Elena Iancu, Radu Iancu v The Alba Court of Law, Romania

Case No: CO/5539/2015

CO/5541/2015

High Court of Justice Queen's Bench Division Administrative Court

14 March 2016

[2016] EWHC 537 (Admin)

2016 WL 00890483

Before: The Hon. Mr Justice Cranston

Date: Monday 14th March 2016

Hearing date: 17/02/2016

Representation

Kate O'Raghallaigh and Abigail Bright (instructed by Lansbury Worthington Solicitors) for the Appellants.

Julia Farrant (instructed by The Crown Prosecution Service) for the Respondent.

Judgment

Mr Justice Cranston:

Introduction

1 This is an appeal against the decision of District Judge Jabbitt of 9 November 2015, ordering the appellants' extradition to Romania pursuant to accusation European Arrest Warrants ("EAWs"), certified by the National Crime Agency on 8 June 2015. The appellants are Romanian nationals and husband and wife. Permission to appeal was granted to both by Collins J on the sole ground that the District Judge erred in each case in finding that extradition was proportionate pursuant to section 21A(1)(a) of the Extradition Act 2003 ("the Act") and Article 8 of the European Convention of Human Rights . The appellants' case is that the District Judge was wrong and that their extradition would constitute a disproportionate interference with the rights of their seven year old twins.

Background

2 The surrender of the first appellant, Mr Radu Iancu, is sought pursuant to an accusation EAW issued on 15 January 2015 and is based on a domestic arrest warrant issued on 8 April 2014. Mr Iancu is charged with one offence equivalent to fraud by false representation. This is described in the warrant as follows:

> "Radu IANCU is accused of having mislead (sic) several people during the year 2011 when he signed legal contracts for the provision of tourism services, which the aggrieved parties did not receive from the accused and thus, he caused a total material

> injury of 83,259.7 RON which meets the requirements for the offence of swindling as foreseen by article 244 paragraph 1 of the Criminal Code with the application of article 35 paragraph 1 of the Criminal Code (5 material acts).
>
> The location of the offending was the following localities in Alba County, and in Botosani Counti: Alba Iulia, Teius, Micesti, Aiud, Ighiu, Zlatna, Burcerdea, Vinoasa and Botosani."

3 The value of the alleged fraud, 83,259 RON, is equivalent to some £13000 at today's exchange rate. The warrant states that the offence is punishable with between 6 months and 3 years' imprisonment. The Framework list in the EAW is ticked for swindling.

4 The accusation EAW for the second appellant, Elena Iancu, the first appellant's wife, was issued on 28 January 2015 and is based on a domestic arrest warrant issued on 8 April 2014. Her surrender is sought to face four charges:

> "Elena Mihaela Iancu is accused of having mislead several people during the year 2011 when she signed legal contracts for the provision of tourism services, which the aggrieved parties did not receive from the accused, and thus, she caused a total material injury of 83.259.7 RON which meets the requirements of the offence of swindling as foreseen by article 244 paragraph 1 of the Criminal Code with the application of article 35 paragraph 1 of the Criminal Code (29 material acts).
>
> Elena Mihaela Iancu is also accused that in 2011 as manager of the private limited company, SC EVEREST TRAVEL SRL Alba Iulia, misappropriated the amount of 49,953 RON and 7,925 Euro (a total of 83,259.7 RON) collected from her clients with whom she had signed legally binding contracts for the provision of tourism services and whom she had mislead. This act meets the constitutive elements for the offence of using company credit for contrary purposes, as described by article 272 paragraph 1(b) of Law 31/1990.
>
> At the same time, the accused, as Manager of the company SC EVEREST TRAVEL SRL Alba Iulia, did not pay between June 2010 and August 2011 the dues and withholding taxes with the value of 2071 RON, which meets the constitutive requirements for the offence foreseen by article 6 of Law 241/2005.
>
> Also, as Manager of the company SC EVEREST TRAVEL SRL Alba Iulia during the period July 2010- August 2011 the accused hid the taxable source and caused tort to the state budget with a value of 26,854 RON, an act which meets the constitutive requirements for the offence described by article 9(a) of Law 241/2005."

