Neutral Citation Number: [2025] EWHC 178 (Admin)

Case No: AC-2023-LON-003226/
AC-2023-LON-003227

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

IN THE MATTER OF AN APPEAL UNDER
SECTION 26 OF THE EXTRADITION ACT 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2025

Before :

THE HONOURABLE MR JUSTICE MURRAY

- -

Between :

(1) GEORGE MARIN
(2) BOGDAN MARIN

Appellants

- and -

COURT OF ILFOV, ROMANIA

Respondent

- -
- -

Matei Clej (instructed by **Coomber Rich**) for the **First Appellant**
Jonathan Swain (instructed by **Coomber Rich**) for the **Second Appellant**
Amanda Bostock (instructed by **the CPS Extradition Unit**) for the **Respondent**

Hearing date: 10 December 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 31 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Murray:

1. This is an appeal under section 26 of the Extradition Act 2003 ("the 2003 Act") by the appellants, George Marin and Bogdan Marin, against the order made on 26 October 2023 by DJ Zani at Westminster Magistrates' Court to extradite each of them to Romania. The district judge set out his reasons for ordering the extradition of the appellants to Romania in a judgment handed down on that day ("the Judgment").

2. The first appellant, George Marin, is the father of the second appellant, Bogdan Marin. Each was convicted and sentenced before the Court of Ilfov in Romania for the offence of "complicity in attempted murder", arising out of a single incident on 12 February 2018, which was a group attack on a lone victim. The district judge found the Romanian offence to be the equivalent of an offence in this country of violent disorder contrary to section 1(2) of the Public Order Act 1986, which carries a maximum sentence of five years' imprisonment.

3. The first appellant was 41 years old at the time of the offence and at the time of his conviction before the Court of Ilfov on 17 January 2019, 43 years old at the time that his sentence was imposed on 23 September 2020, and 44 years old at the time his conviction became final following the dismissal of his appeal on 23 August 2021.

4. The second appellant was 17 years old at the time of the offence and at the time of his conviction before the Court of Ilfov on 17 January 2019, 19 years old at the time that his sentence was imposed on 23 September 2020, and 20 years old at the time that his conviction became final following dismissal of his appeal on 23 August 2021.

Grounds of appeal

5. Each appellant seeks leave to appeal the extradition order made against him on two grounds, namely, that the district judge was wrong to conclude that:

    i) he was not required to discharge the appellant under section 20 of the 2003 Act ("the Section 20 Ground"); and

    ii) the extradition of the appellant would be compatible with the rights of the appellant and his family under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ("the Article 8 Ground").

Permission to appeal

6. On 21 February 2024, Cavanagh J, on a review of the papers, refused the second appellant's application for leave to appeal on the Section 20 Ground but granted it on the Article 8 Ground on the basis of an inconsistency in the Judgment as to whether the second appellant was a fugitive.

7. On 29 February 2024, Cavanagh J, on a review of the papers, refused the first appellant permission to appeal on both grounds.

8. On 20 June 2024, on their respective renewed applications for permission to appeal, Sir Peter Lane granted the first appellant permission to appeal on both grounds and granted

the second appellant permission to appeal on the Section 20 Ground. He also ordered that the two appeals be joined and heard together.

The extradition request

9. The respondent seeks the extradition of the first appellant pursuant to a warrant dated 8 September 2021, which was certified by the National Crime Agency on 28 October 2021 ("the GM Arrest Warrant"). The GM Arrest Warrant seeks the first appellant's return to serve his sentence of three years four months' imprisonment, the whole of which remains to be served.

10. The respondent seeks the extradition of the second appellant pursuant to a warrant also dated 8 September 2021, which was certified by the NCA on 1 November 2021 ("the BM Arrest Warrant"). The BM Arrest Warrant seeks the second appellant's return to serve his sentence of placement in an educational centre for one year (depriving the appellant of his freedom), the whole of which remains to be served. In Further Information dated 28 August 2023, the respondent confirmed that, despite the fact that the second appellant was by that date 22 years old, upon his extradition to Romania he would serve his sentence in the Educational Centre Targu Ocna.

11. I will refer to the GM Arrest Warrant and the BM Arrest Warrant collectively as "the Arrest Warrants". By the time the extradition hearing opened on 3 February 2023, the respondent had provided four items of Further Information in support of the Arrest Warrants, dated 11 February 2022 relating to the second appellant ("FI1"), 12 February 2022 relating to the first appellant ("FI2"), 2 September 2022 relating to both appellants ("FI3"), and 26 September 2022 relating to both appellants ("FI4").

12. The extradition hearing was adjourned part heard and resumed on 11 August 2023, following which the parties provided the district judge with written closing submissions. The district judge handed down the Judgment, as already noted, on 26 October 2023, on the day that he made the extradition order in relation each appellant.

13. Before the Judgment was handed down, the respondent provided a fifth item of Further Information dated 28 August 2023 ("FI5"), clarifying a point in relation to the sentence of the second appellant , as discussed further below.

14. After permission to appeal was granted by Sir Peter Lane on 20 June 2024, the respondent provided a sixth and final item of Further Information dated 28 June 2024 ("FI6") and has applied for this to be admitted as fresh evidence in relation to the appeal. I have decided to admit this evidence, for reasons I give later in this judgment. The summary that follows of the background to these appeals includes information from FI6.

15. The appellants opposed the admission of FI6, but, in the event that I admitted it, have filed further evidence from the second appellant dated 9 December 2024 responding to a point raised in it concerning where they have lived in the United Kingdom.

Facts of the offending in Romania

16. The group attack that occurred on 12 February 2018 was against a man named Emil Curt. According to the description in each of the Arrest Warrants, there were sixteen

offenders involved in the attack on Mr Curt, which was instigated by three other persons who had an unspecified previous conflict with Mr Curt.

17. On 12 February 2018, having been informed that Mr Curt was at the Therme complex in Balotești, a group of 16 men, including the two appellants, set off in four cars armed with sticks, bottles, and a knife. At about 17.40, Mr Curt left the Therme complex in the front passenger seat of a car driven by another man, with two further men in the back of the car. As Mr Curt's car was attempting to enter the Bucharest-Ploiești road, it was blocked by two of the four cars containing the offender group, from which several members of the group came out.

