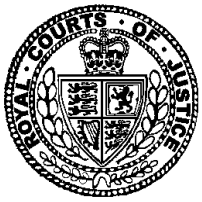

Neutral Citation Number: [2021] EWHC 212 (Admin)

Case No: CO/1472/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/02/2021

**Before**:

**MR JUSTICE SWIFT**

- - - - - - - - - - - - - - - - - - - - -

**Between:**

**ALEXANDRU SIRBU** **Appellant**

**- and –**

**SIBIU COURT OF LAW, ROMANIA** **Respondent**

- - - - - - - - - - - - - - - - - - - - -

**David Williams** (instructed by Sonn Macmillan Walker) **for the Appellant**
**Ben Joyes** (15 January 2020) **Stuart Allen** (14 July 2020) **Helen Malcom QC and Stuart Allen** (12 November 2020) (instructed by Crown Prosecution Service) **for the Respondent**

Hearing dates: 15 January 2020, 14 July 2020 and 12 November 2020

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# Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and others, and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00 am on 8 February 2021.

**MR JUSTICE SWIFT:**

## A. Introduction

1. The surrender of Alexandru Sirbu is requested by the Sibiu Court of Law, Romania pursuant to a European Arrest Warrant ("EAW") issued on 21 May 2018 and certified by the National Crime Agency on 24 May 2018. This appeal is against an extradition order made consequent on the judgment of District Judge McGarva at Westminster Magistrates' Court, delivered on 9 April 2019.

2. This appeal has been heard over three occasions. It originally came for hearing on 15 January 2020. On that day, most matters in the appeal were argued. But it proved necessary to adjourn the hearing to permit the Requesting Judicial Authority the opportunity to serve further information on a matter that arose during the hearing. The hearing resumed on 14 July 2020 and I heard further argument on a new ground of appeal which was added by amendment. The Appellant's application to amend was not opposed by the Requesting Judicial Authority. The hearing was then adjourned once more, this time pending the hearing in the Divisional Court in the case of *Enasoaie v Bacau Court Romania* (CO/3333/2019 and 3404/2019). That court was due to hear argument on whether Romanian law permitted merged sentences (explained below) to be disaggregated or otherwise varied when necessary to comply with the speciality rule. By the end of the hearing in this case on 14 July 2021 it appeared possible that the outcome of this appeal might depend on that point. The final part of the hearing in this appeal took place on 12 November 2020 immediately following the conclusion of the hearing in *Enasoaie*.

3. The EAW in this appeal is a conviction warrant; although issued in respect of a single conviction, the warrant refers to a number of other convictions that were, by operation of Romanian law relevant to the sentence imposed by the court. The information in the EAW has been supplemented by further information provided by the Requesting Judicial Authority: first on 3 December 2020 in response to a request dated 22 November 2018; second on 27 December 2018 in response to a request dated 17 December 2018; and third on 11 February 2019 in response to a request dated 18 December 2018. As I have already mentioned, following the hearing in January 2020 a further request for information was made to the Requesting Judicial Authority. I will explain the circumstances in which that request was made and the information that was provided later in this judgment. Each of the documents provided by the Requesting Judicial Authority in response to the requests has been translated into English. In places, the translations do not make for easy reading. Whether this is the consequence of the quality of the translation, or the style of the original text, it is not possible to say, and in truth does not really matter.

4. The decision on which the EAW is based is a conviction of 14 February 2018 of the Sibiu Court of Law (Conviction No. 21/14.2.18; file number 931/85/2015 – "Conviction 1") this is a conviction for an offence of attempted murder contrary to Article 188 of the Romanian Criminal Code read together with Article 32 of that Code. This conviction resulted in a sentence of imprisonment of 5 years. The EAW then goes on to explain how that sentence has been amalgamated with sentences imposed on the Appellant following other convictions. It is the narrative in the EAW relating to these

matters that gave rise both to the submissions pursued at the extradition hearing before the District Judge, and the grounds of appeal pursued in this court.

