



Neutral Citation Number: [2025] EWHC 56 (Admin)

Case No: AC-2024-LON-000831

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 January 2025

Before :

MR JUSTICE CONSTABLE

Between :

LICA-ANDREI OPREA

Appellant

- and -

IASI CITY COURT OF LAW (ROMANIA)

Respondent

Matei Clej (instructed by AM International Solicitors) for the Appellants
Adam Squibbs (instructed by The Crown Prosecution Service) for the Respondents

Hearing dates: 15 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 Friday 17TH January 2025.

Mr Justice Constable:

1. The Appellant seeks to appeal the order of District Judge Bristow in respect of his extradition to Romania dated 5 March 2024, pursuant to an Arrest Warrant dated 10 October 2023, made after an oral hearing at which the Appellant gave evidence. It is a conviction warrant and relates to one offence, of Aggravated Theft, provided for and punished under Art. 228 paragraph (1) of the Criminal Code – Art. 229 paragraph (1) letter d) of the Criminal Code of Romania. The facts of the offence were stated to be that on 15 May 2016, in Iasi City, jointly with another, the Appellant entered into a particular property and stole electric cables which he later burnt to harvest the copper, thus causing a prejudice of around Lei 75,000 (around £12,500). Following conviction, he was sentenced to a period of 18 months’ imprisonment.
2. In the Perfected Grounds of Appeal dated 25 March, the Appellant took issue with the finding of the Judge that he is a fugitive, on the basis that there was no evidence upon which the Judge could have found that he was aware of the summonses issued prior to his departure to the UK. It is said, therefore, that any finding about the Appellant’s state of mind at the time of leaving Romania was deficient because the Judge failed to make a finding where that event stood in the chronology relative to the summoning of the Appellant to attend trial. It is then said that, had the District Judge not found the Applicant to be a fugitive, it is reasonably arguable that for a relatively old offence with a relatively short sentence, the decision to extradite was disproportionate.
3. Sheldon J granted permission on this sole ground. In his written Skeleton Argument, Mr Clej for the Appellant submitted that the ‘wrong’ finding of fugitive status was just one (indeed, the fifth) factor in the matters it is said the Judge got ‘wrong’. However, this puts the argument in a way that was not part of the Grounds of Appeal and for which permission was not granted. Mr Clej realistically accepted this in argument and applied orally to amend his grounds to include a broad attack on the Article 8 assessment irrespective of whether he was, or was not, successful in respect to the question of fugivity. Mr Squibbs properly conceded he was in no way prejudiced and could deal with the broader argument. I give permission for the new ground to be advanced.
4. The following facts were set out in the initial paragraphs of the District Judge’s judgment. None of them are in dispute on appeal:
 - (1) The Appellant was arrested in respect of the subject offending and was held in custody for eleven hours and fifty-five minutes from 1325 hours on 16 May 2016 to 0120 hours on 17 May 2016. He was not subject to any preventative measure. On 16 May 2016 a decree issued by the Public Prosecutor’s Office attached to the Iasi City Court of Law, ordered the initiation of criminal proceedings against the Appellant. On the same date, the Iasi City Police Department – 6th Division drafted the minutes pertaining to the communication of the offence for which the Requested Person was investigated as well as

the criminal trial rights. This communication was signed, in person, by the Appellant. On the same date the Requested Person gave a statement before criminal investigators admitting he committed the offence and stating he regretted doing so.

- (2) The Appellant was summonsed in person on all hearings, and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he does not appear for the trial. He was summoned at the domicile of comuna Ciurea, sat Lunca Cetatuii, strada Renasterii, nr. 10, judetul Iasi. The proof of the reception of the summoning procedure was signed by the Appellant's father or mother.
 - (3) On 19 October 2021 the Iasi City Court of Law sentenced the Requested Person to one year and six months imprisonment for the offence. The whole of that term, less than the period for which he was in custody, remains to be served by the Appellant. He did not appear at the trial which resulted in the conviction or sentence, and was not represented by a lawyer appointed by the Romanian State or of his own choice. He did not appeal, and the sentence became final on 17 November 2021.
5. In the evidence given in his witness proofs, the Appellant stated that his parents would have told him had they received a summons, and that he was not summonsed to attend Court whilst he remained in Romania. He said that when he initially came to the United Kingdom, he did not have a mobile phone and therefore was not in contact with his parents for a number of months. When he did get a mobile phone and resumed contact with his parents they told him about the summonses that they had received but the hearing dates had already passed. The Appellant accepted that he did not make any enquiries about the case once he found out about the case. He said that he was not aware of the hearing on 19 October 2021, although as set out below, he changed this evidence during the hearing before the Judge.

The Law: Fugivity

6. In 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.”
7. Both counsel rely upon the case of Makowska v Poland [2020] EWHC 2371 (Admin). Fordham J said 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.”