5 The EAW states that the sentencing range for these offences is as follows: 6 months – 3 years' imprisonment for the offence of swindling; 6 months – 3 years' imprisonment for the offence of using a company credit for contrary purposes; 1 to 6 years' imprisonment for the offence contrary to article 6 of Law 241/2005; and 2 to 8 years' imprisonment for the offence contrary to article 9(A) of Law 241/2005.

6 Before the District Judge, Mr Iancu stated that he travelled to the United Kingdom in December 2011 to take up an offer of employment. In Romania, he was a police officer. The travel company referred to in the EAW was owned by his wife and a friend, but he assisted by talking to customers about their travel plans. Before coming here he and his family lived in Spain for 6 months after leaving Romania. They now live in rented accommodation in Luton. He works as a cleaner for a construction company. Mrs Iancu looks after the three children, a son, 17 years old who attends college, and the twins. Mr Iancu stated that in April 2014 his parents in law told him that the police had attended their address and informed them of a court hearing the following day. He knew nothing official until then. Since then he had been in touch with a lawyer in Romania with the hope of making restitution so that the charges will be withdrawn. At the extradition hearing Mr Iancu stated that he had repaid £12,000 of the amount swindled.

7 In the event of extradition Mr Iancu said that if his wife were extradited he would work part-time to look after the twins. In his witness statement he also said that if both he and his wife were extradited they had no relatives who would be able to look after the twins. In his oral evidence Mr

Iancu said that his father lives in a village in Romania with his wife's parents, who are all elderly. He had not seen his nieces and nephews for 15 years and his brother and sister were not in Romania. He accepted that he and his wife had not made contingency plans for their children's care in the event of extradition. In cross-examination he accepted that his parents in law, supported by other relatives, would step in should there be an extradition order. This possibility had also been discussed with Dr Grange, of whom more later in the judgment.

8 Mrs Iancu did not give evidence at the extradition hearing but no point was taken about this. In her proof of evidence, she reiterated many of the points made by her husband. She stated that she is the primary carer for their children. The twins had become very anxious. Neither of them have a good level of Romanian. There is no-one in the United Kingdom who could care for them in the long term. Mrs Iancu denied the allegations in the EAW.

9 Luton Borough Council's Social Services Department reported on the needs of the twins on 17 July 2015, based on a number of visits to the family by a social worker, who spoke to the parents and children both separately and together. Under the hearing of 'Consent, Visits and Communication' and in response to the question 'Has someone with parental responsibility for the child/young person given consent to contact being made with other agencies?' the report stated that:

> "Mr and Mrs Iancu have refused to give consent to share information. The couple has expressed a view that they do not wish to have a stigma attached to their family. The couple has also stated that involvement with social care is viewed in a negative manner within their community."

10 The social worker highlighted no concerns with the appellant's parenting capacity and commented of the good attachment between them and the children. In the report the parents are recorded as stating that they have the support of Mr Iancu's brother and a family friend, Anna, who lives close by, in the event of extradition. Mr Iancu's brother planed to re-locate to the UK in that event. Anna's contact details are given. In the section entitled 'Assessor's Analysis' the report concluded that, since there is no extended family in the UK and there are no plans regarding the care needs of the children, should an extradition order be made the children will obviously be deemed as children in need. Both parents remained confident that the matter would be dismissed because of the restitution paid. The social worker's assessment was that the 17 year old son was not mature and responsible enough to take on the parenting of his siblings, although he had expressed a willingness to do so. Plans regarding the children needed to be in place prior to the court hearing but the case would be closed until further notification from the courts.

11 Dr Tom Grange, a chartered psychologist and clinical psychologist, was engaged by the appellants' solicitors and prepared a report dated 6 October 2015. He met with the family on 2 October 2015 and conducted telephone conversations with the twins' class teacher. Dr Grange concluded:

> "… in the event both Mr and Mrs Iancu were extradited, I am of the opinion that the impact upon [the twins] would be extremely harmful. [A] would likely suffer severe mental health difficulties and significant educational problems as a result. [B] would likely suffer moderate to severe mental health difficulties. This is because the effect of losing both parents, in combination with a high likelihood of entering the foster care system (well-known to produced mainly poor outcomes for children) would be very harmful. The impact on [A] is expected to be worse than that for [B] as he is already suffering mild anxiety and likely has mild learning difficulties. In the event one parent is able to remain with the children, poor outcomes are still anticipated for both … "

12 In respect of care arrangements in the event of extradition, Dr Grange was told that the twins would stay in the house in the UK with their older brother. Help would be available in the short term from the family friend, Anna. If necessary, Mrs Iancu's mother would travel to the UK to help. Dr Grange reported that Mrs Iancu's brother is also in the UK and lives with the family. He reported that Mrs Iancu had told him that her 17 year old son and her brother would look after the

children if extradition were ordered. However, she had not discussed this issue seriously with her brother.

