



Neutral Citation Number: [2023] EWHC 2378 (Admin)

Case No: CO/3324/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/10/2023

Before :

MR JUSTICE JULIAN KNOWLES

Between :

NICOLAE PREJOINAU
- and -
DEPUTY GENERAL PROSECUTOR OF
MESSINA (ITALY)

Appellant

Respondent

Edward Fitzgerald KC and Michael Haggar (instructed by Lloyds PR) for the Appellant
Helen Malcolm KC and Jonathan Swain (instructed by CPS) for the Respondent

Hearing date: **24 January 2023**

Approved Judgment

This judgment was handed down remotely at 10.30am on 6 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal with the permission of Lane J against the decision of District Judge Ikram dated 24 September 2021 ordering the Appellant's extradition to Italy.
2. The decision was based on a European Arrest Warrant (EAW) issued on 11 June 2019 and certified on 10 December 2019. The Appellant was arrested on 22 January 2020.
3. The EAW is a conviction warrant. It contains eleven Italian charges, listed as Charges 1 and Charges 3 - 12 (there is no Charge 2). The offences relate to human trafficking against multiple women and their associated abuse. A sentence of 16 years and six months was imposed, of which 15 years five months and 29 days remains to be served.
4. There is also: (a) Further Information from the Requesting Judicial Authority dated 11 March 2020; and (b) the decision of the Court of Assizes of Appeal in Messina from 11 February 2019 (the Italian Decision) containing further detail. (There was a decision of the Italian Supreme Court upholding the Court of Appeal's decision, however no written judgment is available.)
5. I also have decisions from Romanian courts, namely the High Court of Cassation and Justice, dated 1 February 2011, and the Court of Appeal in Craiova, dated 3 June 2011, the significance of which is as follows. I also have further information from Romania.

The Appellant's Romanian conviction

6. Section 12 of the Extradition Act 2003 (EA 2003) provides:

"Rule against double jeopardy

"12. A person's extradition to a category 1 territory is barred by reason of the rule against double jeopardy if (and only if) it appears that he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction on the assumption -

(a) that the conduct constituting the extradition offence constituted an offence in the part of the United Kingdom where the judge exercises jurisdiction;

(b) that the person were charged with the extradition offence in that part of the United Kingdom."

7. One of the Appellant's grounds of appeal is that the district judge was wrong to reject his challenge under s 12 of the Extradition Act 2003 (EA 2003) (double jeopardy). His argument is based on the fact that in 2010/2011 he was convicted in Romania of

offences linked (to use a neutral word) with the offences for which Italy seeks his extradition.

8. The Appellant was convicted in Romania of human trafficking. Women were trafficked from Romania to Italy and exploited there. This conviction is dated 10 March 2010 and was ultimately upheld by the Romanian High Court of Cassation on 1 February 2011 in the decisions I referred to earlier. The High Court's decision is in the Bundle, starting at p286. The Appellant was sentenced to a term of imprisonment of five years and other penalties.
9. The Appellant was convicted on the basis that he 'recruited, transported, harboured or received' two 'aggrieved parties' from Romania to Italy by promises of jobs, and 'through threats, violence [and] unlawful deprivation of freedom' forced them to practice prostitution and the amounts obtained were pocketed by the Appellant (*inter alia*). This was said to have occurred between December 2007 and June 2008 (Bundle, p289). The two named victims were [DV] and [MM] (in some places in the papers their surnames are rendered first).
10. An EAW from Italy was subsequently executed in Romania by a decision of the Court of Appeal of Craiova on 3 June 2011, although the Appellant's return to Italy was prevented by him being a serving prisoner in Romania. He was eventually released and came to the UK, where he was arrested pursuant to the extant EAW I have referred to.

The Italian offences on the EAW

11. The conduct underlying the Italian charges can be summarised as follows (taken from the Respondent's Skeleton Argument; I am satisfied it is accurate).
12. *Charge 1* (the Charges are referred to as 'Chapters' in the Italian Decision) relates to the 'Romanian Cupola' (also known as the 'Romanian Dome' (Italian Decision, pp253, 259, 261, 266-8, 280), which was the overarching organisation of three different cells of Romanian perpetrators. One of those cells was run by the Appellant (see Charge 3). The offending took place in Italy (Further Information, [1]) from July 2007 (Ibid, at [3]) until December 2010 (EAW). The Appellant associated with named and unnamed others for the purposes of committing the crimes of exploitation and aiding and abetting prostitution, as well as 'reduction and maintenance in slavery or servitude' and trafficking in persons. Specifically, they recruited and promoted the prostitution of Romanian women, including minors; took control of their property to control them, and trafficked them. Threats, deception and violence were used (EAW). The Appellant acted as an 'associate (co-perpetrator)' (Further Information, [2]).
13. *Charges 3-6, 8-10 and 12* relate to the 'Prejoianu Association'. As regards Charges 3-6, the Italian Decision provides greater detail of the conduct (pp259-263). It describes that the Court found an "associative structure" of three cells under the overarching 'Cupola'. One cell was run by the Appellant (Charge 3) together with persons called Ghita, Tufan and Kovacs. The other two cells were run by Bacar and Petrache (pp259-263). The Appellant was 'undisputed leader' of the Prejoianu Cell. He and the others had introduced women from Romania into Messina, forcing them to live in the house of Gioa Tauro and obliged to prostitute themselves (Ibid). The Court detailed

the evidence from the witnesses, providing specific details of the actions of the Appellant towards them and his movements.

14. *Charge 3*: the offending conduct took place in Italy (Further Information at [1]), specifically in Messina, between November 2007 (Ibid, [6] and April 2009 (EAW, p95). The Appellant was a 'leader and 'promoter' (Italian Decision, p253).
15. *Charge 4* relates to the 'subjugation' (enslaving) of [MR], [RK], [MV], [VI], [TR], [TM], [FD], [KO] and others unknown and their exploitation. That was achieved through violence, including beating, raping and threatening the women. One of the women was a minor (under 18). The individuals named include [MR] and [VI], the two victims who were the subject of the Appellant's conviction in Romania. The charge relates to a period between November 2007 and 29 April 2009 (Further Information, [7]) and (Italian Decision, p254). The Appellant was a co-perpetrator/accomplice (Further Information, [9]). It took place in Messina. This is considered the principal charge in terms of seriousness and is the charge that dictates the Italian sentence Italian Decision, p284. Further details of Charges 4 and 8 are found in the Italian Decision at pp277-279.
16. *Charge 5* relates to the exploitation by prostitution of [MR], [RK], [MV], [VI], [TR], [TM], [FD], [KO] and others unknown. In particular, the defendants recruited women to make them practice prostitution and collected the monies they earned. The conduct took place in Messina, between November 2007 and December 2010 (EAW, p95) and (Further Information, [10]). The Appellant was a co-perpetrator [Further Information, [9]).
17. Of the eight women named in Charges 4 and 5, two were the subject of the Romanian decision. The Italian Decision expressly excluded the Appellant's conduct as it pertained to 'offended parties [MR] and [VI] and with exclusive reference to the conduct put in place against them until June 2008', as it had been covered by the Romanian proceedings, and the Court reduced the Italian sentence accordingly by two months (Italian Decision, p282, p284). (The paragraph on p282 only refers to Charge 5, whereas in fact the two women were mentioned in Charges 1 and 4 as well, and [MR] is also referred to in Charge 9).
18. *Charge 6* relates to the Appellant, along with others, exploiting [TM], who was under 18. The conduct took place in Messina, between March 2007 and April 2008 (EAW, p95) and (Further Information, [12]). The Appellant was a co-perpetrator (Further Information, [11]). The conduct is further particularised at [tab 22, pp261] of the Italian decision, including detailing the actions of the Appellant.
19. *Charge 7* relates to conduct with named others as to the recruitment and exploitation of [IM] and collection of the funds from that exploitation. It relates to the period from March 2007 until April 2007, in Rosarno.
20. *Charge 8* relates again to [UM], specifically keeping her 'in a state of continuous awe', forcing sexual performances and otherwise exploiting her. This was achieved through violence, rape, and monitoring of her. It took place in Messina, from May 2007 to July 2007 (EAW, p95).

