Neutral Citation Number: [2020] EWHC 1198 (Admin)

Case No: CO/2988/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/05/2020

Before :

MR JUSTICE DOVE

- -

Between :

Daniel Taranenco	**Appellant**
- and -	
Bucharest Secton 1 Court (Romania)	**Respondent**

- -
- -

Ms Louisa Collins (instructed by **Tuckers Solicitors**) for the **Appellant**
Mr Jonathan Swain (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 10th March 2020

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be listed on 13th May 2020 at 1030.

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Approved Judgment

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Mr Justice Dove :

1. This appeal is against the decision of the District Judge to order the appellant's extradition dated 24 July 2019. Permission to bring this appeal was granted by Farbey J on the 27 November 2019. The appellant's extradition to Romania is sought pursuant to an EAW issued on the 19 January 2017 and certified by the NCA on 26 January 2017. The particulars set out in the EAW, which is a conviction warrant, are as follows:

> "b) Decision on which the warrant is based
>
> 1. Arrest warrant or judicial decision having the same effect: IMPRISONMENT WARRANT no. 935 issued on 25.11.2016 by the 1st District Court of Bucharest
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> Type: imprisonment warrant
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> 2. Enforceable judgment: Criminal sentence no. 412 dated 23.05.2016 of the 1st District Court of Bucharest, in file no. 5537/299/2015, final by the criminal decision no. 1765/A/25.11.2016 of the Court of Appeal Bucharest – 2nd Criminal Division.
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> …
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> 2. Length of the custodial sentence or detention order imposed:
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> By the criminal sentence no. 412 23.05.2016 pronounced by the 1st District Court of Bucharest, final by the criminal decision no. 1765/A/25.11.2016 of the Court of Appeal Bucharest – 2nd Criminal Division the court sentenced the Defendant TARANENCO DANIEIL – (son of Costel and Dorina-Camelia, born on 07.03.1980 in Galati, residing in Galati, Str. Cluj no. 11, bl. D5A, sc. 2, et. 1, ap. 26 Galati county, holder of the ID Card GL series no. 438653, personal identification number 1800307170084), as follows:
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> Based on article 396 paragraphs 1 and 2 of Criminal Procedure Code, convicts defendant TARANENCO DANIEL to four-year prison sentence for committing the offense of deception, provided by article 215 paragraphs 1 and 3 of Law no. 15/ 1968, with application of article 5 paragraph 1 of Criminal Code (Act of 30.03.2010, civil party S.C. Unicredit Leasing Corporation IFN S.A.).
>
> …
>
> Based on article 86/5 paragraph 1 in relation to article 85 paragraph 1 thesis 1 of Law no. 15/1968, with reference to article 15 paragraph 2 of the Law no. 187/2012 and with the

application of article 5 paragraph 1 of Criminal Code, cancels the suspension under supervision of the execution of the resulting penalty of 3 years imprisonment applied to the defendant TARANENCO DANIEL through criminal sentence no. 381 13.06.201, pronounced by Galati Court in the file no. 2243/233/2012, final by criminal decision no. 65/19/01/2015, pronounced by the Court of Appeal Galati.

It separates from the resulting penalty of 3 years imprisonment, applied by criminal sentence no. 1381/13.06.2014, in the constituent punishments – 3 years imprisonment and 3 months imprisonment – punishments it brings back in their individuality.

Based on article 86/5 paragraph 1 in relation to article 85 paragraph 1, thesis II and art. 34 paragraph 1 letter b of Law no, 15/1968, with reference to article 15 paragraph 2, Law no. 187/2012 and with their application of article 5 paragraph 1 of Criminal Code, contrains the 4 years imprisonment sentence, applied by this decision, with sentences of 3 years imprisonment and 3 months imprisonment, applied by criminal sentence No. 1381/13.06.2014) hence the defendant TARANENCO DANIEL is to execute the resulting principle of four years in prison. ”

2. The EAW went on to describe that the appellant appeared in person at the trial which pronounced judgement in the case, and to provide the following in relation to whether or not he was personally served with the decision in question:

> “3.4. X – the person was not personally served with the decision, but:
>
> - The person will be personally served with this decision without delay after the surrender, and; and
>
> - When served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and
>
> - The person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be of 1 month.”

3. The offence that is specified in the EAW is described in that document in the following terms:

> "By the criminal sentence no. 412/23.05.2016 pronounced by the 1st District Court of Bucharest, final by the criminal decision no. 1765/A/25.11.2016 of the Court of Appeal Bucharest – 2nd Criminal division.
>
> In fact the court retains the following:
>
> The act of the defendant TARANENCO DANIEL- who, on 30.03.2010, as the sole associate and administrator of S.C. Dani Metcons S.R.L., at the conclusion of the financial leasing contract no. 73549/ Danimetc-1-001, concerning the right of use and possession of the Renault Clio Symbol car with the registration number B-21-UXS, and subsequently, on the occasion of its execution, misled the financing company – the civil party S.C. Unicredit Leasing Corporation. IFN assuming and executing the contractual obligations by appropriating to himself, after the termination of the contract, on the grounds of non-payment of any instalment, the vehicle in question and unfairly using it- meets the constitutive elements of the offense of deception provided by art. 215 paragraphs 1 and 3 of the Criminal Code of 1969.
>
> In law, the court retains the following:
>
> The Court finds that, in law, the act of the defendant TARANENCO DANIEL- who, on 30.03.2010, as the sole associate and administrator of S.C. Dani Metcons S.R.L., at the conclusion of the financial leasing contract no. 73549/ Danimetc-1-001, concerning the right of use and possession of the Renault Clio Symbol sea car with the registration number B-21-UXS, and subsequently, on the occasion of its execution, misled the financing company- the civil party S.C. Unicredit Leasing Corporation IFN assuming and executing the contractual obligations by approaching to himself, after the termination of the contract, on the grounds of non-payment of any instalment, the vehicle in question using it – meets the constitutive elements of the offence of deceitfulness provided by art. 215 paragraph and 3 of the Law 15/ 1968 (according to Article 244 paragraph 1 of the Criminal Code).

