt that the authorities were looking for her in the context of extradition, she voluntarily surrendered by appointment on 23 July 2020. Not only is she not a fugitive, but she has acted with an entirely creditable degree of engagement and cooperation. She is in a relationship, with a partner whom she met on 21 July 2019. They fell in love and moved in together on 24 August 2019. They wish to marry and have a family. Indeed, later in 2019 they suffered the agony of an ectopic pregnancy. Their relationship, however, began in knowledge of the crimes which the Appellant had committed in 2012: they both told the District Judge that the Appellant told the

partner about that within the one week or two of the relationship beginning. It was a relationship which began under the shadow of the Romanian sentence about which they were both fully aware. The partner is himself a 35 year old Romanian national who has been in the United Kingdom since 2011 and is self-employed with his own business, although like many he has had to take other employment during the pandemic. The Appellant has medical conditions (set out by the District Judge), which the District Judge found the Romanian authorities would be able adequately to treat. The partner sustained a road traffic accident in October 2020 and was unfit to work for two months after that. The fresh evidence gives the Court the updated position, including as to the road traffic accident.

11. The factors to which Mr Zalewski submitted, in writing, that the District Judge should have accorded more weight are helpfully listed in the perfected grounds of appeal: the fact offences took place a long time ago; that the Appellant on the court's finding was and is not a fugitive; the Appellant's blameless conduct in the United Kingdom; the Appellant's cooperation with the Romanian judicial authorities; the Appellant state of health which need monitoring (recent DSycariosis CN2); the Appellant's stable relationship; her excellent work record and references. At the hearing today Mr Zalewski emphasises that this Court ought to look afresh at the Article 8 balance. He emphasises that the ground of appeal only needs to be reasonably arguable. He emphasises these four features: severity of impact; fugitivity; nature and seriousness of the crimes involved; and delay. He emphasises the Appellant's medical conditions. He emphasises the delay and passage of time, about which the District Judge said "there has been some delay", which Mr Zalewski says understates the significant and substantial delay from 2012 when the offending took place. He emphasises the non-fugitivity point – straightforwardly conceded throughout – which he says is a strong point ("a major factor", a "very important factor") weighing in the Appellant's favour. He submits that the Appellant was never "unlawfully at large". He says these points have not been properly addressed, as to their significance as weighty factors. He relies on the fresh evidence as to the Appellant's current carer role and the partner's car accident.
12. I have carefully considered all of the points that have been put forward in writing and orally, and all points which I can think of which could way in the Appellant's favour in the Article 8 balance where it conducted a fresh. In my judgment, there is in this case no realistic prospect that this Court, at a substantive appeal hearing, would conclude that the outcome of the balance struck by the District Judge was wrong. I am quite sure that extradition is compatible with the Article 8 rights both of the Appellant and of the partner. Notwithstanding all the matters relied on by Mr Zalewski on behalf of the Appellant, including the putative fresh evidence, and notwithstanding the admiration which the Court would have – and which I have – for the Appellant in the full cooperation with the criminal and extradition processes, there are in this case strong public interest considerations in favour of extradition. At the heart of this case are index offences which involved more than £24,000-worth of fraud, offences set out in detail in the EAW which involved 31 separate transactions collecting funds from Western Union counters with forged identity documentation, and where it was the Appellant herself who collected those substantial amounts. The Appellant was also convicted of creating an organised criminal group with 3 others and organising fictitious contests and offering cash prizes as part of a swindling operation. The criminal conduct led to a sentence of 3 years and 4 months custody, of which 2 years

2 months and 12 days remain to be served. The Appellant's presence in the United Kingdom since returning here, relatively recently, in 2018, and the relationship with her partner together with the significant impacts that extradition will have for them both having begun that relationship less than 2 years ago and in the shadow of the Romanian sentence, together with the other factors relied on, are – beyond argument – decisively outweighed by the public interest considerations in favour of extradition. Put another way, the Appellant's creditable cooperation with the criminal and extradition processes - having taken the recourse open to her under her fundamental rights of human rights protection and invocation of access to law under the rule of law by seeking to appeal to this Court and by renewing her application for permission to appeal today - must now extend to her facing responsibility for the sentence properly passed by the Romanian authorities. The fresh evidence is not capable of being decisive and I refuse permission to adduce it, for that reason.

13. Permission to appeal on the Article 8 ground, and permission to reduce the fresh evidence relevant to it, are refused.

21.4.21