5. Drawing together the information contained in the EAW and the information provided subsequently by the Requesting Judicial Authority, the position as at the hearing in January 2020 was that sentences for two other offences had been added to the 5 years' imprisonment imposed in consequence of Conviction 1. This exercise had taken place pursuant to Article 43(2) of the Romanian Criminal Code, which provides in specified circumstances for what is described as the merger of sentences. In this instance the relevant other convictions were as follows:

> (a) *Conviction 318/5.5.13* imposed by the Sibiu Court (file number 10050/306/2012, "Conviction 2") in respect of an offence of indecent exposure and a public order disturbance which resulted in a sentence of 1 year 6 months imprisonment; and
>
> (b) *Conviction 425/31.8.15* also by the Sibiu Court (file number 5557/306/2015 – "Conviction 3") in respect of an offence of destruction of property which attracted a sentence of 2 years 9 months' imprisonment and a public order offence which resulted in a penalty of 9 months imprisonment.

6. When the sentences for Conviction 2 and Conviction 3 were merged with the sentence for Conviction 1, the time added to the five years' imprisonment imposed for Conviction 1 was the equivalent of one-third of the sentences of the imprisonment imposed for Conviction 2 and 3 – i.e., an additional period of 1 year 8 months' imprisonment.

7. Next, further time was added to the sentence to be served by the Appellant in accordance with Article 104(2) of the Romanian Criminal Code. This was by reason of a further conviction for robbery and theft offences (*Conviction 443/20.08.2008*, file number 4113/306/2008, imposed by the Sibiu Court – "Conviction 4"). The original sentence imposed for this conviction had been 6 years. By Article 104(2) of the Romain Criminal Code, if a person serving a sentence is released on parole but commits a further crime during the licence period the remainder of the penalty for the original offence is to be served. In this instance that added a further 885 days to the Appellant's sentence.

8. All this meant that the time to be served by the Appellant for Conviction 1 (5 years), Convictions 2 and 3 (1 year 8 months), and Conviction 4 (885 days, i.e. 2 years 5 months and 5 days) came to 9 years 1 month and 5 days.

9. Allowance was then made for periods of detention already served by the Appellant: (a) from 19 August 2012 to 31 December 2013; and (b) 24 April 2015 to 3 November 2017, such that the time remaining to be serve in Romania as stated in the EAW is 5 years 3 months and 11 days. For sake of convenience, I will refer to this end point as the "merged sentence".

10. At the extradition hearing, the District Judge rejected the three submissions made on behalf of the Appellant: that the EAW failed to comply with the requirements of section 2 of the Extradition Act 2003 ("the 2003 Act"); that the offences referred to in the EAW were not all extradition offences within the scope of section 10 of the 2003 Act; and

that prison conditions in Romania were such that if removed to Romania, the Appellant faced prison conditions that would be likely to amount to ECHR article 3 ill-treatment.

## B. Decision

11. The original grounds of appeal repeat the first two of the contentions made before the District Judge: (a) that the EAW does not comply with section 2 of the 2003 Act; and (b) and that not all the offences referred to in the warrant are extradition offences for the purposes of section 10 of the 2003 Act.

### *(1) The section 2 ground of appeal*

12. By section 2 of the 2003 Act a conviction warrant is required to state that the Requested Person has been convicted of the offence referred to in the warrant and that the warrant is issued with a view to the requested person serving a sentence of imprisonment that has been imposed. The warrant must also contain the following further information: particulars of the Requested Person's identity; particulars of the conviction; particulars of any other warrant issued in the requesting state; and, where the person has been sentenced, particulars of the sentence which has been imposed. By reason of the Extradition Act (Multiple Offences) Order 2003, unless the context requires otherwise, references in the 2003 Act to "an offence" is to be construed as a reference to "offences".

13. The Appellant's case on section 2 comprises two points. *First*, he submits that the sentence for which his return is requested has been insufficiently particularised because there is no sufficient explanation of the sentence of 5 years 3 months and 11 days which the Requesting Judicial Authority says is the sentence he will be required to serve if returned. *Second*, the Appellant submits that there is no sufficient explanation in the warrant of the sentence brought into play by operation of Article 104(2) of the Romanian Criminal Code (i.e. the remaining part of the sentence imposed following Conviction 4). The Appellant further submission is that if the warrant is flawed by reason of either of these matters, that is sufficient to invalidate the warrant because under Romanian law it is not possible to disaggregate any part of the merged sentence.

