



IN THE WESTMINSTER MAGISTRATES' COURT

BEFORE

DISTRICT JUDGE (MC) SAM GOOZÉE
Appropriate Judge

Hunedoara Court, Romania

(Requesting Judicial Authorities)

V

Eduard-Marian Vlangar

(Requested Person)

JUDGMENT

Background and Issues raised:

1. This is a request by the Requesting Judicial Authority (“JA”) for the extradition of Eduard-Marian Vlangar, the Requested Person (“RP”) in respect of two European Arrest Warrants (EAW) upon which this extradition request is based.
2. These are two conviction extradition warrants.

3. **Conviction warrant 4691/243/207 [EAW1]**

The conviction EAW [EAW1] was issued on 25th March 2019 by Constantea Raveca Ioredana judge of the Hunedoara Court, Romania, a competent judicial authority and certified by the National Crime Agency (NCA) on 26th March 2019.

4. EAW 1 seeks the RP's return to Romania to serve one year and nine month sentence of imprisonment.
5. EAW 1 is in relation one offence of assault occasioning grievous bodily harm. On 14 February 2015 in the "Gold Club" in Hunedoara City, the RP with another punched and kicked Valentin Alin Grigore multiple times, leading to injuries requiring 40-45 days of medical treatment to heal.
6. The framework list is not ticked.
7. On 13 November 2018, the Hunedoara Law Court delivered judgment. The RP was sentenced to six months' imprisonment for the assault. This resulted in the RP breaching the probation period of a previous conditional suspended sentence of one year and three months' imprisonment imposed by the Hunedoara Law court on 7 March 2013 under file no. 3409/243/2012 against which there had been no appeal. There are no further details of that sentence or the offences to which it relates. The two sentences were ordered to run consecutively, the total sentence the RP is requested to serve is one year and nine months' imprisonment, all of which remains to be served.
8. The RP was not present at the trial. Box D3.1a) is ticked, and the EAW states the RP was personally summonsed at his place of residence in Romania (namely Hunedoara City, Str. Dr. Victor Babes, nr. 22, Hunedoara County) and at his residence in the UK (the same address as he was arrested at, namely 21 Ivy Road, Kettering, Northamptonshire) and by displaying the notice on the court door. Box D3.2 also indicates he was represented by an ex officio lawyer Gabriela Vasile.
9. Similarly, the EAW indicates that the RP was not personally handed the decision but was served via his residential addresses in Romania and the UK and displayed on the court

door. The warrant also confirms he will be personally handed the sentence upon his surrender. The RP has retrial rights.

10. The RP appealed the decision. On 12 March 2019, the Court of Appeal of Alba Iulia refused the RP's appeal at which point the sentence was final. A warrant for execution of the prison sentence was issued by the Hunedoara Law Court the same day.

11. **Conviction warrant File 931/243/2018 [EAW2]**

The EAW 2 was issued on 29th November 2018 by Constantea Raveca Ioredana judge of the Hunedoara Court, Romania, a competent judicial authority and certified by the National Crime Agency (NCA) on 8th January 2019.

12. EAW 2 seeks the RP's return to Romania to serve one year and eight month sentence of imprisonment.

13. EAW 2 is in relation to two offences and states that on 2 August 2015 drove a vehicle on public roads in Hunedoara City without a licence (driving while disqualified) and on the same day and place he used a forged document by presenting at the time of his traffic stop a driving licence number 290920563 purportedly issued by the Irish authorities in the RP's name on 12 August 2011. This document was later found to be issued in the name of an Irish citizen and the RP's name does not appear in the Irish driving licence database. This was ascertained through mutual legal assistance from documentation provided by the Irish authorities on 14 October 2015. The warrant states that the document "proved to be fake." A second version of this document was submitted for inspection by the RP's lawyer on 4 August 2017 was, likewise, not authenticated by corresponding Irish records as confirmed by a second mutual legal assistance letter from the Irish authorities dated 25 October 2017. The Framework List is not ticked.

