



Neutral Citation Number: [2025] EWHC 124 (Admin)

Case No: AC-2024-LON-000755

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 January 2025

Before :

MR JUSTICE CONSTABLE

Between :

MIHAI TOMA

Appellant

- and -

**THIRD AND SIXTH DISTRICTS OF
BUCHAREST, ROMANIA**

Respondents

Clarissa Rodio (instructed by AM International Solicitors) for the Appellant
Honor Fitzgerald (for the Crown Prosecution Service) for the Respondents

Hearing date: 23 January 2025

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Tuesday 28TH of January 2025.

Mr Justice Constable:Introduction

1. The Appellant appeals against the decision of District Judge (Magistrates' Court) Minhas (the DJ) to order his extradition to Romania, dated 29 February 2024. His extradition is sought pursuant to two warrants. The first arrest warrant ("AW1") is a conviction warrant for two offences, namely driving without a licence on 18 March 2015 [Criminal Judgment No. 24 / 09.03.2017; Criminal Judgment No. 99 / 05.07.2018] and shoplifting on 6 January 2017 [Criminal Judgment No. 456 / 06.10.2021]. The second arrest warrant ("AW2") is a conviction warrant for one offence of shoplifting committed on 25 February 2017 [Criminal Decision No. 982/A/07.07.2022].
2. The single ground of appeal is that the DJ was wrong to find that extradition is not a disproportionate interference with the Article 8 rights of the Appellant. There are 4 sub-issues identified in respect of which the Judge, individually or in the aggregate, erred in her assessment. These are (1) fugivity; (2) the family circumstances of the Appellant; (3) the (lack of) seriousness of the offending; and (4) delay.
3. I am grateful to Ms Rodio on behalf of the Appellant and Ms Fitzgerald on behalf of the Respondents for their helpful and efficient submissions.

The Law

4. There is no suggestion that the Judge misdirected herself as to the appropriate legal framework in accordance with which to assess Article 8 extradition claims, in accordance with Norris v Government of United States of America [2010] UKSC 9 and H(H) v Italy Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25. Lady Hale, in the case of H(H), set out the key principles in the familiar passage at [8]:

"8. We can, therefore, draw the following conclusions from Norris: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe havens" to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be

attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.”

5. The Judge also directed herself to the authority of Polish Judicial Authorities v Celinski & Others [2015 EWHC 1274. In that case the Divisional Court considered the basis on which this Court may interfere with the conclusions of a District Judge who has determined the proportionality of extradition under Article 8. In an equally familiar passage, Lord Thomas CJ held at para 24:

“The single question . . . for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong . . . that the appeal can be allowed. . . In answering the question whether the district judge . . . was wrong to decide that extradition as or was not proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong.”

6. The same approach was articulated as follows in Love v USA [2018] EWHC 172 (Admin) by the Division Court, confirming at [25] that:

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

7. In relation to fugitivity, the following cases provide the necessary guidance relevant to the factors in this case:

- (1) De Zorzi v France [2019] EWHC 2062 (Admin) at [48]:

“the test for fugitive status is subjective – the requested person must be shown deliberately and knowingly to have placed himself beyond the reach of the relevant legal process”.

- (2) Makowska v Poland [2020] EWHC 2371 (Admin) at [28]:

“In grappling with the idea of fugitivity, expressed in the authorities which were cited and to which I have referred, I have found it helpful to think in particular about the following three linked themes: (i) locational dynamism; (ii) informational deficit; and (iii) intended consequential elusiveness.

(3) Ristin v Romania [2022] EWHC 3163 (Admin), at [30]:

“ ... an individual can be a fugitive by returning to a country where they have previously been living. And an individual can be a fugitive by leaving a country, notwithstanding that no legal obligation to stay has been imposed upon them. Indeed, the classic instance of "evading arrest" need not arise in the context of any obligation having been imposed. ... In the present case, on 16 May 2019 the Appellant was present when he was convicted. He knew about his sentence and that he faced serving it, subject only to an appeal. He came to the UK three months later in August 2019, returning here, to pursue an appeal from here. These circumstances could properly be characterised as falling squarely within the ambit of the classic character of fugitivity: knowing and evasive relocation. This fits with the basic idea of fugitivity: action which is knowingly evasive of criminal process and undermines the ability of the individual convincingly to complain about delay in their pursuit by the requesting authorities.”

