



Neutral Citation Number: [2023] EWHC 700 (Admin)

Case No: CO/4047/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 28 March 2023

**Before:**

**SIR ROSS CRANSTON**  
**sitting as a High Court judge**

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**Between:**

**EDUARD TABACARU**  
**- and -**  
**IASI COURT OF APPEAL ROMANIA**

**Appellant**

**Respondent**

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**MARY WESTCOTT** (instructed by **Lawrence & Co**) for the **Appellant**  
**AMANDA BOSTOCK** (instructed by **CPS**) for the **Respondent**

Hearing date: 23 March 2023  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 28 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## **SIR ROSS CRANSTON:**

### **Introduction**

1. This is an appeal against a decision made on 10 October 2019 by District Judge Zani to order the appellant's extradition to Romania.
2. The appeal concerns the two grounds for which permission to appeal has been given, first in relation to Article 3 ECHR, prison conditions (Johnson J, October 2021), followed by in relation to Article 8 ECHR, the appellant's private and family life (Holgate J, January 2022).
3. The case has been much delayed. Extraditions to Romania (including this one) were stayed because of challenges regarding the prison conditions to which extraditees would be subject there. The stay was effectively lifted by the Divisional Court's decision in the test case of *Marinescu v Romania* [2022] EWHC 2317 (Admin), handed down on 12 September 2022.

### **The warrant**

4. The extradition order which the District Judge made in the present case was pursuant to a conviction European Arrest Warrant ('the EAW') issued in July 2017 and certified by the National Crime Agency in June 2018.
5. Under the warrant the appellant is sought to serve a sentence of 3 years' imprisonment. His sentence was originally 4 years' imprisonment, imposed by the Iasi Court of Appeal on 10 November 2016. That was later modified and made final by a decision of the Romanian High Court of Cassation on 28 June 2017, which allowed the appeal in part and reduced the sentence to three years imprisonment.
6. The offending occurred between April 2010 and May 2011 when the appellant was acting as principal of his company. The warrant states that he committed the offences of false accounting and tax evasion. He required another person to counterfeit 127 tax invoices and 113 receipts to reduce through fraud the company's liabilities to VAT and corporation tax.
7. The respondent puts the total loss through the offending as being the equivalent of a little over £160,000 (comprising approximately £100,000 lost VAT and £60,000 lost profit tax).
8. The EAW contains the appellant's address in Somerset.

### **Earlier proceedings and further information**

9. The appellant's evidence is that he was before the Romanian court for the offending in March 2013, that the case was in the High Court of Cassation in April 2014, and that it was then in the hands of the prosecution for 18 months. There were meetings with the prosecution in December 2015, but he left for the UK in April 2016 after the prosecution on his account reneged on an agreement which had been reached on the way forward.

10. The Further Information from the Romanian Judicial Authority dated April 2019 explains the sentence imposed in December 2016 by the Iasi Court of Appeal and its reduction the following year by the High Court of Cassation. The appellant had attended the first instance hearing and two of the three appellate hearings in the High Court of Cassation. The Further Information states that he knew that the High Court of Cassation was to pronounce sentence. A domestic warrant to execute sentence was issued in June 2017 but he could not be found in Romania. Subsequently, the Further Information states, it was found that he had left Romania in April 2017 and gone to the UK to an address in Somerset.