21. *Charge 9* specifically relates to the violence against [MR], in Gioia Tauro ‘ascertained’ in February 2008 (EAW, p96). The Further Information at [13] provides further particulars of the Appellant’s conduct.
22. *Charge 10* relates to the keeping of [RK] by force, forcing her to undergo sexual acts, in Rosarno in December 2007 (EAW, p96).
12. *Charge 11* relates to forcing [UM] to undergo sexual acts in Rosarno, in March 2007 [tab 5, pp96-97].
13. *Charge 12* relates to the mistreatment of the Appellant’s partner, Kovacs Mihaela Ileana aka Christina or Ela, forcing her to undergo ‘mortifications, physical and moral harassment of all kinds’ in Messina, September 2008 until 29 April 2009. That included threats by “means of a knife” and “personal injury” (Further Information, [14]).
14. Further particulars of the conduct are set out in the Italian Decision from p280.
15. The Framework list is ticked for ‘participation in a criminal organisation’, ‘trafficking in human beings’ and ‘rape’. The ‘terrorism’ box was wrongly ticked in the English translation of the EAW (Further Information, [16]).
16. The Further Information said at p121, after [22]:

“Mr Prejoianu has not served any sentence in Romania for the same conduct on which the Italian EAW is based, (see in this connection p42 and ff of the judgment delivered by the Assize Court of Appeal on 13.11.2016, a copy of which is enclosed herewith for ease of reference, in which the identity of the conduct has been held only with regard to Count 5) and until June 2008, but not with reference to the following period.”

The proceedings before the district judge

17. The Appellant argued that extradition was barred by the following provisions of the Extradition Act 2003 (EA 2003): (a) s 12 (double jeopardy); (b) s 14 (passage of time); (c) s 17 (specialty); (d) s 20 (person convicted); (e) s 21/Article 8 (human rights).
18. The district judge held as follows, in summary:
 - a. At [11] he said that the EAW complied with ss 2 and 10 of the EA 2003. (This was not listed as a ground of challenge)
 - b. At [12] he said that the s 12 argument was that:

“It is submitted that there is extensive overlap between the offending set out in the EAW and the offending for which Mr Prejoianu was convicted in Romania. The offending is therefore based on ‘the same or substantially the same facts’, meeting the test for the s 12 double jeopardy bar to extradition.”

c. The judge held at [15], [18], [23], [24] in relation to the s 12 argument:

“15. It is clear that two of the victims in the Italian prosecution were the same victims for which the RP received his prison sentence in Romania. That said, the Italian court makes it clear that the said victims were specifically excluded from its final determination. They dealt with the double jeopardy point by excising the two.

...

18. Further information (page 104) from Italy states the RP :

‘Has s not served any sentence in Romania for the same conduct on which the Italian EAW is based.’

In this case, I find that as a matter of fact, find (sic) that the ‘second prosecution’ in Italy is not founded on the ‘same or substantially the same facts’ In fact that same argument was made before the Italian court on appeal but they found that he could properly be prosecuted on the broader/wider basis. This is discussed at pages 117 and 136 of the Italian judgment. They directly considered the issue of overlap of facts. The Italian court, addressing Article 649, made the decision not to proceed against the accused as regards the two victims, [MR] and [VI] and to reflect the same.

...

23. I find that the Italian convictions and sentence which underpin the EAW Romanian prosecution/convictions are not based on the ‘same or substantially the same facts’ as the Romanian prosecution/convictions and the Italian prosecution which related solely to the two abovementioned victims. There are distinct and different victims in the two sets of convictions ‘the associative integration profiles that appear unrelated to the assessment by the AG Romanian’ (sic). I have found the so-called association charges in this case would amount to criminal offences within this jurisdiction because of the actual factual basis upon which they were put.

Whilst the Romanian prosecutor was aware that the RP had trafficked others, there is no evidence that all the victims had been identified.

Critically, there can be no possibility of double jeopardy in this case. Extradition would NOT expose the RP to serving a sentence for offences which he had already been previously convicted and punished. The Italian Supreme Court made that clear in dealing with his appeal.”

- d. In relation s 17, he said at [28]-[31] that there was no compelling evidence that Italy would not apply specialty.
 - e. In relation to s 20, the judge found that the Appellant had deliberately absented himself from his trial (at 40}. The judge said that if he was wrong, the Appellant would have the opportunity to persuade the Italian courts to grant him a re-trial ([41]).
 - f. At [43] the judge said he was not sure whether a s 25 (health) challenge was being made, but rejected it in any event.
 - g. The judge found the Appellant to be a fugitive (at [49]) and so not entitled to rely on s 14, but that in any event it would not be unjust or oppressive to extradite him by reason of the passage of time (at [52]).
 - h. In relation to Article 8, having conducted the required *Celinski* balancing exercise, the judge found at [83] that extradition would not be a disproportionate interference with the Appellant's Article 8 rights.
19. The judge accordingly rejected all of the challenges and ordered the Appellant's extradition.

Grounds of appeal and submissions

20. The Appellant's grounds of appeal are that the judge was wrong and that he should have discharged the Appellant on one or more of the following grounds:
- a. Section 2, in relation to Charge 1 (in particular) and Charge 5 only;
 - b. Section 12 (in relation to Charges 3 - 12);
 - c. Section 17.
21. In granting permission, Lane J observed as follows:
- “The grounds concerning sections 2 (insufficient particularisation) and 12 (double jeopardy) are, in my view, the strongest but the ground concerning section 17 (specialty) is sufficiently arguable.”
22. On behalf of the Appellant, Mr Fitzgerald KC took the s 12 argument first. He said that *Fofana v Deputy Prosecutor Thubin Tribunal de Grande Instance de Meaux, France* [2006] EWHC 744 (Admin) was central to this appeal. He said it is the principal extradition case on double jeopardy and is settled law: see *Heathfield v Staatsanwaltschaft Würzburg, Germany* [2017] EWHC 2602 (Admin), [22].
23. I will return to *Fofana* in detail later, but in summary the Divisional Court held that that s 12 would bar extradition where either: (a) a plea in bar of *autrefois acquit* or *autrefois convict* is available; or (b) where the second prosecution is founded on the same or substantially the same facts as the first prosecution, so as to render it an abuse of process (absent some special circumstance).