18. Mr Curt jumped from his car while it was still moving and ran towards the Therme complex. When the other two cars from the offender group appeared, Mr Curt jumped off the road and ran into a field, where he was pursued by several of the offenders. While he was running, Mr Curt took a pistol out of his bag and tried to use it, pointing it at those who were pursuing him. Eventually he stumbled and was caught. At that point, at least seven members of the group assaulted him. The appellants were not part of this lead group.

19. During the assault, Mr Curt received dozens of blows from various objects, including sticks, a bottle, a baseball bat, and a metal object, to the head, chest, and legs. The assault was witnessed by members of the public. Other members of the offender group encouraged the assault, some throwing bottles at Mr Curt. One of the offenders had a knife in his hand, although the Arrest Warrants do not say that it was used on Mr Curt.

20. The first appellant was accused of having run towards Mr Curt as part of the offending group, and the second appellant was accused of having thrown an "object" at Mr Curt. In his statement provided for the extradition hearing, the second appellant said that he had been drinking from a coca cola bottle at the time of the incident and that he "just threw the bottle but I did not hit anyone".

The proceedings in Romania leading to the appellants' convictions and sentencing

21. On 2 April 2018, the Public Prosecutor applied to the Court of Ilfov for a warrant for each appellant to be detained on suspicion of involvement in the offending against Mr Curt for a 30-day period, but neither warrant was executed.

22. On 11 April 2018, the Court of Ilfov allowed the appeal of each appellant against the decision made on 2 April 2018 to issue the warrant. As a result, neither of the appellants was "subject to any restrictions during the criminal trial", according to FI1 and FI2.

23. On 17 January 2019, each appellant pleaded "no contest", fully acknowledging the facts of the offending alleged against them, under a simplified criminal procedure pursuant to Article 374, paragraph 4 of the Romanian Code of Criminal Procedure. As a result, they were each entitled to a one-third reduction of sentence. Each appellant attended this stage of the proceedings in person. The first appellant was assisted by an instructed Romanian lawyer, Ms Roxanna Petraru. The second appellant was represented by his mother, Mrs Lucica Marin, who is the first appellant's wife, and was also assisted by Ms Petraru.

24. On 23 September 2020, the Court in Ilfov imposed the sentences to which I have already referred at [9]-[10] above. The appellants were not present in person for this stage of the proceedings. It is common ground that they were not required to be present on that occasion. The Court in Ilfov noted on that occasion that it was aware that the first appellant had gone to work "in England" (FI2) and that it was aware that the second appellant had gone to work "in the United Kingdom" (FI1).

25. On 24 September 2020, a Romanian lawyer instructed by the appellants, Ms Violeta Podolianu, issued appeal proceedings on behalf of each appellant in the Court of Appeal in Bucharest.

26. On 16 November 2020, Ms Podolianu informed the Court of Appeal that she was no longer acting for the appellants in relation to the appeal. She gave no reason to the Court of Appeal for ceasing to act, nor is there any other evidence to explain this development. As a result of her ceasing to act and there being no other instructed lawyer for either appellant, the Court of Appeal appointed an "ex officio" lawyer for each appellant to represent them at the appeal.

27. On 23 August 2021, the Court of Appeal in Bucharest dismissed the appeal of each appellant, as a result of which their respective convictions and sentences became final. Neither appellant appeared in person. Although each was represented by a court-appointed lawyer, his court-appointed lawyer was never in contact with him and therefore had no instructions.

28. As already noted, the Arrest Warrants were issued on 8 September 2021. The GM Arrest Warrant was certified by the NCA on 28 October 2021, and the BM Arrest Warrant on 1 November 2021.

29. On 4 November 2021, the appellants were each arrested at an address in Hull, where the first appellant was living with Mrs Marin, and where the second appellant was also living with his partner, Ms Anca Dinca.

30. On 5 November 2021, the appellants were brought before Westminster Magistrates' Court, where extradition proceedings were opened. Each refused consent to extradition. They were each then released on conditional bail, on which they have remained throughout these proceedings.

The extradition hearing and the Judgment

31. As already noted, the full extradition hearing began on 3 February 2023. The first appellant was represented by Mr Matei Clej and the second appellant by Mr Jonathan Swain, each of whom appears at this appeal. The respondent was represented before the district judge by Mr Stefan Hyman.

32. When the extradition hearing opened, the district judge had the following materials before him:

    i) the Arrest Warrants and related NCA certificates;

    ii) FI1, FI2, FI3, and FI4;

iii) a copy of the PNC record for each appellant showing that each has no prior convictions or cautions in this country;

iv) a prison assurance dated 18 January 2021 (although presumably "2021" is a typographical error and should read "2022") in relation to the first appellant, and a prison assurance dated 5 January 2022 from the respondent in relation to the second appellant;

v) two witness statements dated 4 November 2021 from the police constable who arrested each of the appellants;

vi) the second appellant's proof of evidence (undated and unsigned in the appeal bundle);

vii) a witness statement from the second appellant's partner, Ms Dinca (undated and unsigned in the appeal bundle, but which according to the Judgment was given "in June 2022");

viii) a witness statement from the first appellant's wife and the second appellant's mother, Mrs Marin (undated and unsigned in the appeal bundle);

ix) a report dated 27 March 2022 by Mr Graham Rogers, a Consultant Psychologist, instructed by the appellants' solicitors, Coomber Rich, in relation to the second appellant;

x) a report dated 6 June 2022 by Mr Rogers in relation to the first appellant;

xi) a report dated 4 August 2022 by Mr Rogers in relation to Mrs Marin;

xii) a response dated 22 September 2022 by Mr Rogers to additional questions sent to him on 9 August 2022 by counsel for the appellants;

xiii) English translations of Italian and Romanian medical records relating to the first appellant; and

xiv) an English translation of Romanian medical records relating to Mrs Marin.

33. The district judge noted in the Judgment that the first appellant had prepared, signed and filed a proof of evidence, however given that the district judge had concluded that the first appellant was unfit to plead or participate in the proceedings, the district judge had ruled that the first appellant could not give evidence.

34. The district judge adjourned the hearing part-heard in order to enable further enquiries to be made by the respondent and for a psychiatric report to be prepared in relation to the first appellant.

35. At the resumption of the extradition hearing on 11 August 2023, the district judge had, in addition to the materials already listed, a report by Dr Pamela Walters, a Consultant Psychiatrist, instructed by Coomber Rich, in relation to the first appellant.

36. As I have already noted, after the hearing on 11 August 2023 but before the Judgment was handed down, the respondent provided the district judge with FI5.