### **The District Judge's judgment**

11. The appellant was arrested at his home in Somerset pursuant to the EAW on 17 April 2019. He has been on conditional bail since 29 April 2019 with an electronic curfew of two hours per day, although the time varies to accommodate his different night and day shifts.
12. The substantive extradition hearing at Westminster Magistrates' Court occurred in August 2019, and judgment was handed down in October 2019. He was unrepresented. Legal aid had been withdrawn when it was found that he did not meet the means test.
13. After setting out the details of the EAW the District Judge noted that the appellant attended the court proceedings in Romania and had a lawyer to represent him during the trial process. Although the appellant now denied the offending the Judicial Authority had submitted that he made clear admissions of guilt during the course of the criminal proceedings, including the appeal.
14. The District Judge noted that the appellant had submitted references about himself, written by himself with an illegible signature and on company letter head, the company then in administration. His intention was that the references would appear to have been written by another person. The District Judge commented that this did him no favours when the court had to consider the question of his credibility.
15. The District Judge noted that the appellant was born in 1977. He had arrived in the UK in April 2016. His partner and their two children arrived several months later. He had been employed as a health care assistant at a hospital in Somerset. He provided financially for his family, as did his long term partner. During the course of his evidence the appellant acknowledged that he and his partner had spent periods of time living apart. In February 2019 his partner had purchased her own flat where it was anticipated that she would live with the children, separate from the appellant. On his evidence, however, the partner and children returned to live with him but then left again. According to the appellant the partner worked as well as a health care assistant at the same hospital. The relationship with his partner, the District Judge summarised, had not been smooth.
16. The appellant advanced various challenges to extradition. There is no need to canvass all of them here since they are no longer pursued.
17. As to article 3 ECHR, prison conditions, the District Judge noted that the Romanian authorities had provided a written assurance setting out comprehensive details of the

conditions and facilities to be made available to the appellant. The District Judge acknowledged the criticisms which the appellant made about Romanian prison conditions but was satisfied that the written assurance amounted to a detailed, specific, and tailored document compliant with the requirements set out in *Musric v Croatia* (2017) EHRR 1, [93]-[94]. The District Judge said that he was ‘entirely satisfied to the necessary standard that the Romanian authorities are aware of their Convention obligations and, taking into account the contents of the satisfactory written assurance relied upon, that they will comply with them in this case.’

18. In the course of his analysis of article 8 ECHR, the District Judge found that the appellant was a fugitive:

‘[H]e was well aware of those proceedings (and their outcome), having attended the court hearings. He appealed the original sentence (of 4 years) and, for some time, has been aware of the (reduced) 3 year term imposed by the Romanian Court of Cassation but has shown no inclination to return to serve the sentence. He was sought by the Romanian authorities but to no avail, hence the requested for extradition having been made.’

19. The District Judge set out the factors in favour and against extradition in accordance with *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin). In favour of extradition were the public interest factors, the seriousness of the offence, and the appellant’s fugitivity. Against extradition were that the appellant had been settled in the UK since 2016; both he and his partner were in fixed employment; he had, until recently, been residing with her and their children and wished to rekindle the relationship with them; he had led a law-abiding life since settling in the UK, was well thought of in his local community, and also carried out some charity work; and he intended to continue with his studies and potentially change employment if he were allowed to remain in the UK.
20. In finding that it would not be disproportionate to extradite the appellant the District Judge stated as his reasons the public interest factors, the seriousness of the offending, and the appellant's fugitivity. There would be some hardship caused to the appellant, his partner and the two children, the District Judge said, but the partner was of independent means and the main carer of the children. (After the hearing, in August 2019, the District Judge noted that the appellant accepted in a communication with the respondent that his partner and the children had been ignoring his calls and had returned to live in her flat.)
21. The District Judge also noted apparent discrepancies between information provided by the appellant and that which the partner had provided. The District Judge said that the appellant's production of two false references meant that he had ‘serious reservations as to the reliability of [the appellant] as a witness of truth’. In conclusion the District Judge held that there were not such strong counterbalancing factors as would render extradition disproportionate under article 8.

## Further evidence

### (i) *Evidence from the appellant and his partner*

22. By an application notice dated 26 September 2022 the appellant seeks to rely on statements from him and his partner confirming their current family life, including their baby due to be born in early January 2023. They had resumed living together with the children in the summer 2021. They were both working as health care assistants at the hospital in Somerset. In September 2022 they had purchased a new home with a mortgage, closer to their children's secondary school.
23. In his statement the appellant also explains that a daughter with his ex-wife had stayed with them for a month mid-2022. Both live in Romania. This daughter was to study at secondary school here but had returned to Romania because of the uncertainty surrounding the appellant's extradition. The appellant provided financial support for her in Romania. As well the statement refers to his partner's mother having spent some time with them helping out. She now lived with the partner's sister in Italy.
24. By a further application notice dated 6 March 2023 the appellant seeks to rely on a further statement from him and his partner confirming the birth of their daughter in January this year.