14. An EAW must meet the requirements of section 2 of the 2003 Act. However, it will not necessarily be fatal if all the information required by section 2 is not on the face of the warrant so long as the information required is provided subsequently by the Requesting Judicial Authority in response to requests for information made to it. This will be sufficient so long as the original EAW is not itself wholly deficient: see *Alexander v Public Prosecutor's Office Marseille District, Court of First Instance, France* [2017] EWHC 1392 (Admin) at paragraph 75. Where the line is drawn in terms of sufficiency of information in the original warrant is matter of evaluation. The reason for flexibility, as explained in *Alexander* stems from Article 15(2) of the Framework Decision.

> "2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may

> fix a time limit for the receipt there of, taking into account the need to observe the time limit set in Article 17."

Taking account of that ability to request further information, including by reference to Article 8 (the provision that is the premise for section 2 of the 2003 Act), and taking account also of the principles of mutual cooperation which underpin the EAW system, a degree of flexibility exists as described at paragraph 75 of the judgment in *Alexander*.

15. In the present case, the warrant is based on Conviction 1. The sentence imposed for that offence was a composite sentence of 9 years 1 month and 5 days. The description of the circumstance of the offence at Part (e) of the warrant includes reference to the treatment of Conviction 4 following the revocation of parole under Article 104(2) of the Criminal Code, and also records the treatment Conviction 2 and Conviction 3 by application of Article 43(2) of the Criminal Code. My conclusion is that the details of the sentence are sufficiently provided and that the application of Article 104(2) of the Criminal Code is sufficiently referenced. Both these matters are then further explained in the further information that has been provided.

*(2) The section 10 ground of appeal*

16. The Appellant's second ground of appeal is under section 10 of the 2003 Act. He submits that one of the offences that comprised part of Conviction 3 is not an extradition offence for the purposes of section 10 of 2003 Act. "Extradition offence" is defined at section 65 of the 2003. The material part of the definition is at section 65(3) and requires: (a) that the conduct complained of occurred in the Category One territory (i.e. in this case, in Romania); (b) that had the conduct recurred in the United Kingdom it would have amounted to a criminal offence; and (c) that a sentence of imprisonment or other form of detention for a term of 4 months or more has been imposed in the Category One territory in respect of the conduct.

17. The offence in issue in this appeal is what is described by the Requesting Judicial Authority as a public order offence for which a sentence of 9 months imprisonment was imposed. The relevant offending behaviour is described as follows:

> "… in order to deliver this decision, the first instance court established that on 15.08.2012 the defendants SIRBU ALEXANDRU IONEL and ANTAL ATILA ALEXANDRU, while in La Fortuna Pub from the Sibiu Municipality, in the presence of several persons, in public, committed certain acts involving insulting gestures and words towards the pub customers, thus affecting principles of morality and making a public scandal."

18. The District Judge considered this point at paragraph 39 of his judgment. When considering whether the behaviour described amounted to criminal conduct as a matter of English law, he referred to sections 4A and 5 of the Public Order Act 1986. His conclusion was that the conduct complained of would have been an offence under

section 4A of the 1986 Act if committed in England. I can find no fault with this part of the District Judge's reasons, although for my own part I would conclude that the matters complained of, while capable of comprising commission of the offence under section 4A of the 1986 Act, more naturally comprised commission of the offence under section 5 of that Act – i.e. use of threatening words or abusive behaviour, or disorderly behaviour, within the sight or hearing of a person likely to be caused harassment, alarm or distress thereby. Be that as it may, it is not a matter of any substance for the purposes of the success or failure of this ground of appeal. My conclusion is that this part of Conviction 3 does amount to an extradition offence for the purposes of the 2003 Act, and that this second ground of appeal fails.

*(3) The new ground of appeal – has the Appellant already served the sentence imposed for Conviction 3?*

19. A further ground of appeal arose in the course of submissions at the January 2020 hearing. The point spotted was that it appeared from information provided by the Requesting Judicial Authority that the sentence imposed in respect of Conviction 3, which had been included in the calculation of the composite sentence imposed following Conviction 1, had already been served.

