

Case No: CO/5053/2016

Neutral Citation Number: [2018] EWHC 670 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28th March 2018

Before :

MRS JUSTICE MCGOWAN

Between :

VALERIU COSMIN ARGESANU
- and -
DISTRICT COURT OF HUNEDOARA AND
PETROSANI (ROMANIA)

Appellant

Respondent

Mr Malcolm Hawkes (instructed by **Aneta Maziarz Solicitors**) for the **Appellant**
Mr Nicholas Hearn (instructed by **The Crown Prosecution Service**) for the **Respondent**

Hearing date: 14th December 2017

Judgment

Mrs Justice McGowan:

1. On 4 October 2016 District Judge Branston sitting at the City of Westminster Magistrates' Court ordered this appellant's extradition to Romania on two conviction European Arrest Warrants (EAW).
 - i) **EAW 1 Hunedoara Court of Law**

EAW 1 was issued on 26 May 2016 and was certified on 2 June 2016. It follows the Appellant's conviction at a trial on 31 August and 28 September 2005. It is said he was present at the trial.
 - ii) **EAW 2 Petrosani Court of Law**

EAW 2 was also issued on 26 May 2016 and certified on 2 June 2016. It also relates to a conviction following a trial on 16 May 2005, 22 February 2006 and 30 January 2007. He is said to have been present at that trial.
2. This case is to be dealt with under Part 1 of the Extradition Act 2003.
3. There were six grounds of appeal.
 - i) Section 2 Extradition Act 2003. The failure accurately to particularise both warrants means they are both invalid.
 - ii) Section 21 Extradition Act 2003. Article 8 ECHR. Extradition would be a disproportionate interference with his family and private life rights.
 - iii) Section 14 Extradition Act 2003. The four-year delay between his discharge in 2012 and the institution of these proceedings in 2016 is oppressive.
 - iv) Section 17 Extradition Act 2003. Specialty. Extradition pursuant to insufficiently particularised conduct for which the appellant would be imprisoned would result in a breach of speciality protection. the failure to uphold speciality protection must bar extradition.
 - v) Abuse of process. The Respondent Judicial Authorities' repeated attempts to secure the Appellant's extradition on the basis of incomplete and misleading information amounts to an attempt to usurp the statutory extradition scheme. Extradition pursuant to both warrants should therefore be barred as an abuse of process.
 - vi) Section 21 Extradition Act 2003. Article 3 ECHR. Prison conditions in Romania are so poor as to engage and breach Article 3 of the Convention. In the light of the known breaches of previous assurances to the court, together with misleading information supplied on behalf of the Romanian authorities to the UK courts, no confidence may be placed in the assurances, such as they are, that they will be honoured in practice.
4. On 23 November 2016 Garnham J granted permission to appeal on Ground 1 of his grounds of appeal only. He seeks to renew his application for permission on grounds

2 to 5. He further seeks permission to re-open the renewal application for permission on ground 6, which had been abandoned.

5. Having granted permission on Ground 1, Garnham J found;
 - i) Ground 2 was not arguable, as the Appellant was a fugitive and barred from relying on delay by section 14 EA 2003. That there is no proper argument that there are exceptional circumstances. That there is no properly arguable case that the District Judge's conclusions were wrong.
 - ii) Ground 3. The arguments appeared to be based on observations made in *Edutanu v Romania* [2016] EWHC 864 (Admin) and not on evidence in the court below. There was no evidence to support the contention that Romania would not comply with the relevant specialty arrangements.
 - iii) Ground 4. The DJ had set out the relevant principles, identified the competing considerations and reached an entirely rational conclusion. He had properly taken into account the circumstances of the earlier extradition proceedings and the delay. There was no arguable basis to say he was wrong to come to that conclusion.
 - iv) Ground 5. The DJ's analysis of the abuse argument was "compelling". The re-issue of an EAW by a requesting state is not an abuse.
 - v) Ground 6. This ground could not survive the decision of the Divisional Court in *Mures v Romania* [2016] EWHC 2786 (Admin).
6. The renewal and substantive hearing was adjourned by Sir Stephen Silber at the request of the CPS on 6 February 2017 pending the cases *Alexander v France and Di Benedetto v Italy*. This was opposed by the Appellant. The case was dismissed on 15 June 2017 *Alexander v France, Di Benedetto v Italy* [2017] EWHC 1392 (Admin). The High Court certified a point of law of general public importance,

"Is it ever permissible for a Part 1 warrant which fails to comply with the requirements of section 2 of the Extradition Act 2003 to be corrected through the provision of information extraneous to the warrant?"