### (ii) *The October 2022 assurance*

25. The respondent adduced an updated prison assurance on 24 October 2022 (dated 27 September 2022) consistent with *Marinescu v Romania* [2022] EWHC 2317 (Admin). I shall call this the October 2022 assurance. It guarantees the appellant the requisite minimum space in prison in Romania and decent conditions respecting human dignity.
26. Amongst other things the assurance states that having served a fifth of his sentence the appellant could qualify for open conditions, most probably at Iasi prison. The assurance states that at that prison holding rooms are equipped with a separate bed, mattress, and related bedding for each person, and inmates are provided with the necessary furniture for the storage of personal effects and for meals. Rooms are properly ventilated and lit and heated to an optimum temperature, according to the weather. Prisoners have permanent access to water and sanitation items. The authorities were disinfecting the prison regularly and exterminating pests on a regular basis.

### (iii) *Dr Chirita's report*

27. Pursuant to an order of Sir Duncan Ouseley in November 2022, there is a report dated 12 January 2023 by Dr Chirita, a Romanian lawyer. As well as reports in a number of other Romanian prison cases, he has given two previous reports in this case. In summary these spoke of persistent overcrowding in Romanian prisons, missed targets, a limited prison budget, the impossibility of predicting which prisons would be overcrowded in future. Dr Chirita also reported that monitoring of prison conditions and prison assurances were ineffective.

28. Under Sir Duncan Ouseley's order Dr Chirita was not to give expert evidence for his most recent, his third report in this case, but was to collect information on the facts about conditions in Rahova and Vaslui prisons which might undermine the Romanian assurance. Consequently, Dr Chirita has collected information from the prison estate, National Ombudsman reports, and prison inspection reports conducted by a Romanian NGO, APADOR-CH. There are details on the specific prisons where the appellant is likely to be placed.
29. Rahova is the holding prison for extradites during the so-called quarantine period when they first arrive from abroad before they are allocated elsewhere. In addition to Dr Chirita's third report, the appellant has provided a report by APADOR-CH of a visit to Rahova prison on 13 January 2023 identifying amongst other things overcrowding, a shortage of staff, inadequate mattresses, and a lack of furniture. As regards inmates experiencing less than four square metres, the prison did not contest this but told the APADOR-CH delegation it would transfer those affected to other prisons.
30. The Romanian Ombudsman had visited Vaslui prison in 2022, and reported multiple problems with overcrowding, a lack of staff especially medical staff, insufficient furniture, water infiltration and moisture stains in some bathrooms, delays in providing necessary medicines and sanitary materials, and the storage of some foods in inappropriate conditions.
31. As to Iasi prison, an APADOR-CH delegation visited it on 30 August 2022. The delegation could not obtain a clear picture of the actual holding capacity of the prison in terms of the 4 square metres requirement for inmates, but it did observe a degree of overcrowding and inadequate conditions. The delegation recorded a lack of hot water and also that some of the cells had small windows with the resultant difficulty for ventilation and access to natural light. One of the biggest problems identified was with what is called 'Pavilion A' of the prison. Conditions were dirty and there was rat infestation through the Turkish toilets. To stop the rats water cans were placed on them at night and toilets were blocked. It was very cold in winter and the drains could be clogged.
32. The delegation has a paragraph on one of the cells, '4.4'. That was 'a room with eight beds, intended for people extradited from Austria, UK and also there was a person of Lithuanian nationality, who spoke Romanian quite well.' Detainees complained about the way they had to shower, the quality of the food they received, and the lack of a place to store food. There were no lockers for personal belongings. There were the rats in the sewers and bed bugs, which meant inmates slept with the lights on. There were also inmates who worked (it seems on construction sites outside the prison) who said that they would need a shower every day, but they could only wash three days a week. There were problems accessing medical assistance for those who worked.
33. Inmates in open conditions at Iasi complained as well about bed bugs, the lack of a place for personal belongings, and the bad food. The delegated judge for the prison said that most complaints were about the minimum 4 square metres per detainee, furniture, disinfection, and rights to a visitor. The delegated judge said that it was difficult to analyse the complaints because of inadequate recording. The APADOR-CH delegation recommended the closure of pavilion A.