24. Mr Fitzgerald said that s 12 and the domestic authorities were the starting point, and that it was unnecessary to delve into EU jurisprudence on the *ne bis in idem* (ie, double jeopardy) principle. I will come back to EU law later.
25. He further said that the district judge had wrongly relied on the Italian Court of Appeal's determination that there was no breach of double jeopardy.
26. Mr Fitzgerald said that in this case extradition was barred by s 12 under the second limb of *Fofana*, ie, because it would be an abuse of process if (per s 12) it was sought to prosecute the Appellant here. That was for one or both of two reasons. He said that there was a significant overlap between the Italian proceedings and the earlier Romanian proceedings, although the Italian proceedings involved a larger number of victims than had the Romanian ones. Further or alternatively, the Romanian authorities had been aware that there were other victims (he said at least six others; the full list is in footnote 3 in the Appellant's Skeleton Argument), and a deliberate decision had been taken in Romania not to prosecute the Appellant in respect of these victims. He showed me a letter from January 2010 from the Italians to the Romanians naming at least some of these other victims.
27. He also said the reduction in sentence in Italy of two months did not properly reflect the punishment which the Appellant had already undergone in Romania for the overlapping conduct.
28. On speciality, or 'speciality', enshrined in s 17 of the EA 2003, which Mr Fitzgerald took next, this is intended to ensure that an extradition defendant is only dealt with in the requesting state for the conduct for which they were extradited.
29. The Appellant relied on the expert report of Professor Maffei, a professor of criminal procedure at the University of Parma, that the Italian courts might not honour speciality.
30. Lastly, in relation to s 2 and particularisation, Mr Fitzgerald submitted that the district judge had not – or not properly - addressed the issue.
31. Charge 1 appears akin to a conspiracy charge. The case law is clear that where a requested person is charged with conspiracy, it is not sufficient for the warrant to state that the person was involved in a conspiracy, without setting out any detail about what the individual did in that conspiracy. It is said the narration of conduct does not set out the Appellant's individual role in this alleged conspiracy and that the reference in the Further Information at [2] to him having been an 'associate/co-perpetrator was not sufficient.
32. Furthermore, Charge 1 sets out that the Appellant was involved in the Romanian Cupola until 12 May 2010, which is nearly 18 months on from when the Appellant was detained in Romania (on 29 April 2009), following which he was sentenced to five years' imprisonment. It follows he could not have been involved in criminal activity at that stage.
33. Charge 5 is said to suffer from the same issue as Charge 1 in relation to timescales. The Appellant is once again alleged to have been involved in criminal activity until 12 May 2010. This is said to be 'implausible'.

34. On behalf of the Respondent, Ms Malcolm KC submitted as follows.
35. First, the Appellant's extradition was not barred by s 12. There were good reasons why the Romanians had not prosecuted for other victims. These were detailed in the Romanian indictment at p138. Further, there had been considerable witness intimidation, as shown in the papers. By way of example, she referred me to the same letter from January 2010 which Mr Fitzgerald had shown me, which described the Appellant (on the basis of witness testimony) as a 'very violent, merciless and barbarian person' (sic). Elsewhere (p305) he was described as exhibiting 'brutal' and 'violent' behaviour. She said in light of this, not only was it not an abuse for the Italians to prosecute the Appellant, public policy required it.
36. She said that it was not necessary to delve into the EU law question. She was happy to argue her case on the basis of *Fofana*. There was no overlap between the conduct on the EAW and the Romanian conviction, which had been specifically excluded from the Italian judgment and the Appellant's punishment adjusted downwards accordingly. The Italian case covered more victims, and a greater timespan than the Romanian case did. A proper sentence reduction had been made to reflect double jeopardy. I could make clear in my judgment that the Appellant was not being extradited for any conduct covered by the Romanian prosecution.
37. In relation to s 17 and specialty, per *Brodziak v Circuit Court in Warsaw, Poland* [2013] EWHC 3394 (Admin), given that there is a strong presumption that EU Member states will act in accordance with their international obligations in respect of specialty, 'compelling evidence' is required that they will act in breach of the specialty rule. Ms Malcolm said the district judge rightly held that the evidence from Professor Maffei did not amount to such compelling evidence.
38. In relation to the s 2 argument on particularisation, she said (in writing; I did not need to call on her orally) that the EAW, read with the Further Information and the Italian Decision, amply set out the Appellant's role in a way which did not leave room for any ambiguity as to what the Appellant's role had been and what he had been convicted of.

Discussion

The test on appeal

39. The test of whether an appeal should be allowed is set out in s 27 of the EA 2003. The High Court may allow an appeal if the first instance judge 'ought to have decided a question before him ... differently' and that this would have required him to discharge the appellant (s 27(3)).
40. In *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551 it was held that the single question for the appellate court is whether or not the district judge made the 'wrong' decision ([24]); see also *Love v Government of the United States* [2018] 1 WLR 2889, [26].

Was the judge wrong to reject the Appellant's argument that extradition was barred by s 12 of the EA 2003 ?

41. Mr Fitzgerald put *Fofana* at the centre of his submissions and I will therefore begin with that case.
42. The appellants had been tried in England (at Southwark Crown Court) for fraud and their extradition was subsequently sought by France pursuant to an EAW. The English prosecution had been brought by the CPS. The main issue on the appeals was whether the appellants' extradition was barred on the ground of s 12/double jeopardy by virtue of the English criminal proceedings (which commenced in the City of London Magistrates' Court in June 2005, shortly before the issue of the French EAW), and were completed in the Southwark Crown Court in mid-November 2005, a few weeks before the extradition proceedings were heard and determined at Bow Street Magistrates' Court on 21 December 2005.
43. The victim of the alleged fraud was a company called Serviware SA. Auld LJ, with whom Sullivan J agreed, said at [6]-[9], [11]:

“6. In mid-June 2005, as I have indicated, the appellants were arrested in this country taking delivery of the controlled delivery that month of a consignment of computer equipment from Serviware. The French authorities acted promptly by issuing the Warrant within a fortnight of those arrests, clearly considering that the appellants' conduct was part of a serious, long-term and wide-spread conspiracy to defraud. Before they could proceed with the extradition proceedings, the City of London Police decided to prosecute them here in respect of substantially the whole range of transactions alleged with varying particularity in the Warrant. They charged them, not just with those relating to Serviware, but of six offences of using a false instrument, contrary to section 3 of the Forgery and Counterfeiting Act 1981 Act ..., one for each of six French companies, including Serviware. However, the Crown Prosecution Service sought the committal of the matter to the Southwark Crown Court on a single charge of using a false instrument, contrary to section 3, seemingly confined to the June 2005 – the second – Serviware transaction, but with, as purported exhibits, allegedly false documentation relating to the transactions originally charged by the City of London Police in respect of all six French companies.

7. The indictment, as drawn at the Crown Court, was confined to the appellants' dealing with Serviware, and, did not, therefore, reflect the seriousness and range of conduct referred to in general terms in the Warrant, or covered by the police charges, or that documented in the exhibits bundle. Each appellant was merely charged with two counts of using a false instrument with intent, in relation to the second of the two transactions with Serviware described in the Warrant, contrary to section 3 of the 1981 Act. The statement of offence in each count was the same, namely “[u]sing a false instrument with intent”, contrary to section 3 of ... the 1981 Act. The material particulars of each count were also the same, save as to dates and the nature of the instrument, the first

charging user of the instrument over a four month period between 24th February and 15th June 2005 and specifying the alleged false instrument as a purported international bank transfer from Lloyds TSB for 60,225 Euros. The second was for an overlapping period, but only of nine days, between 4th and 15th June 2005, clearly in relation to the same transaction, but specifying user of a different alleged false instrument, namely a purported funds transfer confirmation of credit slip, again for 60, 225 Euros, from Lloyds TSB I should note that the value of 60, 225 Euros attributed by the indictment to this transaction was that attributed by the Warrant to the May 2004 transaction, its valuation of the June transaction being 55,600 Euros.