37. The district judge began the Judgment by summarising the background facts and the history of the proceedings in Romania, with particular reference to the five items of Further Information that had by that point been served by the respondent. Among other things, he noted (from FI3) that the appellants, not being in custody, were not required by Romanian law to attend the appeal proceedings in person. He also noted, as I have already mentioned, that although Ms Podolianu had issued the appeal proceedings, she withdrew well before the appeal was heard, and the Court of Appeal therefore appointed a lawyer to represent each appellant at the appeal.

38. The district judge summarised the evidence in some detail. In addition to the written evidence, he had live evidence from the second appellant and from Mr Rogers on 3 February 2023. The witness statements of Mrs Marin and Ms Dinca were not challenged, and therefore they were not required to attend the hearing to be cross-examined.

39. The district judge summarised the evidence of the second appellant in some detail, noting, among other things, the second appellant's evidence that he suffered from depression "after what happened in Romania" and continued to suffer from depression. The second appellant also considered that he had suffered discrimination in Romania due to his Roma background (through his mother) but did not suffer such discrimination in England. He had not known that he was an "accused person" when he left Romania to come to England. When he became aware of his conviction, he instructed a lawyer to appeal it. He did not know the outcome of his appeal until after he was arrested on the BM Arrest Warrant. He did not know why his instructed lawyer had not appeared at the appeal hearing.

40. The district judge noted that the witness statement of Mrs Marin confirmed, among other things, that she and the first appellant had been together for 17 years. She was of Roma origin. In Romania, the first appellant had suffered discrimination due to his disabilities, and she had suffered discrimination due to her Roma origin. They had lived for a number of years in Italy, where the first appellant worked in construction, and she worked as a cleaner at a hotel. In 2007 her sister died, as a result of which she had a severe breakdown. She spent three months in bed, unable to sleep and barely able to eat.

41. The witness statement of Ms Dinca confirmed, among other things, that she was 19 years old, that she had met the second appellant three years previously in Bucharest, and that they had been together ever since. She had moved to England in 2020. At the time of her statement, she was pregnant, with a due date of 18 August 2022. The district judge noted that Ms Dinca subsequently gave birth to a boy in August 2022, who was therefore just over one year old at the time the Judgment was handed down.

42. The district judge summarised the evidence of Mr Rogers that led to his conclusion that the first appellant was unfit to plead or participate in the extradition proceedings. The district judge noted that the first appellant had a disorder of intellectual development, which particularly affected his verbal abilities. This "moderate" intellectual disorder did not prevent his engaging in employment that primarily relied on his strength and his non-verbal abilities, which were higher than his verbal abilities. The first appellant's employment in the UK as a cleaner in an abattoir was a "good choice" for him as it principally relied on his practical, rather than verbal, skills. Mr Rogers noted in his evidence that the Romanian Social Services had issued the first appellant with a

"certificate of disability" and that the Romanian army had rejected him due to his learning disability.

43. The district judge noted Mr Rogers' evidence that the first appellant also suffered from "dwarfism", had a hearing impairment, had a "potential" visual impairment, and appeared to have uncontrolled diabetes. In light of his difficulties, Mr Rogers concluded that the first appellant would be unable adequately to challenge evidence, to understand the court proceedings, or to provide instructions to his counsel. His "moderate" intellectual disorder meant that he was of low ability, with an IQ below 75, placing him in the lowest 5% of the population. (In his report on the first appellant, Mr Rogers indicated that he had a non-verbal IQ of 76, which was "as good if not better than" 5% of the population for his age, and a verbal IQ of 45, as low as the test can score, placing him in the lowest 0.1% of the population for his age.) Mr Rogers would therefore expect the first appellant to be suggestible and to show a "high level of compliance in areas of uncertainty, stress, or when faced with individuals of 'power'". Mr Rogers was of the view that the first appellant was a vulnerable adult, who would struggle to cope with imprisonment in Romania. He recommended that a psychiatric report in relation to the first appellant be obtained.

44. The district judge also summarised the evidence of Mr Rogers in relation to Mrs Marin. Mr Rogers considered that the first appellant, Mrs Marin, the second appellant, and Ms Dinca comprised a "functioning family system", which was found in many cultures but was less common "in the Western world with its individualism". In Mr Rogers' view, if the first and second appellants were extradited, Mrs Marin would struggle to function. She would be likely to lose her home and possibly also contact with Ms Dinca and her grandson, who might have to return to Romania if the second appellant were to be extradited. In Mr Rogers' view, Mrs Marin lacked the skills and cognitive capacity to cope "without the rest of the family system around her". She, too, had a disorder of intellectual development, although it was "mild" (rather than "moderate"). The family operated as a "collective whole", which is common "in many societies where state facilities are often non-existent and as such, if the family does not provide the support, then it is not available". Her mild intellectual development disorder meant that she could generally achieve relatively independent living and employment with appropriate support, which was consistent with Mrs Marin living in a family group "that operates as a collective whole".

45. At the conclusion of Mr Rogers' evidence, the district judge decided that it was necessary and in the interests of justice to adjourn the proceedings to enable the first appellant's legal team to instruct a psychiatrist and to enable the respondent also to instruct a psychiatrist, if it wished. He gave directions.

46. In the event, the only psychiatric report obtained was that of Dr Walters, instructed by the appellants' legal team. Her evidence was considered at the resumption of the extradition hearing on 11 August 2023. The district judge summarised it at length in the Judgment. It appears that she was largely in agreement with the principal conclusions of Mr Rogers in relation to the first appellant as to his level of intellectual functioning, namely, a moderate disorder of intellectual development. She considered that he functioned around the level of a child aged 6 or 7 years old. She also found him to be suffering from a mild depressive disorder. He was highly suggestible. There were no special measures that would be sufficient to offset his intellectual disability and enable

him to give evidence. It would be "unsafe and undesirable" for him to do so. In short, she agreed that he was not fit to plead or participate in the extradition proceedings.

47. The district judge noted that Dr Walters agreed with Mr Rogers that the first appellant was vulnerable and would struggle to cope in prison in Romania. Dr Walters also considered that his mental health would be likely to deteriorate if he were extradited and that it was likely that he would develop thoughts of self-harm. She found no evidence that he was malingering or exaggerating his symptoms.