4. Following receipt and certification of the EAW, several requests for further information were made of the respondent, leading to further evidence being provided by the respondent relating to a variety of factors affecting the merits of the claim for extradition. Firstly, on the 26 September 2018, the respondent provided further information about the obligations or restrictions which were placed upon the appellant as a consequence of the respondent court's decision. In particular, the following was stated:

> "Was Daniel Taranenco under any obligation to notify the relevant authorities about any change of address? If so, what was the length of such restriction? How would Daniel Taranenco have possibly become aware of such restriction?
>
> Under Penal Sentence no. 1381/13.06.2014 passed by the County Court of Galati and rendered final by penal decision no. 65/19.01.2015 of the Galati Court of Appeal, the defendant has the following obligations among others – to give notice of changing domicile, residence or dwelling, and of any travel longer than 8 days, as well as of their return date; to give notice of and justify changing jobs to provide information and documents of a nature that will make it possible to check into their livelihood.
>
> The obligation to appear before judicial bodies when summoned, with such warning that a bench warrant may be issued against him unless he complies with such obligations or even an arrest warrant if he tries to avoid appearing before the authorities; the obligation to notify in writing any change of address within 3 days, being warned that, in case of failure to do so, any summons and any other documents served on him at the first address are considered to be valid and acknowledged by the addressee, according to the statement given before the court on 15.04.2015.
>
> Generally, do you hold any information according to which Daniel Taranenco might be considered a wanted person?
>
> Upon issue of the Prison Warrant no. 935/25.11.2016 and of order no. 935/25.11.2016 instituting the ban on leaving the county, as issued by the County court of District 1, Bucharest the Police Inspectorate of Galanti County, by its letter no. 125233/BU/CM/12.01.2017, informed us that the defendant was put on a national all-points bulletin (APB) by JGPR no. 137808/29 and that we are asked to launch the demand and start the international search and to issue an EAW against the defendant."

5. Additional information was sought in relation to the history of the criminal proceedings leading to the decision upon which the EAW was based. The respondent was requested to confirm whether the appellant had been acquitted, and what had occurred in respect of an appeal by the prosecutor and subsequent conviction. The questions posed and the respondent's replies were as follows:

> "Was Daniel Taranenco acquitted? The prosecutor lodged appeal. The defendant said he knew nothing of prosecutor's appeal and was convicted.

By Penal Sentence no. 412 passed on 23.05.2016 by the County Court of District 1, Bucharest, the judge ruled as follows on merits of the case:

"Under Article 396(5) of the Criminal Procedure Code in relation to Article 16(1)(b), second thesis from the Criminal Procedure Code, the court decides to acquit the Defendant TARANENCO DANIEL (son of Costel and Doina-Carnelia DOB: 07.03.1980, place of birth Mun. Galati, domiciled in Galati, Str, Cluj, Nr. 1, BI. D5A, Sc. 2. Et. 1. Ap. 26, Jud, Galati, identified with ID card no. GL 438653, national identification number (CNP) 1800307170084, from the charge of deceit as incrimination at Article 215(1) and (3) of 1969 Criminal Code, with the application of Article 5 of the Criminal Code (criminal offence committed on 30.03.2010 – the aggrieved person: S.C. UNICREDIT LEASING CORPORATION IFN S.A.).

The court records that the defendant TARANENCO DANIEL was taken into provisional custody between 29.05.2013 and 27.07.2013 on the basis of the Provision Arrest Warrant no. 95/UP/15.05.2013 issued by the County Court of District 1, Bucharest."

The Prosecutor's Office attached to the County Court of District 1, Bucharest lodged appeal against this decision on 03.06.2016.

By Penal Decision no. 1765/A/25.11.2016 passed by the Bucharest Court of Appeal, 2nd Criminal Division, the court decided as follows:

"Under Article 421(2)(a) of the Criminal Procedure Code, admit the appeals lodged by the appellant PUBLIC PROSECUTOR'S OFFICE ATTACHED TO THE COUNTY COURT OF DISTRICT 1, BUCHAREST, and the S.C. MAX BET S.R.L as party joining a civil action under the criminal proceedings, against penal sentence no. 412/23.05.2016 passed by the County Court of District 1, Bucharest – Criminal Division, in case no. 5537/259/2015.

The court partly dismisses the appealed penal sentence and, upon re-examining the case on its merits:

(…) F. Fully dismisses the decision adopted by the first court on the criminal side against defendant TARANENCO DANIEL. Upon re-examination of the case on its merits, the court decides:

Under Article 396(1) and (2) of the Criminal Procedure Code, convicts the defendant TARANENCO DANIEL to 4 years in

prison for the offence of deceit as incriminated under Article 215(1) and (3) of Law no. 15/1968, with the application of Article 5(1) of the Criminal Code (offence committed on 30.03.2010 against the aggrieved party S.C. Unicredit Leasing Corporation IFN SA.).

Under Article 71(1) and (2) of Law no. 15/1968, with the application of Article 5(1) of the Criminal Code and Article 12(1) of Law no. 187/2012, convicts the defendant to an additional penalty by placing a ban on the rights listed at Article 64(1)(a), second thesis, and (b) of Law 15/1968.

Under Article 865(1) in relation to Article 85(1), first thesis of Law 15/1968, by reference to Article 15(2) of Law 187/2012, and with the application of Article 5(1) of the Criminal Code, cancels the suspension under supervision of the resulting sentence of 3 years in prison inflicted upon TARANENCO DANIEL by penal sentence no. 1381/13.06.2014 passed by the County Court of Galati in case no. 2243/233/2012, rendered final through the penal decision no. 65/19.01.2015 passed by the Galati Court of Appeal.

Divides the resulting penalty of 3 prison years inflicted upon the defendant by penal sentence no. 1381/12.06.2014 into the constituent sentences of 3 years imprisonment and 3 months in prison which are hereby reinstated individually.

Under Article 865(1) in relation to Article 85(1), second thesis, and Article 34(1) (b) of Law no. 15/1968, by reference to Article 15(2) of Law no. 187/2012, and with the application of Article 5(1) of the Criminal Code, merges the 4-year prison penalty inflicted by this judgment with the penalty of 3 years in prison and the penalty of 3 months in prison decided by penal sentence no. 1381/13.06.2014. As a result, the defendant TARANENCO DANIEL will serve the main penalty of 4 years in prison."

6. On 8 October 2018 further information was, again, obtained from the respondent dealing with prison conditions in Romania to which the appellant would be subject were he to be returned. Nothing turns on that information for the purposes of these proceedings. On 10 December 2018 further information was provided relating to the facts and circumstances of the offences which were involved in the criminal proceedings against the appellant. On the 21 January 2019 more information was sent by the respondent in relation to a number of issues concerned with these proceedings. Firstly, bearing upon whether or not the appellant had been notified of the proceedings in relation to the prosecutor's appeal against his acquittal, which was lodged on 2 June 2016, the further information provided as follows:

