



Neutral Citation Number: [2023] EWHC 431 (Admin)

Case No: CO/1648/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/03/2023

Before:

MR JUSTICE CHAMBERLAIN

Between:

VADIM ISAC

Applicant

– and –

THE OLT TRIBUNAL (ROMANIA)

Respondent

Benjamin Seifert (instructed by Coomber Rich Limited) for the Applicant
There was no representation for the Respondent

Hearing dates: 8 February 2023

Approved Judgment

This judgment was handed down remotely at 10.00am on 1 March 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

- 1 The appellant, Vadim Isac, is sought by Romania pursuant to a European arrest warrant (“EAW”) seeking his surrender to serve a sentence of 3 years’ imprisonment. The sentence was imposed in 2010 in respect of offences of fraud and forgery committed between 2006 and 2008. It was originally suspended on terms, but was activated in 2013. An appeal was dismissed in 2014. The EAW was issued on 30 March 2014 and certified on 30 June 2014.
- 2 The appellant was arrested under the EAW on 24 January 2020. There was a hearing before District Judge Zani (“the judge”) at Westminster Magistrates’ Court. The only point taken was that extradition would be contrary to Article 8 ECHR. The judge found the appellant’s evidence to be untruthful in certain key respects. He found that the appellant had failed to comply with the conditions on which his sentence was suspended and in particular had failed to inform the authorities of his change of address.
- 3 The judge explained his conclusions on the question whether the appellant was a fugitive in some detail. The appellant had not been honest in his evidence. There was evidence to show that the appellant’s lawyer had attended the hearing at which the appellant’s suspended sentence had been activated. The judge rejected the appellant’s evidence that his lawyer had not told him that he must keep in contact with the probation officer. The appellant had left Romania aware that the trial process was ongoing.
- 4 In the light of this, the judge said that the delay was not the fault of the judicial authority; on the contrary, it was properly to be attributed to the appellant. The judge bore in mind that extradition would cause hardship to the appellant and members of his family, noting that he lived with his partner, but there was no evidence from her and the references to her in his evidence were “fleeting”. Nor was there any evidence from the appellant’s mother or sister. Although some financial support had been paid to his family, this, the judge said, fell well short of the sums he claimed had been paid.
- 5 The judge directed himself in accordance with the leading authorities on Article 8 ECHR (*Norris v USA* [2010] UKSC 9, [2010] 2 AC 487, *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338 and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551) and undertook a balancing exercise. The judge took account of the time that had passed since the commission of the offence. This was “a factor, but no more than that”. The judge undertook the balancing exercise on the basis that the appellant was a fugitive, but said that, even if he were not, extradition would not be a disproportionate interference with his Article 8 rights.
- 6 There were originally two grounds of appeal. The first raised a new issue: that extradition would be contrary to the appellant’s rights under Article 3 ECHR because of prison conditions in Romania. The second was that extradition would be contrary to the appellant’s rights under Article 8 ECHR. At the hearing, Benjamin Seifert, who appeared for the appellant, explained that the first ground of appeal was no longer pursued in the light of an updated assurance dated 17 January 2023.
- 7 As to Article 8, the appellant says that the judge erred in finding him to be a fugitive. But this is an attack on reasoned findings of fact which the judge was well-placed to

make having heard oral evidence and reached credibility conclusions adverse to the appellant. There is no proper basis on which an appellate court could disturb these findings. Even if there were, the judge made plain that his conclusion that extradition would not be disproportionate would have been the same even if he had found the appellant not to be a fugitive.

- 8 Insofar as the appellant now seeks to adduce fresh evidence from family members to overturn the credibility findings made against him, I would not admit that evidence. That evidence was available at the time of the original hearing. Even if it were admitted, it would not make a decisive difference to the Article 8 balancing exercise.
- 9 At the hearing, Mr Seifert placed particular emphasis on an argument for which, he said, permission had been granted in another case by Thornton J: that in carrying out the balancing exercise, the judge failed to identify for himself the factors militating against extradition (rather than merely listing the factors identified by the defence). I can see that such an argument might arguably succeed if, when reading the judgment as a whole, it could be seen that the judge had not made findings relevant to these factors or had not then borne these findings in mind when performing the Article 8 balancing exercise.
- 10 In this case, however, the judge – having first listed the factors identified by the appellant as militating against extradition – then went on to give his own detailed reasons for finding that extradition would not be disproportionate. These findings make clear beyond doubt that he considered every one of the factors identified by the appellant. As to delay, he found that this was not the fault of the Romanian judicial authority. As to the seriousness of the offence, he found that it might well merit a prison sentence in this jurisdiction and that the value (£9,600) was not “low”. The findings as to fugitive status were, as I have said, detailed and reasoned. As to the financial responsibility for his family, the judge also made detailed findings, which were adverse to the appellant. So, there is nothing in this point.
- 11 In my judgment the conclusion that extradition would not constitute a disproportionate interference with the appellant’s Article 8 rights was open to the judge. There was no error of law or approach. This ground is not arguable.
- 12 I would therefore refuse permission to appeal.