48. The district judge considered whether his conclusion that the first appellant was not fit to plead or participate in the extradition proceedings meant that it would be either unjust or oppressive to order his return to Romania. He was satisfied that the evidence of Dr Walters (and, by implication, Mr Rogers) that the first appellant was not fit to plead or participate in these proceedings did not sufficiently demonstrate that he was not fit to participate in his trial in Romania. That would have been a matter for the Romanian authorities to deal with as part of the trial process. The district judge referred (at paragraph 92 of the Judgment) to a number of Romanian medical records relating to the first appellant that had been produced by the appellants' legal team. It was reasonable to infer that this information, which predated his trial in Romania, would have been brought to the attention of the first appellant's lawyer and the Romanian court.

49. The district judge then turned, at paragraph 94 of the Judgment, to consider the question of fugitivity. He noted that the burden was on the respondent to establish to the criminal standard that either appellant was a fugitive. He reviewed the relevant principles and the evidence of the appellants and summarised the submissions of both parties. He concluded, at paragraph 109 of the Judgment, that he was not satisfied that the respondent had been able to show to the criminal standard that either appellant was a fugitive from justice.

50. The district judge then turned to the various challenges raised by the appellants to extradition. In relation to both of the appellants, there were challenges under section 20 of the 2003 Act and under section 21 of the 2003 Act in relation their respective rights under Articles 3 and 8 of the ECHR. In relation to the first appellant only, there were additional challenges under section 25 of the 2003 Act and under section 21 in relation to his rights under Articles 5 and 6 of the ECHR.

51. The district judge determined that each challenge failed.

52. In relation to the section 20 challenge, which the district judge considered at paragraphs 110-126 of the Judgment, he noted that each appellant had attended his first instance trial in person, where each was represented by his chosen lawyer. Each had chosen to leave Romania for work purposes and come to England, knowing that proceedings were ongoing. Each had instructed a lawyer to represent him at his appeal. For reasons unknown to the appellants and not explained by any other evidence, their instructed lawyer, having filed their appeals, withdrew from representing them before the appeal hearing. Each was represented at the appeal hearing by a court-appointed lawyer, but that lawyer had no instructions.

53. The district judge, referring to FI4, agreed with the respondent's submission that, having regard to the Romanian Code of Criminal Procedure, neither appellant could be

said to have been absent from the appeal hearing as far as Romanian law was concerned. The district judge had regard to the judgment of Swift J in *Bertino v Italy* [2022] EWHC 665 (Admin), where Swift J had concluded that the district judge had correctly decided that the requested person, being aware of the ongoing proceedings in Italy and that, in his absence, any documents would be sent to his court-appointed lawyer, was intentionally absent from his trial and therefore section 20 of the 2003 Act did not prevent his extradition to Italy.

54. The district judge in this case concluded that, although it could not be said that the requested persons had left Romania so as to hide from the relevant authorities (having informed the Romanian court that they had moved to England for work), he was satisfied, "following the principles in *Bertino*", that by his conduct each appellant, being aware of the Romanian proceedings and having initially appointed a lawyer to act for him and lodge an appeal on his behalf, chose to waive his right to attend the appeal hearing. The district judge ruled, accordingly, that section 20 raised no bar to the extradition of either appellant.

55. In relation to the Article 8 challenge, which the district judge considered at paragraphs 172-188 of the Judgment, he reviewed the relevant authorities and carried out, as required, a balancing exercise in relation to each appellant.

56. In relation to the first appellant, the district judge found that it would not be a disproportionate interference with his Article 8 rights to extradite him to Romania. His reasons, in summary, were as follows:

i) It was important for the UK to be seen to be upholding its international extradition obligations and not to be considered a "safe haven" for those sought by other Convention countries to stand trial or serve a prison sentence.

ii) The criminal conduct set out in the GM Arrest Warrant was serious.

iii) It was appreciated that extradition would cause hardship to the first appellant and Mrs Marin, but not such hardship as would make it disproportionate to extradite him.

iv) The district judge took into account the first appellant's health issues, including his dwarfism, and the findings of Mr Rogers and Dr Walters in relation to his mental health issues. He was satisfied, however, that the Romanian authorities were aware of their obligations under the ECHR in relation to the care to be afforded the first appellant while he is in the Romanian prison estate.

v) The first appellant's ties to the UK were not deep, and it was open to Mrs Marin to stay in the UK or to follow the first appellant to Romania.

vi) There might be some uncertainty, post-Brexit, as to the first appellant's ability to return to the UK on a settled basis, however this did not make his extradition disproportionate.

vii) The amount of time that had passed since the offence occurred in 2018 did not tip the scales against ordering extradition.

57. In relation to the second appellant, the district judge found that it would not be a disproportionate interference with his Article 8 rights to extradite him to Romania. His reasons, in summary, were:

    i) It was important for the UK to be seen to be upholding its international extradition obligations and not to be considered a "safe haven" for those sought by other Convention countries to stand trial or to serve a prison sentence.

    ii) The criminal conduct set out in the BM Arrest Warrant was serious.

    iii) The second appellant was a fugitive from justice.

    iv) It was appreciated that extradition would cause hardship to the second appellant, Ms Dinca and their young child, but not such hardship as would make it disproportionate to extradite him. The second appellant was not the primary carer for the child, and Ms Dinca could decide whether to remain in the UK or follow him to Romania.

    v) There might be some uncertainty, post-Brexit, as to the second appellant's ability to return to the UK on a settled basis, however this did not make his extradition disproportionate. Given that his sentence to be served was one year in an educational establishment, it "may be that he will be allowed back into the UK once released".

    vi) The amount of time that had passed since the offence occurred in 2018 did not tip the scales against ordering extradition.

58. At paragraph 188(iii) of the Judgment, the district judge gave the following reasons for concluding that the second appellant was a fugitive:

> "… The reasons for this finding are that he left the jurisdiction while the proceedings were ongoing, after having been convicted and sentenced in his presence by the 1st instance court, after trial. He gave confusing evidence during the full hearing regarding his knowledge of the ongoing proceedings; I did not believe much of what he said in relation thereto."

59. The district judge appears to have forgotten at this point in his analysis that at paragraph 109 of the Judgment he had concluded that he was <u>not</u> satisfied to the criminal standard that the second appellant was a fugitive from justice. It was due to this inconsistency in the Judgment that Cavanagh J, on the papers, granted the second applicant permission to appeal on the Article 8 Ground.

60. Having rejected each of the challenges advanced at the extradition hearing, the district judge ordered the extradition of each appellant under section 21(3) of the 2003 Act.

