



JUDICIARY OF
ENGLAND AND WALES

District Judge Timothy King

In the Westminster Magistrates' Court

Between:

Romania

Issuing Judicial Authority

-v-

Cornel Ciuriuc

Requested Person

JUDGMENT

THE APPLICATION

1. This is an application made by the Suceava Local Court, Romania. The Judicial Authority is represented by Mr Dolan.

2. Romania is a Category 1 territory for the purposes of the Extradition Act (EA) 2003. (Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (SI 3333 of 2003) as amended). As the requested person was arrested after 23:00 hours on 31st December 2020, the warrant falls to be considered under the provisions of The Trade and Cooperation Agreement (TACA) and the 2003 Act, as amended by the European (Future Relationship) Act 2020.
3. The requested person is **Cornel Ciuriuc**. He was born in Suceava City, Romania on 14 July 1993. He is now 30 years old. He was represented by Mr Seifert at the extradition hearing.

AW relating to case reference 5153/314/2020

4. An Arrest Warrant (AW) was issued by the judicial authority on 4 April 2023 and certified by the National Crime Agency in the United Kingdom on 26 May 2023. The AW is a conviction warrant. It relates to a merged sentence of 1 year and 9 months imprisonment all of which remains to be served. The sentence relates to and original offence of driving with excess alcohol on 28 January 2018 and the following offending which occurred on 17 February 2019:
 - a. Driving without a licence
 - b. Refusing to provide a sample
 - c. Driving with excess alcohol.
5. Mr Ciuriuc was not present at trial but was represented by a lawyer of his choosing and admitted the offences. An appeal against sentence was submitted on his behalf by his lawyer.

ISSUES RAISED

6. A skeleton argument dated 8 September 2023 prepared by Mr Seifert was served on behalf of Mr Ciuriuc. The issues raised are:

- i. S10 EA 2003 – the offence of refusal to give a specimen is not an extradition offence;
- ii. S21/Article 8 – right to respect for private and family life, home and correspondence, proportionality principle.

HISTORY OF EXTRADITION PROCEEDINGS

7. Mr Ciuriuc was first arrested in relation the offences in the AW on 9 August 2021 following his surrender to Westminster Magistrates Court. This related to an EAW issued on 5 June 2020 for an offence of driving with excess alcohol on 28 January 2018 for which a sentence of 1 year's imprisonment was imposed. The resumed extradition hearing took place on 21 January 2022 with judgment ordering his extradition being handed down on 22 March 2022. Those proceedings were heard before DJ Callaway where only the issue regarding Article 8 was argued.
8. The decision of DJ Callaway was successfully appealed on 30 May 2023 and Mr Ciuriuc was discharged under s42 EA 2003 when the JA withdrew the warrant.
9. The extradition hearing in relation to the current AW was formally opened on 1 June 2023 following Mr Ciuriuc's voluntary surrender to Westminster Magistrates Court. The extradition was formerly opened and adjourned and Mr Ciuriuc was granted conditional bail. The hearing resumed on 12 September 2023 before myself and the matter was adjourned to 9 October for judgment.

THE EVIDENCE/FINDINGS OF FACTS

Evidence received

10. A proof of evidence was made Mr Ciuriuc in respect of the first extradition hearing. It states:

- i. *I was born in Romania and I moved to the UK in 2019 to work. I have been working in construction for many years and I am a trained electrician as well. I also worked in Belgium and Germany for 5 and a half years, I've always worked hard and never had any problems.*
- ii. *I work with Lavy Building Ltd, 47A Vaughan Road Harrow HA1 4DP since February 2021. I work as a fixer – frames, walls and general building.*
- iii. *Before that, I did the same job for another firm, and prior to that worked in demolition. I have been in building trade for about 10 years, since I was 18. My family living in UK: Brother (26, since 2020) and 2 sisters (33, 31 years old) for about 7 years.*
- iv. *I have been with my partner, Valentina Ciobanu (dob: 14/02/2000) for about 1 year and a half. She does not work at present as we are expecting a baby in March 2022.*

Offence in the Warrant:

- v. *The drink drive offence took place in 2018. There is a second matter of driving without a licence which is at Suceava Court now. I found out that I was sentenced for the matter in the warrant in August 2020. I was sentenced when I was already in the UK. I was told that I cannot appeal or do anything else about it.*
- vi. *I do not have any previous convictions in the UK and in Romania I have one offence of driving without a licence apart from the offence in the warrant. This matter is still ongoing and I understand that I should be sentenced soon.*
- vii. *In Romania I was not arrested nor interviewed about this offence, I was taken to hospital for a blood test. I was not charged and I was not given a court date. I did hire a lawyer but in the end, I was*

represented by the duty solicitor. My lawyer knew I was leaving the country to come to the UK for work.