13 Dr Grange agreed with the social worker that the 17 year old would not be an appropriate carer for his twin siblings. He also excluded Mrs Iancu's brother on the basis that he has no firm plans to stay in the UK and did not report a close relationship with him. Dr Grange also had other concerns about him identified in the report. In relation to the possibility of Mrs Iancu's mother providing care for the children in the UK, Dr Grange stated that this seemed wholly inadequate as she would have to live in a new country, relatively unsupported. There were too many uncertainties about this for it to be a viable option. On this basis he concluded that it would be most likely that the children would enter foster care, a notoriously poor result for children with the risk in this case of the twins being separated and also having to change foster placements over time.

14 Dr Grange also considered the possibility of only one parent being extradited. In his opinion if Mrs Iancu were extradited the emotional impact on the twins would be extremely serious, even if their father remained with them, because she is the primary carer. If Mr Iancu's extradition were ordered the impact of separating the children from their father would still be harmful, a major concern being the financial loss in his absence and the risk of losing the home and having to move school. His absence would also have a negative effect on Mrs Iancu's mental wellbeing and that would affect the twins.

The District Judge's judgment

15 After reviewing the evidence, the District Judge made a number of findings of fact. First, he concluded that Mr and Mrs Iancu knew at the least that there was a high likelihood of civil if not criminal proceedings in Romania but had left the country the same year the allegations were made. Mrs Iancu ran the company and her husband, who worked for the police, assisted. Although Mr Iancu described the company as owing the money to persons who had booked holidays, they had received neither a holiday nor a refund. He was a former police officer and had a working knowledge of Romanian law. Mrs Iancu was responsible for winding up the company, which she failed to do before they left.

16 The judge made these factual findings:

> “49. …Although [Mr Iancu] describes the company as owing the money to persons who had booked holidays and who received neither a holiday or a refund, his wife ran the company as an administrator, and was responsible for winding up the company which she failed to do before they left. Mr Iancu acted as an advisor. The amount involved is quite substantial and the allegations are that the money was obtained fraudulently and tax evasion is also alleged. Mr Iancu has paid £12,000 of the £14,000 owing and he acknowledged he did this to avoid potential conviction and extradition. Neither Mr nor Mrs Iancu have returned to Romania voluntarily to deal with the accusations nor entered any dialogue with the prosecuting authority or the police in Romania, although Mr Iancu has instructed a lawyer to advise him and to facilitate repayment. Mr and Mrs Iancu do not think they will be extradited and have not given any considered thought to what will happen to their children if it occurs. They have not put forward or properly considered all the potential options for their children's care but focused on those that have the most substantial emotional impact on their two younger children. Mr and Mrs Iancu have settled together with their children in this country. The psychological impact on the children of the parents returning to Romania would be substantial, particularly for [A].”

17 The District Judge turned to Article 8 of the European Convention on Human Rights . In light of *Polish Authorities v. Celinski [2015] EWHC 1274 (Admin)* he considered the factors in favour of and against extradition. The family life developed in the UK, the impact on the children of extradition and the fact that most of the money has been repaid were all factors reducing the public interest in extradition. However, although not fugitives the appellants had left Romania in the knowledge that court proceedings would be likely and had not returned to resolve matters. The offences were not trivial. In relation to care for the children, the District Judge found as follows:

> "68. The local authority assessment relies on the discussions with the parents, that although a friend and Mr Iancu's brother can provide care in the short term there is no one who could provide long term care for the children. The conclusion is that they would become children in need and therefore likely to be placed in foster care. Ms Farrant has explored, in these proceedings, the prospect of the children being cared for in Romania by family members, this was not suggested by the parents, but my experience of family law is that there would be a family group conference, if there was no one able to provide care in this country the [local authority] would investigate the issue of kinship care in Romania. Plainly this investigation would not occur unless an extradition order was made. I have found that Mr and Mrs Iancu have not given any considered thought about who would look after their children but also, in my view, are seeking to portray the bleakest possible future for their children, if extradition occurs.
>
> 69. I accept in accordance with Dr Grange's assessment that [A] would be likely to suffer severe mental health difficulties and [B] likely to suffer moderate mental health difficulties if they were separated from their parents and placed in foster care but not to that extent, in my view, if family members were able to provide care. I know that if extradition was ordered in the short term the twins care needs would be met. I do not share the view of Dr Grange that the likely long term outcome for the children would be foster care.
>
> 70. The parents were brought up in Romania and Mrs Iancu's parents and Mr Iancu's father are still alive. They have family ties in Romania and there are relatives on Mr Iancu's side of the family. I do not share Mr Iancu's bleak assertion that the family would not be able to help if they were called upon to do so. In addition, if as Mr Iancu asserts, although I have seen no evidence to substantiate this, he has paid most of the money that the couple/ company owe, it is reasonable to infer that the Romanian court would consider conditional bail as appropriate for either or both of the parents. Indeed, Mr Iancu believes that the charges would be withdrawn when he pays the balance of the money owing, therefore, if this is true, his time with his wife in Romania is therefore likely to be short. The couple will remain on bail for a short time in England and will have the opportunity to consult with their family, as well as the local authority, about a potential placement that will mitigate the emotional harm to their children.
>
> 71. The children's welfare is a primary but not determinative factor and I sympathise with their predicament but I am confident that constructive alternatives to their care, beyond foster care will be available. It is sadly inevitable that the children will suffer some emotional harm if both their parents are extradited, but in the circumstances obtaining in this case I conclude that the harm will not be so exceptionally severe and such an interference with family life that it outweighs the public interest in extradition."

18 In an addendum report dated 27 January 2016, Dr Grange was asked to comment upon aspects of the District Judge's judgment. Ms Farrant took no objection to the admissibility of the addendum report as fresh evidence on appeal. Dr Grange opined that the impact on the twins of separation from their parents would be extremely harmful, whether they were placed with other family members or in foster care. There was the issue of the grandparents' ages. Kinship care placements were not necessarily better than foster placements. Adequate assessment of carers in Romania had not taken place and therefore it was unclear whether any such arrangements would be appropriate. In his view, fostering in the UK remained a highly likely outcome for the twins. He recommended that a social worker give an opinion on the process of kinship placements in Romania.

19 In granting permission to appeal to both Mr and Mrs Iancu, Collins J stated that further evidence from the local authority would be desirable concerning the children's care if both parents or even one were to be extradited, as well as some information about care prospects in Romania. No such evidence from Social Services was before me. Collins J further stated that since the outstanding amounts which were allegedly dishonestly taken had almost been repaid, the Judicial Authority should be requested to indicate whether the charges would be pursued. Ms Farrant has made that request, sensibly also inquiring about the possibility of bail upon surrender. The information had not been received at the time of this hearing. Accordingly, on 17

February I heard arguments from the both sides but postponed judgment so that that information could be available.

20 On 25 February 2016, Judge Ovidiu Toth wrote from the Alba Court to this court:

> "Regarding [the] questions, we communicate the following:
>
> a) to repair the damage caused by the alleged crimes, the two defendants paid the injured persons the amount of 550 euro;
>
> b) the fully paid prejudice is a matter that the court shall consider at the end of the trial and does not affect the extradition request that was made in another purpose;
>
> c) we inform you that the defendants can request the replacement of the preventive arrest with an easier measure, as the judicial control or the judicial control on bail."