8. It is important to place fugitivity in the context in which it is of particular relevance within the Article 8 assessment – which is principally delay. As made clear by Lady Hale in H(H), and emphasised by the Divisional Court in Kortas v Poland [2017] EWHC 1356 (Admin) at [36], delay may reduce the weight to be accorded to the weighty public interest in surrendering a person to serve a sentence following conviction; the passage of time may also have an impact on the nature and extent of the private or family life developed by the requested person in this country. Where, however, the requested person is a fugitive the effects of this delay which might otherwise tip against extradition will be significantly diluted in the overall assessment. In this context, the Article 8 assessment will take account of facts which lie on an inevitable spectrum. Flagrant fugitivity, in breach of an order to remain in the country and deliberate acts of evasion in the face of pursuit may lie at one end, however there may be other situations where the facts are not so stark but are still to be considered to amount to the evasion of ongoing criminal proceedings or conviction which, whether or not it is strictly to be defined as ‘fugitivity’, may still weigh against placing significant weight on such delay as there may be between the offences or conviction and extradition.

The Chronology

9. On 8 December 2016 the Appellant was present at the trial in relation to the offence of driving without a licence committed on 18 March 2015. On 7 January 2017 the Appellant was interviewed as a suspect in relation to the shoplifting offence committed on 6 January 2017. Two months later, on 9 March 2017 he was convicted and sentenced to a fine in the amount of Lei 4,050 in relation to the offence of driving without a licence (Criminal Judgment No. 24 / 09.03.2017).
10. On both 29 March 2017 and 29 August 2017, the Appellant was informed of the obligation to pay the fine imposed. He did not pay the fine.

11. The Appellant left Romania and went to the UK later in 2017.
12. On 4 September 2018, with the fine still unpaid related to the driving offence, the Court ordered that the fine be replaced with a prison sentence of 135 days (Criminal Judgment No. 99 / 05.07.2018). The Appellant returned to Romania in the autumn of 2020. Between 31 October 2020 to 16 February 2021, the Appellant was arrested and imprisoned for the offence of driving without a licence.
13. The Appellant was interviewed on 26 January 2021 in relation to the second shoplifting offence committed on 25 February 2017. On 8 February 2021, the Court ordered the conditional release of the Appellant from the execution of the sentence imposed by Criminal Judgment No. 99/2018 (Criminal Judgment No. 313 / 08.02.2021), relating to the driving offence. The Appellant was released from prison on 16 February 2021. He then left Romania and went back to the UK in March 2021.
14. On 6 October 2021 the Appellant was convicted in absentia and sentenced to 1 year and 45 days' imprisonment. The Court decided that the shoplifting offence committed on 6 January 2017 was concurrent with the offence for which he was sentenced to a fine, namely driving without a licence on 18 March 2015, which was replaced by 135 days of imprisonment. On 7 July 2022, the Appellant was convicted in absentia and sentenced to 9 months and 45 days' imprisonment for the second shoplifting offence committed on 25 February 2017. The Appellant returned for a short trip to Romania in 2023.

The Appeal

Fugivity

15. In relation to fugivity, the Judge found at paragraph 18:

“b. I find the RP is a fugitive. He conceded he may have been informed of the requirement to notify a change of address to the JA. He accepted he had not done so. He left Romania knowing proceedings were still outstanding in respect of AW1 in 2017, thus knowingly placing himself beyond the reach of the JA. I rely on the JA’s FI and am satisfied so that I am sure that he was duly notified of the obligation upon him.

c. On the second occasion, he left Romania in 2021 knowing proceedings were outstanding in respect of both AW1 and AW2. I again find him to be a fugitive in respect of both AWs. I do not accept nor find credible his account that he considered he had served a prison sentence for the offending in AW1 within three months, when he received over 1 year for the offending on AW1 and he had only just been interviewed for the offending in AW2. The proceedings in AW2 had not been finalised whilst he was in custody or before he left Romania in 2021.”