14. The Court of Appeal of Alba Iulia reached a decision on 11 November 2018 following which, the RP was sentenced by the Hunedoara Law Court on 22 November 2018 (under sentence 443/2018) to 1 year and six months' imprisonment for the driving without a licence and six months for forgery. The sentences were concurrent with a 1/3 uplift for the lesser sentence added to the total imposed for the longest sentence in accordance with Romanian law. A total sentence imposed for both offences was, therefore, one year

eight months' imprisonment, all of which remains to be served. A warrant for the execution of the prison sentence was issued on the same day.

15. The RP was not present at the trial. Box D3.1a) is ticked and states the RP was summonsed at his place of residence, namely Hunedoara City, Str. Dr. Victor Babes, nr. 22, Hunedoara County (the same as that which appears on EAW 1 but not his UK address), and via his lawyer Ms Vasile (who is the same lawyer who represented the RP in relation to EAW 1). Box D3.2 also indicates he was represented by counsel, who informed the IJA that the RP was aware of the proceedings.
16. Similarly, the EAW indicates that the RP was not handed the decision, but was served via his Romanian residential address and his lawyer's professional address.
17. An appeal of this decision was forthcoming (*see* Box D3.4). The Further information dated 27th September 2019 states that although the RP did not participate in the appeal, he did request an adjournment of the appeal in order to hire a lawyer. The adjournment was granted but the RP never hired a lawyer.
18. The further information also states that on 25 July 2019 the RP had made a request to reopen the trial upon which both EAWs were issued.
19. Further information dated 24th May 2019, 29th May 2019 and 3rd June 2019 has been received from the Ministry of Justice in Romania. This is by way of an assurance that if surrendered, any period of detention for the offences specified in the EAWs, the RP will most likely serve his sentence at Deva Prison in semi-open facilities, The assurance of *“ minimum individual space of 3 sq. metres including the bed and related furniture, without including the area reserved for the sanitary facilities, its to be provided throughout the execution of the entire custodial sentence”*
20. The assurance confirms monitoring and compliance with the assurance.
21. Romania has been designated a Category 1 territory pursuant to the Extradition Act 2003 [“EA 2003”] and Part 1 of that Act applies to these proceedings.

The Extradition Proceedings

22. The RP was arrested on 1 May 2019 in Kettering. A Romanian passport was seized from him on arrest. The extradition proceedings have a tortuous history but it is important to set out below a summary of the key hearings.
23. The initial hearing was conducted in this matter on 2 May 2019 before District Judge Snow. No production or service issues were raised under s.4 or s.7 EA 2003. The hearing was opened. The issues raised were s.2 (pending translation of the warrant) and Article 3 and Article 8. The extradition hearing was listed originally listed for 28 June 2019 but was adjourned at a bail variation hearing on 20 June 2019 before District Judge Inyundo to 30 July 2019 due to legal aid issues. The RP was granted conditional bail and has been on bail throughout the proceedings.
24. A prison assurance was requested on 14 May 2019 in relation to both EAW 1 and EAW 2 and obtained from Prison Chief Superintendent Răzvan Constantin Cotofană on 24 May 2019.
25. By a statement of issues dated 23 July 2019, the RP clarified that the issues in the case were:
- i) s.2 in relation to EAW 1 due to lack of particulars of sentence;
 - ii) s.14 passage of time based on oppression arising from the RP having “effectively lost the opportunity to challenge the key evidence against him and due to his not increasingly dependent family”;
 - iii) Article 3;
 - iv) Article 8;
 - v) Abuse of process by virtue of (i) the complainant in EAW1 seeking to withdraw his testimony and being prevented from doing so and, (ii) in relation to EAW 2, that the evidence of forgery was never produced.
26. On 26 July 2019 (listed for 30 July 2019), the extradition hearing was adjourned by DJ Radway. It was refixed by DJ Tempia for 9 October 2019 with directions for:

- i) All defence evidence to be served on 30 August 2019;
- ii) Any prosecution response by 27 September 2019;
- iii) An agreed bundle by 4 October 2019.