34. Following that APADOR-CH report on Iasi prison, Dr Chirita states that the Romanian authorities took remedial measures, such as attempting to fill vacant medical positions, disinfection and cleaning, training inmates in cleaning, closing Pavilion A, and obligating the prison to report periodically to the national administration for prisons about the implementation of these measures. Dr Chirita states that he was doubtful about the implementation of these reforms and their monitoring in the face of the systemic nature of the problems in Romanian prisons over many years.

### **The article 3 challenge**

#### *(i) The appellant's case*

35. The appellant submits that the District Judge erred in deciding that extradition was compatible with article 3 ECHR. Further, Ms Westcott submitted that the October assurance was inadequate when assessed against the evidence raising up to date and specific concerns about the guarantee of decent conditions to ensure human dignity. Those concerns were contained in Dr Chirita's report and included the rise in Romanian prison overcrowding and the conditions described in the various inspection reports. It was material not before the court in *Marinescu v Romania* [2022] EWHC 2317 (Admin). Ms Westcott submitted that the terms of the assurance were not sufficient to protect the appellant from a breach of his article 3 rights. There was no sound objective basis for believing that the contents of the October 2022 assurance would be fulfilled and it was incapable of being verified.
36. Ms Westcott highlighted the APADOR-CH report on Iasi prison in August last year, which is where the appellant was likely to be sent. Specific prison numbers for Iasi were cited in *Marinescu*, but the APADOR-CH report could not be clear about actual holding capacity and had observed overcrowding as well as improper conditions of detention. Ms Westcott underlined the delegation's visit to cell 4.4, which was for those extradited from the UK and Austria. The detainees there complained about their conditions, which Ms Westcott submitted could not constitute dignified conditions on any analysis. She referred to Dr Chirita's comments about the inadequacy of the remedial measures taken after the APADOR-CH visit and of the monitoring the central prison administration had imposed.
37. Overall, Ms Westcott submitted, the October 2022 assurance failed to dispel the cumulative risk of inhuman and degrading conditions by a combination of overcrowding and poor material conditions over a lengthy period. It remained largely silent on the mechanics of how the appellant would be detained and protected, there was no sound objective basis for believing that the assurance would be fulfilled, and fulfilment of the assurance was not capable of being verified.

#### *(ii) Discussion*

38. There are two aspects to the reliability of the October 2022 assurance. The first is its coverage. For the reasons explained in *Bobirnac v Romania* [2023] EWHC 479(Admin) the coverage of this assurance meets the requirements laid down in *Marinescu* as regards the minimum space which the appellant will occupy and the minimum conditions ensuring human dignity which he will experience, initially at Rahova prison and then, as likely, at Vaslui and Iasi prisons.