- viii. Apart from the driving offences, I am of previous good character. I do not know why I was not given a suspended sentence as this was my first offence. I was of a previous good character*
- ix. My partner is pregnant and cannot work, she has severe morning sickness now and is dependant on me. Her parents are in Romania, there is nobody who can help her here if I will be sent to serve the sentence.*
- x. I am waiting to receive a sentence for the driving without a licence matter as well.*
- xi. I have not left UK since February 2019. I was convicted in absence. I did give a statement to a notary in which I admitted the offence but it came as a shock to me when I was sentenced to a custodial sentence.*
- xii. I have worked all the time in the UK, even during COVID lockdowns, I went to work every day apart from a short period in the summer of 2020. I never stopped working.*
- xiii. I am very worried about my family if I will be extradited as they will not receive any help from anyone.*
- xiv. I will be sent to prison to Romania to serve the sentence and I would not be able to provide in any way for my new born baby and family.*

11. An updated statement was served by Mr Ciuriuc in these proceedings. It states:

- i. *Further to my previous statement I wish to add as follows. My partner and I have a daughter who is 1 year and 4 months now. My partner is a stay at home mom and I am the only one taking care of my family.*
- ii. *We both have pre-settled status and our daughter was born here. Our child's future will be incomparably better than in Romania. There is a better school system and a better care system here. Our future as a family is in England and we both feel England is our home.*
- iii. *I have been living in England for almost 5 years now. I have worked since the beginning. I currently do cladding work and my work schedule is 8am to 4pm not including overtime.*
- iv. *I understand from my lawyer in Romania that he is appealing the decision in my matter. Not only due to the fact that the sentence is too high but also, the time limitation period was reached.*

12. In oral evidence at the hearing on 12 September Mr Ciuriuc gave the following evidence:

- i. *He adopted his witness statements and confirmed it was true to the best of his knowledge and belief.*

Cross examination

- ii. *He first found out about the custodial sentence in August 2020. In August 2020 he attended a police station in the UK. Since August*

2020 he has known that he has been facing a custodial sentence. His child was born between the hearing of the last matter and judgement.

- iii. In April 2019 he was stopped for driving without a licence, drink-driving and was taken to hospital to provide a sample. He realised he had committed other offences. He thought he would have to go to court for those offences. This was in April 2019 but he does not know exactly when. When he left Romania in April 2019 he understood he would have to go to court for those offences. When he left he gave a forwarding address to his lawyer. He thought his lawyer would give the address to the court. He was not trying to avoid proceedings by leaving. The lawyer was supposed to turn up at court. He asked the lawyer if it was okay for him to go to the UK and he said yes. He thought it was the lawyer's responsibility to tell the court.*

13. Mr Ciuriuc's partner Valentina Ciobanu provided a statement dated 4 November 2021 in the first set of extradition proceedings. It states:

- i. I Valentina Ciobanu DOB: 14/02/2000, wish to state the following:*
- ii. I am Cornel Ciuriuc's partner and we have been together for two years, since I was 19 years old. I was born in Romania and went to work in Norway when I turned 17 years old. My family's financial situation is very difficult, and their financial resources are extremely limited. After I left Romania, I worked initially as a seasonal worker and then I was working making Christmas decorations.*
- iii. I came to England at the end of 2020. I knew Cornell from Romania. He is a wonderful man and we are now expecting our first baby, a*

little girl, in March 2022. Cornell cried with happiness when he heard we are having a little girl, he is looking forward to becoming a father.