27. On or around 14 August 2019, the JA requested further information in relation to both EAW 1 and EAW 2. This was responded to in respect of EAW2 on or around 2 September 2019. In respect of the further information sought in respect of EAW 1, the CPS has chased up the response on 12 and 24 October 2019, 17 and 14 October 2019 and 18 November 2019. On 14 October 2019 the liaison magistrate for Romania was asked to assist this request was repeated on 27 November 2019. By the final hearing before me on 14th December 2019 no response had been received.

28. On 26 September 2019 the case was adjourned by DJ Zani as the proceedings in Romania in relation to EAW2 were due on or around that time. This was not opposed by the JA. Directions were given for:

- i) By 3 October 2019 any expert report to be served.
- ii) By 7 October 2019 any updated skeleton argument.
- iii) By 8 October 2019 an updated skeleton by the IJA.

29. At a CMC on 10 October 2019 before DJ Radway, the matter was listed for final hearing on the 14th December 2019, with directions for:

- i) 23 October 2019 any expert evidence from a Romanian lawyer to be served;
- ii) 11 November 2019 any further information and updated skeleton argument from the RP;
- iii) 20 November 2019 an updated skeleton argument from the IJA;
- iv) By 3 December 2019 an agreed bundle was to be provided.

30. On 28 November 2019 the RP served a report from Dr Chirita in regard to EAW1 and whether Romania could comply with specialty arrangements if the RP were returned only in relation to the six month term of imprisonment for which he is sought in EAW1. The report suggests that *“the [Romanian] legislation does not contain any provisions regarding a resentencing of the surrendered person in case the executing state discharges the convicted person for some of the offences in the European Arrest*

Warrant” and “when an offence has been committed in the term of a previous suspended sentence, the Criminal Code states that it is mandatory that the two sentences applied to be merged/aggregated and that the offender execute the sentence that results from adding the two sentence... the offender [executes] a single sentence resulting from the aggregation” .

31. On 6 December 2019, the RP submitted new counsel’s skeleton argument and authorities relied upon by the defence. At a hearing on 6 December 2019, the IJA objected to the admission of Dr Charita’s report. The matter was put over to the final hearing before me on the 14th December 2019.
32. By email on 10 December 2019 counsel for the RP indicated the issues would be s.2 and s.17 in respect of EAW 1 and Article 8 in respect of both EAW 1 and 2.
33. At the final hearing, the JA was represented by Mr Hoskins and the RP was represented by Mr Hall. The RP was assisted throughout by a court appointed interpreter.
34. Mr Hoskins sought a further adjournment to secure the further information from the JA in relation to EAW1 and the particulars of the conviction and sentence. The case history above was outlined to me. The proceedings had been ongoing since May 2019. The s.2 issue with regard to the particulars of the conviction and sentence on EAW1 had been raised in the statement of issues dated 23rd July 2019. Since that date it had been confirmed further information was being sought from the requesting JA or alternatively EAW1 was to be re-issued. No further information or re-issued EAW has ever been provided. As no further information had been served by 11th November 2019 in accordance with directions made by DJ Radway on 10th October 2019, the report from Dr Chirita was then served on the 3rd December 2019 on behalf of the RP. In view of the history of the case and the number of opportunities the requesting JA had been given to provide the further information or re-issue EAW1, I refused the adjournment request by the JA. I also gave leave for Dr Chirita’s report to be adduced in evidence on behalf of the RP. The report had in my view been served as soon as practicable in view of the lamentable delays caused by the fault of the Romanian authorities not responding to numerous requests for further information relating to EAW1.

35. The RP raises the following challenge to extradition.

i) **Conviction EAW 1**

i. S2 – inadequate particulars of conviction and sentence

ii. S.17 – specialty

iii. S.21 – Article 8 (right to private and family life).

iv. **Conviction Warrant EAW 2** - Section 21 - Article 8 (right to private and family life).