39. The second aspect of the assurance's reliability is whether in light of the fresh evidence in this case Romania will comply with the October 2022 assurance as regards this appellant. The law in this regard was recently stated by the Supreme Court in *Zabolotnyi v Mateszalka District Court, Hungary* [2021] UKSC 14. For the court Lord Lloyd-Jones held that even if the requesting state has lost the general presumption that it will comply with its obligations under article 3 in relation to its prison estate as a whole, it will still normally enjoy a presumption that it will comply with specific assurances given in individual cases and cogent evidence will be required to rebut it: [44]. The test is whether the evidence is decisive. In that case the Supreme Court held that the Divisional Court correctly applied that test and came to the only conclusion that was open to it, namely that the fresh evidence could not be considered decisive in favour of the appellant on the issue of the reliability of the assurance: [60]-[62].
40. As regards Dr Chirita's report and the attendant material, this is far from being decisive in favour of the appellant on the issue of the reliability of the October 2022 assurance. First, apart from one aspect discussed shortly, the evidence is concerned with the general conditions in these three prisons, not with any returned person to Romania for whom an assurance has been given. As the Divisional Court said in *Marinescu*, 'the ECtHR judgments and Ombudsman reports, whatever they may show about the conditions in which other prisoners have been held, do not provide a sufficient basis for treating the assurance...as unreliable, or for departing from the presumption that the respondents will honour their assurances': [63].
41. Secondly, the evidence suggests that Romania is attempting to address the obvious failings in its prison estate. As one example Dr Chirita sets out measures which were taken after the APADOR-CH report on Iasi prison last year. Dr Chirita is sceptical about their successful implementation and monitoring, but it is obvious that the Romanian authorities are aware of the need to meet their Convention obligations.
42. Thirdly, there is no cogent evidence about Romanian non-compliance with any assurance they have given. Specifically, the passage in the APADOR-CH report about cell 4.4 at Iasi prison goes nowhere near being decisive for treating the October 2022 assurance as unreliable. Accepting that the detainees in cell 4.4 at the time of the APADOR-CH visit were from the UK, Austria, or both, it is unclear whether an assurance was in place which applied to them, or if it did what it covered. As Ms Bostock observed, assurances prior to 2022 were only in respect of minimum space and did not cover conditions ensuring human dignity as is now required following *Marinescu*. Although the conditions described were grim, the report itself does not address the extent to which they were such as to detract from the *Marinescu* standard. Moreover, there were the remedial measures put in place to address deficiencies identified in that APADOR-CH report.

## **The article 8 challenge**

### *(i) The appellant's case*

43. For the appellant Ms Westcott submitted that the District Judge erred in deciding that extradition to enforce the three year sentence was compatible with the article 8 ECHR rights of the appellant, his children, and his partner. Further, there was an incorrect



analysis of other material factors such as fugitivity, overall delay since the offending occurred as long ago as 2010/2011, and its seriousness.

44. First, there was the appellant's family rights. As Ms Westcott put it, after a period of separation in the summer of 2019, then "co-parenting" from October 2019, fully fledged family life had resumed in June 2021 with the new home in September 2022 and the new baby this January. The District Judge should have placed far greater weight on the key role the appellant has always played in his family's life, especially in supporting his children. Their interests were a primary consideration. In her submission the District Judge failed to scrutinise sufficiently the serious impact extradition would have on the two children (now 12 and 14 years old), with their father a joint carer. Moreover, extradition could mean a complete loss of the new baby's father during her most formative years, unless prison visits could be paid for and arranged. There was also the 15 year old daughter in Romania to whom the appellant provided financial and emotional support.
45. As for the appellant's partner, Ms Westcott added, she does not have a well-developed support network in this country. Her parents now live with her sister and grandchild in Italy and she sends them financial support. Her evidence has been consistent that she does not know how she will manage financially and also with care arrangements if the appellant is extradited. The appellant had been open about the ups and downs of his relationship with his partner which refuted the District Judge's attacks on his credibility. His partner had explained the impact of the stress of extradition on her own health.
46. Secondly, Ms Westcott submitted that delay was an especially important factor in cases involving children, but delay was absent from the District Judge's analysis save for the finding about the appellant being a fugitive. There was delay between the offending in 2010/11 and the final conviction in 2017, in the years' delay in certification by the National Crime Agency, and in the arrest after that in March 2019. The delay reduced the public interest in extradition.
47. Thirdly, Ms Westcott submitted, there was no basis for the finding that the appellant was a fugitive. The appellant had repeatedly informed the Romanian authorities of his UK address, attended numerous court hearings between 2016 and 2017, and returned to living in Somerset where he had told the Romanian authorities he was living. The Further Information wrongly suggested that they did not know where he was and had to find him. If that finding about fugitivity were corrected, she submitted, more weight needed to be attached to the significant delays in the case.
48. Further, the seriousness of the extradition offending was undermined by the appellant's good character before and since the offending. Moreover, the appellant has been on strict bail conditions since April 2019, which meant that he has not gone unpunished.
49. Finally, there was the uncertainty about the appellant's ability to return to this country absent full settled status, which even if not an objective factor would increase the anguish surrounding his extradition for all involved.