8. Mr Clej rightly emphasised that this was not a ‘litmus test’ and are, instead, themes that lend themselves to evaluation of the circumstances of the case which will inevitably be fact specific. Not all may be present; moreover, the superficial presence of (i) and/or (ii) may have valid explanations such that (iii) is not present.
9. In Ristin v Romania [2022] EWHC 3163 (Admin), at §30, Fordham J also stated the following in respect of fugitivity:

“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.”

10. It is to be remembered that the function of the principle of fugitivity is that any lapse of time or delay in the commencement or conduct of extradition proceedings can be said to have been brought about by the requested person’s own making. Similarly, the upheaval of a settled private or family life must, if the person is found to be a fugitive, be weighed in the context where that life has been built in the shadow of their knowing choices.

The Law: Article 8

11. In Love v USA [2018] EWHC 172 (Admin), the Division Court confirmed 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.”

12. Two of the factors which the Appellant places specific emphasis upon within the evaluation are the delay and his health. As to these:
 - (1) In Kortas v Poland [2017] EWHC 1356 (Admin) at [36], the Divisional Court considered the significance of delay in the Article 8 balance:

“Article 8 ECHR does not provide a freestanding mechanism to dilute or circumvent section 14 . In HH , Lady Hale explained the bite that Article 8 may have in an extradition case. The context was a recognition, that "it is likely that the public interest in extradition will outweigh the Article 8 rights of the family unless the consequences of the interference are exceptionally severe": see paragraph 8(7). Earlier in the same paragraph, Lady Hale explained that delay may be relevant for two reasons when considering Article 8 . First, delay in seeking extradition may reduce the weight to be attached to the public interest in surrendering a person for prosecution. No doubt something similar would weigh in the public interest balance considered by prosecuting authorities in this jurisdiction if they were dealing with an old, relatively minor offence. Delay may reduce the weight to be accorded to the public interest in surrendering a person to serve a sentence following conviction, even when he has deliberately absconded, but in practice that will be rare. Secondly, the passage of time may have an impact on the nature and extent of the private or family life developed by the requested person in this country. When delay impacts upon Article 8, it is most usually in this context. In extreme cases, which have not been unknown, a young man wanted for a relatively minor offence committed decades ago has settled down in the United Kingdom and established a family. In such circumstances, an Article 8 argument will warrant close attention in accordance with authority.”

- (2) In Magiera v District Court of Krakow [2017] EWHC 2757 (Admin) Knowles J made the following observations at [32] – [34]:

“Where an extradition defendant maintains that it would violate Article 8 to extradite him because of his medical condition, or that extradition is barred by s 25 for the same reason, there must be an intense focus on what that medical condition is and what it means for him in terms of his daily living, so that a proper assessment can be made of what effects upon him and his condition extradition and incarceration would have. Once that exercise has been carried out the court must assess the extent to which any adverse effects or hardship can be met by the requesting state providing medical care or other arrangements.

...This exercise requires an intensely fact specific approach

...The starting point must be that in the case of an EU member state there is a rebuttable presumption that there will be medical facilities available of a type to be expected in a prison: Kowalski v. Regional Court in Bielsko-Biala, Poland [2017] EWHC 1044, para 20.”

The Decision on Fugitive Status

13. At paragraph 23 of the Judge’s decision, having listened to the evidence, the Judge recited much of the foregoing evidence that is not in dispute, and concluded that he was sure that the Appellant did know of the summonses and, consequently, of the court dates before he departed Romania and that he is not correct when he asserts otherwise. The Judge went on to explain, moreover, how the Appellant accepted in evidence (contrary to his proof of evidence) that he knew about the summonses before 19 October 2021, and that he did not tell anyone that he was leaving his registered address; he “*just left*”. The Judge recited the evidence that the Appellant “*expected*” that he would be punished.
14. It is argued ably on behalf of the Appellant by Mr Clej that it was not open to the Judge to conclude that he was sure that the Appellant knew of the summonses before he left Romania on the basis of (a) the Appellant’s knowledge of impending proceedings and his own admission of guilt (b) the fact of signature of the summonses by his parents and (c) his acceptance that his parents would have told him of the summonses. It is said the absence of evidence of the dates of the summonses means that the Judge could not have been sure (without more) to the criminal standard that the Appellant left Romania with knowledge of the summonses. This argument is correct (at least ‘without more’), as far as it goes. However, it is clear from the judgment that the Judge placed emphasis, as he was entitled to do in considering the state of the Appellant’s mind at the point of departure, upon the Appellant’s acceptance of guilt and knowledge that that he expected to go to Court and be punished. Moreover, it was plainly open to the Judge to take into account (as Mr Clej fairly accepted) that the Appellant conceded that he knew about the summonses prior to the hearing on 19 October 2021, contrary to his written evidence which had stated in terms that he was not aware of that hearing. The concession made in his oral evidence is unsurprising given that he accepted (a) that his parents would have told him about the summonses and (b) the period during which he did not have a mobile phone and was not therefore in contact with his parents was at most ‘a number of months’ after his arrival in the UK (sometime in 2017).
15. Mr Clej makes the point that the Judge did not expressly place weight on the fact that there was a period of around a year after the initial police interview and confession and the Appellant leaving the country, which was, he said, inconsistent with the conclusion that the Appellant was leaving to avoid an impending prosecution.
16. However, having found that the Appellant knew, from his parents, about the summonses and that the Appellant nevertheless chose not to attend the relevant hearing in October 2021, the Judge was more than entitled to conclude that this conduct was consistent with and supports the conclusion that the, or a material, motivation for leaving Romania when he did was the impending