36. I reserved judgment until today's date.

Evidence

37. I have read all the documents filed in this case.

i) The EAWs and Part 1 certificates in relation to both warrants.

ii) Further information dated 24th May 2019, 29th May 2019 and 3rd June 2019 by way of an assurance from the Ministry of Justice in Romania and correspondence confirming the assurance applied to both EAWs.

iii) Arrest statement

iv) Directions Form and Personal Details form in relation to the RP completed at the first hearing at Westminster Magistrates' Court on 2nd May 2019.

v) Statement of Issues and Skeleton Legal Argument on behalf of the RP prepared by Miss Westcott dated 23rd July 2019

vi) Updated Skeleton Legal Argument on behalf of the RP prepared by Mr Hall dated 6th December 2019.

vii) Opening Note and Skeleton Legal Argument on behalf of the requesting JA prepared by Mr Hoskins dated 10th December 2019.

viii) RP's proof of evidence dated 10th December 2019

ix) Witness statement of Liliana Vlangar (RP's wife) dated 10th December 2019

x) Report prepared by Dr Radu Chirita dated 3rd December 2019.

xi) Redacted further information served on behalf of the JA in accordance with their duty of candour relating to disaggregation of sentences in Romania.

xii) Two Judgments referred to in the skeleton argument on behalf of the RP:

- i. Judgment of appropriate judge DJ Ezzatt dated 8th November 2019 in relation to the case of Romania v. Adrian Manole.
- ii. Judgment of appropriate judge, DJ Grant dated 12th October 2018 in relation to the case of Lithuania v. Egigijus Zuolys.
- xiii) *Romania v. Edutanu [2016] EWHC 124 (Admin)*
- xiv) *Alexander v. France [2017] 3 WLR 1427*

38. The RP gave live evidence on oath and adopted his signed proof of evidence.
39. In summary, the RP was born in Romania on 11th September 1981. He trained as a boxer and was a Romanian national champion. He moved to the UK with his family 4 years ago. He has two daughters aged 11 and 14 years who are in school. The RP is the primary carer for the children as his wife works and is also studying at University.
40. The RP disputes the offences in EAW 2 and disputes presenting false documents to the police or the Court. He disputes knowing about the trial itself but says he knew when it ended. He says he was never notified about the trial. He says he has been convicted and he is not allowed a re-trial. He has never lived in Ireland although he has been on trips.
41. In relation to EAW 1 and the assault matter, he asked his lawyer for the trial to be re-opened. The victim wanted to withdraw the complaint but he was not allowed to.
42. In cross examination, he accepted he was aware of the offences in the EAWs. In relation to the driving and fraud offence in EAW2, he denied he was stopped by the police. He accepts he was in the car but his friend was driving. He accepted he was aware the matter had gone to court. He chose a lawyer to represent him but they did not keep in touch. When he appealed he said he did not have a lawyer. He had given his UK address to the authorities and he heard nothing. He denied his lawyer had presented a document to the Court. He said he sent a copy of his UK driving licence.
43. He accepted that he had appealed against both sentences.
44. In relation to EAW1, he accepted he had spoken to the Police but denied he knew he had a lawyer in the court proceedings. However, he said that he was the only one to receive a prison sentence. He said, “on the day of the trial the victim settled with him for 3000 euros but judge rejected it”. He found out about the conviction. He says the victim

has been assaulted by others. He was interviewed by the police and thought that was the end of the matter. He knew nothing about the court process but was told by one of the co-defendants he had been convicted. He denied he knew anything about a suspended sentence from March 2013.

45. In relation to his personal circumstances, the RP was vague in cross examination about when challenged about when he came to the UK. It was put to him that at the time he came to the UK it was shortly after the offences in 2015 and that he was running away from the investigations.

46. The RP said he had family in the UK in Northampton. He accepted there was a network of friends and family that could help his wife if he was extradited. The RP said his wife would find it very difficult to cope if he was returned as she would lose her employment.

47. The RP's wife Liliana Vlangar gave live evidence and adopted her signed proof of evidence. In summary she explains she and the RP have been together for 15 years. She works full time and is also a student. She is studying at the University of Birmingham and has two more years left of the course. If her husband is returned to Romania she will not be able to support her children as well as studying and working. She outlines details of the children's schooling and the arrangements which are in place for the RP to look after the children while she works and studies. She expresses concerns about the impact extradition will have on the family and in particular the children.