21 Following Judge Toth's communication to the court, those acting on behalf of the appellant served an email from Andrei Pacurar to Mr Iancu, dated 4 March 2016. Mr Pacurar states that he is a lawyer at the Romanian bar and that he assists in representing Mr Iancu before the Romanian courts. He states that while Judge Toth is 'technically correct' that €550 has been repaid, it does not represent everything Mr Iancu has paid back to the injured parties. This is because Romanian law permits those charged with fraud to come to an agreement with the injured party to reimburse back, therefore bringing the case to an end and removing criminal liability. For the agreement to be effective before the Romanian courts it does not need to specify the amount of money that has been repaid. It needs only to state the parties have come to the agreement, that civil damages have been paid and that the parties request that criminal liability be removed. Mr Pacurar continues:

> "Radu Iancu is indicted for 5 accounts (sic) of fraud regarding the following injured parties- Tautean Robert, Sarbu Nica Adriana, Dobre Ioan Daniel, Canija Nicolae and Boc Gabriel Flaviu. Radu Iancu has come to an agreement with every injured party, presenting the judge the notary statements for each of them.
>
> Although, not every statement presented to the judge has a mention regarding the actual sum of money that has been returned (because the Romanian Law does not require such information for the agreement to be valid) each and every one of the agreements find that all civil damages have been paid in compliance with Romanian law.
>
> That is the reason why the information the Romanian judge has sent the British authorities indicates that only 500 euros have been returned."

Mr Pacurar states that the Romanian judge does not in fact know the amount of money that has been reimbursed and reiterates that Romanian law does not require the judge to have that information.

22 Ms Farrant for the Judicial Authority submits that the email from Mr Pacurar is not in receivable form. It is an email from a general Gmail address, there are no formal contact or identification details for Mr Pacurar, no information about his professional experience or expertise in Romanian law, and the email has been obtained by Mr Iancu and forwarded to his UK solicitors, with no direct contact between them and Mr Pacurar. Furthermore, Judge Toth has confirmed that the question of repayment becomes relevant only at the conclusion of the criminal trial. Lastly, Mr Pacurar does not specify the amount of money that has been repaid, and it is unclear how the information given by Judge Toth that €550 has been repaid can be "technically correct" in circumstances where sums far in excess of that amount have in fact been repaid.

23 For the reasons Ms Farrant gives, it is not possible for me to have regard to the further evidence of Mr Pacurar as it stands. In my view, however, there is no need for further clarification. The District Judge has made sufficient findings for the disposal of the case. In any event, a further adjournment of this case would be undesirable.

The law

24 The approach of the Divisional Court in *Celinski v. Poland [2015] EWHC 1274 (Admin)* to appeals made on Article 8 grounds is binding on this court. It found that the approach of greatest assistance on appeal was for the District Judge to list the factors for and against extradition and then strike a balance: [17]. Moreover, the single question is whether the District Judge made the wrong decision and only if the court concludes that the decision was wrong should the appeal be allowed. Findings of fact, especially if evidence has been heard, must ordinarily be respected, and in answering the question whether the District Judge, in the light of those findings of fact, was wrong, the focus must be on the outcome: [24].

25 The rare situation where the extradition of both parents is sought has been considered in two cases. One was *HH v. Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25; [2013] 1 A.C. 338* . The first appeal there concerned an EAW where the Italian Judicial Authority sought a husband and wife, the parents of three young children (the youngest was three years old). They had fled to the UK and were convicted in their absence for serious drug offences and sentenced to long periods of imprisonment. The wife had suffered a physical and mental collapse in the UK and the husband was the children's primary carer. There were expert reports about the adverse impact of extradition on the children. Inquiries by the Official Solicitor found that the family members whom the children knew had genuine reasons for not being able to look after them.

26 The Supreme Court upheld the extradition of both parents, although Baroness Hale dissented on the husband's appeal: her reasoning was that the harm to the children would be greater if he were extradited, and the public interest in her extradition was greater because she had greater involvement in the drugs conspiracy: [70]-[73], [79]. In the course of her judgment, Baroness Hale addressed the situation in cases where the extradition of both parents is sought:

> "[83] The cases likely to require further investigation are those where the extradition of both parents, or of the sole or primary carer, is sought. Then the court will have to have information about the likely effect upon the individual child or children involved if the extradition is to proceed; about the arrangements which will be made for their care while the parent is away; about the availability of measures to limit the effects of separation in the requesting state, such as mother and baby units, house arrest as an alternative to prison, prison visits, telephone calls and face-time over the telephone or internet; and about the availability of alternative measures, such as prosecution here or early repatriation."