> "Defendant Taranenco Daniel was absent at the hearing of 09/08/2016. Inquiries in the databases were performed as to the permanent address of defendant Taranenco Daniel and a bench warrant was issued and delivered to the defendant's domicile in Municipiul Galati, str. Cluj nr 11. Bl. D5A, sc 2. Et 1, ap 26, judet Galati, with respect to the hearing date scheduled on 15/09/2016. An official letter was sent to the Bucharest Bar Association to have a public defender appointed for defendant Taranenco Daniel. Further enquiries in the databases were performed as to the domicile of defendant Taranenco Daniel with respect to the hearing date scheduled on 13/10/2016.
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> Defendant Taranenco Daniel was absent at the hearing of 13/10/2016. His public defender answer to the clerk's roll call in lieu. A new bench warrant was issued for defendant Taranenco Daniel on this occasion and delivered to domicile in Municipiul Galati, str. Cluj nr 11, bl. D5A, sc 2, et 1, ap 26, judet Galati, with respect to the hearing date scheduled on 15/09/2016, as well as to the domicile located in Municipiul Galati, str Calugareni, nr, 9, bl. K.4, sc 1, et 2, ap 10, judet Galati, with respect to the hearing date scheduled on 10/11/2016.
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> Defendant Taranenco Daniel was absent at the hearing of 10/11/2016. His public defender answer to the clerk's roll in lieu. At the hearing, the defendant was summoned to appear before this court at all known domiciles via the National Penitentiary Authority, the General Inspectorate of Romanian Police, and by a public display of the summoning letter on the court of law's entrance gate, with respect to the hearing date scheduled on 24/11/2016.
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> Defendant Taranenco Daniel was absent at the hearing of 24/11/2016. His public defender answer to the clerk's roll call in lieu. On this hearing date, the court decides to adjudicate on the matters on the second day, i.e. on 25/11/2016."

7. The material then went on to describe the approach to be taken in relation to an offender who faces penalties for multiple offences. The further information described the approach in the following terms:

> "2. As regards the penalties inflicted for multiple offences (in Romanian: 'concurs de infratiuni') incriminated under Article 86(1) in relation to Article 85(1), Article 33(a) and Article 34(1)(b) of Law 165/1968, if the person convicted by final decision had committed another criminal offence by the time the penal sentence ordering the suspension of the imprisonment sentence by placement of the offender under supervision was

> passed, which made such offences to be concurrent, the provisions of Articles 34 and 35 would have applied in the sense that the heaviest penalty (that could be increased up to its social maximum value) would have been established after individual penalties had been determined for each and every criminal offence considered separately. When any such maximum penalty would not be enough, further increases in sentence would add up. Thus, the concurrence of offences would have permitted to sum up individual penalties and also apply an increase in sentence. Under Article 97(1) in relation to Article 39(1)(b) of the new Criminal Code, as far as multiple offences are concerned, when the penalty previously enforced for any of such offences is suspended from service under supervision, then the heaviest penalty plus one third of the total of all other penalties established would apply after individual penalties had been determined for each and every criminal offence considered separately."

8. The respondent then provided the following information in relation to the approach taken by the court to the imposition of the sentence which is the subject of the EAW:

> "Upon examining the information retrieved after running the background check, the court holds two aspects into consideration:
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> First of all, since the offence being incriminated in this case was committed on 30/03/2010, i.e. before the Penal Sentence no. 1381F/13.06.2014 convicting the defendant to a suspended penalty of 3 years in prison remained final on 19.01.2015, we deal with a plurality, a combination of offences. Therefore, from the legal point of view, the terms of Article 86(1) read in conjunction with Article 85(1) of Law 15/1968 shall apply, in that the suspension ruled for the prison penalty inflicted by Penal Sentence no. 1381 F/13.06.2014 is cancelled; the resulting penalty will then be split into the two individual penalties that made it up in the first place, to be reinstated individually. The punishment to be applied in this case would be added to the two individual concurrent penalties, and their resulting penalty would finally apply.
>
> Secondly, from a criminal point of view, upon examining the defendant's personality and by reference to his criminal record, the court notes that, although he has benefited from the leniency of the judicial bodies, both from having to pay an administrative fine and not serve a penalty, and from receiving a suspended sentence instead of a prison penalty, he persevered in committing offences similar to those committed before. By demonstrating a clear-cut disregard of social rules, his actions turn out to bear a high degree of social risk.

For all these reasons, the Court notes that there is not identifiable circumstance likely to be qualified as a mitigating factor in line with Article 74(1)(a) (for he is known to be a criminal history), b (he made no effort whatsoever to grant relief for the damage caused to the aggrieved party), or c (he kept denying the offence during the criminal prosecution and the pretrial investigations, and failed to appear in court at the hearing dates set during trial in appeal), or paragraph 2 (there is no identified circumstances that might lower the degree of social risk borne by the committed of the defendant's dangerousness) of Law 15/1968, with the application of Article 5(1) of the Criminal Code.

Consequently, the Court will inflict a penalty of 4 years imprisonment, whose length will be oriented towards to special minimum of 6 months in prison stipulated in Article 215(1) and (3) of Law no. 15/1968. The special maximum is 12 years of imprisonment."

9. The final topic covered by this further information was the application lodged by the appellant on 8 October 2018 to set aside judgement in the criminal proceedings. That application was rejected by the court and thus the information confirmed that the decision upon which the EAW was based remained final. The judgment of the court in respect of this application was described in the following terms:

"It turned out upon verification of the summoning procedure during appeal that adjudication on the matters did not take place without the applicant being legally summoned to appear before the Judge.

Therefore, the Court noted that the applicant TARANENCO DANIEL was legally summoned at all this domiciles, as known and communicated, by simple summoning letter and bench warrant, in accordance with the terms of Article 259(1) of the Criminal Procedure Code. Not a single person was identified.

During the appeal proceedings, further checks were made at the detention centre and penitentiary – tome ,1, page 17. The applicant was also summoned at the premises of the General Inspectorate of the Romanian Police.

Three bench warrants were also issued in order to legally summon the applicant – tome 1, pages 191-193. Inquiries were carried out in D.E.P.A.B.D database.

As only one address from those to which summoning letters were directed was retrieved in D.E.P.A.B D database, namely the address from Mun, Galati, the applicant was also summoned through a letter displayed on the court's entrance

> gate. By doing so, the requirements of Article 259(5) from the Code of Criminal Procedure have been fulfilled too.
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> Besides, the Court records that the appellate court made all necessary diligences and identified an address where the applicant lived without holding legal residence documents, located in Bucharest, str. Barometrului. 20, sector 2, to which both a summoning letter and a bench warrant were directed – tome 1, page 306. However, the applicant did not turn up.
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> For as much as was said above, the Court notes that the applicant's claim he had not been legally summoned to appear before the appellate court is neither acceptable nor justified by saying he left Romania after the case was tried on the merits. Not being aware of the provisions of the criminal law cannot be called upon by the applicant *in favourem*, with such consequence of the court adopting a non-final judgment.
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> On the other side, the Court notes that the applicant disregarded the terms of Article 259(2) of the Criminal Procedure Code as he was bound to let the appellant court know he established his domicile in another country.
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> Deriving from the same obligation, to appellate court cannot be blamed for not making inquiries via SIRENE to identify, the applicant as the court had no idea of the country the applicant decided to establish his domicile in.
>
> Consequently, since the applicant failed to demonstrate that he had provided another address for the service of process to the court, and submitted no evidence of his impossibility to appear before the appellate judge, the Court finds this application to set aside the judgment is inadmissible."