48. In cross-examination, she denied she knew her husband had been questioned by the police in 2015 before they came to the UK. She said they came to the UK as she had a brother in the UK. They had tried unsuccessfully to settle in Italy. Her brother has lived in the UK for 11 years and has a wife and children. She said the RP had family in Northampton. She denied she had a network of family to help if the RP was extradited.

49. She confirmed she was working as a manager of a recruitment agency and was also studying in Birmingham. She goes to work before and after university and sometimes she stays away from home. She denied she could find work around her family commitments as work is very scarce.

50. I received in evidence the unchallenged report of Dr Radu Chirita. He is a lecturer and criminal lawyer in Romania. He was asked to provide a report in relation to the RP and whether in relation to EAW1, Romania would only require the RP to serve the 6 month sentence imposed for the assault offence set out in EAW1. In summary, Dr Chirita explains that Romanian Legislation does not contain any provisions regarding re-sentencing a surrendered person if an executing state discharges an requested person for some of the offences in the EAW. In the RPs case, the entire one year and nine-month sentence will have to be served by the RP.

Submissions

51. Mr Hall made the following oral submissions on behalf of the RP in addition to those set out in his skeleton legal argument. I have summarized his submissions in brief below. I accept Mr Hall has provided a considerable amount of material and a detailed legal argument and I mean him no discourtesy by not summarizing all the material, caselaw or the details of his legal argument:

- i) In relation to EAW1 – the warrant is not compliant with s.2 EA 2003. The burden is on the JA to the criminal standard of proof to establish that s.2(6) is complied with and there are adequate particulars of the offence and the sentence. The offences for which the suspended sentence was imposed are not particularized.
- ii) If court satisfied that in relation to the assault matter, the warrant adequately particularizes the details of the offence and the 6 month sentence, then extradition is barred under s.17 EA 2003 as on the balance of probabilities the total outstanding sentence of 1 year and 9 months imprisonment cannot be disaggregated to exclude the 1 year 3 months unparticularized sentence from 2013.
- iii) In relation to both EAWs – the RP’s Article 8 right to family and private life. The offences are not serious offences, he is the primary carer for his two daughters and extradition would have a disproportionate impact on his children and his wife. The RP disputes he is a fugitive. There is no evidence from the JA that he has failed to comply with any obligations imposed by the authorities.

52. Mr Hoskins made the following oral submissions in response on behalf of the JA in addition to those set out in his opening note and legal argument. I have summarized his submissions in brief below. I accept Mr Hoskins has provided a detailed opening note and legal argument and I also mean him no discourtesy by not setting out his submissions in full.

- i) In relation to EAW1 – the JA concede the particulars of the offences and the sentence imposed are unclear, however the details of the suspended sentence are set out in the warrant. Taking a broad purposive approach, the RP has sufficient knowledge and details of the offences and sentence imposed to identify any challenges or bars to extradition.
- ii) The warrant must be read against the background of mutual trust and recognition.
- iii) The RP cannot discharge his burden to show on a balance of probabilities that there is no remedy in Romania for the protection of specialty and for a remedy should specialty rights be infringed.
- iv) In relation to both EAWs and Article 8, the JA submit the RP is a fugitive due to the temporal proximity of the offences and the RP;s decision to come to the UK. There is a string public interests in favour of honouring extradition obligations as well as the mutual confidence and respect in honouring extradition arrangements. These outweigh the RP’s Article 8 rights.

53. **The Law**

Section 2 EA 2003

Part 1 warrant and certificate;

(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

(b)the statement referred to in subsection (5) and the information referred to in subsection (6).

(5)The statement is one that—

(a) the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The information is—

(a) particulars of the person's identity;

(b) particulars of the conviction;

(c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;

(e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.

Section 17 EA 2003

Speciality

(1) A person's extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.