The test on appeal

61. The court's powers on an extradition appeal are set out in section 27 of the 2003 Act, which provides that the court may allow the appeal if the court is satisfied that either (i) or (ii) is true, namely:

i) the district judge ought to have decided a question before him differently, and had he done so, he would have been required to order the requested person's discharge; or

ii) an issue is raised that was not raised at the extradition hearing, or evidence is available that was not available at the extradition hearing, and that issue or evidence, had it been before the district judge, would have resulted in the district judge answering a question before him differently such that he would have been required to order the requested person's discharge.

62. The test on appeal is whether the district judge's decision was wrong, namely, whether the district judge erred in such a way that he ought to have answered the statutory question differently: *Love v United States of America* [2018] EWHC 172 (Admin), [2018] 1 WLR 2889 (DC) at [25]-[26].

The appellants' application to admit fresh evidence for the appeal

63. On 26 November 2024, the appellants applied for additional evidence to be admitted at this appeal in the form of a second statement from the second appellant's partner, Ms Dinca. In common with the other witness statements provided by the appellants, the copy of this statement in the appeal bundle is also unsigned and undated.

64. I have considered this evidence *de bene esse*. I have had regard to section 27(4) of the 2003 Act and the guidance in *Hungary v Fenyvesi* [2009] EWHC 231 (Admin), [2009] 4 All ER 324 (QBD). In my view, this evidence should not be admitted. To the extent that it deals with a change of circumstances, principally, the birth of the second appellant and Ms Dinca's son, it satisfies condition (a) in section 27(4). This evidence is not, however, decisive. It adds little of substance to the information that was before the district judge who was aware of the pregnancy during the extradition hearing and the birth of the son by the time the Judgment was handed. The proposed new evidence fails to satisfy conditions (b) and (c) in section 27(4). Accordingly, the appellants' application to admit the second witness statement of Ms Dinca is refused.

The respondent's application to admit fresh evidence for the appeal

65. On 19 July 2024, the respondent applied for additional evidence to be admitted at this appeal in the form of FI6. I have already indicated that I have decided to admit it.

66. The questions to the respondent that FI6 sought to answer were as follows:

> "(i) The Requested Persons state their instructed lawyer lodged an appeal on their behalf, but did not appear at the appeal itself – are you able to say if this is correct?
>
> (ii) Whether the Requested Persons would be entitled to have their appeal reconsidered in these circumstances?"

67. The respondent provided FI6 on 28 June 2024, together with a copy of a document dated 17 April 2018 relating to each appellant entitled (in English translation) "Minutes of the Indictment, Rights and Obligations of the Defendant" ("the Indictment Document"). Each Indictment Document was provided to the relevant appellant and

signed by the appellant on 18 April 2018. It was also signed by the prosecutor and the appellants' chosen lawyer, Ms Podolianu. Each appellant was handed a copy of it.

68. Each Indictment Document includes, after setting out (i) details of the charge ("the attempted crime of aggravated murder") and related information including a summary of the alleged facts and (ii) a summary of the appellant's rights under Article 83 of the Romanian Criminal Procedure Code, the following summary of the appellants' obligations:

> "Furthermore, he was also informed of the obligations set out in Article 108, paragraph 2 of the Criminal Procedure Code, namely:
>
> 1. the obligation to appear when summoned by the judicial bodies, reminding them that if they fail to comply with this obligation, a warrant may be issued for their arrest, and if they abscond, the judge may order their remand in custody;
>
> 2. the obligation to notify in writing, within 2 days, any change of address, reminding them that, if they fail to do so, the summons and any other documents served at the first address shall remain valid and shall be deemed to have been served.
>
> Pursuant to Art. 107, paragraph 1 of the Criminal Procedure Code, the defendant requested that the documents of the proceedings be served to him at the address at [an address in Bucharest]."

69. FI6 sets out information that I summarise for present purposes as follows:

i) The respondent had located and enclosed the Indictment Document relating to each appellant. Each Indictment Document set out the obligations of the relevant appellant under Article 8, paragraph 2 of the Romanian Criminal Procedure Code and was signed on 18 April 2018 by the relevant appellant, by the prosecutor and by the appellants' instructed lawyer, Ms Podolianu. Each appellant was therefore aware of his obligation to keep the Romanian authorities informed of his address and the potential consequences of failing to do so.

ii) On 24 September 2020, the appellants lodged an appeal through Ms Podolianu against the criminal judgment rendered against each of them on 23 September 2020 by the Ilfov Tribunal, Criminal Division.

iii) On 16 November 2020, Ms Podolianu stated to Court that she would not defend the appellants at the appeal, but she did not give reasons for this. The respondent had no information as to any discussions between Ms Podolianu and the appellants or whether she informed them that she would no longer represent them during the appeal proceedings.

iv) Given that their chosen lawyer would not be defending them, the Court of Appeal appointed an ex officio lawyer for each appellant, "who effectively represented them during the appeal proceedings"

v) The respondent then set out in some detail its various unsuccessful attempts over the following months to serve summons on each appellant at addresses in Bucharest. These attempts were made in relation to hearings on 25 November 2020, 20 January 2021, 17 February 2021, 17 March 2021, 14 April 2021, 12 May 2021 (FI6 gives this date as "12 May 2024", but I assume from context that this is a typographical error), and 9 June 2021.

vi) For the hearing on 20 January 2021, summons and arrest warrants were issued for each appellant. The summons was also posted at the court premises. At that hearing, Ms Maria Vasii, a Romanian lawyer who represented two of the co-defendants in the case, informed the Court of Appeal of "the UK address" of the appellants, stating that "they wish to come to Romania, but they need a summons". When asked by the Court, Ms Vasii indicated that she would not be assisting the two appellants during the appeal, but "she would put them in contact with the lawyers defending them in the appeal". Ms Vasii indicated that the appellants could be summoned at an address in Sheffield.

vii) For the hearing date on 17 February 2021, the Court of Appeal issued a summons to an address in Bucharest and an arrest warrant in respect of each appellant. The summons was also posted at the court premises. The Court also issued a summons in respect of each appellant directed to the address in Sheffield that Ms Vasii had given the Court. At that hearing, Ms Vasii told the Court that she had sent information about the hearing to the lawyers for the appellants, but she did not know if they had been contacted. She said that she had received the UK address for the appellants "from their family". She offered to contact the relevant family member again and obtain a telephone number. The Court asked her to do so and, if possible, to obtain an email address. Neither of the ex officio lawyers for the appellants had been in direct contact with the appellants. The Court found that the summons had been validly issued, given that each appellant was summoned at addresses known to the Court and which appeared on documents in the case, as well as by posting of the summons at the court premises. If Ms Vasii was able to provide a telephone number and email address, then the Court would attempt to summon the appellants using those methods as well.

viii) There was no record that the appellants had informed the Romanian authorities of any change of address as required by Article 108 of the Romanian Criminal Procedure Code.

ix) The respondent set out the circumstances in which a defendant may request the reopening of criminal proceedings in the event of a judgment by default of the convicted person, on the basis of Article 466 of the Romanian Criminal Procedure Code.