16. It is plain that this was a finding open to the Judge, having heard the evidence and assessed the credibility of the Appellant. There is nothing inherently inconsistent within the chronology above with a finding of fugitivity to

undermine the Judge's conclusion. Indeed, on its face it demonstrates that (a) the Appellant was in breach of an obligation to give any change of address to the authorities and (b) whilst he served a sentence in respect of the driving offence (in lieu of paying the fine), there was nothing to suggest to the Appellant that proceedings relating to the first shoplifting offence (included within AW1) or the second shoplifting offence (AW2) had been concluded or resolved in his favour. The fact that the Appellant had not been charged is not, as a matter of principle, determinative of the finding against fugivity, as submitted at one point by Ms Rodio. The stage at which any investigation may have reached will of course be a factor in assessing the subjective state of mind of the requested person at the point they leave the country. Against this background, the fact that the Appellant returned to Romania and served a sentence for the unpaid fine is not inconsistent with a finding that his first and second departures to the UK, knowing about ongoing proceedings relating to the other offences and having failed to notify the authorities of his change of address, amounted to placing himself beyond the reach of the authorities which were proceeding against him. His conduct created precisely the sort of informational deficit and locational dynamism envisaged in Makowska.

Family Circumstances

17. Ms Rodio emphasised that the Appellant has been living in this jurisdiction since 2017. He has a partner and two children, one of whom was born two months ago (i.e. after the Judge's decision), and a 2-year-old child. They are dependent on the Appellant. It was submitted, as it was before the Judge, that following the Appellant's arrest, her claim ceased and the Appellant received state assistance for the family instead. It is also said that the Appellant's extended family in the UK or Romania are unable to assist with accommodation nor financially support his partner and two small children if the Appellant is extradited; they will struggle significantly without the support and assistance on behalf of the Appellant in this jurisdiction.
18. However, as Ms Fitzgerald correctly submitted, the Judge clearly and explicitly took into account the private life of the Appellant which he has established since 2017. Specifically in relation to the suggestion that the Appellant's partner will not be supported in his absence, this was given careful and appropriate consideration at paragraph 27 of the Judgment below:

“The RP gave an account that his partner was not eligible for state benefits. He was unable to explain why. He was unable to explain on what basis the enquiry was made as to her eligibility. I do not find it credible that a single mother with a young child, with settled status in the UK, who was previously employed and previously in receipt of state benefit income as recently as October/November 2023 would be ineligible for financial assistance if the RP was extradited. Aside from the RP's evidence, which lacked clarity on this issue, there was no documentary evidence to support his assertion. In my view, the weightiest factor militating against extradition is the potential impact on the RP's partner and child but on the limited evidence before me, I do not find that the impact will be exceptionally severe.”

19. This is a finding that was plainly open to the Judge, and having made this finding it was not wrong, correctly applying the test in H(H), to conclude that the family circumstances were such that extradition would not be disproportionate.

Seriousness of the Offences

20. The Judge weighed this appropriately at [24]. She correctly acknowledged the offending was at a low level of seriousness which militated against extradition. Whilst the sums involved were undoubtedly low, this Court should be acute, as Ms Rodio candidly accepted, to view this through purely domestic eyes; it is generally for Romania to decide the seriousness of offending and mark it with a sentence deemed appropriate within that jurisdiction. The Judge was therefore entitled to observe that the Appellant received a not insignificant sentence of imprisonment, of which the majority remained to be served. He also received dishonesty/fraud convictions in the Netherlands and Germany before arriving in the UK and offending by way of driving offences which all weighed in favour of extradition. The offending was not so trivial as to render her finding wrong.

Delay

21. In light of the Judge's finding of fugivity, the weight to be placed on delay would, justifiably, have been minimal. She appropriately considered the extent to which the authorities were culpable for delay. Throughout, the Appellant was aware that these proceedings were outstanding and built his life in the UK in the shadow of this knowledge. The Judge's assessment was not wrong.

Conclusion

22. Whilst I have considered the 4 sub-issues identified by Ms Rodio separately, it is of course necessary to stand back and consider matters in the round. Whether taken individually or collectively, the matters raised on this Appeal are insufficient to permit a conclusion that the Judge was wrong in her reasoned assessment of proportionality under Article 8.
23. The appeal is dismissed.