- iv. I have acute morning sickness and I cannot travel due to my pregnancy, I am on medication.*
- v. I have pre-settled status in the UK and a national insurance number. Due to my pregnancy I cannot work now. If Cornell will be extradited, I will not be able to support myself.*
- vi. My parents are in Romania and only my father has a pension from the state. My parents have to survive with the equivalent of £120 a month which is very little even for Romania. There will not be able to help me. My only support is my partner, Cornel. We want to send our daughter to school here, there is nothing for us back in Romania. We both came to England to have a better life.*
- vii. It is an impossible situation for me as I cannot go back to Romania, I would not have support there, I would not be able to support myself and the baby whilst Cornel is in prison. He is the only one supporting us. He is very hard-working.*
- viii. He takes care of me in everything I need and he attends all medical appointments with me. He does the shopping and the cleaning around the house. I get tired a lot, I find it difficult to get by but he's always there taking care of everything and protecting me.*
- ix. Cornel is a good person, he is very helpful, very calm, very respectful, We are very happy as a family.*

- x. *To me the situation is extremely difficult, I feel that the opportunity to be a happy family is slipping away from us. I do not know what I would do without him, I need him to be by my side when our daughter is born and to be with us and take care of us.*

14. Ms Ciobanu provided a statement dated 12 September 2023 It states:

- i. *I, Valentina Ciobanu DOB: 14/02/2000, wish to read the following:*
- ii. *I am Cornel Ciuriuc's partner and we have been together for three years and a half. We have a daughter, A who is now one year and half.*
- iii. *Cornel is an amazing father and partner and we are very happy as a family.*
- iv. *The situation is extremely difficult, and we have been under immense stress for two years. I do not work and I take care of our daughter. I wouldn't know what to do if he will be extradited Cornel is hard working, he is the one providing for both of us. I do not know what to do if he would not be here to take care of us. I would not be able to afford childcare, rent and all costs by myself in if I would get a job. I would not be able to get by alone with our daughter. My family is not here. We do not have anyone else around who could help us.*
- v. *My parents are in Romania and their pension is about £150 a month each, in total £300 a month. They would not be able to support me and my daughter. We are lost without him.*

- vi. *We want to live in England, we are a happy family together, our daughter is a miracle in our lives. We want to send her to school here.*
- vii. *Our baby has eczema and is under treatment. We need to continue the treatment as the issues have not gone away. The baby is very attached to him and he is the most doting father.*
- viii. *During the day I need to call in at work and put on the camera even for a short while. Our daughter needs to see him for a few moments as she cries and he is not around. They are very close and have a special bond.*

15. In oral evidence at the hearing on 12 September Ms Ciobanu gave the following evidence:

- i. *She confirmed her statements of 4 November 2021 and 12 September 2023 were correct to the best of her knowledge. She was content for these to stand as evidence. Her daughter was born on 3 March 2022. She is 18 months old. She was at court and was being looked after by her partner's sister.*
- ii. *She does not work and looks after the baby.*

Cross examination

- iii. *She does not work.*
- iv. *She found out partner had received a prison sentence in Romania when she came to the UK in December 2020.*

- v. *Her baby is currently looked after by her sister-in-law as the baby is not allowed in the court room. Her sister-in-law lives in Harlow which is 1.5 hours travel time away from her. Her sister-in-law has two children and she sees her every now and then. She also sees her partner's other sister and brother. His brother lives not too far from them and his sister lives about 1.5 hours away from them. His sister has a little boy as well.*

- vi. *She tried to telephone to find out why she been turned down for universal credit but there was no answer. She tried twice to apply. She applied in September 22 and before September 2022. The account was closed and reopened. She applied for universal credit in July. She began to set up an account but they closed the account because they didn't submit the evidence. She reapplied and gave them the documentation and the reply came after that refusing the claim.*

- vii. *She had pre-settled status in the UK since June 2021. She opened the universal credit account in July 2022 but the account was closed. She went back and reopened it and they called them over and the answer was that the claim was refused. She has not applied since.*

Re-examination

- viii. *If her partner was extradited she would ask for state help. Her child cannot stay in the UK without her. He daughter is too little to understand. She would begin working.*

- ix. *Her daughter was born in the UK and has settled status and her birth is registered here.*

16.I have also considered documentation provided by Mr Ciuriuc proving employment status, tax paid and the tenancy he and his partner have.

GROUNDINGS FOR CHALLENGE

Section 2 – Warrant and certificate

Analysis

17. No challenges have been made under section 2 of the EA 2003. I am satisfied that the warrant is a valid Part 1 warrant and was properly issued and certified.