10. Finally, on 9 July 2019 the respondent provided material in answer to questions raised about the obligation of the requested person to notify of any change of address during the course of proceedings. The respondent advised that the provisions of the relevant Code provided that the appellant was obliged to inform the court in relation to any change in his address. In support of this contention, the respondent provided a report which was produced on 8 July 2013 during the course of the investigation of the allegations against the appellant in which it is recorded that, in addition to the right to a lawyer, the right to silence, and the right to be informed of the allegation against him, the appellant was informed of the obligation upon him to indicate in writing within three days of any change of dwelling during the course of the criminal proceedings. Further, the respondent provided a statement from the appellant given during the course of the investigation of the matters in which an address in Romania was furnished.

11. On the basis of this material it was contended on behalf of the respondent that the EAW complied with the requirements of section 2 of the Extradition Act 2003 which are set out below. The narrative of events which is relied upon by the respondent, and which it is said is properly particularised in the EAW, is as follows.

12. The first relevant offending with which the appellant was involved related to a company called S C Dani Metcons SRL ("Metcons") of which he was a director. In around 2008 the appellant signed and stamped income certificates as a director of the company which were used by others to obtain bank loans, although he knew that those others had never been employed by Metcons. These activities amounted to offences of deceit and falsification of private deeds. They are known within the proceedings as the Metcons offences. These offences are not particularised in the EAW.

13. The offence which is specified or particularised in the EAW and which is set out in paragraph 3 above is known within the proceedings as the Unicredit offence. It was an offence of deceit.

14. On 13 June 2014 the County Court of Gulati imposed a decision (which became final as a result of the Gulati Court of Appeal decision of 19 January 2015) to impose a sentence of three years imprisonment for deceit and three months imprisonment for falsification of private deeds in respect of the Metcons offences. The sentences were merged to form a sentence of three years imprisonment which was suspended for five years subject to a number of measures related to notification of changes in residence, employment and any travel plans of over eight days. In June 2015 the appellant came to live in the UK.

15. Returning to the Unicredit offences, on 23 May 2016 the County Court of Bucharest acquitted the appellant of the charge of deceit. The prosecution appealed that decision on 2 June 2016, following which there were hearings on 9 August 2016, 15 September 2016 and 10 November 2016 from which the appellant was absent. Bench warrants were issued in relation to him which were served on the domiciles which appeared on the court record. On the 25 November 2016 the Court of Appeal of Bucharest dismissed the decision in relation to the appellant's acquittal and convicted him, thereafter imposing a sentence of four years imprisonment for the offence of deceit. The court then cancelled the suspension under supervision of the sentence of three years which had been previously imposed in relation to the Metcons offences, but proceeded to divide that sentence into its constituent parts of three years and three months and then merged the sentences to arrive at a resulting penalty of four years in prison. It is this decision upon which the EAW is based. As a result of earlier periods that the appellant had spent in custody, the remaining sentence to be served by him under this decision is three years, 10 months and 28 days. On 8 October 2018 the appellant lodged an application to set aside the decision in respect of the prosecution's successful appeal against his acquittal. The Court of Appeal of Bucharest dismissed that application on the 29 November 2018, noting that the appellant had been summoned at all of his domiciles legally without him in fact attending and that the appellant had been bound to let the court know if he had taken up residency in a foreign country.

16. The appellant raises two grounds in this appeal which were also raised before the District Judge. The first ground is that the EAW, taken together with the additional

information that was provided, did not provide sufficient particulars to satisfy the requirements of section 2 of the 2003 Act. The second ground, is that the District Judge erred in concluding that the requirements of section 20 of the 2003 Act were satisfied. In particular, the District Judge was wrong to conclude that the appellant had been deliberately absent from his trial and, furthermore, had incorrectly concluded that the appellant was entitled to a retrial in any event. The detailed submissions raised on behalf of the appellant by Ms Louisa Collins are set out in greater detail below.

17. At the hearing before the District Judge the appellant gave evidence. In relation to the Unicredit offence he indicated that he had left Romania before the court had reached its decision. He accepted in his evidence that he had not notified the court of his leaving Romania as "no one told me to notify the court and I had no obligation to live in the country". He did not give his lawyer any contact details or address as she was state appointed on a rota and not specifically allocated to him. On behalf of the appellant it was submitted that the EAW was defective in that it purported to relate to the single Unicredit offence but, when read as a whole, it was clear that it also related to the Metcons offences which were not particularised in the EAW, nor was any information in relation to those matters provided. The conclusions of the District Judge in respect of that contention are set out as follows in her judgement:

> "36. It is true that the EAW relates to single offence of deceit, for which Mr. Taranenco was sentenced to four years imprisonment. However, the EAW clearly indicates that this sentence (for the UniCredit offence) has been merged with a sentence previously imposed for the Metcons offences. It states that based on provisions of the Romanian Criminal Code (set out in full in the EAW) a previous sentence of three years imprisonment suspended for five years in respect of two offences of deceit and falsification of private deeds (the Metcons offences) have been activated and divided into its constituent parts, namely three years imprisonment for the deceit offence and three months imprisonment for the falsification of deeds offence. It "constrained" the four-year sentence (imposed for the UniCredit offence) with the three year and three month sentences and apply the relevant parts of the Criminal Code Mr. Taranenco is to "execute" the resulting "principle sentence" of four years imprisonment. The Further Information clarifies that the three year and three month sentences, which were originally suspended sentences, were activated and merged with the four-year sentence which resulted in a "main penalty" of four years imprisonment (Further Information 15 September, page 15).
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> 37. First it is clear from the EAW that a composite sentence has been imposed. The previous suspended sentence for the Metcons offence has been merged with the sentence for the UniCredit offence to reach a final "principle" sentence of four years imprisonment.