7. There was no general stay pending the decision of the Supreme Court. It was not appropriate to adjourn the hearing of this case but it was the safer course to await the decision on the application to the Supreme Court. It has now been announced that the Supreme Court will not accept the case as the applications "do not raise an arguable point of law".
8. The issue at the heart of this appeal is, were both warrants irredeemably flawed by the lack of sufficient accurate particularity?
9. The public interest in compliance with extradition requests is clear. There must be good reasons to depart from the expected course of compliance with such a request. Equally the District Judge in such hearings has the benefit of seeing the witnesses and

the expertise which should be given all due respect. This court should be slow to interfere with findings made in the Magistrates' Court.

EAW 1

10. The incident occurred on 11 December 2004. The trial was heard on 31 August 2005 and 28 September 2005. The appellant was present at the trial. The appellant was convicted of three offences of assault. It was an incident of violence in which the appellant was the initial aggressor, someone else produced a baseball bat which the appellant used to carry out an assault. The baseball bat was then used as a weapon against the appellant and he suffered very serious injury, on any view a great deal more serious than anything he inflicted. The man, Andrei Mihalcea, who attacked the appellant was later convicted of attempted murder.
11. It is said that there are errors in the warrant which appears to show that the appellant was sentenced to two years for his part in this incident. In fact, he was sentenced to an aggregate term of six months for the offences arising out of this incident and another 18 months for a different assault on another occasion altogether in 2002. He was pardoned for that offence. It is not clear but the commission of the offence in December 2004 might have led to that pardon being revoked. The 2004 offences are particularised in the warrant, the 2002 offences are not.
12. EAW 1 is in identical form to an earlier warrant, issued on 27 July 2012 and certified on 24 August 2012. The Senior District Judge refused extradition on that warrant on 15 October 2012. The prosecution did not appeal against that discharge.

EAW 2

13. The trial on this matter spanned 16 May 2005, 22 February 2006 and 30 January 2007. The offence is said to have been committed on 4 May 2005. It appears that the appellant was convicted of an offence akin to criminal damage or similar. He was sentenced to a term of 18 months imprisonment on 15 May 2007. However, that appears to have been expressed as a term of 3 years by the addition of a sentence of 18 months for another assault passed on 17 June 2003 but un-particularised.
14. This warrant was withdrawn on 24 August 2016. It was replaced by EAW 2, issued on 9 August 2016 and certified on 18 August 2016. There is no significant difference in the two versions of the warrant. The second has some little additional detail.
15. On 14 September 2012 the Deputy Senior District Judge discharged that warrant. She found that there was a failure to particularise the conduct for which the Requested Person was wanted to serve a sentence so great as to invalidate the warrant. There was no prosecution appeal against that decision.

MAGISTRATES' COURT HEARING

16. The District Judge gave his decisions in a lengthy and thorough judgment on 4 October 2016. The history of proceedings is set out in very considerable detail and need not be re-stated here. He found that this appellant, having been present at his trials and being aware of outstanding proceedings when he left Romania was a fugitive. That is a perfectly proper conclusion to have reached on the evidence.