Section 4 – Person arrested

Analysis

18. No challenge was made under section 4 of the EA 2003.

Section 7 – Identity

Analysis

19. No challenge has been made under section 7 of the EA 2003. I am satisfied that this warrant applies to Mr Ciuriuc.

Section 10 – Extradition offence

Law

20. Section 10 of the EA 2003, as modified by the Extradition Act 2003 (Multiple Offences) Order 2003, provides:

10. Initial stage of extradition hearing

- (1) This section applies if a person in respect of whom a Part 1 warrant is issued appears or is brought before the appropriate judge for the extradition hearing.

- (2) The judge must decide whether any of the offences specified in the Part 1 warrant is an extradition offence.
- (3) If the judge decides the question in subsection (2) in the negative in relation to an offence, he must order the person's discharge in relation to that offence only.
- (4) If the judge decides that question in the affirmative in relation to one or more offences he must proceed under section 11.

21. Section 65 of the EA 2003 provides:

65. Extradition offences: person sentenced for offence

- (1) This section sets out whether a person's conduct constitutes an "extradition offence" for the purposes of this Part in a case where the person—
 - (a) has been convicted in a category 1 territory of an offence constituted by the conduct, and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 1 territory if the conditions in subsection (3) are satisfied.
- (3) The conditions in this subsection are that—
 - (a) the conduct occurs in the category 1 territory;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.
- (4) The conditions in this subsection are that—
 - (a) the conduct occurs outside the category 1 territory;

(b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom;

(c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.

The position of Mr Ciuriuc

22. Mr Ciuriuc asserts that it is necessary that there is an equivalent offence of refusing to provide a specimen in the UK, but that scrutiny of the UK offence under s7 of the Road Traffic Act 1988 demonstrates material differences between the UK offence that the JA rely on to satisfy s10 to the offence that Mr Ciuriuc's extradition to Romania is sought for such that s10 is not satisfied in respect of that offence. In particular it is submitted that none of the necessary conditions concerning the offence contrary to Section 7(6) of the 1988 Act are apparent and in fact the police officers in Romania were able to take a sample of Mr Ciuriuc's breath which confirmed that he was driving with excess alcohol.

23. It is further submitted that there is nothing to explain why the sample provided was insufficient for their purposes. There is no information concerning the reason that the request was made and, nothing concerning a warning that Mr Ciuriuc would be prosecuted for these failures. It is submitted that in the absence of this there can be no criminal offence.

24. Mr Ciuriuc seeks to distinguish the decision of Supperstone J in **The Regional Prosecutor's Office, Stara Zagora (Bulgaria) v Minchev** [2019] EWHC 1925 (Admin). He submits that in **Minchev** a technical device detected the presence of opiates using the Respondent's saliva. However, the difficulty was that "neither the concentration nor the level of opiates" were apparent and then Mr Minchev refused to submit to a medical examination. The Court found that the offence under Section 7(6) of the 1988 Act was necessary "to ensure that those

persons who decline to engage do not go unpunished.” Mr Ciuriuc asserts that as he did provide a positive sample the situation is different in his case because that positive sample meant that Mr Ciuriuc could be punished.

The position of the judicial authority

25. The Judicial authority asserts that the offence of ‘refusal or avoidance from the collection of biological samples’ is akin to the UK offence of failing to provide a specimen for analysis contrary to s7 of the Road Traffic Act 1988 in the UK such that there is equivalence between a UK offence and the Romanian offence and s10 is satisfied.

Analysis

26. I am satisfied that the offence of ‘refusal or avoidance from the collection of biological samples’ is an extradition offence because the ‘dual criminality’ gateway under section 65(3) EA 2003 is met.

27. I consider that the scrutiny that Mr Ciuruc submits is required which establishes material difference between the UK offence and the Romanian offence is not appropriate. What I focus on is the mischief that both offences seek to address in criminalising conduct (in this case the failure of a vehicle driver to give a specimen). It is likely that there are specific differences between the procedural steps necessary for the UK offence to be proved in a UK court and the Romanian offence to be proved in a Romanian court. Such differences are not uncommon when comparison between penal codes/criminal offences is conducted. For example, it not clear whether the Romanian offence has an equivalent requirement of the statutory warning that is required to be given under s7(7) RTA 1988 for an offence to be proved in a UK court. However, I am satisfied that for s10 to be satisfied it is not necessary for the procedural requirements of the two offences to be absolutely identical. What is required is