20. The material part of the further information provided on 3 December 2018 referred first to Conviction 3 itself (reference 425/31.08.2015) and explained how the sentenced passed had been determined. Next it stated that:

> "On 9.12.15 the Sibiu Court issued the imprisonment conviction No. 479/2015."

which I take to be an order consequent on the conviction for offence reference 425/31.08.2015 (i.e., Conviction 3). The information then stated:

> "According to the letter of the Aiud Prison No. A42746/11.12.2015, on 10.12.2015 the Defendant Sirbu Alexandru Ionel was imprisoned under the no. S0148/2015, whereby the Defendant has to serve the sentence during the period from 27.04.2015 to 26.04.2018.
>
> According to the letter no. I2 50181/03.11.2017 issued by the Targu Mures Prison, the Defendant Sirbu Alexandru Ionel was released at full term. According to Law 169/2017, 174 days were deducted."

Finally, the information stated this in the context of File 931/85/2015 (i.e. Conviction 1):

> "At the trial of this file, the Defendant was brought from the Aiud Prison because he was serving the 3-year penalty imposed through the criminal conviction no. 425/2015 delivered by the Sibiu Court of Law until 03.11.2017 when the imprisonment conviction expired, and he was released."

21. I adjourned the hearing in January 2020 to allow the Requesting Judicial Authority to provide clarification. I was concerned to know if the Appellant had already served the 3-year sentence imposed for Conviction 3. On 29 January 2020 the following questions were put to the Requesting Judicial Authority.

> "Considering the extracted text above, and with reference only to 'file 5557/306/2015 of the Sibiu Court … criminal conviction 425/31.08.2015, final through the criminal decision 1140/A/03.12.2015 of the Alba Iulia Court of Appeal':
>
> (a) Please confirm whether there remains a term of imprisonment left to serve in respect of this sentence.
>
> (b) Please explain what is meant by the phrase 'was released at full term'.
>
> (c) Please also explain what is meant by the phrase 'the imprisonment conviction expired'."

22. On 10 February 2020, the Requesting Judicial Authority replied as follows:

> "Following your request for us to give you further information concerning the punishment imposed on Mr. Sirbu Alexandru - Ionel, we hereby send you the answers you requested.
>
> (a) The defendant has finished serving the 3-year prison sentence imposed through the criminal conviction 425/31.08.2015 of the Sibiu Court, delivered in the file number 5557/306/2015. This punishment has been merged with the sentence imposed through the criminal sentence no. 21/14.02 .2018 delivered by the Sibiu Court in the file 931/85/2015 and the served period has been deducted.
>
> We mentioned that the sentenced person SIRBU Alexandru-Ionel has the possibility, at the time of his imprisonment in Romania, to request the deduction, from his prison sentence left to serve, of the period in which he was in provisional detention on the territory of the UK.
>
> (b) The phrase "was released at full term" means that the person deprived of liberty was released from prison on the date on which he fully served the punishment which deprived him of his liberty.
>
> (c) The phrase "the imprisonment conviction expired" has the same meaning as the phrase "was released at full term"."

23. The hearing resumed on 14 July 2020. The Appellant applied to amend his Grounds of Appeal to contend that the merged sentence rested in part on the 3-year sentence given for Conviction 3 which he had already served, with the consequence that returning him to Romania to serve the sentence of 5 years 3 months and 11 days would offend the principle of double jeopardy. The Appellant's submission was to the effect that the merged sentence included elements added for each of Convictions 2, 3 and 4 (the total before deduction was 9 years 1 month and 5 days imprisonment), and that this included an element derived from the sentence passed for Conviction 3, equivalent to 1 year and 2 months. I considered the point to be arguable, and granted permission to amend to add this ground of appeal.

24. At the hearing on 14 July 2020 Mr Allen (who appeared for the Judicial Authority on the second day of the hearing of the appeal) submitted by reference to one passage in the EAW and a further passage in the further information dated 3 December 2018, that any period added by reference to the sentence for Conviction 3 did not represent part of the sentence imposed for Conviction 3, but rather represented a period of uplift added to the sentence for Conviction 1 on the basis that the previous Conviction 3 was regarded as an aggravating factor that should increase the sentence to passed for Conviction 1. I do not accept that submission for the following reasons.

25. The relevant part of the EAW is in these terms:

> "… By virtue of Article 43 paragraph 2 of Criminal Code, the main, complimentary and ancillary penalty – applied through this decision, was merged with the main complementary and ancillary penalties established through the criminal conviction 318/2013 of the Sibiu Court and the criminal sentence 425/2015 of the Sibiu Court; it is ordered that the defendant should serve the main penalty of 5 years of imprisonment plus an increase of 1/3 of the penalties of 1 year and 6 months of imprisonment, 2 years and 9 months of imprisonment and 9 months of imprisonment (namely 1 year and 8 months) and it orders that the defendant should serve a penalty of 6 years and 8 months of imprisonment (total prison sentence)."