27 In *A and B v. Central District Court of Pest, Hungary [2013] EWHC 3132 (Admin)* an accusation EAW was issued for both parents of a nine year old child (V) to stand trial for mortgage frauds. There was also a conviction EAW for the mother alone to serve a sentence imposed for some 34 mortgage offences. A clinical psychologist spoke of the incredibly stressful time for the child resulting from the mother's arrest and the breakup of her parents' relationship. There was evidence of domestic violence, some in the child's presence. The local authority's assessment of the family drew attention to the parents' belief that extradition would not be ordered and their reluctance to discuss plans for the future. However, there was no cogent local authority plan as to what was to happen to the child were her parents to be extradited, in particular her mother. The only possible alternative carers were a half brother and a half sister, neither of whom would be able to provide a satisfactory standard of care due to their study and work commitments. The District Judge ordered the extradition of both parents.

28 The Divisional Court (Moses LJ and Mackay J) allowed the appeal by the child's mother and primary carer on the basis that her extradition would be a disproportionate interference with her child's right to a family life. The father's appeal was dismissed. Moses LJ said this:

> "38. I say unhesitatingly that had there been before this court greater detail as to how this child was to be cared for and on that basis more precise predictions as to the effect on the child in the light of that care, I for my part might well have said that both these appellants should be extradited. I suffer from considerable discomfort that the mother

> should escape at least trial for persistent, serious offences. But I have concluded that she, of the two appellants, should not be extradited. There is not enough evidence in this case to demonstrate to me that the undoubted devastating consequences on V will in any way whatever be ameliorated or mitigated. It is in those circumstances and for that limited reason that I am compelled to the conclusion that she should not be extradited and her appeal should be allowed."

29 A and B v. Central District Court of Pest, Hungary was considered by a three judge Divisional Court (Elias LJ, Ouseley and Bean JJ) in *A v. Public Prosecutor for Oldenburg, Germany [2014] EWHC 2517 (Admin)* . There the appellant's extradition was sought to stand trial for an offence of human trafficking. The appellant was the sole carer for her 12 year old daughter who had disabilities and the mental age of a 6 year old. There was no detailed plan from the local authority as to the care for the daughter if extradition was ordered, although it had indicated that it would make all necessary arrangements for her care. Elias LJ held that the Article 8 question was fact sensitive and required a careful and close analysis of the facts. Separation of mother and daughter would cause deep emotional and psychological harm: [55]. He added that the public interest in extradition, coupled with the serious nature of the alleged offences, were powerful factors in its favour that were not outweighed by the interference with the daughter's rights pursuant to Article 8 .

30 Elias LJ held that A and B v. Central District Court of Pest, Hungary did not mean that because the local authority had not responded as to care for a child that meant extradition was disproportionate. He said that he would not be too critical of an overworked local authority social services department since it would focus its attention on immediate problems rather than contingent possibilities which might never arise: [66]-[71]. Elias LJ said:

> "[72] The assessment of the child's Article 8 rights must then be based on the court's best assessment of the likely effects on the child on the basis of the evidence it has. If there is no significant evidence about ameliorating measures before the court, the court should not assume that they will be taken. But here there is a statutory obligation on the local authority if necessary, and in my view the court must assume that it will comply with its duties."

31 A further authority cited to me was *BP v. High Court, Maramures, Romania [2015] EWHC 3417 (Admin)* . There the appellant was wanted to serve a sentence of four years' imprisonment for drug trafficking offences. She sought to resist extradition on the basis that it was a disproportionate interference with her Article 8 rights, and those of her three children. It was submitted on her behalf that the consequence of extradition would be that her two eldest children would go into care in the UK and her baby would go with her to prison initially and then be removed and placed into social services care in Romania. In rejecting the Article 8 ground of appeal I addressed the extent of the obligation on the defence to adduce relevant evidence about care arrangements for children when extradition is a prospect:

> "[54] Finally on the Article 8 point, I would make this comment. Far too often requested persons in extradition cases will invoke Article 8 and ask the court to draw inferences without adducing very relevant evidence which is within their control. This case was typical. The appellant produced a statement from her mother but did not call her as a witness in the case. Her mother supported her daughter's account that she had not known of the proceedings in Romania but did not provide assistance to the District Judge with regard to her ability to care for the two older children for any length of time. Yet the appellant's evidence before the District Judge was that she had left her son with her mother in Romania while she was residing in the UK, forming a relationship with KA. Equally absent was evidence from any members of the appellant's extended family, including the two sisters, one of whom was apparently living in Newcastle. No reason was advanced as to why her sisters did not provide statements. In my view, requested persons must be open with the court about possible assistance for children from the family or elsewhere. In this case the District Judge took the generous view and assumed the worse about alternative care. That may well have been the sensible approach when

> the appellant was being sought to serve a four sentence. However, it is up to a requested person to make the case in relation to the Celinski balance. If deprived of information, a court need not draw inferences of benefit to the requested person."