8. On 28th October 2005 the appellants pleaded not guilty to those two counts. On 14th November 2005 the prosecution amended the indictment by adding two alternative and lesser counts of having custody or control of respectively the same alleged false instruments, each still in the amount of 60,225 Euros, contrary to section 5(2) of the 1981 Act, but both over the same period in 2005, that is, from 24th February to 15th June 2005. On re-arraignment on that day, Fofana pleaded guilty to the two new counts and Belise pleaded not guilty to them. The Judge directed verdicts of not guilty on the original two counts against Fofana and on all counts against Belise, and sentenced Fofana to a short period of imprisonment on the two new counts. So much for the allegations of widespread fraud described with varying particularity in the Warrant, taken up by the City of London Police in their charges and suggested in the documentation included in the committal papers for the Southwark Crown Court.

9. Only then did it fall to Judge Wickham to consider, in December 2005, what was left over in the Warrant's description of an extradition offence.

...

11. The arguments advanced on behalf of both appellants is that the [English] indictment that they faced, in its original and amended form, was based on the same conduct, including the same alleged false documentation relied upon by French authorities in the Warrants. But, as I have said, the indictment, in all its counts, related only to the June 2005 transaction. Whereas the description of the alleged criminality in the Warrant, notwithstanding its heading as 'related to a total of 1 (one) offence', and of that in the original police charges before the City of London Magistrates Court, was of a much wider and lengthy course of fraud against a number of French companies, of which the June 2005 Serviware transaction was only part. The fact that the committal papers for the prosecution in respect of that transaction at Southwark Crown Court included documents that might have supported a more widely based charge or charges does

not mean that they were relevant to or would have been admissible if there had been a trial on that indictment.”

44. Auld LJ said at [18]-[21]:

“18. In summary the authorities establish two circumstance in English law that offend the principle of double jeopardy:

i) Following an acquittal or conviction for an offence, which is the same in fact and law – *autrefois acquit or convict*; and

ii) following a trial for any offence which was founded on ‘the same or substantially the same facts’, where the court would normally consider it right to stay the prosecution as an abuse of process and/or unless the prosecution can show ‘special circumstances’ why another trial should take place.

19. In *Connelly* [*v DPP* [1964] AC 125], their Lordships reached this position in practical, though not unanimously in formal, terms by, in the main, confining the notion of double jeopardy to the narrow pleas in bar of *autrefois acquit or convict*, but allowing for a wider discretionary bar through the medium of the protection afforded by the court's jurisdiction to stay a prosecution as an abuse of process. In *Humphreys*, where their Lordships sanctioned a prosecution for perjury based on the same facts plus evidence of perjury by the defendant at an earlier failed prosecution for a driving offence, Lord Hailsham of St Marylebone indicated the second broader discretionary bar in the following passage at 41D-E:

‘(10) Except where the formal pleas of *autrefois acquit or convict* are admissible, when it is the practice to empanel a jury, it is the duty of the court to examine the facts of the first trial in case of any dispute, and in any case it is the duty of the court to rule as a matter of law on the legal consequences deriving from such facts. In any case it is, therefore, for the court to determine whether on the facts found there is as a matter of law, a double jeopardy involved in the later proceedings and to direct a jury accordingly.’

20. In *R v Beedie* [1998] QB 356, the Court of Appeal, Criminal Division, gave more formal expression and separation to the two routes to preventing a second prosecution where the charges and/or facts relied upon are the same or substantially the same, the first, where the charge also is the same, and the second, where the charge is different. It confined the principle or doctrine of *autrefois acquit or convict* to the first, and allowed the court a ‘discretion’ to stay the proceeding where there are “special circumstances’.

21. The semantic bonds that so constrained their Lordships in *Connelly* and the Court of Appeal in *Beedie* to confine the notion

of ‘double jeopardy’ – the terminology now employed in sections 11 and 12 of the 2003 Act – to the absolute plea in bar of *autrefois acqui or convict*, were loosened by their Lordships, albeit indirectly, in *R v Z* [2000] 2 AC 483, so as to apply it to a case where, even though the charge is different, it is founded on the same or substantially the same facts as an earlier trial. Lord Hutton, considering the various speeches in *Connelly* and speaking for their Lordships, said at 497C-D:

‘In my opinion the speeches in the House recognised that as a general rule the circumstances in which a prosecution should be stopped by the court are where *on the facts* the first offence of which the defendant had been convicted or acquitted was founded on the same incident as that on which the alleged second offence is founded.’”

45. Auld LJ expressed his conclusions on the facts at [26]-[30]:

“26. The contemplated French proceedings for a continuing offence of fraud against Serviware, of which the two described fraudulent transactions could be regarded as overt acts, concern a longer and more serious course of criminality than the second of them to which the Southwark indictment was confined. Prosecution in France for such a continuing offence would not, of itself, offend against the double jeopardy rule. In the recent case of *Boudhiba v Central Examining Court No 5 of the National Court of Justice, Madrid, Spain* [2006] EWHC 167 (Admin), to which Mr Caldwell referred the Court, Smith LJ, with whom Newman J agreed, accepted that the Spanish authorities might prosecute the appellant for wide-ranging offences concerning the forgery of passports, despite his conviction in this country for an offence of using a particular passport. She did not find it to be an abuse of process that the offences to be prosecuted in Spain were of a more serious nature, and observed that it would be appropriate for the evidence supporting the conviction in this country to be led in Spain in support any prosecution there for the wider forgery offences.

27. However, in the circumstances of this case the contrast in extent and seriousness between the two sets of proceedings, the extradition criminality confined, as Mr Caldwell acknowledged, to fraud against Serviware, would not be so great. A hypothetical attempt to prosecute both men again in this country on a broader charge based on both Serviware transactions, would, in my view, be vulnerable to the court directing a stay as an abuse of process. The only significant addition to the June 2005 Serviware conduct giving rise to the Southwark indictment would be the almost identical conduct described in the Warrant against Serviware a year before, albeit subject to some confusion in that instrument as to the relative values of the two transactions. The case is clearly

distinguishable on its facts from that considered by Smith LJ and Newman J in *Boudhiba*.

28. In addition, as I have indicated earlier in this judgment, it is an unhappy feature of the case that the Crown Prosecution Service proceeded with and narrowly confined its Southwark prosecution to the June 2005 Serviware transaction, not only in the full knowledge of the pending and more broadly based extradition proceedings, but also causing them to be delayed until after the completion of that prosecution. In doing so, the Crown Prosecution Service was also already aware, as a result of the information provided in the Warrant and other information provided by the French authorities, not only of the earlier Serviware transaction alleged, but also of the allegations in respect of other French companies, none of which, despite its inclusion of documentation relating to them among the exhibits prepared for the Southwark prosecution, it chose to rely upon as a basis for charging in the indictment. The fact that it chose to frame a prosecution on only one transaction, notwithstanding the material as to others available to it and lying, albeit unused, in the prosecution papers, would, I think, make it difficult for an English Judge to resist an application for a stay as an abuse of process such a prosecution as that now sought by the French authorities in these extradition proceedings.

29. Accordingly, I am of the view that, although the extradition offence specified in the Warrant is not based on exactly, or only partly, on the same facts as those charged in the Southwark indictment, there would be a such significant overlap between them as to have required the District Judge to stay the extradition proceedings as an abuse of process. But, in any event, given what was known, and the material available, to the Crown Prosecution Service when committing this matter to the Southwark Crown Court and when framing the indictment on which they were respectively convicted and acquitted, extradition of these men would be an abuse of process and, on that account, in the words of section 11(1)(a) and 12 of the 2003 Act would be barred 'by reason of ... the rule against double jeopardy'.

30. For those two reasons alone, I would allow the appeal of each appellant in respect of the extradition order made against him."

46. Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p.1) (the EAW Framework Decision) provides that extradition is prohibited:

"if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts."

47. Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 L 239, p19) (the Schengen Convention) provides:

“A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.”

48. Article 50 of the Charter of Fundamental Rights of the EU (the ‘Charter’) (2012/C 326/02) provides:

“No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union accordance with the law.”

49. The meaning of ‘same acts’ in Article 3(2) was considered by the CJEU in *Mantello* (Case C-261/09, judgment of 16 November 2010). The reference was for a preliminary ruling in the context of the execution in Germany of an Italian EAW relating to criminal proceedings instituted in Italy against Mr Mantello and 76 other persons who were suspected of having organised cocaine trafficking in the region of Vittoria, Italy and elsewhere and the supply of drugs to third parties. Article 3(2) has been directly transposed into German domestic law.
50. The Italian EAW was based on two alleged acts of Mr Mantello. He was accused, first, of having participated, between January 2004 and November 2005, in the framework of a criminal organisation comprising at least 10 other persons, in cocaine trafficking, organised in Vittoria, in other Italian cities and in Germany. It was alleged that Mr Mantello not only played the role of courier and middleman, but was also in charge of obtaining and dealing in cocaine.
51. Second, during that period and in the same places, acting alone or in concert with others, he was alleged to have unlawfully taken possession of, retained, transported, sold or disposed of cocaine to third parties. Mr Mantello also faced charges of aggravated criminal conduct to the extent that the cocaine was supplied by the network to a minor
52. He had been previously sentenced in Italy on 30 November 2005 for the unlawful possession of cocaine intended for resale on 13 September 2005 (ie, encompassed within the time period by the subsequent charges he faced). Information received from the Italian authorities made plain that, under Italian law, the conviction for possession with intent did not act as bar to prosecution of the wider allegation. The Grand Chamber held that, in those circumstances, the executing judicial authority was obliged to draw its conclusions from the assessment of the issuing judicial authority and, in this case, no bar arose [49-51].

53. The EAW was executed in Germany. The German executing court referred the following questions to the CJEU ([30]):

“(1) Is the existence of the ‘same acts’ within the meaning of Article 3(2) of the Framework Decision ... to be determined:

(a) according to the law of the issuing Member State, or

(b) according to the law of the executing Member State, or

(c) according to an autonomous interpretation, based on the law of the European Union, of the phrase ‘same acts’?

(2) Are acts consisting in the unlawful importation of narcotic drugs the ‘same acts’, within the meaning of Article 3(2) of the Framework Decision, as participation in an organisation the purpose of which is illicit trafficking in such drugs, in so far as the investigating authorities had information and evidence, at the time at which sentence was passed in respect of such importation, which supported a strong suspicion of participation in such an organisation, but omitted for tactical reasons relating to their investigation to provide the relevant information and evidence to the court and to institute criminal proceedings on that basis?”

54. The CJEU held that ‘same acts’ is an autonomous concept:

“38. In that regard, the concept of ‘same acts’ in Article 3(2) of the Framework Decision cannot be left to the discretion of the judicial authorities of each Member State on the basis of their national law. It follows from the need for uniform application of European Union law that, since that provision makes no reference to the law of the Member States with regard to that concept, the latter must be given an autonomous and uniform interpretation throughout the European Union (see, by analogy, Case C-66/08 *Kozłowski* [2008] ECR I-6041, paragraphs 41 and 42). It is therefore an autonomous concept of European Union law which, as such, may be the subject of a reference for a preliminary ruling by any court before which a relevant action has been brought, under the conditions laid down in Title VII of Protocol No 36 to the Treaty on the Functioning of the European Union on transitional provisions.

39. It should be recalled that that concept of the ‘same acts’ also appears in Article 54 of the CISA. *In that context, the concept has been interpreted as referring only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected* (see Case C-436/04 *Van Esbroeck* [2006] ECR I-2333, paragraphs 27, 32 and 36, and

Case C-150/05 *Van Straaten* [2006] ECR I-9327, paragraphs 41, 47 and 48).

40. In view of the shared objective of Article 54 of the CISA and Article 3(2) of the Framework Decision, which is to ensure that a person is not prosecuted or tried more than once in respect of the same acts, it must be accepted that an interpretation of that concept given in the context of the CISA is equally valid for the purposes of the Framework Decision.”

55. The Court went on to say that ‘finally judged’ for the purposes Article 3(2), means circumstances where, following criminal proceedings, further prosecution is definitively barred or where the Member State has adopted a decision that the accused is finally acquitted (at [45]). Whether a person has been finally judged is to be determined by the law of the Member State in which judgment was delivered. Thus, the converse is also true: *Mantello* at [46]-[48].
56. The key question on this appeal, it seems to me, is whether the district judge was wrong to hold that s 12 as interpreted in *Fofana*, did not preclude the Appellant’s extradition.
57. A conviction or acquittal by a court of competent jurisdiction outside England and Wales can found a plea of *autrefois acquit* or *convict*, at least where the alleged conduct is identical in both countries: see, for example, *Aughet* (1919) 13 Cr App R 101. In *Archbold 2013*, [4-409], the case of *Roche* (1775) 1 Leach 134 is referred to. The footnote to that case states as follows:

“... a final determination in a Court having competent jurisdiction is conclusive in all Courts of concurrent jurisdiction: therefore if A., having killed a person in Spain, were there prosecuted, tried and acquitted, and afterward were indicted here, at Common Law, he might plead the acquittal in Spain in bar. Bull. N. P. 245, as in the case of Mr. Hutchinson, who had killed Mr. Colson in Portugal, and was acquitted there of the murder: and being afterwards apprehended in England for the same fact, and committed to Newgate, he was brought into the Court of King’s Bench by *Habeas Corpus*, where he produced an exemplification of the Record of his acquittal in Portugal; but the King being very willing to have him tried here for the same offence, it was referred to the consideration of the Judges, who all agreed, that as he had been already acquitted of the charge by the law of Portugal, he could not be tried again for it in England. See *Beak v. Thyrrwhit*, 3 Mod. 194; S. C. 1 Show, 6. And the statute 33 Hen. VIII. c. 23.”

58. In both *Aughet* and in the footnote to *Leach* the alleged conduct in the English case and the foreign case was the same, although, obviously, the legal ingredients of the English and foreign case were different. In the case before me, there is no question but that the conduct is different and more extensive in Italy from that which was prosecuted in Romania, and for that reason no issue of *autrefois convict* or *acquit* can arise, in my view. The matter must be approached through the lens of abuse of process.