70. In response to FI6, the second appellant filed a witness statement dated 9 December 2024, in which he states that he and the first appellant have lived together at all times since they have been in England and that they have lived only at addresses in Hull. The first address at which they lived was in the HU6 area of Hull, and the second address in the HU5 area. He attached to his witness statement official correspondence and other documents issued by public authorities on various dates in 2019, 2020 and 2021 showing the HU6 address. He denied that they had ever lived at the address in Sheffield

that Ms Vasii had given to the Court of Appeal on 20 January 2021. The second appellant applied on 9 December 2024 for this witness statement to be admitted in response to FI6.

71. In *FK v Germany* [2017] EWHC 2160 (Admin) at [31]-[40], the Divisional Court confirmed that section 27(4) of the 2003 Act, which sets out conditions for the admission of fresh evidence on an appeal by an appellant, does not apply to the admission of fresh evidence adduced by a respondent with a view to defeating the appeal. In *FK*, the Divisional Court considered the admission of such evidence in some detail. It confirmed that, in such a case, the test is simply whether it is in the interests of justice to admit it, without limitation by the conditions in section 27(4). As discussed in *FK* at [40], it is likely to be in the interests of justice to admit evidence that confirms a factual finding made by the district judge or clarifies an issue of law or fact that might otherwise be ambiguous or unclear.

72. The Divisional Court in *FK* at [38] also confirms the straightforward proposition that where fresh evidence from a respondent judicial authority has been admitted, then further evidence in reply from the requested person is also likely to be admissible in the interests of justice. For that I reason, I also admit the second appellant's witness statement dated 9 December 2024.

73. The appellants opposed the admission of FI6 for the following reasons:

i) The facts of *FK* are quite different from this case. In that case, the Divisional Court was focused principally on whether the Administrative Court had the power to seek and admit additional information on its own initiative in relation to an appeal under the 2003 Act, where the single judge considering matters at the permission stage considered that additional information from the requesting judicial authority might assist the court.

ii) Although *FK* confirms that the court's inherent jurisdiction to admit further evidence from the respondent is not restricted by any measure other than whether it is in the interests of justice to admit it, *FK* also makes clear that this is not a *carte blanche* to adduce any relevant evidence. It remains relevant whether the evidence was "available" at the time of the original extradition hearing, in the sense discussed in *Fenyvesi*.

iii) The respondent has already provided five items of Further Information. It has a duty fully to present its case. This new material in FI6 was not sought at the point at which the application for leave to appeal was lodged by the appellants or when permission was granted. It comes essentially "out of the blue" more than a year after the hearing at first instance. In contrast to the facts of *FK*, the information in FI6 does not merely confirm the conclusions of the district judge. It presents a "litany" of new information. It would therefore be unfair to admit it at this late stage.

iv) This is particularly so given that FI6 contradicts some of the original information in the Arrest Warrants and the five items of Further Information that were before the district judge. That information indicated that the appellants were not subject to any obligations in relation to the criminal proceedings in Romania. FI6 not only contradicts this, but adds a lot of new information which, if the respondent

was going to seek to rely on it, should have been adduced at the extradition hearing so that it could have been put to the appellants and properly tested in that way.

74. In my view, it is in the interests of justice to admit FI6. Although it is true that it provides a good deal of additional information, none of it contradicts the information in the Arrest Warrants or in the five items of Further Information that were before the district judge. The only apparent conflict between FI6 and the information from the respondent that was before the district judge was the statement in each of F1 and F2 that the relevant appellant in each case, as a result of the appeals granted on 11 April 2018 discharging warrants to arrest the appellants, "was not subject to any restriction during the criminal trial". That statement, however, was at best ambiguous. It is clear to me, having read FI6 *de bene esse*, that it was intended to refer simply to there being no restriction at that time on the appellants' liberty, including their ability to travel abroad to work, a position that, in any event, changed on 23 August 2021 when their convictions became final, from which point they were unlawfully at large. Bearing in mind that I am considering an English translation of a Romanian document, I note that it is not possible to put too much weight on the use of the word "restriction" in that statement. We are not construing a statute. It was always highly unlikely that the appellants, whilst subject to criminal proceedings in Romania, would have no obligation to keep the authorities informed of their whereabouts and how they could be contacted. Indeed, FI6 confirmed that they were notified of just that obligation, signed a document confirming that obligation, and were each handed a copy of that document.

75. Although there is a good deal of information in FI6, most of the factual information concerns the unsuccessful efforts of the Court of Appeal to summon the appellants to attend the appeal proceedings, which were repeatedly adjourned by the Court in order to secure their attendance, ultimately without success. It is clear that, as a matter of Romanian criminal procedure, the Court of Appeal was entitled eventually to proceed in their absence, having appointed lawyers to represent them even if, through no fault of the Court or the court-appointed lawyers, those lawyers had no instructions from the appellants. None of this provides any legitimate ground of complaint by the appellants.

76. The district judge concluded, in substance, that the appellants were properly convicted in Romania and that those convictions were final in accordance with Romanian law. FI6 merely confirms the efforts made by the Court of Appeal in Bucharest to ensure fairness to the appellants by making every effort to have them produced for the proceedings. There is no prejudice to the appellants in admitting this information, which does not take matters much further forward, but provides some limited additional support for the conclusions that the district judge reached in any event.

77. As to the point about Ms Vasii having given the Court of Appeal an address in Sheffield for the appellants that she claims to have learned from a family member, it is not necessary to resolve whether the appellants ever lived at, or had some other connection, with the address in Sheffield. The reference to this address may have been a simple error by the relevant family member or there may be some other explanation for this information. The key point is that the district judge was entitled to conclude, as he did, that the appellants had voluntarily left Romania while criminal proceedings were ongoing, had failed to keep the authorities informed of their whereabouts or how they could be contacted, and had failed to keep in touch with their own lawyers to ensure

that they gave instructions in relation to the appeal proceedings and remained informed of the progress of those proceedings.