The relevant part of further information (dated 3 December 2018) states as follows:

> "In this file [the file relating to Conviction 1] there have also have been taken into consideration a punishments imposed through the criminal convictions no. 318/2013 and 425/2015 of the Sibiu Court of Law and there was imposed a resulting penalty of 9 years, 1 month and 9 days of imprisonment which included the increase of 1/3 from the penalties imposed through the other legal decisions, namely: from the penalties of 1 year and 6 months of imprisonment, 2 years, 9 months of imprisonment and 9 months of imprisonment (namely 1 year and 8 months) and it was decided that the Defendant should serve a total penalty of 6 years and 8 months of imprisonment ."

Thus, the relevant passage in the EAW is to the effect that Article 43(2) of the Romanian Criminal Code provided the legal basis for adding the period of 1 year 8 months to the sentence for Conviction 1.

26. Article 43(2) of the Romanian Criminal Code provides as follows

> "(2) Where before the previous punishment has been served or deemed as served committed several crimes competitors, of which at least one is in a state of recidivism, the penalties laid merge under the provisions relating to competition offences and punishment resulting adding to the previous sentence is not executed or not executed in the remaining part of it

Although the side heading above Article 43 is "Punishment in case of relapse", it is clear from the words used, first that Article 43(2) only applies when the sentence for the previous punishment (on the facts of this case, Conviction 3) has neither been served nor deemed to be served; and second, that the Article operates so that the unserved sentence "merges" with the sentence imposed for the later offence. Thus, Article 43(2) does not provide that an earlier conviction is an aggravating factor for the purposes of setting the sentence to be served for a subsequent offence. Rather, it is a provision about the consolidation of outstanding punishments.

27. The Conviction 1 was declared on 14 February 2018 and became final on 25 April 2018. The further information dated 3 December 2018 records that by 3 November 2017 the Appellant had served the sentence imposed for Conviction 3. All this being so, although the EAW explains the 1 year 8 months added to the sentence for Conviction 1 by reference to Article 43(2) of the Criminal Code, it is difficult to see how that provision came into play, at least in so far as concerns the sentence imposed by Conviction 3 (which came to represent 1 year and 2 months of the consolidated).

28. Mr Allen's submission would have carried significantly more weight had the EAW (or the further information) explained the relevance of Conviction 3 by reference to Article 43(5) of the Criminal Code, which states as follows,

> "(5) If after the previous sentence has been served or deemed as served another crime is committed in a state of relapse special limits of the punishment prescribed by law for the new offences shall be increased by half"

This does provide for increased punishment for a later offence by reason of an earlier offence. However, there is nothing either in the EAW or in the further information provided that suggests that Article 43(5) was applied to the Appellant's case when he was sentenced for Conviction 1.

29. By the end of the hearing on 14 July 2020, save for the point addressed above, the question of whether the merged sentence had incorrectly take account of the sentence the Appellant had already served for Conviction 3, remained unresolved. However, both parties accepted the possibility that if the Appellant's submission on this new ground of appeal was correct, the issue that would then fall for consideration would be whether

under Romanian law it was possible to disaggregate part of a merged sentence if that was necessary to avoid breach of the specialty requirement.

30. The operative part of the 2003 Act is section 17. Section 17(1) prohibits extradition "if … there are no [specialty] arrangements with the category 1 territory"; subsections (2) to (5) then set out the circumstances in which specialty arrangements do exist:

> "(2) There are speciality arrangements with a category 1 territory if, under the law of that territory or arrangements made between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—
>
> (a) the offence is one falling within subsection (3), or
>
> (b) the condition in subsection (4) is satisfied.
>
> (3) The offences are—
>
> (a) the offence in respect of which the person is extradited;
>
> (b) an extradition offence disclosed by the same facts as that offence;
>
> (c) an extradition offence in respect of which the appropriate judge gives his consent under section 55 to the person being dealt with;
>
> (d) an offence which is not punishable with imprisonment or another form of detention;
>
> (e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;
>
> (f) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.
>
> (4) The condition is that the person is given an opportunity to leave the category 1 territory and—
>
> (a) he does not do so before the end of the permitted period, or
>
> (b) if he does so before the end of the permitted period, he returns there.
>
> (5) The permitted period is 45 days starting with the day on which the person arrives in the category 1 territory."