59. In *Fofana* the Court asked itself the question whether a notional prosecution here for the conduct in the French EAW would be an abuse of process having regard to the earlier Southwark Crown Court conviction. It decided that it would be, for the reasons that it gave, and so allowed the appeal.
60. This was an application of the second limb of *Fofana*, [18(ii)], which says the question is whether what the defendant's extradition is sought for is founded on 'the same or substantially the same facts', as the earlier prosecution, such that the court would normally consider it right to stay the prosecution as an abuse of process, unless the prosecution can show 'special circumstances' why another trial should take place.
61. Hence, I consider that the key question I identified earlier becomes whether the judge should have found that it would be an abuse of process to prosecute the Appellant in England for the conduct for which his extradition is sought in Italy (on the notional assumption that that Italian conduct were prosecutable here, *per s 12*), having regard to his earlier conviction in Romania against the two aggrieved victims.
62. The Respondent submitted in writing that because the Appellant was arrested on 22 January 2020, ie, before the UK's exit from the EU on 31 January 2020, and before the end of the transition period on 31 December 2020, the district judge was bound to interpret s 12 in line with EU law, pursuant to the duty of conforming interpretation: see *Cretu v Local Court of Suceava, Romania* [2016] 1 WLR 3344, [17]-[18].
63. I do not think this appeal is the proper case to consider whether the approach in *Fofana* needs to be modified and, if so, how, to take account of EU jurisprudence, including *Mantello* even though EU law, while mentioned (at [22]), was not considered in any detail *Fofana*. The point was raised but not really fully argued out before me, and *Fofana* is a decision of a Divisional Court which I consider that I should follow, and all the more so because it seems to me to state a more favourable test for the Appellant than the *Mantello* test of whether the facts of the prior and existing case are 'inextricably linked together'. As I have said, Ms Malcolm orally said it was not necessary to go into this question and that even pursuant to *Fofana*, the Appellant's case failed.
64. I turn to my conclusions.
65. It is necessary to start with the judgments of the Romanian courts in order to identify the conduct of which the Appellant was convicted in Romania.
66. I begin with the decision of the Romanian High Court of Cassation. The narration of the conduct begins at p289 in the bundle. It describes how the 'aggrieved party' [VI] was promised work in Italy and travelled there from Romania, where she was sexually exploited by the Appellant (among others) who kept the money she earned and used violence against her. He was also involved in the transportation. The aggrieved party [MR] was similarly exploited by being transported from Romania to Italy with the promise of work, only to be prostituted out and exploited including by using violence and threats. The dates for the conduct are given variously as December 2007 – June 2008 and December 2007 – April 2008 for the two victims respectively.
67. At p290 there is a reference to the 'material trafficking acts' having been carried out against unnamed others also.

68. The decision of the Court of Appeal of Craiova dated 3 June 2011 dealt with the Italian EAW and begins at p200. It is clear from [3] and [4] at p202 that the EAW dealt with a significant number of victims, including the two women specifically mentioned in the High Court's judgment.
69. At p203 the Court of Appeal said that the issue double jeopardy did not arise, and Ms Malcolm placed some emphasis on this.
70. It is therefore plain that the conduct in Romania for which the Appellant was convicted: (a) spanned the period, in total, from December 2007 – June 2008; and (b) only concerned two victims, [VI] and [MR].
71. In contrast, the Italian EAW refers to many more victims (at least one of whom (Ms Tufan) is said to have been under 18) and it covers a wider timespan of offending, going back to March 2007 and extending to December 2010 (Further Information, [12] and [13], and see above). Furthermore, as I said earlier, both the Italian Decision (p282) and the Further Information (below [22]) say that the Appellant's conduct in relation to the two victims in the Romanian proceedings has been excluded from the conduct covered by the Italian convictions. The latter document expressly says that, 'Mr Prejoianu has not served any sentence in Romania for the same conduct on which the Italian EAW is based ...', and that the sentence was adjusted by the Court of Appeal to exclude any punishment for Romanian conduct (albeit Mr Fitzgerald said not by enough).
72. It is therefore plain that the Court of Appeal of Messina was aware of the risk of double jeopardy under Italian law, and ruled accordingly, including by reducing the Appellant's sentence. Indeed, the Italian Decision makes clear at pp282-4 that the Appellant's lawyers expressly raised double jeopardy on the basis of Article 54 of the Schengen Convention (and I was shown a letter from his Romania lawyer to the Romanian prosecutor raising it). I can assume that both defence counsel and the Court of Appeal properly understood what the areas of overlap in the two countries' cases were so as to give rise to the double jeopardy issue.
73. I therefore find it impossible to disagree with the district judge's conclusion at [22] and [23] of his judgment that the Italian EAW does not involve conduct founded on 'the same or substantially the same facts' as the Romanian prosecution. I agree that it does not. Although the two Romanian victims are referred to in the EAW in Charges 1, 4 and 5, and one of them in Charge 9 (I should make clear the s 12 argument was not advanced in relation to Charge 1 unless I found it to be properly particularised: see Appellant's Skeleton Argument, [14], footnote 2), these have to be read as being subject to the judgment of the Court of Appeal, which restricted the conduct for which the Appellant is to be punished in the way I have indicated and excluded the Romanian conduct and reduced his sentence.
74. However, it does seem to me there is at least a degree of uncertainty in the Italian documents, in that the Italian Decision and the Further Information refer to Charge 5 in relation to the two Romanian victims, whereas they are referred to in Charges 1 and 4 as well, and Ms [MR] is referred to in Charge 9). This point was picked up on in the Appellant's Response of 23 January 2023, at [9]-[12] and also orally by Mr Fitzgerald.

75. However, of greater moment is the clear and unambiguous statement – set out earlier - in the Further Information that there will be no dual punishment; in other words, that the Appellant will not be imprisoned in Italy for any conduct for which he has already been punished in Romania. I am not prepared to go behind this statement, which is given in good faith and in which I must have trust and confidence.
76. However, for the avoidance of doubt, in the event that the Appellant is extradited, I make clear that it is on the basis that he will *not* be punished for *any* conduct in any of the Charges/'Chapters' on the EAW in relation to the two Romanian victims, [VI] and [MR], for which he was convicted and imprisoned in Romania. Those representing the Respondent in this country should make this clear to their client. As I will discuss further in respect of the Appellant's specialty ground, I have no doubt that the Italian authorities will faithfully apply the principle of specialty if any further application is made by either the prosecution or the defence.
77. Ms Malcolm did not seek to dissuade me from taking this approach.
78. As for Mr Fitzgerald's complaint that a two month reduction in the Appellant's Italian sentence did not sufficiently reflect the Romanian sentence that, it seems to me (and without going into the detail), was a matter entirely for the judgment of the Italian Court of Appeal applying its own domestic sentencing principles, which I cannot go behind. If a mistake has been made then it can be corrected, and I have no doubt it will be. But that is for the Italian courts to decide.
79. I turn to the alternative, broader, basis on which Mr Fitzgerald put this ground of appeal. He said I should find that the Romanian authorities could have framed a wider prosecution so as to encompass the other victims named in the EAW besides the two Romanian victims, but deliberately chose not to do so, such that would give rise to an abuse of process assuming a notional prosecution in the England for the Italian conduct.
80. I reject that submission and decline to draw the inference Mr Fitzgerald urged upon me. Firstly, whilst I accept that the evidence shows that the Romanians were aware to some extent – perhaps a significant extent - of other victims of the trafficking conspiracy besides the two named Romanian victims, and hence that there had been a wider conspiracy (see eg, at p290 of the High Court of Cassation decision, where it was said that the Appellant trafficked 'other victims as well'; and p138 of the Romanian indictment, where some of them were named:

“From the documents on file there are clues that, besides the two aggrieved parties, other young females were trafficked in Italy, such as: [MV], [RK] and [UM], however for objective reasons the criminal prosecution was not finalised, especially that some of them are abroad. Also the criminal prosecution was not finalised, especially that some of them are abroad. Also, the criminal prosecution against the accused Kovacs Mihaela – [VI] was not completed, because she was not found at her domicile, and as a consequence this accused person was not presented her procedural rights.

For these reasons, the splitting of the case is ordered with respect to defendants Ghita Gheorghe Ionut and Prejoianu Nicolae, for the offence of human trafficking in relation to the victims that were not interviewed and with respect to the accused Kovacs Mihaela-Ileana, for whom the prosecution will continue for the same offence”

and p290, namely the letter from Italy to Romania naming other victims dated 4 January 2010); I cannot infer from this that Romania *intentionally* decided not prosecute in respect of these other victims despite an ability to do so that the Italian case would be an abuse of process if prosecuted here.