that conduct is equivalent and in this case it is. It is not appropriate for this court to question why a sample was required when a sample of breath had already been provided by Mr Ciuriuc. There are any number of explanations about why a second sample may have legitimately been required, but this court does need to resolve that issue. It is or would have been a matter for the Romanian court. Similarly, I do not consider that the fact that Mr Ciuriuc could have been prosecuted for driving with excess alcohol such that punishment the mischief of driving with excess alcohol or refusing to provide a sample would have followed anyway. The reality is that the broad mischief of failing to provide a specimen is catered for by the UK law and equivalent to the Romanian offence in the AW. The conduct took place in a category 1 territory namely Romania. The conduct described in the warrant would constitute an offence in the United Kingdom, namely failing to provide a specimen for analysis. The conduct has been punished by a term of imprisonment of at least 4 months, in this case 1 year 9 months.

28. I must therefore go on to consider whether any of the bars to extradition in section 11 of the EA 2003 apply.

Section 11(1)(a) & section 12 – Double jeopardy

Section 11(1)(aa) & section 12A – Absence of prosecution decision

Section 11(b) & section 13 – Extraneous considerations

Section 11(1)(c) & section 14 – Passage of time

Section 11(1)(g) & section 18 – earlier extradition to the UK from another category 1 territory

Section 11(1)(h) & section 19 – earlier extradition to the UK from a non- category 1 territory

Section 11(1)(i) & section 19A – earlier extradition to the UK by the International Criminal Court

Section 11(1)(j) & section 19B – forum

s.20 (right to retrial/conviction in absence)

29. No challenge was made under any of these bars and I do not find that the bar under any of these sections operates in this case.

Bars to Extradition – Conclusion

30. I am satisfied no other bars to extradition exist and accordingly I therefore consider his challenge under s21 EA 2003 /Article 3 and Article 8 ECHR.

Article 3 – prohibition of torture/ inhuman/ degrading treatment

LAW

31. Article 3 states, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

32. In ***Mohammed Elashmawy and others [2015] EWHC 28 (Admin), para 49 & 50***, Lord Justice Aiken held,

“A number of general propositions are very well established by ECHR case law and accepted by the courts of England and Wales in relation to Article 3 and its application to prison conditions in the context of extradition. We think that they can be summarised as follows: (1) the extradition of a requested person from a Contracting state to another state (whether or not a Contracting state) where that person will be held in detention (either awaiting trial or sentence or in order to serve a sentence lawfully imposed) can give rise to an Article 3 issue, which will engage the responsibility of the Contracting state from which the

extradition of the requested person is sought. (2) If it is shown that there are substantial grounds for believing that the requested person would face a “real risk” of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country then Article 3 implies an obligation on the Contracting state not to extradite the requested person. (3) Article 3 imposes “absolute” rights, but in order to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. In general, a very strong case is required to make good a violation of Article 3. The test is a stringent one and it is not easy to satisfy. (4) Whether the minimum level is attained in a particular case depends on all the circumstances, such as the nature of the treatment, its duration, its physical and mental effects and, possibly, the age, sex and health of the person concerned. In that sense, the test of whether there has been a breach of Article 3 in a particular case is “relative”. (5) The detention of a person in a prison as a punishment lawfully imposed inevitably involves a deprivation of liberty and brings with it certain disadvantages and a level of suffering that is unavoidable because that is inherent in detention. But lawful detention does not deprive a person of his Article 3 rights. Indeed, Article 3 imposes on the relevant authorities a positive obligation to ensure that all prisoners are held under conditions compatible with respect for human dignity, that they are not subjected to distress or testing of an intensity that exceeds the level of unavoidable suffering concomitant to detention. The health and welfare of prisoners must be adequately assured. (6) If it is alleged that the conditions of detention infringe Article 3, it is necessary to make findings about the actual conditions suffered and their cumulative effect during the relevant time and on the specific claims of the complainant. (7) Where prison overcrowding reaches a certain level, lack of space in a prison may constitute the central element to be taken into account when assessing the conformity of a given situation within Article 3. As a general rule, if the area for personal space is less than 3 metres², the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3: (see the ECtHR judgment of **Ananyev v Russia** (Applications Nos 425/07 and 60800/080910) of January 2012,

referred to at [9] of **Florea v Romania [2014] EWHC 3538 (Admin)** (“**Florea**”). (8) However, if overcrowding itself is not sufficient to engage Article 3, other aspects of the conditions of detention will be taken into account to see if there has been a breach. Factors may include: the availability for use of private lavatories, available ventilation, natural light and air, heating, and other basic health requirements.