31. As at the time of the July 2020 hearing it was apparent that whether or not Romanian law met the requirements of section 17 of the 2003 Act (and specifically whether

Romanian law included provision for dis-aggregation of merged sentences sentence if enforcement of that sentence would offend against the specialty requirement) was due to be considered by a Divisional Court in appeals CO/3333/2019 and CO/3404/2019, *Enasoaie v Bacau Court, Romania*. I agreed to adjourn this appeal pending the outcome in that case. The Divisional Court heard argument in *Enasoaie* on 11 and 12 November 2020. The remaining part of this appeal was listed for hearing immediately after. On 12 November 2020 the Respondent was represented both by Mr Allen, and by Helen Malcolm QC (who had also been instructed by the Requesting Judicial Authority in *Enasoaie*).

32. When the hearing resumed on 12 November 2020, Miss Malcolm QC made two submissions: first that as a matter of fact, the merged sentence did not include any element that represented the sentence imposed for Conviction 3; and in the alternative, if her first submission failed, that Romanian law was consistent with the specialty requirement at section 17 of the 2003 Act and would permit an application to disaggregate any part of the merged sentence that depended on the sentence imposed for Conviction 3.

33. I am satisfied that Miss Malcolm succeeds on her first submission. She is correct to point out that although the initial part of the calculation of the merged sentence (the part prior to reduction for time served which results in the sentence of 9 years, 1 month and 5 days imprisonment, referred to above at paragraph 8) does include time derived from the sentence for Conviction 3 (which on application of the merger provisions is equivalent to 1 year and 2 months), when allowance is then given for time served, one of the periods allowed (24 April 2015 to 3 November 2017, i.e., 2 years 6 months and 7 days) corresponds precisely to the period the Appellant spent in prison for Conviction 3. In this way, no part of the final merged sentence of 5 years 3 months and 11 days represented time in prison that the Appellant had already served. This approach – including elements relating to Conviction 3 on both sides of the equation – might be open to criticism as a somewhat cumbersome process, but that alone is not a matter of substance because overall, the discount given for time served in the second part of the calculation of the merged sentence was greater than any contribution made by the sentence for Conviction 3 in the first stage of calculation. On this basis I am satisfied that no part of the sentence of 5 years, 3 months and 11 days for which surrender is sought includes or represents any part of the sentence already served by the Appellant for Conviction 3.

34. Mr Williams for the Appellant submitted that it was still unclear whether any part of the sentence the Appellant would be required to serve could be attributed to Conviction 3. Although he accepted that the sentence for Conviction 3 did figure on both sides of the equation by which the merged sentence had been calculated he suggested that the Appellant's position might be better still if the sentence for Conviction 3 was removed from the equation entirely. He proposed that further information be sought from the Requesting Judicial Authority.

35. I do not consider this is necessary for the fair determination of this appeal in accordance with the requirements of the 2003 Act. The application of section 17 of the 2003 Act or some other issue arising from the submission of double jeopardy would only arise as a live issue in this appeal if there was some reasonable basis to consider that surrendering the Appellant to serve the merged sentence entailed surrendering him to serve all or part of a sentence he had already served. For the reasons set out above the merged sentence

does not include any element representing time already served for Conviction 3, the calculation of the merged sentence included full discount for time the Appellant spent in prison following that conviction. Since that is so, the further point raised by Mr Williams, that by some unspecified route some even greater discount might be available, is no more than speculation. Had I not reached that conclusion, the application of the specialty bar at section 17 of the 2003 Act would have been a live issue, but had that been so the observations made on the relevant provisions in Romanian law at the end of the judgment in *Enasoaie* (see [2021] EWHC 69 (Admin), at §§64 – 71) would have applied. On that basis, I would have concluded that no bar to extradition in this case arose by reason of section 17 of the 2003 Act. For all these reasons, the third ground of appeal fails.

## C. Conclusion

36. In the premises, the appeal fails and is dismissed. The extradition order remains valid.