81. It seems to me that much stronger evidence would be required before I could reach the conclusion Mr Fitzgerald urged upon me. He said the Romanians’ reasons were ‘unconvincing’, however it is not open to me to go behind their explanation. In any event, to my mind the reasons given are not unconvincing. This was a transnational conspiracy lasting some time involving multiple victims and multiple suspects/defendants. I think I can reasonably infer the investigation was complex. It is unsurprising that there were difficulties in putting the case together, and that decisions had to be taken about the shape of the case. I decline to draw any adverse inference about any failures by the Romanians to respond to queries.
82. It also seems to me there is a further difficulty standing in Mr Fitzgerald’s way. He sought to draw an analogy between the facts of this case and *Fofana*. However, even leaving aside that facts of cases are always different, one important difference is that in *Fofana*, the Court was able to say on the evidence what the CPS had been aware of when it prosecuted the Southwark Crown Court case: see [27]-[30], which I quoted earlier.
83. In other words, it was an abuse of process because the self-same prosecuting agency prosecuted the first case and then sought to prosecute a broader second case, which the Court was able to say could and should have been prosecuted the first time around. The facts of *Fofana* were, accordingly, somewhat special.
84. The situation before me is fundamentally different. It is difficult to see why what the Romanians did should affect what the Italians chose to do with regards other victims. Not only can I not infer the deliberate abandonment in Romania of a viable case, even if that had occurred, I cannot see why it would give rise to an abuse of process, because a separate and distinct prosecuting agency in Italy would still have decided to proceed having assessed matters for itself. The Italians are entitled to take their own course as a matter of sovereignty, if nothing else. They are entitled to take a different view to the Romanians. Even if the abuse of process jurisdiction were somehow engaged by the Italian prosecution, the fact that it is taking place in a different country to Romania would, I think, amount to the ‘special circumstances’ exception referred to in *Fofana*.
85. I therefore reject the Appellant’s ground of appeal on s 12 in so far as it seeks his discharge. I am not returning the Appellant for any conduct for which he has already been punished in Romania.

Was the conduct of which the Appellant was convicted on Charges 1 and 5 sufficiently particularised?

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86. The relevant part of s 2 of the EA 2003 provides:

“Part 1 warrant and certificate

(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

(a) the statement referred to in subsection (3) and the information referred to in subsection (4), or

(b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(3) The statement is one that -

(a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.

(4) The information is -

(a) particulars of the person’s identity;

(b) particulars of any other warrant issued in the category 1 territory for the person’s arrest in respect of the offence;

(c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it.

(5) The statement is one that -

(a) the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The information is -

(a) particulars of the person's identity;

(b) particulars of the conviction;

(c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;

(e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.

(7) The designated authority may issue a certificate under this section if it believes that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory."

87. There is considerable jurisprudence on s 2 and what it requires by way of particularisation. In *Ektor v National Public Prosecutor of Holland* [2017] EWHC 3106 (Admin), [7], Cranston J said:

"... The description must include when and where the offence is said to have happened and what involvement the person named in the warrant had. As with any European instrument, these requirements must be read in light of its objectives. A balance must be struck between, in this case, the need on the one hand for an adequate description to inform the person, and on the other the object of simplifying extradition procedures. The person sought by the warrant needs to know what offence he is said to have committed and to have an idea of the nature and extent of the allegations against him in relation to that offence. The amount of detail may turn on the nature of the offence."

88. The Divisional Court in *King v. Public Prosecutor of Villefranche sur Saone* [2015] EWHC 3670 (Admin) set out the following principles on the required level of particularity:

- a. There was no need for an exhaustive description. The description need not be in great detail ([22]).
 - b. Sufficient circumstances must be set out in order for there to be compliance with Article 8 of the [EAW Framework Decision] to enable the requested state and appellant to ensure any barriers to extradition can be relied upon ([16] and [18]).
 - c. There is no material difference between the requirements for an accusation or conviction warrant ([16] and [18]).
 - d. The level of particulars required will depend on the circumstances of the case ([21]).
89. As regards conspiracy offences, in *Pelka v Regional Court in Gdansk, Poland* [2012] EWHC 3989 (Admin), Collins J held:
- “6. Certainly, where involvement in a conspiracy is alleged, it is not necessary to include any great detail as to the precise acts committed in furtherance of the conspiracy. But, as a general proposition, it seems to me that a warrant ought to indicate, at least in brief terms, what is alleged to have constituted the involvement or the participation of the individual in question. It seems to me that, *prima facie*, simply to say there was a conspiracy and he conspired with others is to do whatever the end result of the offence is, is likely not to be sufficient.
90. I am satisfied that there is no merit in this ground of appeal. That is for the following reasons.
91. I am entitled to have regard to the EAW; the Further Information from Italy; and the Italian Decision in deciding whether proper particularisation has been given: Case C-241/15 *Criminal Proceedings Against Bob-Dogi* [2016] 1 WLR 4583 and *Goluchowski v District Court in Elblag, Poland* [2016] 1 WLR 2665, [44]-[45].
92. Taken together, this material provides an ample basis for the Appellant to be sure what conduct he has been convicted of to the standard required by the cases I have mentioned.
93. In relation to Charge 1 (the Romanian Cupola/Dome), which Mr Fitzgerald fastened on in particular, the conduct in the EAW alleges that the Appellant associated with named and unnamed persons for the purposes of committing the crimes of exploitation and prostitution as well enslavement, servitude and trafficking. The means by which this was done, including violence, are specified. Very considerable further detail was then given in the Italian Decision at p259 et seq. For example, at p259 it was said that the Appellant had headed an ‘associative structure’ and that ‘he and his co-defendants had introduced women from Romania to the Messina square with the following operating methods ...’, which were then set out in detail.

94. Reading all the documents together, it cannot be seriously argued that the Appellant does not know what he has been convicted of, or when and where it was committed. The conduct alleged in the documents goes far beyond simply alleging that there was a conspiracy. His personal role is clearly described.
95. The argument that the Appellant cannot have continued to offend in custody is a question of evidence, which on well-recognised principles are not a matter for the courts of this country.
96. This ground of appeal fails.
97. Finally, I turn to the Appellant's speciality argument. Section 17 of the EA 2003 provides:

“17 Speciality

(1) A person's extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.

(2) There are speciality arrangements with a category 1 territory if, under the law of that territory or arrangements made between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if -

- (a) the offence is one falling within subsection (3), or
- (b) the condition in subsection (4) is satisfied.

(3) The offences are -

(a) the offence in respect of which the person is extradited;

(b) an extradition offence disclosed by the same facts as that offence;

(c) an extradition offence in respect of which the appropriate judge gives his consent under section 55 to the person being dealt with;

(d) an offence which is not punishable with imprisonment or another form of detention;

(e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;

(f) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(4) The condition is that the person is given an opportunity to leave the category 1 territory and -

- (a) he does not do so before the end of the permitted period, or
- (b) if he does so before the end of the permitted period, he returns there.”

98. This section invites attention to whether there are speciality arrangements with Italy. There are. They are to be found in Article 27 of the EAW Framework Decision:

“Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given

before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.”