> 38. Second, sufficient particulars of the UniCredit offence are provided in the EAW. In my view there are also sufficient particulars of the Metcons offences, which are provided in a combination of the EAW and Further Information. These include:
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> a. The date of lower court decision (13 June 2014 made by the County Court of Gelati)
>
> b. The date the decision became final (19 January 2015 made by the Gelatai Court of Appeal [Further Information 26 September 2018, page 11]. "

18. Amongst the other matters that the District Judge went on to consider were the issues raised on behalf of the appellant in relation to section 20 of the 2003 Act. The issues which the District Judge had to assess were, firstly, whether the respondent had satisfied her to the criminal standard that the appellant was deliberately absent from his trial. The second issue arising was whether or not the District Judge was sure, if she were wrong on the first issue, that the appellant would have a right to a retrial or appeal upon return pursuant to section 20(5) of the 2003 Act. Finally, she had to determine whether or not if she were wrong in relation to this second issue that the requirements of section 20(8) of the 2003 Act were satisfied. Her conclusions in relation to these issues are set out as follows:

> "57. First, on the basis of the evidence before this court, I am satisfied that Mr Taranenco was deliberately absent from his trial:
>
> a. "Trial" in section 20(3) of the 2003 Act must be read as meaning "trial which resulted in the decision" in conformity with article 4a paragraph 1.(a)(i) (see "Cretu" above). It is clear from the CJEU decisions above the trial in this context is the hearing at which a final ruling of guilt and imposition of sentence takes place. In this case the relevant hearing took place on 25 November 2016 when the Bucharest Court of Appeal overturned the acquittal and imposed a sentence of 4 years in prison. It also cancelled the suspended sentence in the Metcons offences and divided that sentence into its constituent sentences which are reinstated and merged with the sentence of 4 years. It is accepted by the Judicial Authority that Mr. Taranenco was not present at this hearing.
>
> b. An accused must be taken to be deliberately absent from his trial if he has been summoned as envisaged by article 4a in the manner which, even though he may have been unaware of the scheduled date and place, does not violate Article 6 ECHR. In this case summonses were sent "in person" to all of Mr Taranenco's known addresses. In addition, in rejecting Mr Taranenco's application to set aside conviction the Court of Appeal stated: "Therefore the Court notes that the applicant Taranenco Daniel was legally summoned at all his domiciles,

as known and communicated by simple summoning letter and bench warrant, in accordance with the terms of Article 259(1) of the Criminal Procedure Code". Although Mr Taranenco may not have been aware of the appeal hearing, the court had taken proper steps to inform him of it.

c. Mr Taranenco was told on 8 July 2013, in relation to the UniCredit offence, of his obligation "to inform", in writing, within three days, any changes to his address during the criminal trial. He had signed receipt of this information, in the presence of his lawyer. In addition, the Further Information of 9 July 2019, signed by the "delegated judge" Timofte Irina, confirms that Article 2(2) Romanian Code of Civil Procedure requires a party, summoned at one address, who changes their address "in the course of proceedings" to inform the court of the change. Judge Irina explicitly states "If the party fails to do so [notify the court of change of address] the summoning procedure for the same court is valid at the old summoning place, resulting not only [stet] that the Requested Person is liable to inform the court about the change of address". The usual principles of mutual trust and cooperation under which the EAW framework operated apply. Judge Irena is clear that Mr. Taranenco was liable to inform the court of his change of address and I accept her description of Romanian law and procedure at face value. I am satisfied Mr Taranenco was aware of this obligation and that it lasted at least until the conclusion of his criminal trial.

d. Nevertheless, on his account, Mr Taranenco left Romania in June 2015, long before the lower court reached its verdict on the UniCredit offence, which took place on 23 May 2016. When he left Romania, on his own account, he did not provide a UK address to the court, to the police or to his lawyer. He was thus in breach of his obligations. His suggestion that the court could have found out his address by contacting his probation officer in the Metcons case was unhelpful. He discovered the lower court's decision to acquit him on an internet site in 2016. In failing to provide his contact details to the court he deliberately avoided receiving the court decision. In particular, it seems, the prosecution has a right of appeal against acquittal in Romania. His assertion that he was unaware of this, is undermined by his failure to provide the court with the means to provide him with information of this kind.

e. The Bucharest Court of Appeal have made it clear that Mr. Taraenco was bound to let the appellate court know that he was living outside the jurisdiction, stating: "On the other side, the Court notes that the applicant disregarded the terms of Article 259(2) the criminal procedure code as he was bound to let the appellate court know he established his domicile in another

country." (page 9 Further Information dated 21 January 2019). Again, I accept the views of a Higher Romanian court, on its own law and procedure. I am satisfied that Mr Taranenco was required to let the appeal court know that he had left Romania, a requirement he did not comply with. He had done so, I have no doubt he would have received the summonses properly sent to him.

f. The Bucharest Court of Appeal conducted its own investigation into whether Mr. Taranenco was properly been summoned to court. In October 2018 Mr Taranenco applied for his appeal to be "annulled" and in determining the application the court considered whether he had been properly summoned in that this had been done in accordance with domestic law and procedure. The appeal court would likely have had significantly better information than is before this court upon which to make its finding, including the "tome" or court file. The clear and unequivocal finding of the Appeal Court that he had been properly summoned to the hearing in which the prosecution appeal was determined, that is in accordance with domestic law and procedure, attracts significant weight.

58. Second if I am wrong about this, I am satisfied that Mr. Taranenco has a right to a retrial or appeal within the terms of section 20(5) EA 2003.

a. The EAW unequivocally states Mr. Taranenco's position on surrender. In particular that he will be provided with a copy of the court's decision and expressly informed of his right to a retrial or appeal in which he had the right to participate and which allows the merits of the case, including fresh evidence to be examined and which may lead to the original decision being reversed. He will be informed of this right within one month of his surrender he can request the retrial or appeal.

b. Whilst it is for the requesting state to satisfy the court to the criminal standard that Mr. Taranenco has a right to a retrial or appeal within the terms of section 20(5) EA 2003, as Lord Justice Burnett states above, the burden of proof will be discharged to the requisite standard if the information required by article 4a is set out in the EAW. In this case the EAW clearly states that, on surrender, he will be provided with a copy of the court decision without delay and informed of his right to re-trial or appeal. There is no indication in the Further Information that this procedure has changed in light of events subsequent to the issue of the warrant.

c. Following his arrest on the EAW Mr. Taranenco made an application to "annul" the relevant decisions. This does not lead me to conclude he had already exercised his right to (or to apply for) a retrial or appeal. The application was made from

> the UK. Mr. Taranenco was not present at the hearing of the application and it is reasonable to assume he did not seek to establish with evidence his reasons for his absence from the appeal hearing. The application was made without Mr. Taranenco having available the judgment dealing with conviction and sentence. These circumstances are substantially different from those circumstances likely to exist upon surrender, not least because Mr. Taranenco would be present at the hearing and able to provide an account.
>
> d. The decision of the Appeal court was made on a narrow basis namely whether he had properly been summoned to his hearing. I have been given no reason to believe that the Judicial Authority will refuse to allow Mr. Taranenco to exercise his right to apply for a re-trial, as stated in the EAW.
>
> 59. Third if I am wrong about this and the application to "annul" the relevant decision is regarded by the Romanian courts as the exercise of his right to (or apply for) a retrial or appeal then section 20(8) has been complied with.
>
> a. It is settled law, that Member States must be permitted to regulate their own proceedings by imposition of their own rules and that whilst Section 20 may create entitlements the Romanian authorities are entitled to set parameters within which such rights are exercisable. Whether Mr. Taranenco meets the evidential pre-conditions to obtaining a re-opening of the case and the calling of new evidence is a matter for the Romanian authorities.
>
> b. If the "annulment" application is considered to be the exercise of his right to apply for a retrial or appeal then it is a right which clearly was available to him in law in compliance with section 20(5) and which he has already exercised.
>
> c. The fact that an Appeal Court has found that the parameters set by domestic law has meant that he has failed to meet the pre-conditions for re-opening his case, does not mean these were not available to him."