78. As to the submission that the appellants were deprived of the opportunity to have the information in FI6 put to them, so that it could be tested in that way, it could only have been put to the second appellant, and it is not clear how, if at all, he could have challenged any of it. It was not suggested at the appeal hearing that any of the information in FI6 was untrue. There is no assertion, for example, in the second appellant's witness statement of 9 December 2024 that he never signed or received a copy of the Indictment Document. Most of the information in FI6 concerns either Romanian criminal procedure or factual matters regarding the efforts of the Court of Appeal to summon the appellants, none of which could plausibly be challenged by the second appellant.

79. For all these reasons, I concluded that it was in the interests of justice to admit FI6.

The Section 20 Ground

80. For the second appellant, Mr Jonathan Swain submitted that the district judge was wrong to conclude that the second appellant was deliberately absent from his appeal. The relevant law was clarified by the Supreme Court in *Bertino v Italy* [2024] UKSC 9, [2024] 1 WLR 1483 (SC), which was handed down on 6 March 2024 ("*Bertino (SC)*"). In *Bertino (SC)*, the Supreme Court overturned the decision of Swift J in the High Court, which had been referred to and relied upon by the district judge, as I have discussed at [53]-[54] above.

81. Mr Swain, referring to *Cretu v Romania* [2016] EWHC 353 (Admin), [2016] 1 WLR 3344 (DC) at [34], submitted that the fact that the second appellant was represented at the hearing of the appeal by a court-appointed lawyer who was without instructions was not sufficient to mean he was present at the appeal hearing as far as English law is concerned, even if this counted as presence under the Romanian Code of Criminal Procedure.

82. Mr Swain noted that the second appellant had given evidence that he had instructed a lawyer to lodge an appeal and that he had expected his instructed lawyer to attend the appeal. He was not required to attend the appeal himself. He was also not under an obligation to remain in Romania pending the appeal proceedings. The second appellant was never told that his chosen lawyer had withdrawn from representing him at the appeal, and he was never warned that if he failed to attend the appeal proceedings in the Court of Appeal in Bucharest, the appeal could proceed in his absence. He was also not told about the various efforts made by the Court of Appeal in Bucharest to summon him to the appeal proceedings.

83. Mr Swain submitted that, having regard to all these circumstances, the respondent could not prove to the criminal standard that the second appellant had knowingly and unequivocally waived his right to attend the appeal hearing. If the second appellant was not deliberately absent from his appeal, then it was necessary under section 20(5) of the 2003 Act that the district judge determine whether he would be entitled to a retrial. The Further Information from the respondent (including, as it happens, FI6) made it clear that the second appellant would not have a right to a retrial. Accordingly, the district

judge, had he determined properly that the second appellant was not deliberately absent from his appeal, would have been required to discharge him under section 20(7).

84. For the first appellant, Mr Matei Clej adopted the submissions in relation to the Section 20 Ground made by Mr Swain on behalf of the second appellant.

85. For the respondent, Ms Amanda Bostock submitted that, regardless of whether FI6 was admitted, it is clear that the appellants were deliberately absent from the appeal proceedings. The district judge was entitled to reach this conclusion on the evidence before him. It was not necessary, therefore, for the respondent to rely on the appellants' having a right to a retrial. There was, therefore, no bar under section 20 to the appellants being extradited to Romania.

86. In my view, the district judge was entitled to conclude on the evidence before him to the criminal standard that the appellants were deliberately absent from the appeal proceedings in the sense that each of them had unequivocally waived his right to be present at the appeal proceedings. Each had knowingly chosen not to contest the charge against him and had been present at the first instance hearing where his conviction was recorded. Each had left Romania voluntarily before sentencing and before his appeal was heard. Each was aware that he had been convicted and sentenced in Romania and that appeal proceedings had been filed on his behalf by his chosen lawyer. These circumstances distinguish the factual position of this case from that of Mr Bertino.

87. It is true that in this case there is no evidence that either appellant was explicitly warned that the appeal proceedings could proceed in his absence. The Supreme Court makes it clear, however, in *Bertino (SC)* at [58] that actual knowledge that a trial will proceed in a defendant's absence does not preclude a finding of unequivocal waiver. It depends on the facts.

88. In *Bertino (SC)*, the appellant left Italy, aware that he was under investigation, but before first instance proceedings had commenced against him. The district judge in that case concluded that he was deliberately absent from his first instance trial, essentially, because of his "manifest lack of diligence" (using a phrase from Strasbourg jurisprudence) in moving without keeping the authorities notified of an updated address where he could be served.

89. On appeal to this court, Mr Bertino did not have permission directly to attack the district judge's conclusion that he was deliberately absent from his trial. The focus was therefore on whether it was necessary that he be warned that he might be tried in absence. Swift J rejected the submission that it was necessary that he be given such a warning before he could be tried and sentenced *in absentia*. Swift J considered that the key question was whether Mr Bertino ought reasonably to have foreseen that the consequence of his conduct (leaving the jurisdiction and failing to keep the authorities informed of his updated address) would mean that his trial and sentencing would proceed in his absence.

90. The Supreme Court concluded, after a careful consideration of relevant facts, that the district judge and Swift J on appeal had erred in concluding, in that case, to the criminal standard that Mr Bertino had unequivocally waived his right to be present at his trial. The position, however, in this case was quite different. At the appeal stage, there was no violation of Article 6 of the ECHR when the appeal proceeded in the absence of the

appellants, their chosen lawyer having decided to withdraw. It was the inevitable outcome of their having proceeded in the way that they did, namely, voluntarily leaving Romania before the proceedings were fully at an end, instructing a lawyer to file their appeal proceedings, and then failing to keep in touch with her to give instructions and to be kept informed of progress. It was quite clearly reasonably foreseeable that the appeal would ultimately proceed in their absence in these circumstances.