Court appearance(s) at which he expected that he would be convicted and sentenced. This is so whether or not he knew of the precise date of the hearings at the time he decided to leave Romania. Even if the Judge was not entitled to conclude on the evidence that he had specific knowledge of the service of the summonses prior to leaving Romania, this does not detract from his overall conclusion - which was clearly justified on the evidence before him - that the reason the Appellant left Romania for the UK when he did was, or included, the desire to avoid the consequences of his impending conviction for the crime that he had admitted and in respect of which he knew that there was a process on foot which would inevitably lead (in light of his admission) to his conviction and sentence. As correctly submitted by Mr Squibbs for the Respondent, each of the three elements of fugivity identified by Fordham J in Makowska were present: (i) locational dynamism, by leaving for the UK in knowledge of the anticipated prosecution; (ii) informational deficit, in failing to have provided the relevant authorities with his details or inform them of the fact of his relocation to the UK (irrespective of a specific order requiring him to do so); and (iii) intended consequential elusiveness, exacerbated by his failure to make any enquiries or indeed return to Romania when he knew of the summonses.

17. In the circumstances, the Judge's decision as to the Appellant's fugitive status was one open to him on the evidence, notwithstanding the absence of identification of a precise date or a range of dates establishing the chronological relationship between the service of the summonses and the Appellant's departure to the UK. The Judge was entitled to include this as a factor weighing against the Appellant in the Article 8 assessment. This would have been enough to dispose of the appeal as originally framed.

The Broader Article 8 Assessment

18. Mr Clej submits that the Judge failed to factor in the time elapsed since the commission of the offence at all in the balancing exercise. He contends that the time elapsed since the offending reduces the public interest in extradition, although clearly this can only be the case in respect of the 'initial' delay from the commission of the offence to the conviction and sentence in 2021. In light of the finding of fugivity which the Judge was entitled to make, this does not apply to the period from 2021 to date.
19. The Judge did acknowledge at [24] of his judgment that the Appellant had been in the UK for 5 years, and at [35] that "*there will be an interference with the Requested Person's private and family life in the UK.*" The building of a life in the UK over a period of time was plainly a factor in the Judge's overall balancing assessment. The passage of time from mid 2016 to 2021 plainly represents a period of time longer than one within which it would generally anticipate a prosecution in a relatively straight forward case, and where there is a confession, ought to be concluded. However, the offence is one which has led to custodial sentence of 18 months and cannot properly be described as minor. The public interest in extradition remains high.

20. In terms of health, the Judge clearly considered the potential effect of the Appellant's diagnosis of HIV positive. However, there was no evidence to rebut the presumption that Romania would be unable or unwilling to provide management, treatment and care or specific reasons why, provided the appropriate treatment was provided, the condition gave rise to particular additional hardships in custody. The unevicenced assertion that 'stigma', in 2025, attaches to a person with HIV is not a matter which, although invited to, I would be prepared to take 'judicial notice' of.
21. Although not a factor emphasised in oral submissions by Mr Clej, the Judge's reference to the Appellant's "*greater experience is of the culture and society of Romania*" was not 'wrong'. As submitted by Mr Squibbs, the fact that the Appellant speaks Romanian and has experience of the culture and society of Romania plainly means that he would better adapt to a Romanian prison than a foreign national without the knowledge of the language or culture.
22. As for the Judge's 'qualification' on the absence of convictions since living in the UK (namely that the absence may be accounted for by the Appellant's interest in lying low), it is clear that – irrespective of whether the qualification was truly justified – the absence of convictions in the UK is a neutral factor, and certainly not one which will weigh heavily in favour of discharge. Of course: the existence of convictions in the UK may be a negative (indeed, potentially strongly negative) factor, but that is not the same thing.
23. Standing back, and notwithstanding the delay between 2016 and 2021, the life built by the Appellant in the UK has been subject to the shadow, of his own making, of criminal proceedings in Romania. The Appellant's footprint in the UK is light, in that he has not got a partner or children, or anyone else who is dependent upon him. The Judge cannot be criticised for the factors that he identified in the assessment process and there is nothing obviously wrong about his conclusion that extradition was proportionate.
24. The appeal is therefore dismissed.