(ii) *Discussion*

50. Given that this appeal has been delayed, I consider the fresh evidence served relating to the family situation of the appellant, his partner, and children de bene esse. However, none is decisive, as I will explain, and so it fails the test in *Fenyvesi* [2009] EWHC 231 (Admin). In my view the District Judge's conclusion on article 8 cannot be regarded as wrong.
51. First, it is undoubtedly the case that the appellant's family situation has moved on since the hearing before the District Judge. But even with the parties' reconciliation, his enhanced role in caring for the children, and the new baby early this year, the balance against extradition does not move significantly. The District Judge acknowledged the hardship caused to the appellant, his partner and the children were he to be extradited. That is, of course, too often a tragic consequence in this type of case. However, the District Judge was entitled to take into account that the partner was of independent means and had been the main carer of the children. She had bought a flat in her own name and had been the main carer when the appellant and she separated. As Ms Bostock submitted, there was a care plan for the children, given their mother currently cared for them, alongside their father, and the fact that she has two homes if she does not sell one was not a factor which made the family less stable.
52. Secondly, as to delay, there was a lapse between the appellant's offending in 2010/11 and his conviction in November 2016. Ms Bostock submits that tax fraud takes time to investigate, and there is something in that. In any event, on the appellant's own evidence there were proceedings in 2013 and 2014, leading to the discussions with the prosecution in late 2015. The conviction by the Iasi Court of Appeal was in 2016, followed by the appellant's appeal to the High Court of Cassation the following year. The EAW was issued soon after that decision in 2017, which reduced the appellant's sentence. The appellant was engaged and represented in these legal proceedings in Romania. Admittedly there was some delay until his arrest under the EAW in 2019, but as Ms Bostock pointed out it was caused in part by the appellant's decision not to surrender given that he knew about what was going on in Romania. Against that background the District Judge was not wrong in his overall conclusion having failed to take account of delay in the *Celinski* balance.
53. As to the finding of fugitivity, the question is whether the appellant placed himself beyond the reach of Romanian legal process: *Wisniewski & Others v Poland* [2016] 1 WLR 3750 para 59. The fact is that the appellant attended part of the appeal proceedings in 2017, which did not suspend his sentence although it reduced its length by a year. He denies that he knew of the outcome, that he still had to serve 3 years' imprisonment, until he was arrested under the EAW. That is very difficult to accept when he was so involved in the proceedings in Romania. The fact is that knowing that he was convicted and that the appeal revolved around the sentence alone, he returned to the UK anyway before the High Court of Cassation had pronounced the outcome of the sentence appeal. Although there were no restrictions on his leaving the jurisdiction, and although the Romanian authorities knew where he lived in the UK, he thereby placed himself beyond the reach of Romanian law enforcement. The District Judge's finding in this respect cannot be faulted. This is not analogous to the position in *De Zorzi v France* [2019] EWHC 2062 (Admin) where the requested person had been permitted to return to her home in the Netherlands before her

conviction and sentence were issued by the French court and she had simply remained there afterwards.

54. The fourth point, the seriousness of the offending, need take little time. Tax evasion is serious, robbing the state of revenue and placing a burden on other taxpayers. The appellant has been of good character before and since that offending, but the District Judge took that into account as well as his contribution in the hospital and community.
55. In relation to bail conditions, these have been long-lasting, albeit that the appellant's curfew period is limited to two hours a day. They have some but limited weight in the article 8 balance. When the appellant is extradited the Romanian authorities must be made aware of their nature and extent so they may take them into account.
56. As to Brexit uncertainty, this is not a case which is finely balanced where it can carry significant weight: see *Hojden v Poland* [2022] EWHC 2725 (Admin), [60], per Lane J, who makes the point about article 8 having a role in the context of a requested person's return after extradition.

### **Conclusion**

57. For these reasons the appeal is dismissed.