19. As a consequence of these and other conclusions reached by the District Judge she formed the view that the appellant's extradition should be ordered.

20. The provisions of section 2 of the 2003 Act set out the requirements for an arrest warrant to be the basis of a valid extradition process. Failure to comply with these provisions invalidates the warrant. The relevant parts of section 2 dealing with a conviction warrant of the kind concerned in the present case are as follows:

> "2 Part 1 warrant and certificate
>
> …

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

(a) the statement referred to in subsection (3) and the information referred to in subsection (4), or

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

…

(5) The statement is one that-

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

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

(6) The information is-

(a) particulars of the person's identity;

(b) particulars of the conviction;

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

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

21. Particular issues have arisen where a warrant is concerned with a merged sentence, in particular a merged sentence in respect of a matter which has not been particularised as the basis of the EAW. The case of *Edutanu v Romania* [2016] EWHC 124 makes clear that particular attention needs to be given to the terms of the EAW in cases of this kind. If the sentence which is the subject matter of the EAW has been added to, or contains a sentence for another matter which has not been particularised (as opposed to being merely aggravated by the existence of the other matter), then the absence of particulars of that matter would be fatal to the validity of the warrant.

22. Turning to the arguments in relation to section 20 of the 2003 Act the relevant provisions of the statute provides as follows:

"20 Case where a person has been convicted

> (1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.
>
> (2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.
>
> (3) If the judge decides that the question in the negative he must decide whether the person deliberately absented himself from his trial.
>
> (4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.
>
> (5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.
>
> (6) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.
>
> (7) If the judge decides that question in the negative he must order the person's discharge.
>
> (8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights-
>
> (a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;
>
> (b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on behalf under the same conditions as witnesses against him."

23. In the light of the decision of this court in *Cretu v Local Court of Suceava, Romania* [2016] EWHC 353, the provisions of section 20 of the 2003 Act are to be construed in the light of *Framework Decision (2002/584/JHA)* as amended by *Framework Decision (2009/299/JHA)* ("the 2009 Framework Decision"). The relevant provisions of the 2009 Framework Decision for these purposes are contained in Art 4a which provides as follows:

> "Framework Decision (2002/584/JHA) is hereby amended as follows:
>
> 1. The following Article shall be inserted:
>
> "Article 4a

Decisions rendered following a trial at which the person did not appear in person

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that a person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:

(i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

And

(ii) it was informed that the decision may be handed down if he or she does not appeal for the trial

Or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

Or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(i) expressly stated that he or she does not content the decision; that the subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.

(3) The judge must-

(a) Order the person's discharge, or

(b) Adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

24. In giving his judgment in the case of *Cretu,* Burnett LJ (as he then was) provided the following interpretation to various aspects of Art 4a of the 2009 Framework Decision and the approach to it in paragraphs 34 to 37 of his judgment:

> "34. In my judgment, when read in the light of article 4 section 20 of the 2003 Act, by applying a Pupino conforming interpretation, should be interpreted as follows:-
>
> i) "Trial" in section 20(3) of the 2003 Act must be read as meaning "trial which resulted in the decision" in conformity with article 4a paragraph 1(a)(i). That suggests an event with a "scheduled date and place" and is not referring to a general prosecution process, Mitting J was right to foreshadow this in Bicioc.
>
> ii) An accused must be taken to the deliberately absent from his trial if he has been summoned as envisaged by article 4a paragraph 1(a)(i) in manner which, even though he may have been unaware of the scheduled date and place, does not violate article 6 ECHR.
>
> iii) An accused who has instructed ("mandated") a lawyer to represent him in the trial is not, for the purposes of section 20, absent from his trial, however he may have become aware of it;
>
> iv) The question whether an accused is entitled to a retrial or a review amounting to a retrial for the purposes of section 20(5), is to be determined by reference to article 4a paragraph 1(d).
>
> v) Whilst, by virtue of section 206 of the 2003 Act, it remains for the requesting state to satisfy the court conducting the extradition hearing in the United Kingdom to the criminal standard that one (or more) of the four exceptions found in article 4a applies, the burden of proof will be discharged to the requisite standard if the information required by article 4a is set out in the EAW.
>
> 35. It will not be appropriate for requesting judicial authorities to be pressed for further information relating to the statements made in an EAW pursuant to article 4a save in cases of ambiguity, confusion or possibly in connection with an argument that the warrant is an abuse of process. The issue at the extradition hearing will be whether the EAW contains the necessary statement. Article 4a is drafted to require surrender if the European arrest warrant states that the prison, in accordance

with the procedural law of the issuing Member State, falls within one of the four exceptions. It does not contemplate that the executing state will conduct an independent investigation into those matters. That is not surprising. The EAW system is based on mutual trust and confidence. Article 1 of the 2009 Framework Decision identifies improvement in mutual recognition of judicial decisions as one of its aims. It also contemplates surrender occurring very shortly after an EAW is issued and certified. To explore all the underlying facts would generate extensive satellite litigation and be inconsistent with the scheme of the Framework Decision. Article 4a provides additional procedural safeguards for a requested person beyond the provision it replaced in the original version of the Framework decision, but it does not call for one Member State in any given to explore the minutiae of what has occurred in the requesting Member State or to receive evidence about whether the statement in the EAW is accurate. That is a process which might well entail a detailed examination of the conduct of the proceedings in that other state with a view to passing judgment on whether the foreign court had abided by its own domestic law, EU law and the ECHR. It might require the court in one state to rule on the meaning of the law in the other state. It would entail an examination of factual matters in this jurisdiction, on which the foreign court had already come to conclusions, but on partial different evidence. None of that is consistent with article 4a of the Framework Decision.

36. Should a requested person be surrendered on what turns out to be a mistaken factual assertion contained in the EAW relating to article 4a, he will not be helpless. He would have the protections afforded by domestic, EU and ECHR law in that jurisdiction. Furthermore, article 4a does not require the executing judicial authority to refuse to surrender if the person did not appear in his trial, even if none of the exceptions applies. No doubt that is because it can assumed that whatever may be the circumstances of a requested person on his surrender, he will be treated in accordance with article 6 ECHR in an EU state.

37. In the event that the requesting judicial authority does provide further information I can see no reason why that information should not be taken into account in seeking to understand what has been stated in the EAW."