(2) There are speciality arrangements with a category 1 territory if, under the law of that territory or arrangements made between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—

(a) the offence is one falling within subsection (3), or

(b) the condition in subsection (4) is satisfied.

(3) The offences are—

(a) the offence in respect of which the person is extradited;

Section 21 & Article 8

- a) Article 8 provides that everyone has a right to respect for his private and family life, his home and his correspondence. It qualifies that right by saying that “There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”
- b) The Divisional Court has confirmed that the concept of `private life` per Article 8 is to be broadly defined (see *Niemitz v Germany* (1977) ECHR).
- c) *Polish Judicial Authority v. Celinski and others* [2015] EWHC 1274 (Admin) considers the approach that should be taken to Article 8 at the extradition hearing. It reiterated the general principles in relation to the application of Article 8 in the context of extradition proceedings set down in *Norris v. Government of the USA (No 2)* [2010] UKSC 9 and *HH v. Deputy Prosecutor of Italian Republic* [2012] UKSC 25. The question raised under Article 8 is whether the interference with private and family life of the person whose extradition is sought is outweighed by the public interest in extradition.
- d) In reaching that decision I am required to carry out a balancing exercise weighing up the various factors in favour of extradition against those which may militate against it.

Findings on the evidence

54. I have listened carefully to the evidence and submissions made by the RP and the JA and I have considered all documents placed before me.
55. In relation to EAW1, I find that the warrant is invalid and does not comply with s. 2(6)(b) and (e) EA 2003. The warrant states in box[c] that the length of sentence imposed for the assault offence is 6 months imprisonment. In box [e] it states that the EAW relates to one offence only and goes on in detail to set out the circumstances of the assault.

However, box [3] confirms that the remaining sentence to be served is one year and nine months. The EAW explains that the assault offence was found to have been committed within a “*probationary period of the conditional suspension of the execution of the one year and three months imprisonment penalty – imposed by the Criminal sentence no 52 of March 7 2013 delivered by the Hunedoara Law Court in file number 3409/243/2012.*” However, the warrant does not give any particulars of that sentence or the offences for which it was imposed. I have considered the case of *Romania v. Edutanu [2016] EWHC 124 (Admin)* in detail. Reading EAW1 as a whole, it is very clear that the sentence to be served is not only for the particularised assault offence but also for unparticularised offences for which a suspended sentence was originally imposed. EAW1 refers to a total sentence to be served that is longer than the sentence for the particularised assault offence. I have considered the “underlying matter of substance” and whether the RP has sufficient details of the offences in respect of which extradition is requested and for which a sentence of imprisonment is to be served to understand what he has been convicted of and whether there are any bars to extradition. I find the EAW does not particularise the earlier offences but only the most recent assault offence. The warrant does not comply with s.2(6)(b) and (e) EA 2003. The lack of particularisation of the earlier sentence and the underlying offences is that the RP is unable to identify whether they are extraditable offences or whether any bars to extradition exist. The JA have had a multitude of opportunities to provide further information or an opportunity for the warrant to be re-issued. I find the JA have failed to discharge the burden upon to satisfy me so I am sure that s.2 EA 2003 has been complied with.

56. I find that even if I ordered that the RP be surrendered only for the offence of assault referred to in box [e] there is no assurance that the RP would only serve the sentence of 6 months imprisonment imposed for that offence. The report of Dr Radu Chirita was unchallenged by the JA. In summary, Dr Chirita explains that Romanian Legislation does not contain any provisions regarding re-sentencing or disaggregating a sentence imposed on a surrendered person, if an executing state discharges a requested person for some of the offences in the EAW. In the RPs case, the entire one year and nine-month sentence will have to be served by the RP. This is corroborated to some extent by the redacted further information served on behalf of the JA in accordance with their duty of candour relating to disaggregation of sentences in Romania.