The legal principles with regard to extradition, prison conditions in Contracting States to the ECHR and Member States of the EU and whether Article 3 is engaged, have been recently restated by this court in **Krolik (and others) v Several Judicial Authorities in Poland [2013] 1 WLR 490**. There is no need to reconsider earlier authorities in this area. We can summarise the relevant principles as follows: (1) member states of the Council of Europe are presumed to be able and willing to fulfil their obligations under the ECHR, in the absence of clear, cogent and compelling evidence to the contrary. (2) That evidence would have to show that there was a real risk of the requested person being subjected to torture or inhuman or degrading treatment or punishment. (3) This presumption is of even greater importance in the case of member states of the European Union. In such cases there is a strong, albeit rebuttable, presumption that EU member states will abide by their Convention obligations. Each member state is entitled to have confidence that all other EU states will abide by their Convention obligations. (4) The evidence needed to rebut the presumption and to establish a breach of Article 3 by the EU member state (our emphasis) will have to be powerful.”

33. Article 3 arises in this case as Romania is required to provide an assurance that if extradited Mr Ciuriuc will serve his sentence in a prison establishment that complies with his Article 3 rights. Mr Ciuriuc has not formally raised a challenge under Article 3 but it is necessary for me to consider it nonetheless.

34. An assurance issued by **Commissioner of Correctional Police Dr Dan Halchin General Director National Administration of Penitentiaries** dated

4 March 2023, together with the English translation has been provided. I am satisfied that this demonstrates sufficiently that Mr Ciuriuc will be detained at an Article 3 compliant prison establishment and I am satisfied that this assurance is sufficient for me to be sure that his Article 3 rights will be met if he is extradited.

Article 8 – right to respect for private and family life

LAW

35. The general principles in relation to the application of Article 8 in the context of extradition proceedings are set out in a number of decisions of the higher courts including:

- i. **Norris v Government of the USA (No.2)** [2010] UKSC 9, [2010]
- ii. **HH** [2012] UKSC 25.
- iii. **Celinski and others v Slovakian Judicial Authority** [2015] EWHC 1274 (Admin)

36. A detailed consideration or rehearsal of those decisions is unnecessary in this judgment. It is accepted by the parties that I must conduct a balancing exercise to determine whether extradition would amount to a disproportionate breach of Mr Ciuriuc's Article 8 rights and in doing so I should list the competing balancing factors.

37. In order to find that ordering extradition would be disproportionate I would have to find that the consequences of extradition could be characterised as “*exceptionally serious*” (per Phillips LJ in Norris at [56]) or “*exceptionally severe*” (per Hale LJ in HH at [8]). I would need to be satisfied that there are “*very strong counter-balancing factors*” (per Celinski at [39]) which outweigh the high public interest in extradition.

The issue of fugitivity

38. In **Wisniewski v Romania (2016) EWHC 386(Admin)**, the High Court ruled that ...`*fugitive status is where a person has knowingly placed himself beyond the reach of a legal process*’ In the recent authority of **Ristin v Romania [2022] EWHC 3163 Admin** Fordham J (at paragraph 23) approved the finding of the first instance Judge in **Ristin** that the core principle that flowed from **Wisniewski** is:

A person who has knowingly placed himself beyond the reach of a legal process is a fugitive. It is for the requesting state to establish fugitive status to the criminal standard. It must be shown that the requested person deliberately and knowingly placed himself beyond the reach of the relevant legal process.

The position of Mr Ciuriuc on fugitivity

39. Mr Ciuriuc’s submits that he was not a fugitive and points to the following matters to demonstrate this:

- i. He was not arrested nor charged with the offences;
- ii. There is no evidence that he was aware of the any of the court hearings;
- iii. It has not been unequivocally established that he was summonsed in person to any hearing;
- iv. The further information lends support that it was simply that the Romanian requirements of service were satisfied rather than actual personal service having taken place been established;
- v. For the later proceedings in Romania he was subject to bail conditions in the UK extradition proceedings and so could not have been present in person in Romania.