17. The District Judge found that,

125. *“I am quite satisfied that EAW 1, as it stands, contains both inaccurate and insufficient information. The information is inaccurate because it appears to state that the sentence of two years’ imprisonment was imposed in respect of three offences of assault, when in fact only a total of six months was imposed in respect of these three offences. The EAW is inaccurate because it states that the warrant relates to three offences when in fact it relates to four offences. [The EAW is also likely to be inaccurate because the Framework list is marked to indicate that it relates to “murder/grievous bodily injury” when it seems to me that such attribution is most probably ill directed at Mr Argeseanu and more properly directed at Andrei Mihalcea who faced a charge of attempted murder. However, I do not consider that an error such as this is relevant to my consideration under section 2].*

126. *The information is insufficient in EAW 1 because it does not give any particulars of the offence and conviction which led to 18 months of the two-year sentence being imposed.*

127. *These omissions and inaccuracies were originally made apparent by the court judgment of 25 January 2006 provided to me by Mr Argeseanu. Ms Bostock was understandably cautious about this material, which was not provided directly to the court by the judicial authority. I have already indicated that I accept the accuracy of the material, but it is important that it is not further information provided by the judicial authority.*

128. *In any event, the judicial authority has now provided its own further, recent information. In that further information, it confirms that 18 months of the two-year sentence is made up of the penalty previously applied by the Petrosani Court of Law (penal sentence no. 499/2003). No further details of the offence underlined that conviction had been provided by the Hunedoara judicial authority.*

129. *It is, clear that the strict rigidity of the House of Lords approach to section 2 in Dabas has been replaced by one of more flexibility. Lord Sumption anticipated this in Zakrewski, when he noted that, whether statements on an EAW cease not to be true then one of the safeguards by which the process is protected would be the correcting of statements by the provision of further information. The more flexible position has been made explicit in Goluchowski. Lord Mance stated both that further information could show an EAW to be valid but also that it could not be right to give effect to an EAW if subsequently obtained information undermines the validity of the warrant.*

130. *In my judgment, I am entitled to consider the judicial authority’s further information in assessing the validity of the warrant. This further information shows that the information on EAW 1 is inaccurate and insufficient in the ways I have described.*

131. *Does the further information itself provide all the necessary information so that I have an accurate picture which accords with section 2? In my judgment, it does not. The further information provided by the judicial authority is scant on detail. It tells me that the penalty of one year and six months imprisonment article 181(1) of the Romanian Criminal Code was imposed. That is about it, though. No particulars whatsoever of that conviction are provided by the Hunedoara judicial authority.*

There are insufficient details of the nature and legal classification of the offence – i.e. I am not told what the name of the offence is (Article 8(1)(d)). There is no description at all of the circumstances in which the offence was committed, including the time, place and degree of participation by Mr Argeseanu (Article 8(1)(e)). I agree with Mr Payter that I am bound by Echimov to demand particularisation of the older activated sentence offence in order to satisfy section 2(6)(b). That has not been done. This is not an empty technicality. It is a requirement, and not an onerous one, the judicial authority.

132. Am I able to ascertain the necessary information from the material I have before me both from EAW 2 and from the court judgment of 25 January 2006 provided to me by Mr Argeseanu? I do not consider that I can. Though the Supreme Court judgments I have referred to allow more flexibility to the examining courts at Westminster to look at further information provided by the judicial authority, the onus remains on the judicial authority to show that a warrant is a valid Part 1 warrant. As was stated in Cando Armas, requested persons are entitled to expect the court to see that procedures are adhered to according to the requirements of the statute. It is their liberty at stake. I do not consider that the Supreme Court in Zakrewski or Goluchowski intended to place any burden on the requested person to provide suitable information to validate an EAW against him. Nor do I think it appropriate to try to shore up a creaking EAW by scrabbling around for information which might be found in a separate EAW issued by different judicial authority, even if from the same member state.

133. The onus is on the judicial authority to demonstrate that the EAW is valid. It does that by properly completing the warrant itself with the necessary information and, where necessary itself providing further information. In my judgment, it is failed to do that with regards to the single offence (penal sentence no. 499/2003) which attracted one year and six months'. In that regard, the warrant does not satisfy section 2(6)(b).