91. FI6 was not before the district judge, but it confirms the great lengths to which the Court of Appeal in Bucharest went to try to ensure the attendance of the appellants. It reinforces the district judge's implicit conclusion that there was no violation of Article 6 in this case in the appeal proceeding in the absence of the appellants, who had each chosen unequivocally to waive his right to attend the appeal hearing. This is a case where the facts demonstrate that the appellants:

> "… put themselves beyond the jurisdiction of the prosecution and the judicial authorities in a knowing and intelligent way with the result that for practical purposes [an appeal hearing] with them present would not be possible, [such that] they may be taken to appreciate that [an appeal hearing] in absence is the only option." (see *Bertino (SC)* at [58])

92. The district judge made clear in the Judgment at paragraph 188(iii) that the second appellant gave confusing evidence during the full hearing regarding his knowledge of the ongoing proceedings against him in Romania and that he disbelieved much of what the second appellant said on that subject. He was entitled to reach that view.

93. For these reasons, I am unable to conclude that the district judge was wrong to conclude that each appellant was deliberately absent from the appeal hearing and that therefore there was no bar to their extradition under section 20 of the 2003 Act. I would have reached this conclusion even if I had not admitted FI6. In line with *FK*, however, FI6 reinforces the district judge's reasoning and conclusions.

94. The appeal of each appellant on the Section 20 Ground therefore fails.

The Article 8 Ground

95. In support of the Article 8 Ground, in their common skeleton argument, Mr Clej for the first appellant and Mr Swain for the second appellant, submitted that the district judge had failed properly to engage with the "texture" of the Article 8 case put forward on behalf of each appellant. He failed to give appropriate consideration to Mrs Lucica Marin's particular vulnerability, the length of time she had been married to the first appellant, and the first appellant's role in supporting both Mrs Marin and the second appellant's partner, Ms Dinca.

96. Of particular importance to these submissions, as emphasised, in particular, by Mr Clej during oral submissions at the hearing before me, was the observation of Mr Rogers that this particular family unit was, for cultural reasons, particularly tightly knit and interdependent. It was submitted that Mr Rogers' evidence on this point was not challenged by the respondent and that the district judge failed to consider sufficiently carefully how the extradition of either appellant or both to Romania would affect the Article 8 rights of their family members left behind given the nature of this family unit.

97. Mr Clej submitted that had the district judge given proper consideration to these matters, he would have concluded that the extradition of either or both appellants would have a disproportionate impact on the family's Article 8 rights. Accordingly, the balancing exercise he carried out was wrong.

98. In addition, Mr Swain relied, in relation to the second appellant, on the inconsistency in the Judgment regarding whether the second appellant was a fugitive. In his analysis of the Article 8 objection to extradition, the district judge relied at paragraph 188(iii) of the Judgment on his conclusion that the second appellant was a fugitive. At paragraph 109 of the Judgment, however, the district judge had clearly concluded that he could not be sure that either appellant was a fugitive. The judge therefore had taken into account, in relation to the second appellant, a factor that he should not have taken into account. Given the importance of this factor in the Article 8 balancing exercise, his overall conclusion was vitiated.

99. Finally, also in relation to the second appellant, Mr Swain submitted that the district judge failed properly to take into account the unusual nature of the sentence imposed on the second appellant, namely, placement in an educational establishment (a youth sentence) given his current age. Given the purpose of that sentence with its clear aim of rehabilitation rather than punishment, taking into account the time past since the offence and the lack of any further offences, the aim of rehabilitation has already been met. This is another factor that weighs in favour of the conclusion that extradition of the second appellant would have a disproportionate effect on his Article 8 rights and those of his family.

100. For the respondent, Ms Bostock submitted that it cannot be said that the district judge's conclusion that extradition would be disproportionate was wrong, given the high public interest in extradition, there being nothing in the other factors relied on by the appellants that was sufficient to counterbalance this.

101. Ms Bostock submitted that the internal inconsistency regarding fugitivity in relation to the second appellant was immaterial given the district judge's unambiguous finding that each appellant voluntarily left Romania knowing that he had been convicted and would be sentenced and each was voluntarily out of Romania while his appeal was pending. There was no significant delay in this case and, given their relatively short time in the UK and their knowledge of their respective convictions and sentences, the appellants had not built a significant family life in the UK or been allowed, unfairly, to rely on a false sense of security. The district judge had regard to the health issues of the first appellant and Mrs Marin as well as the second appellant's depression. None of these factors, considered individually or collectively, outweighed the weighty public interest in extradition.

102. In my view, the district judge clearly had regard to the appropriate authorities and carried out a proper balancing exercise in which, leaving aside the question of fugitivity in relation to the second appellant, he had regard to the relevant factors for and against extradition. The "interdependent family unit" point was strongly argued on behalf of the appellants, relying principally on the conclusions of Mr Rogers. It is clear from the Judgment that the district judge fully understood it and took it into account. The district judge was entitled, nonetheless, to conclude that there was nothing about the family circumstances of this joint household that rendered extradition of either appellant

disproportionate, bearing in mind the constant and weighty public interest in extradition.

103. Regarding the district judge's unfortunate inconsistency in relation to the question of fugitivity of the second appellant, it is clear, given the rest of his reasoning and his conclusion in relation to the first appellant, that he would have come to the same conclusion in relation to Article 8 in relation to the second appellant had he remained true to his conclusion earlier in the Judgment that he could not be sure that the second appellant was a fugitive. It was still the case that the second appellant had voluntarily left Romania knowing of his conviction, that he was in due course aware of his sentence, and that he was aware that appeal proceedings had been filed on his behalf. Although fugitivity can be a factor of great weight in many cases, in the circumstances of this case it is not of such weight that the absence of fugitive status in relation to the second appellant means that extradition of the second appellant would be disproportionate.

104. The judge had proper regard to the health issues of the first appellant, of Mrs Marin, and of the second appellant (his depression). The judge was aware, by the time he handed down the Judgment, of the birth in August 2022 of the son of the second appellant and Ms Dinca. He carefully considered and summarised in detail the evidence of Mr Rogers. He also had regard to the psychiatric evidence of Dr Walters. In short, he had regard to all the relevant evidence and factors for and against extradition, and he carried out a proper balancing exercise before concluding that extradition would not have a disproportionate effect on the Article 8 rights of the appellants or their family members. I am not persuaded that the district judge's conclusion in that regard was wrong.

105. There is nothing in the point about the nature of the sentence that the second appellant will have to serve in Romania.

106. The appeal of each of the first appellant and the second appellant, therefore, fails on the Article 8 Ground.

Conclusion

107. For the foregoing reasons, the appeal of each appellant against his extradition is dismissed.