The position of the judicial authority on fugitivity

40. The judicial authority makes no positive assertion that Mr Ciuriuc is a fugitive.

Analysis

41. To determine whether the judicial authority has made me sure that Mr Ciuriuc deliberately and knowingly placed himself beyond the reach of the Romanian legal process it is necessary for me to make findings of fact regarding the issue of fugitivity.

42. Having considered the evidence before me I make the following findings of fact:

- i. I am not satisfied that Mr Ciuriuc was aware that he was to face prosecution for the offences.
- ii. It is clear that there was overlap between the conclusion of the Romanian proceedings and the previous extradition proceedings where the JA must have known or should have known he was on bail in the UK regarding those proceedings.

43. Accordingly, I do not proceed on the basis the Mr Ciuriuc is a fugitive.

The position of the judicial authority regarding Article 8

44. From the opening note and submissions made at the hearing the judicial authority relies on the following points in support of extradition:

- i. The constant weighty interest in the United Kingdom upholding its treaty obligations;
- ii. The principles of mutual trust and confidence;
- iii. The sentence to be served is lengthy;
- iv. The offending is repeated and shows a disregard for the law

The position of Mr Ciuriuc

45. From his proofs of evidence, oral evidence, witness evidence, skeleton argument and submissions at the hearing it is argued on behalf of Mr Ciuriuc that the following points militate against ordering his extradition:

- i. Gravity of offending in the UK the offending listed in the warrant would certainly not merit a custodial sentence of any description and would likely attract no more than a financial penalty. That is a relevant consideration when determining proportionality, particularly given his daughter's age;
- ii. Fugitive status – he is not a fugitive;
- iii. Delay –. There has been a delay of over 5 years from the 2018 offence and over 4 years from the 2019 offences – none of which is attributable to Mr Ciuriuc. In addition he has been forced to incur additional legal costs because of the withdrawn appeal and the new extradition proceedings.
- iv. the impact of extradition on Ms Ciobanu and their daughter A. It is plainly the case that the absence of a father for the first vulnerable years of a child's life will have ongoing ripples in terms of the child's emotional development.

Analysis

46. I have considered the factors listed above when conducting the balancing exercise. I have noted the decision of DJ Callaway in March 2022 that on the factors he considered and the balancing exercise he conducted it would not be disproportionate to order extradition. Of course, that decision is not binding upon me.

47. I agree with DJ Callaway that this is a finely balanced case. The effect on Mr Ciuriuc, Ms Ciobanu and their daughter A will be significant, both emotionally in terms of being physically separated (whether Ms Ciobanu and their daughter A return to Romania with him or not) and on a practical basis in terms of the losing the financial and practical support and care that he currently provides. Of course, it was correctly identified by DJ Callaway that those effects are common to a great many people facing extradition or facing imprisonment for offences committed in the UK and such effects/difficulties do not stand in the way of extradition or imprisonment when it is justified.

48. I further note the principle that the determination of the appropriate sentence is a matter for the country seeking extradition and it is not the place of this court to determine that this court would not have imposed such a sentence and refuse extradition on that basis.

49. Notwithstanding these principles, DJ Callaway described this as a finely balanced case and I agree with that description. However, what has changed since his description of the case in that way in March 2022 is the passage of time of a further (almost) 19 months, the birth of A and the establishment of Mr Ciuriuc as the centre of her life and the cost and no doubt emotional stress upon Mr Ciuriuc and Ms Ciobanu of the appeal proceedings in the earlier case and these new proceedings, coupled with conditional bail. When factoring in those considerations it is, I am satisfied, appropriate to reflect again on the gravity of the offending and take account the disparity of sentence between such offences being committed in the UK and in Romania and in so doing I am satisfied that this is a rare and exceptional case where the effect of extradition upon A would be disproportionate, even taking account of the fact that she would not be left without a primary carer with whom she is familiar.

ORDERS

50. I therefore order the discharge of Mr Ciuriuc under s21(2) EA 2003.

T KING
DISTRICT JUDGE (MAGISTRATES' COURTS)
APPROPRIATE JUDGE (s.67(1)(a)/139(1)(a) of the Extradition Act 2003)
9 October 2023