134. Am I able to excise that part of EAW 1 from the three offences of assault which Mr Argeseanu received a sentence of six months? (sic) In my judgment, I am able so to do. I note the decisions of Taylor v Public Prosecutor's Office, Berlin, Germany [2012] EWHC 475 (Admin) and Kubun v District Court of Warzawa, Poland [2012] EWHC 3036 (Admin) to which Ms Bostock has referred me. I note the endorsement of that approach in Edutanu, in which reliance is placed on the Multiple Offences Order. Although the further information from the judicial authority shows that the EAW itself is inaccurate in terms of the sentence passed the three offences of assault, it has corrected that information. I therefore consider that the EAW has provided the necessary statements and information contained in section 2(5) and 2(6) in relation to the three offences contained therein. EAW 1 is valid in that regard

135. I therefore discharge Mr Argeseanu in relation to the penal sentence no.499 of 2003 on EAW 1 for which he received one year and six months imprisonment as the judicial authority has not satisfied section 2 of the EA 2003 and the warrant is not valid to that extent.

136. However, I do consider that the warrant is a valid Part 1 warrant in relation to the three offences of assault for which Mr Argeseanu received a separate sentence of six months'.

137. *If I am wrong about this aspect of the warrant, then I do go on to consider this aspect of the case under section 10 and abuse of process.*

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138. *EAW 2 contains a statement that Mr Argeseanu is been convicted of the offences specified in the warrant by a court in Romania (section 2(5)(a). EAW 2 contains a statement that the warrant is issued with a view to Mr Argeseanu's arrest and extradition to Romania the purpose of serving a sentence of imprisonment brackets section 2(5)(b).*

139. *EAW 2 clearly gives particulars of Mr Argeseanu's's identity (section 2(6)(a)). It also gives all necessarily particulars about domestic warrants issued in Romania (section 2(6)(c)). As a person already sentenced, section 2(6)(d) has no relevance. EAW 2 also makes clear the particulars of sentence which has been imposed, (both the substantive offence and the previously activated sentence). However, issues again arise as to whether section 2(6)(b) has been satisfied.*

140. *EAW 2 purports to relate to one offence, according to the entry in Box E. However, it makes clear that it relates also to the activated sentence (penal sentence no. 499 of 2003) and so actually relates to more than one offence. I do not consider that is this inconsistency invalidates the warrant and the authorities have made it clear I must consider the warrant as a whole.*

141. *The difficulty with EAW 2 again relates to the older offence, penal sentence no. 499/2003. Details are provided in the particulars of that offence. As is accepted on both sides, the EAW simply does not specify the location of the offence involved. Such particulars are necessary, as is observed in *Echimov and Sandi*, to allow the requested person properly to consider and deal with the warrant against him. Even in *Sandi*, where it was suggested that the conviction warrant might require less detail than an accusation warrant, *Hickinbottom J* referred to the need for the warrant contain some information about "when and where" the offences were committed. Article 8 requires the place when offence was committed to be supplied. It is not a difficult requirement for the state to deal with. This judicial authority has failed to provide even that small level of detail.*

142. *Ms Bostock invites me to follow the lead of *Supperstone J* in *Bober*. At paragraph 31 to 34 of his judgment, he states:*

"31 I agree with Mr Hearn that the overall description of the offence allows the court to draw the clear inference, at the very least, some effects of the criminal conduct occurred within Poland

32 First, the conduct engaged the criminal jurisdiction of the Polish criminal courts.

33 Second, the complainant has a Polish name.

34 Third, importantly, the offence occurred during a period of time when the appellant has been convicted of multiple dishonesty offences in Poland."

143. *With all due respect to the learned High Court judge, I must note the admonition of the Lord Chief Justice in Puceviciene and resist the urge simply to follow the facts of another case. I must make my own judgment on the facts before me. The authorities of Sandi and Echimov are clear, as is Article 8. In my judgment, though there may be material which points to the offence having been committed somewhere in Romania, when Mr Argeseanu's liberty for a sentence of 18 months is concerned, it is not appropriate to guess about the offence for which Mr Argeseanu received that sentence in 2003. The judicial authority has not provided any detail as to the location of the offence. This is despite the fact that this was the basis on which the warrant was found to be invalid in 2012. The judicial authority has failed to satisfy section 2(6)(b) in that regard, notwithstanding the four years it has had to get it right. The warrant is invalid to that extent.*

144. *Am I able to excise that part of EAW 2 from the one offence contrary to Article 321(1) of the Penal Code which adequately particularised? (sic) For the reasons I have outlined above in my judgment, I am able so to do.*