25. Against the background of this legal framework it is necessary to examine the submissions made in relation to the two grounds upon which the appeal was brought, and reach conclusions on the arguments made. It is convenient to deal with each of the grounds in turn, starting with the ground related to section 2 of the 2003 Act. In support of her contentions that the EAW did not contain the necessary particulars to

establish compliance with the requirements of section 2 of the 2003 Act, Ms Collins contended that the information provided in response to the requests to the respondent produced material that was unnecessarily complex and incoherent. The material was not at all clear what it meant when it spoke of sentences being brought back in their individuality, or constrained, or merged. The information was not clear in respect of the role that the three year sentence for the Metcons offences had played in deriving the sentence which the appellant was being required to serve: in particular, it was not clear whether that sentence had been aggravated or extended as a consequence of the Metcons sentences, it not being a sentence for which the appellant was wanted under the EAW. In addition, Ms Collins submitted that the information provided was vague and opaque in respect of the acquittal of the appellant in relation to the Unicredit offence particularised in the EAW. The EAW stated on its face that there was an enforceable judgment pronounced against the appellant on 23 May 2016 suggesting that he was convicted on that date and that a "criminal sentence" was pronounced on that date. This material is then contradicted by the further information stating that the appellant was in fact acquitted on 23 May 2016, albeit confusingly the further information also describes the decision of that date as being a "penal sentence". In addition, and building on the concerns set out above about the vagueness of how the four year sentence upon which the EAW was based had been derived, Ms Collins submitted that the terms of the EAW provide no explanation of where the sentence of three years and three months to which it refers came from, and no explanation of the description in the EAW of how the court "constrains" that sentence with the sentence of four years. Ms Collins submits that the further information does not adequately explain that the sentence of three years for deceit is separate from the sentence upon which the EAW is based. The language of the further information in relation to the formulation of the four year sentence to which the EAW is related is, she submits, open to a number of interpretations and the suggestion of the respondent that the sentence imposed on 13 June 2014 does not form part of the four year sentence is not supported by the further information, which refers to the sentences being "merged", leading to the conclusion that there is here a combined sentence and that, in effect, the appellant is wanted to serve a sentence which relates at least in part to an offence which is not particularised in the EAW.

26. Having considered these submissions I am not satisfied that they properly reflect the material comprised in the EAW and the further information furnished by the respondent subsequent to the receipt of the EAW. There is no dispute but that the court is entitled to have regard to further information provided by the judicial authority in considering the contents of the EAW. In my view that material has to be approached in a constructive manner, seeking to identify the sensible meaning of the documentation, bearing in mind that the information is provided in good faith and has been translated. An overly forensic scrutiny of the precise language may obscure, rather than elucidate, the intended meaning. In my view the analysis provided by the District Judge in paragraphs 36 to 39 of her judgment were entirely accurate, once the documentation is read as a whole and constructively. In particular, as the District Judge points out, it is clear that the offence to which the EAW relates is a single offence of deceit, namely the Unicredit offence. The position in relation to the appellant's conviction in respect of that offence is clarified in the further information, namely that he was originally acquitted of the offence, but then on appeal by the

prosecution, the verdict was overturned by the Court of Appeal in its decision of 25 November 2016. Following this conviction the court then proceeded to consider sentence. It cancelled the suspension under supervision of the sentence of three years previously imposed in relation to the Metcons offences, disaggregated that sentence into its original component parts of three years and three months and then determined that it "merges the four year prison penalty inflicted by this judgment [the decision on appeal] with the penalty of three years in prison and the penalty of three months in prison decided by the penal sentence [of 13 June 2014]". As a consequence of this decision "the defendant…will serve the main penalty of four years in prison". As the District Judge concluded in paragraph 38 of her judgment, which is set out in full above and does not require repeating, there were adequate particulars provided in relation to the Metcons offences provided in the EAW and the further information.

27. It follows from this that I am satisfied that the District Judge was correct to conclude that there was no breach of section 2 of the 2003 Act. The necessary particulars were provided to satisfy the requirements of the section in the EAW and the further information. Once that material is understood correctly, the appellant was wanted to serve the 4 year sentence for the Unicredit offence (which was the offence underlying the EAW and specified within it) and that the sentences for the Metcons offences did not extend or add to the sentence for the Unicredit offence but were simply absorbed into it. I therefore dismiss this ground of appeal.

28. The second ground upon which the appeal was brought related to the requirements of section 20 of the 2003 Act. On behalf of the appellant, Ms Collins submitted, firstly, that in the further information the respondent indicates in answer to the questions posed that there is "no data" in relation to whether the appellant is illegally at large and, further "no data" available in relation to whether he was under any restriction to stay in the respondent's jurisdiction. Indeed, as set out above, the further information indicates that the ban on leaving the country was imposed at the time of the decision on 25 November 2016. Secondly, she submits that there was no evidence to suggest that there was any obligation on the appellant to remain in the country following his acquittal and pending the appeal by the prosecution. Thus, the District Judge was wrong to conclude that the appellant was deliberately absent from his trial. Thirdly, she submits that the District Judge was wrong to fail to have regard to the position as it might be perceived by a lay person, namely that the appellant had been in contact with the probation services to whom he had provided details of his whereabouts and having established that he had been acquitted it was unsurprising that he did nothing further to notify the Romanian courts of his address in the UK. Finally, Ms Collins submits that the conclusions which the District Judge reached in paragraphs 58 and 59 in relation to whether the appellant had a right of appeal, or alternatively whether the application for an annulment satisfied the requirements of section 20(8) were based upon unsubstantiated assumptions which did not warrant the conclusions she reached.

29. The starting point to the consideration of this ground must be the question of whether the District Judge's conclusions in relation to section 20(3) of the 2003 Act, and whether the appellant was deliberately absent from his trial. In my view the District Judge's assessment of this issue in paragraph 57 of her decision is unimpeachable. Firstly, as the District Judge noted, in further information provided by the respondent

on 9 July 2019 the following was observed in relation to the relevant provisions of the Romanian law relating to these issues:

> "1. Under article 2 paragraph (2) of the Romanian Code of Civil Procedure. Also, the provisions of this code apply in other matters, to the extent that the laws regulating them do not include contrary provisions, related to article 172 of the Romanian Code of Civil Procedure "If one of the parties changed the place where the party was summond in the course of the proceedings, he/she is obliged to inform the court indicating the place where he/she shall be summoned at the following court hearings, as well as the opposing party by registered letter whose delivery note shall be attached to the case file with the request to notify the court about the change of the summoning place. If the party fails to do so, the summoning procedure for the same court is valid at the old summoning place, resulting that not only the requested person is liable to inform the court about the chance of address."