57. Albeit, there are specialty arrangements with Romania by virtue of Article 27(2) of the Framework Decision and I accept there is a strong presumption that other member States will act in accordance with their international obligations in respect of specialty, I find that in respect of EAW1, the RP has discharged the burden on the balance of probabilities that the outstanding sentence the RP is required to serve in EAW1 cannot be disaggregated to exclude the 1 year 3 month sentence from the activated earlier suspended sentence. The evidence from Dr Charita, supported in part by the redacted further information, I find is sufficiently compelling to displace the strong presumption that the Romanian authorities will act in accordance with their international obligations in respect of specialty in this case and that in relation to the total outstanding sentence set out in EAW1 there are no effective specialty arrangements in place.

58. The RP came to the UK four years ago. The offence in EAW1 was committed in February 2015 and the offences in EAW2 were committed in August 2015. In cross-examination, the RP accepted he was aware of both sets of offences. He had been interviewed by the Police in relation to the assault offence in EAW1 . He also accepted that in relation to the offences in EAW2, he knew the matter had gone to Court. Both EAWs make clear that he had lawyers instructed and he also appealed both sentences. The RP was very vague when cross-examined about why he came to the UK. Overall, I find his evidence about his reasons for coming to the UK to be unreliable. I am satisfied so I am sure that when he left Romania for the UK he was deliberately evading the investigation and the court proceedings. Despite my findings in relation to the particulars of the suspended sentence in EAW1, I find that the RP's denial of any knowledge of the suspended sentence imposed in 2013 to be implausible. I find that when he came to the UK, he knew he was under investigations and matters were proceedings to court. He would have known he was subject to a suspended sentence at the time. I am satisfied so I am sure he is a fugitive.

59. In relation to the RP's family life, I find the RP is married and has been in an established relationship with his wife for 15 years. They have two daughters aged 11 and 14 years. I find that the RP is primarily looking after the children while his wife is working and studying. I find that if extradited, this will have an impact on his wife's ability to both work and study. However, I do find that the scale of the impact of extradition has been objectively overstated by both the RP and his wife. The RP in cross-examination gave

evidence that he had family in Northampton and accepted there was a network of friends and family that could help his wife if he was extradited.

60. The Assurance from the Ministry of Justice states that the RP will serve his sentence at Deva Prison in semi-open conditions. The assurance confirms at all time he will be provided with a minimum individual space of 3 sq meters. The existence of procedures for monitoring and compliance is set out in the assurance. Romania is a signatory to the ECHR and a member State of the European Union. There is a strong presumption that Romania is willing and able to fulfil its human rights obligations and any assurance given in support of those obligations. I accept the Assurance provided by the Romanian Ministry of Justice. This has not been challenged by the RP in any event.

Decision

Conviction warrant 4691/243/207 [EAW1]

61. In relation to s.2 Extradition Act 2003, in accordance with my findings at para 55 above, EAW1 does not comply with s.2(6) (d) and (e) and I order the RP's discharge in relation to EAW1. I do warn the RP that of course the Romanian authorities may well still proceed against him if EAW1 is re-issued and the defects rectified.

62. Even if I am wrong with regard to the validity of the warrant, in accordance with my findings at para 56 - 57 I have concluded on the balance of probabilities that the outstanding sentence the RP is required to serve cannot be disaggregated to exclude the 1 year 3 month term from the unparticularised and activated suspended sentence imposed in 2013. I have further concluded that the evidence adduced is sufficiently compelling to displace the strong presumption that the Romanian authorities will act in accordance with their international obligations in respect of specialty in this case and on the facts of this warrant, there are no effective specialty arrangements in place. I would have discharged the RP under s. 17 EA 2003.