99. As the Appellant rightly acknowledged, there is a strong presumption that EU Member states will abide by their international obligations in the EAW Framework Decision. In *Brodziak*, [46], the Divisional Court said:

“46. There is, moreover, a strong presumption that other Member States will act in accordance with their international obligations in respect of specialty. In *Hilali v Central Court of Criminal Proceedings Number 5 of the National Court, Madrid* [2006] 4 All ER 435, Scott Baker LJ referred to ‘a surprising submission that Spain is likely to act in breach of the international obligations to which it has signed up’ (para 52). In *Ruiz & Others v Central Court of Criminal Proceedings No 5 of the National Court, Madrid* [2008] 1 WLR 2798, Dyson LJ endorsed the approach in *Hilali*, stating:

‘67. It is to be presumed that the Spanish authorities will act in good faith in the absence of compelling evidence to the contrary. They are trusted extradition partners and parties to the Framework Decision. They have incorporated the specialty rule into their domestic law, so that the appellants have a remedy under their domestic law in the unlikely event of a breach of specialty.

68. Secondly, there is no compelling evidence that the Spanish authorities will act in breach of their specialty rule and article 27 of the Framework Decision. Castillo's case (which was governed by the Extradition Act 1989) does not provide such evidence. It appears that proceedings have not been completed. Even if Castillo's case were to be evidence of a breach of specialty, it would be a single instance. There is no other evidence. Moreover, if there has been a breach of

specialty in that case, the defendant has his remedy in Spanish domestic law.’

The need for compelling evidence of a breach of specialty arrangements was further emphasised in *Arronategui v 1st, 2nd, 3rd, and 4th Sections of the National High Court Madrid, Spain* [2012] EWHC 1170 (Admin), at para 47.”

100. In *Brodziak*, the submission was made that under Polish law and on the particular facts (which were to do with a cumulative sentence for several offences), whilst there was Article 27, there was no effective specialty protection because of the operation of Polish domestic criminal procedural law and how it dealt with cumulative sentences.
101. Notwithstanding that the Court said it had been caused ‘anxiety’ by the Polish response to a request for information, and that the situation was ‘unsatisfactory’, because it appeared that if returned to Poland the appellant might be imprisoned for an offence for which he had not been extradited in breach of specialty (at [54]), nonetheless, the Court held at [55]-[57]:

“55. We have come to the conclusion, however, that the evidence is not sufficiently compelling to displace the strong presumption that the Polish authorities will act in accordance with their international obligations in respect of specialty, and that the appellants have therefore failed to prove the absence of effective specialty arrangements. Two broad considerations, in particular, have led us to that conclusion.

56. First, as stated at [45] above, the relevant provisions of the Polish Criminal Procedure Code are entirely consistent on their face with the protection of specialty in Poland. The law itself is tolerably clear. What is not clear is how effect is or can be given to it in practice. The response from the judicial authority states that ‘a final and non-appealable convicting sentence’ cannot be reversed, yet the expert opinion adduced on behalf of *Brodziak* refers to the possibility of a judgment being quashed “in extraordinary proceedings”. All of this, however, is a matter of internal procedure for the Polish courts. We are not persuaded that an extradited person will lack a remedy under Polish law to give effect to the requirements of the Criminal Procedure Code.

57. Secondly, and very importantly, there is no evidence before us of even a single case in which an extradited person has been required in practice to serve a sentence relating in whole or in part to an offence for which he was not extradited. Yet there has been a large number of extraditions to Poland from the United Kingdom (and there have no doubt been many others from other Member States) for the purpose of serving a sentence following conviction; and it must be relatively common, as the present appeals suggest, for such cases to involve a single sentence imposed for multiple offences that include non-extradition offences. If this had given rise to a real problem in practice as

regards breach of specialty, we would expect evidence of specific cases to be available. We do not think that an adverse inference as to the absence of effective specialty protection should be drawn on the basis of the limited material of a general nature that has been placed before us.”

102. I do not consider the district judge was arguably wrong in his conclusion that there was no ‘compelling’ evidence of a risk of a breach of specialty. I note the following paragraph from Professor Maffei’s first report (p186):

“3. If the English Court decided that some (but not all) counts in the EAW were barred by double jeopardy, would Mr Prejoianu be to receive a reduction in his sentence to reflect that? Is there an automatic process to guarantee such a reduction?”

The Italian prosecutor in this case has no authority to make any immediate change to the residual punishment in this case (apart from those indicated under §1) and there is no automatic process that would guarantee such reduction, although I expect the Italian courts to take account of that instruction if appropriately motioned.

There is no automatism or guarantee that the reduction will take effect on surrender. Mr PREJOIANU (or the prosecution office) will have to motion a judge to amend the residual punishment in the very same way, for example, that would occur if one of the offences would be ‘expunged’ from the Criminal code or covered by some ‘amnesty or pardon laws’. In such situations, the convicted person will have to motion the judge and seek a new determination of the residual punishment. The rule is that the judge to be motioned is the same judicial authority that passed the final judgment (in this case the appellate court of Messina).

When all the conducts are executive actions of the same criminal project, however, the dropping of a single count – unless it is the ‘main’ offence - may be irrelevant in the determination of the residual punishment, for the reasons explained in [2].”

103. Also, there is this at p187 of his report (emphasis added):

“4. Assume the English Court had concerns that of the conduct in was caught by double jeopardy, but other conduct in that charge was not. Would the Italian Court be able to break down that charge into several lesser charges in order to apply the English Court’s double jeopardy ruling (i.e. that double jeopardy was in play in relation to but conduct in the original charge)?

I have never come across such a situation but it is my opinion that Mr PREJOIANU (or in theory also the prosecution office) could certainly motion the judge to re-determine the residual penalty

and consider the arguments advanced by the English courts - in the exact same way that I described in §3 above.

This being said, however, an important distinction must be drawn between counts referring to the “crime of association” (i.e. Article 416 of the Italian criminal code, counts 1,3,4,5, 6 in the EAW) and counts referring to other offences (i.e count 9 in the EAW).

If the English courts raised concerns that some of the conducts described in a count referring to a crime of association was caught be double jeopardy, Italian courts will most likely respond that the removal of certain specific conducts does not take away the ‘association’ charge. By its nature, in fact, the association charge – which I believe is foreign to English law – does not punish a specific conduct but rather the very fact of being a promoter, manager or associate of a criminal organisation.

If the English courts raised concerns that some of the conducts described in a count referring to specific crimes (not the association crime) was caught be double jeopardy, Italian courts might be persuaded to accept the argument with an ad hoc motion, although they will retain a discretion to assess whether the conducts are in fact ‘identical’. The rule of speciality, in fact, only automatically applies when extradition is ordered with the explicit and clear exclusion of a charge (or count) and not just for a ‘portion’ of a count.”

104. I am not sure the learned Professor was right about ‘association’, as it is very similar to the common law concept of conspiracy. Be that as it may, as I read these paragraphs, the Appellant could make a motion to the Court of Appeal, if necessary, to reduce his sentence on the grounds of double jeopardy or, indeed, for any other reason. If the Appellant is extradited to Italy and his Italian lawyers consider that his sentence should be further reduced on the grounds of double jeopardy then they can make the appropriate application and I have no doubt that the Italian court will rule appropriately upon it. The fact is that the Court of Appeal has already reduced the Appellant’s sentence to take account of double jeopardy, and the Professor does not rule out the possibility it could do so again, if asked.
105. For these reasons, his evidence does not amount to compelling evidence of the risk of a breach of Article 27 of the EAW Framework Decision.

Conclusion

106. Save as indicated above namely that, for the avoidance of doubt, I am not returning the Appellant for any conduct for which he has been imprisoned in Romania, this appeal is dismissed in so far as it sought his discharge on one or more of the Italian charges.