30. This further information was accompanied by the police report in respect of the Unicredit investigation in which it was noted that the police officer had, amongst other matters, warned the appellant of "the obligation to inform in writing, within 3 days, of any change of dwelling during the criminal trial". As the District Judge noted, it was the appellant's evidence that he left Romania and moved to the UK in June 2015, long before the verdict of the lower court in relation to the Unicredit offence given on 23 May 2016, and in breach of the obligations about which he had been warned. In response to the application made by the appellant to have the judgment of the Court of Appeal of Bucharest set aside in relation to the Unicredit conviction, that court dismissed the application, as set out above, on the basis that the appellant "was bound to let the appellate court know he established his domicile in another country" in the light of the provisions of Article 259(2) of the Criminal Procedure Code. Since he had not provided the appellate court with his new address abroad, and therefore the court had no idea that the appellant was in fact living abroad, the application to set aside judgment failed as the court were satisfied for the reasons which are quoted above that the appellant had been properly served with notice of the proceedings in accordance with the relevant law and procedure. In essence there was ample evidence to support the findings of the judge that the appellant was deliberately absent from his trial.

31. It follows from this conclusion that the District Judge was not wrong to conclude as she did and proceed to consider the case under section 21 of the 2003 Act. In reality, there was no need for her to go on to formulate the alternative conclusions under sections 20(5) and section 20(8). Since my conclusions in relation to the contentions under section 20(3) effectively dispose of the second ground of this appeal I shall state my conclusions in relation to these subsequent and alternative points for the sake of completeness. Firstly, in relation to section 20(5), as set out above, the EAW stated on its face that the appellant would be entitled to seek a retrial in which the merits of his case (including fresh evidence) could be considered and the decision underlying the warrant reversed. As the District Judge concluded, there is no basis to conclude that the application made by the appellant to annul the order of the Court of Appeal

amounted to the exercise of his right to a retrial. It was an application determined on a narrow basis concerned with whether or not the appellant had been properly summoned to the hearing of the appeal. Although Ms Collins contends that there was no basis for the assumption that the District Judge reached that the annulment application was not the application for a retrial, in my view her reasons were clear, that is to say the narrow scope of the determination of the application by the Court of Appeal coupled with the fact that there was nothing to suggest in the further information that this application in any way affected the contents of the EAW.

32. The contentions in relation to section 20(8) arise on the assumption that not only was the appellant not deliberately absent from his trial, but also that the application for annulment was, in truth, his application for a retrial. Was the District Judge entitled to conclude that the requirements of section 20(8) in respect of the right to a retrial or appeal amounting to a retrial? In my view she was, for the reasons that she gave in paragraph 59 of the judgment. The fact that the entitlement to a retrial may be subject to procedural requirements which must be satisfied before the right to retrial arises does not mean that the appellant is not entitled to a retrial or the requirements of section 20(5) and (8) have been breached. The respondent is not precluded from having procedural rules governing the admissibility of an application of a retrial, including as here the question of whether the appellant was not in fact summoned to the hearing in accordance with the relevant law and procedure governing the appeal which led to his conviction. This approach is supported by the decision of the Divisional Court in the case of *Nastase v Italy* [2012] EWHC 3671, in particular in the following paragraphs from the judgment of Rafferty LJ:

> “Conclusions
>
> 41. I accept that since it post-dates the deadline for lodging an appeal an application under article 175 is an out-of-time subsequent appeal lodged during the appeal phase. However as illustrated in *Gradica* and explained by the Court of Cassation in judgment 1805/2010, a person unaware of proceedings, tried in absentia, may obtain restoration of the term to lodge an appeal if he can show that he was not present at the original proceedings. The appellant has no further burden to discharge. Such restoration is excluded only if the judge can on the evidence demonstrate the defendant knew of the proceedings and voluntarily renounced his right to appear or to file an appeal. The judgment also reminds us that Article 175 was amended to comply with dicta of the ECHR and to add safeguards.
>
> 42. An insuperable difficulty confronting the appellant is that UK jurisprudence has consistently found article 175 compatible with section 20. In addition to *Gradica,* in *Ahmetaj* the court said "*under Article 175(2) as amended, a defendant who is absent from his first trial will be granted what may be called a fresh merits hearing without strings or conditions unless he deliberately evaded the trial on the first occasion.*". Notwithstanding some confusion in the documents supplied by the Judicial authority, the court accepted that as the appellant

had never had any contact with the Italian Judicial authorities, and always been represented by a court-appointed defence lawyer, his right to a retrial was unconditional, notwithstanding the theoretical possibility of its refusal. In *Rexha* the prosecutor's office had been unable to guarantee a retrial. Once again the Divisional Court accepted that there was no basis on which the Italian Court or prosecutor's office could resist an application for a retrial and the appellant would have the protection of his Article 6 convention rights if extradited. That the law of a requesting territory requires a requested person to apply for retrial was not found incompatible with s.20 of the 2003 Act in *Benko*.

43. These decisions in my view show a difference between on the one hand an exercise of what one might term pure discretion when considering an application for a retrial (*Bohm)* and the application of the law to the facts in accordance with a criminal code on the other. The latter is the approach of the Italian Court at least since *Daniele v The Governor of HM Prison Wandsworth, The Government of Italy & The Secretary of State for the Home Department* [2006] EWHC 3587 (Admin).

Applying my interpretation of the authorities to the facts in this case, I do not doubt that the Italian Court will comply with the provisions of its own Code and re-open the appellant's case in the appellate phase. He is entitled to a retrial if he can show that he was absent from the original proceedings: *Gradica*. No more is required from the appellant. His entitlement to a retrial is excluded only if the court is satisfied, on the evidence, that he knew of proceedings and voluntarily renounced his right to appear or to file and appeal. Where there is no evidence of his knowledge there is no basis on which his appeal could be excluded. The Italian courts can be expected to apply their own law and decisions of the Court of Cassation. I am fortified in my conclusion to note that the second and third sets of further information contain assurances that the Court of Appeal of Trento in similar cases granted an out-of-time appeal under Article 175 leading, in substance, to a new trial. I remind myself too of the judgment in Case 1805/2010 which supports those assurances.

44. The existence of procedural steps does not remove the entitlement to a retrial. Rather, the Italian authorities must be permitted to regulate their own proceedings by imposition of their own rules. Section 20 may create entitlements, but procedural rules set parameters within which such rights are exercisable. In my view the evidence demonstrates that s.20(5) is satisfied by the provisions recited in the material provided to this court and to the District Judge. I am not persuaded that

> Nastase would be excluded from those protections. I conclude that the District Judge was correct to answer the question set out in section 20(5) of the 2003 Act in the affirmative."

33. In the light of the approach set out in this authority, based on the analysis of a number of previous authorities, it is clear that the conclusions of the District Judge in relation to this issue were correct. Contrary to the submissions made by Ms Collins, the fact that the application for annulment was refused does not demonstrate that the appellant was prevented from being entitled to a retrial. It demonstrates that the court were not satisfied that he met the procedural requirements set out in the domestic law and was therefore excluded from exercising the right; it does not mean that he was not entitled to the right.

34. It follows that I am satisfied that neither of the grounds upon which this appeal has been advanced have been made out and it must be dismissed.