Laws LJ specifically agreed with this passage.

The appeal

32 On the husband's behalf, Ms O'Raghallaigh contended that there were compelling reasons against extradition and the District Judge had been wrong to order it when it was a wholly disproportionate interference in the twins' lives. The public interest in extradition was greatly reduced when the amount allegedly defrauded had been almost fully repaid. Dr Grange had identified at length the devastating impact on the twins' lives, an ongoing impact which the District Judge had not addressed. Extradition would constitute a wholesale severance of the relationship between the parents and their young twins. Alternative care arrangements through the 17 year old son, the uncle and the family friend, Anna, were unsustainable in the long term. The District Judge had wrongly assumed that adequate kinship arrangements would materialise when there was no evidence to that effect, and Dr Grange's assessment was flawed that foster care was the inevitable destination for the children. Through no fault of the appellants, the local authority had closed its file and not provided evidence of what arrangements would be made either here or in Romania. The District Judge was also wrong to assume that the appellants would be granted conditional bail when there was no evidence to support this.

33 As to the husband's offending, Ms O'Raghallaigh submitted that there had been restitution of the amount defrauded in the one charge he faced. Moreover, it was unclear from the EAW what exactly he was alleged to have done as regards the wife's offending. That did not affect the validity of the EAW but both factors reduced the public interest in favour of extradition. The outcomes in HH and A v. Public Prosecutor for Oldenburg, Germany were explained by the much more serious offending involved in those cases. In Ms O'Raghallaigh's submission, this was not what she described as a "reluctance case" as in BP v. High Court, Maramures, Romania : simply because the appellants had not devised care arrangements for their children should they be extradited did not mean that they were hiding anything. It was irrational for the District Judge to suggest, as he did in paragraph [68] of the judgment, that the extradition order would trigger the local authority's duty under the Children Act 1989 , when that was contrary to the twins' interests.

34 For the mother, Ms Bright endorsed the case Ms O'Raghallaigh had advanced, underlining by reference to the reports of the social worker and Dr Grange the exceptionally severe consequences for both twins should extradition of their parents occur. As to the extradition of the mother alone, who faced more charges than the husband, Ms Bright contended that the cases of the appellants stand or fall together. They had been married for many years and in Romania the husband had assisted his wife in her business. Dr Grange's report demonstrated that the two appellants constituted a seamless parenting unit, the father providing financial support for his family, the mother caring for the twins at home. She was the primary carer, always lived with them, managed most of their care and was generally acknowledged as having a close relationship with them.

Discussion

35 In my view, the District Judge was correct in finding that there was a strong public interest in extradition in this case for the reasons he identified. As regards the weight to be attached to the offending the swindling count, as the District Judge said, involved consumers who thought they were dealing with a reputable travel agent but who were defrauded of money for holidays they had booked. As he noted elsewhere in his judgment, it was relatively recent offending and a not insubstantial sum in total was lost. The warrant itself states that swindling attracts a minimum sentence of 6 months and a maximum of 3 years' imprisonment.

36 As the District Judge correctly noted, while the public interest in extradition always carries great weight, the weight attached to it in a particular case varies with the nature and seriousness of the crimes alleged or committed. On the basis of Mr Iancu's evidence the District Judge found as a fact that £12,000 of the £14,000, which consumers had lost, had been compensated. (At this

stage, Judge Toth may not be aware of the full amount repaid separately to consumers.) As a matter of Romanian law, repayment does not enter the calculation until the end of the proceedings. Nonetheless, in the context of extradition, there is some reduction in the weight to be attached to this charge because of the repayments.