Conviction warrant File 931/243/2018 [EAW2]

63. I am satisfied in relation to s.2 Extradition Act 2003, the EAW2 contains all the necessary information required under s.2 of the Act and the Framework Decision and is a valid EAW.
64. There are no issues raised that the offences which are the subject of the warrants are not extradition offences. However, for the sake of completeness in relation to EAW 2, I find that s.10 and s.65 (3) Extradition Act 2003 are satisfied. I therefore proceed under s.11.
65. There are no bars being raised to extradition and I find there are none and I therefore proceed under s. 20 for EAW 2, the conviction warrant.
66. In relation to s.20 EA 2003 the RP was not convicted of the offences subject to EAW2 in his presence. I must therefore determine whether the RP deliberately absented himself from his trial in accordance with s.20(3) EA 2003. In accordance with my findings, I am satisfied so I am sure that at the time he left Romania for the UK, the RP had was aware the offences subject to EAW2 were proceeding to court. The RP is a fugitive. The procedural safeguards are confirmed in EAW2. The RP was represented by a lawyer and the RP had knowledge of the proceedings and the outcome as he exercised his right to appeal which were subsequently dismissed. I am satisfied so I am sure that the RP deliberately absented himself from the trial. I therefore proceed under s.21 EA 2003.
67. In relation to the Article 8 argument, the case of *Polish Judicial Authorities and Others v. Celinski* [2015] EWHC 1274 (Admin) requires the Court to balance the factors for and against extradition in reaching a decision. I have fully taken into account the relevant principles laid down in the established case law set out above. I accept that Article 8 is engaged by virtue of the RP establishing a life in the UK and I have carried out the requisite balancing exercise. I recognise the RP has young children. The special position of children must be a “primary consideration” in making an article 8 proportionality assessment. *HH and PH v. Deputy Prosecutor of the Italian Republic*

68. The factors supporting extradition are:

- a) The public interest in ensuring that extradition arrangements are honoured is very high and carries great weight. Greater weight is attached to the public interest in this case due to the serious nature of the alleged offending reflected in the outstanding sentence of 1 year 8 months imprisonment to be served.
- b) The decisions of the JA of a member state making a request should be accorded a proper degree of mutual confidence and respect. There is a clear public interest in this country complying with its treaty obligations to other countries. The RP is a fugitive and this country should not be regarded as a safe haven for those seeking to avoid serving outstanding sentences.
- c) The RP is a convicted offender Romania having previously received a suspended sentence of imprisonment in Romania in 2013 and has continued to offend in Romania.

The factors militating against extradition are:

- a) The RP has now a settled life in the UK with his family. The emotional distress of extradition will impact on his family especially his children. His wife will inevitably be required to give up either work or her course at University to look after the children. His wife currently provides financially for the family.
- b) The lapse of time since the offences were committed or alleged in 2015.

69. The decisions of the Supreme Court in *Norris* and *HH* make clear the question raised under Article 8 is whether the interference with private and family life of the person whose extradition is sought is outweighed by the public interest in extradition. I need not repeat the guidance in the cases quoted above. I have considered the above factors and concluded that the factors supporting extradition outweigh the factors mitigating against extradition. This is primarily based on the public interest, the RP's fugitive status and the length of the sentence remaining to be served.

70. I recognise the decision will disrupt the RPs settled life in the UK and no doubt cause distress to his wife and children, however, the effect is no more than is inherent in the extradition jurisdiction. The RP accepted that there was a network of friends and family in the UK who could assist his wife and children in any event.
71. There is no evidence of culpable delay on the part of the JA seeking the RP's extradition. The RP's actions as a fugitive leaving Romania in avoid criminal proceedings.
72. I conclude in considering these factors that the combination of the strong public interest in this country complying with its international treaty obligation in respect of extradition, the fact the RP is a fugitive and wanted in Romania to serve a custodial sentence. The UK should not be seen as a safe haven for those seeking to avoid serving sentences. These factors far outweigh the RP's Article 8 rights in this case. I am satisfied so I am sure a decision to order his extradition would be a proportionate decision. I reject the Article 8 challenge.
73. There is no challenge under Article 3 , nevertheless in accordance with my findings I accept the assurance provided by the Ministry of Justice in Romania.
74. Extradition of the RP to return to Romania in respect of the matters set out in EAW2 would be compatible with the RP's human rights.

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75. Extradition is ordered pursuant to s.21(3) of the Act subject to the right to seek leave to appeal by virtue of s.26 so long as such application is within the strict 7 day time limit and in proper form.

District Judge (MC) Sam Goozée

APPROPRIATE JUDGE

6th January 2020.