145. *I therefore discharged Mr Argeseanu in relation to penal sentence no. 499/2003 on EAW 2 for which he received one year and six months' imprisonment as the judicial authority has not satisfied section 2 of the EA 2003 and the warrant is not valid to that extent.*

146. *However, I do consider that the warrant is a valid Part 1 warrant in relation to the single offence contrary to Article 321(1) of the Penal Code, which for which Mr Argeseanu received a separate sentence of one year and six months'.*

147. *If I am wrong about this, then, again, and I do go on to consider this aspect under section 10 and abuse of process."*

18. The errors and omissions in both warrants are clear and undisputed. The essential question was how far can the court go by analysis and excision to clarify the information in a warrant to achieve something that is accurate and therefore valid? It is clear from the authorities and reinforced in Di Benedetto (supra) that the approach that "anything will do" is not permissible. All member states are bound by the Charter when implementing EU law. The Extradition Act and Article 8 list the mandatory requirements for information to be included. accurate particulars must be included and their omission is fatal to the validity of a warrant. As the court observed in Di Benedetto, at paragraph 75, "*The question in a given case whether the Court is faced with lacunae or a wholesale failure to provide the necessary particulars can only be decided on the specific facts*".
19. The warrants in this case provided the District Judge with information about offences proved against the appellant. They set out details of sentences imposed. No question of the provision of further information to supplement the contents of the warrants arises. Where there was insufficient or inaccurate information the District Judge discharged the appellant. Only on the offences where he found the information to be sufficient, clear and accurate did he order extradition.

20. The District Judge considered the application of the principles of *Edutanu v Romania* [2016] EWHC 124 (Admin) and correctly applied them to the facts as he found them to be. It is his assessment of the clarity of those details on the offences where he granted extradition that is important and to be respected. The court can order extradition on offences which are sufficiently and accurately particularised and refuse on others if there is an absence or insufficiency of accurate information.
21. In this case the District Judge carried out an extremely careful and thorough analysis and concluded that in some instances he had sufficient accurate information to order extradition. It is clear, on his analysis, that where he did not have sufficient or was unsure of the sufficiency of the information he found in the appellant's favour and discharged. That was the correct application of law to fact.
22. There are applications to renew Grounds 2 to 5.
 - i) Ground 2 is based on the engagement of Article 8 rights. The District Judge heard evidence and carefully considered the relevant circumstances. The appellant has a family and his and their lives will be disrupted by his serving these sentences in Romania. This ground could only succeed if it could be shown that the decision of the court below was wrong. There is no basis upon which that ground could succeed. There has been delay in this case, in particular in relation to the discharge and the re-issue of the warrant. That could not have engendered a false sense of security as he knew of the outstanding proceedings and that he was liable to be required to serve some term of imprisonment. There is no ground to interfere with a rational decision based on a full consideration of all the relevant facts.
 - ii) Ground 3 presents some considerable difficulty. The appellant accepts that he is a fugitive, that he was present at his trials and that he left Romania knowing that there were proceedings outstanding against him. He cannot rely upon section 14 in relation to the passage of time. Even if the delay was extended by the failing of the Romanian authorities to seek to re-issue the warrant and he is not responsible for that extension, he is nonetheless prevented from relying on delay. There is nothing exceptional in his case.
 - iii) Ground 4 is also unarguable. There was no evidence before the District Judge to support the contention that the authorities in Romania would not act in accordance with their obligations. There is no basis to challenge the finding of the court. There are s.17 arrangements in place and the presumption in favour of mutual trust in a willingness to comply with such obligations.
 - iv) Ground 5 is based on an abuse of the process. This is inextricably linked to the arguments based on delay and family rights. The mere re-issue of a warrant is not an abuse. This argument was considered at length and dealt with in a rational and well-reasoned judgment.
 - v) Ground 6 was not renewed after refusal by Garnham J. It came back into argument at the substantive hearing. I refuse the application to re-open this ground as there is no basis upon which a section 21 EA 2003 or an Article 3 argument could succeed. Assurances are required from and given by the

Romanian authorities. The position of prison conditions in Romania was dealt with in *Mures v Romania* [2016] EWHC 2786 (Admin).