37 But in my respectful view, the District Judge was wrong in not distinguishing the position of Mr and Mrs Iancu. Both EAWs contain the swindling charge, but Mrs Iancu faces three additional charges compared to her husband arising from her role as the manager of the travel company. As the District Judge found, Mr Iancu was only an adviser to his wife, so is not charged with these offences involving the company's administration and winding up. The first of these three charges is based on the same loss as in the swindling charge, that loss being couched as an offence under Romanian Company Law, Law 31/1990. It attracts the same sentencing range as for swindling under the Penal Code. Two are offences under Law 241/2005, concerned with combating tax fraud, and as the warrant indicates these attract higher minimum and maximum sentences (1 to 6 years' imprisonment and 2 to 8 years' imprisonment respectively) than other two sentences in Mrs Iancu's EAW. Whatever the ultimate result of a prosecution, certainly in the case of Mrs Iancu, she must meet allegations of serious offending.

38 On the other side of the balance is the impact of Mr and Mrs Iancu's extradition on the twins. The District Judge's focus was on the extent to which that impact would be ameliorated by the care for the twins which would be available if extradition occurred. In this regard the family did not assist the District Judge, just as they did not assist the local authority social worker. They were burying their heads in the sand and assuming that extradition could be avoided: cf. *BP v. High Court, Maramures, Romania [2015] EWHC 3417 (Admin)* .

39 On the evidence available to him the District Judge was entitled to make the findings he did about care. There was evidence before him of a number of adult family members who would be able to assist in providing care in the event of extradition. In particular, Mrs Iancu's mother was prepared to move to the UK and there was also Mrs Iancu's friend, Anna. Mr Iancu accepted this in cross-examination and the possibility had also been discussed when Dr Grange saw the family. Thus, contrary to Dr Grange's opinion, the District Judge was able to find that a kinship arrangement was likely, albeit that it would not be ideal. Further, the District Judge was entitled to apply his knowledge of family proceedings and to assume that, despite the local authority closing the case, it would fulfil its statutory obligations in respect of the children, should that be necessary, once extradition was ordered. In this respect the District Judge was acting consistently with the decision in *A v. Public Prosecutor for Oldenburg, Germany [2014] EWHC 2517 (Admin)* . Bail is relevant to any interruption in the twins' care by their parents and perhaps the District Judge went too far in inferring that the Romanian court would consider conditional bail as appropriate. However, bail is certainly available, as Judge Toth in his recent communication to this court confirms.

40 There can be no question but that the District Judge was aware of Dr Grange's evidence about this, especially the repercussions for A, and took it into account. However, Dr Grange considered only in passing the differential impact of one parent being able to remain. At one point, he stated that poor outcomes would still be anticipated but did not use the “extremely harmful” language he did in association with both parents being extradited. At another point, he stated that if Mrs Iancu was extradited, that would have an extremely serious impact on the twins, since she was the primary carer, while if her husband was extradited, there would be a marginally less emotional impact, although there would be a financial loss and a possible loss of home and school.

41 In my judgment this is one of those rare cases, contemplated in *HH [2012] UKSC 25; [2013] 1 AC 338* , but rejected by the majority of the Supreme Court because of the seriousness of both parents' offending in that case, when the outcome of the Celinski balance differs between the parents. In my view, contrary to Ms Bright's submission, the cases of Mr and Mrs Iancu do not stand or fall together. I cannot find that the District Judge's conclusion as to the balance of factors in favour of extradition in Mrs Iancu's case was wrong. Hers was serious wrongdoing, and the public interests in favour of extradition in my view outweigh the impact of her extradition on the twins, notwithstanding its seriousness.

42 The position with Mr Iancu is different. There is only one charge and its seriousness is mitigated by the District Judge's finding that he has repaid most of the money the company swindled. On the other side of the balance, the upshot of the evidence seems to be that if Mr

Iancu were to remain and Mrs Iancu extradited, the twins will have at least some stability with their housing and schooling, assuming they do not return to Romania. As I have indicated, I accept the District Judge's general finding that constructive care arrangements will emerge for the twins, come what may. Indeed, in his evidence to the District Judge, Mr Iancu said that if his wife was extradited, he would work part-time to care for them and there was also his evidence about family members stepping in to assist.

Conclusion

43 The result is that with respect to Article 8 ECHR I cannot regard the outcome the District Judge reached for Mrs Iancu as wrong. However, I have concluded that Mr Iancu's extradition would be disproportionate. I therefore dismiss Mrs Iancu's appeal but allow Mr Iancu's.