



Neutral Citation Number: [2024] EWHC 1180 (Admin)

Case No: AC-2021-LON-000288

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

Thursday, 16th May 2024

Before:
FORDHAM J

Between:
MARIAN RADUCAN **Appellant**
- and -
BIHOR COURT, ORADEA, ROMANIA **Respondent**

Matei Clej (instructed by Direct Access) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 16.5.24
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.

FORDHAM J

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

FORDHAM J:

1. The Appellant is aged 41 and is wanted for extradition to Romania in conjunction with a conviction Extradition Arrest Warrant on which he was arrested in December 2018. The index offending is a corruption offence. It involved receiving the equivalent of some €9,000 from individuals who were trying to obtain two acquittals. The Appellant was sentenced to 3 years custody in May 2012. After an oral hearing in December 2020, District Judge Tempia (the Judge) on 1 February 2021 ordered extradition, dealing with the Article 5 and abuse of process arguments which had been raised. Bourne J refused permission to appeal on 28 November 2022 on the then pursued Article 3 grounds, and there is no opposition to reliance on a prison assurance whose Article 3 sufficiency is not disputed by the Appellant. The sole ground invokes Article 8 and was raised for the first time on 8 February 2023. The argument is that the electronically-monitored curfew (3 hours; midnight to 3am) to which the Appellant has been subject as a bail condition since being bailed on 11 December 2018 is a relevant factor which, on all the evidence, provides a reasonably arguable basis of appeal.
2. After the filing of a 24 February 2023 expert report by Romanian lawyer Cristina-Daniela Munteanu, Ellenbogen J gave directions on 13 February 2023 and the Administrative Court Lawyer gave further directions on 7 September 2023. That was because of a February 2023 appeal filed in Romania by the Appellant, based on his “house arrest” in these extradition proceedings. That appeal was known to be the subject of hearings in Romania. The Appellant’s position was this. If the Romanian court had the information it needed about the electronically-monitored curfew, that court would decide prior to any extradition whether this was a case of “house arrest” attracting a deduction pursuant to the relevant provisions of Romanian law. Ms Munteanu refers to CCR Decision No.650 of 11.11.14, a ruling of a Romanian court under which “preventive house arrest” was deducted on a parity basis, equating one day of preventive house arrest with one day of the custodial penalty. This approach was applied in Romania in Bagarea (19.1.18) post-extradition (as to which case see [2017] EWHC 1427 (Admin)) and in Ticu (7.11.18) again post-extradition (as to which case see [2018] EWHC 269 (Admin)). It is a matter for the Romanian courts, applying Romanian law, to determine what could constitute “house arrest” for the purposes of a parity deduction. In Ticu the ruling records that the curfew was 11pm to 8am. In the present case Ms Munteanu’s February 2023 report gave her opinion that a parity deduction should apply. That would mean the Appellant would have served the sentence after 3 years of electronically-monitored curfew on 11 December 2021. However, Ms Munteanu acknowledges that the approach of the Romanian courts has not been a uniform one and she refers to court decisions refusing “house arrest” deductions, which rulings in her view were wrongly decided.
3. Having waited to see what would happen, the position of the Romanian court in this case is now clear. The Appellant’s February 2023 appeal continues to be adjourned, most recently on 1 March 2024 with the next hearing scheduled for 24 May 2024. That is because the Romanian court is awaiting the outcome of these extradition proceedings. The Romanian court has not been prepared to make a ruling on the house arrest parity deduction point, until after the extradition proceedings here have been determined. The documents also show that the Romanian court is very well aware that this is a case of a three hour daily curfew (midnight to 3am). Clearly, in my judgment there is no justification for any further delay at the UK end.

4. Reliance has been placed on a ruling of a Romanian court in a case called Fotea (26.4.24) which determined an appeal and decided that a sentence had been served. That was a pre-surrender case where the extradition warrants were then withdrawn. But that course has not been taken by the Romanian court in the present case.
5. Fotea was moreover, on the face of the ruling, a case articulated by the Romanian court as concerning qualifying remand (a period of “detention”). There, 12 months between May 2022 and May 2023 were identified in the ruling as serving to extinguish the custodial sentence of 150 days. The ruling records the requested person in that case as having been arrested in May 2022 and then having been released on bail in May 2023. That ruling moreover has been placed before me and gives me the best source, available to me as to what the Romanian courts reasoning was within that ruling. Qualifying remand is – and that case on its face was – deducted in accordance with the provisions governing extradition arrangements.
6. Be all of that as it may, Fotea is no basis for me to form a view about what would happen in the present case. The Romanian court in the present case has not acted to give a parity deduction.
7. The argument being advanced on this appeal is no longer about waiting for the Romanian court to make a decision. This Court is now being invited, in effect, to decide a legal entitlement under Romanian law. It is not reasonably arguable that it is this Court’s role to undertake that function. I can see that, if it was clear that a requested person was going to be extradited purely for the purpose of going before a requesting state court who would inevitably then immediately order unconditional release, this could be weighty and possibly decisive in Article 8 terms, depending on the facts and circumstances of the case. But that is not this case.
8. There is no reliable material which shows that any electronically-monitored curfew, of 3 hours (or presumably less), whose effect is to ensure that a requested person is at their home address once a day, constitutes “house arrest” rather than a restriction on freedom of movement, so as to give rise to a legal entitlement to a parity deduction in sentence under applicable provisions of Romanian law. In any event, and beyond reasonable argument, it is appropriate that the Romanian judicial authorities should be able to make their own decisions post-extradition. There is no clear evidence that extradition is going to lead inevitably to immediate release.
9. So, in the circumstances of this case, the opportunity for a pre-extradition appeal to succeed by reference to a decision treating the electronically-monitored curfew as house arrest for the purposes of a parity deduction under the Romanian legislative provisions, has been given as was requested by the Appellant. It has not yielded the outcome for which this case was previously adjourned. No arguable basis has been shown to support a conclusion that extradition would be a disproportionate interference with anyone’s Article 8 rights. The application for permission to appeal is refused. Since it is incapable of being decisive, I will refuse permission to adduce the putative fresh evidence.
10. After delivering my ruling and Mr Clej has made an application that I should direct that the Order in this case have a delayed effect. He wants the Order to direct that its effect should not bite until after 24 May 2024. The purpose of that is to continue these proceedings, for that limited purpose, until after the next hearing in Romania. I decline

to make that Order. As I have already explained, given every opportunity, and with full knowledge, the Romanian court has repeatedly adjourned the proceedings in Romania for this Court to determine these proceedings. That is what I have done and that is what my Order will reflect.

16.5.24