IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2022] EWHC 538 (Admin)

No. CO/3825/2020

Royal Courts of Justice

Monday, 28 February 2022

Before:

THE HONOURABLE MR JUSTICE KERR

B E T W E E N :

ADINA-GABRIELA PRISACARIU

Appellant

- and -

JUDECATORIA SUCEAVA, ROMANIA

Respondent

MR MARTIN HENLEY (instructed by AM International Solicitors) appeared for the Appellant.

MS REBECCA HILL (instructed by Crown Prosecution Service) appeared for the Respondent.

J U D G M E N T

MR JUSTICE KERR:

Introduction and Summary

1. The appellant appeals with permission of Murray J against a decision of District Judge Branston in a reserved judgment given on 15 October 2020 at the Westminster Magistrates' Court to extradite her to Romania to serve a sentence of five years and two months' imprisonment for nine offences.

2. Seven of the offences, committed in 2015 and 2016, are of smuggling hundreds of thousands of cigarettes. The other two offences, committed in April and December 2015, involved driving a car in Suceava, Romania, while disqualified. The second of them also involved the appellant crashing the car and causing injury to three persons.

3. Permission to appeal was, initially, refused on the papers by Steyn J, but was granted by Murray J at an oral hearing on 18 March 2021. For various reasons, it has taken some time for this substantive appeal hearing to take place. The appellant is on conditional bail. The sentence remains unserved.

4. There is also outstanding an application to rely on a further witness statement of the appellant made on 9 January 2022, following a recent social services report from Brent Council ("Brent") - directed by the court to be provided - about the care of the appellant's two-year old daughter. The respondent judicial authority does not oppose that application and I grant it. I have therefore considered that additional evidence.

Facts

5. The appellant is a Romanian citizen from Suceava in the northeast, near the Ukrainian border. She was born on 3 February 1994 and is now 28. In May 2014, the appellant married her then husband. In August 2014, he died in a car accident in which she was the driver. She suffered serious injury. Her licence was retained by the police and not restored to her.

6. The offences the appellant committed, as shown in the relevant European arrest warrant ("EAW"), were in slightly more detail, as follows. First, during 2015, she joined an organised crime group (offence (1)) which carried out many acts of smuggling. Those were as follows.

    (1) in August 2015, transporting 30,000 cigarettes in the amount of 7,000 RON (offence (2)) (in pounds sterling, about £1,180);

    (2) on 12 November 2015, transport of 30,000 cigarettes in the amount of 7,300 RON (offence (3));

    (3) on 25 November 2015, transport of 90,000 cigarettes which she obtained from a co-defendant (offence (4));

    (4) on November 2015, transport of 70,000 cigarettes (offence (5));

    (5) on 7 December 2015, smuggling of 20,000 cigarettes (offence (6));

    (6) on 6 January 2016, transport of 59,960 cigarettes that she subsequently sold to a co-defendant (offence (7));

(7) Also, on 26 April 2015, she drove a BMW car and caused an accident which resulted in property damages and bodily injuries while driving without a licence (offence (8).

(8) On 26 December 2015, driving a car on a street in Suceava, having been disqualified from driving "and at a crossroads, lost control of the car, crossed the carriageway, struck the crash barrier on the left side, overturned at about 7 metres from the road, as a result of which three persons suffered trauma injuries" (offence (9)).

7. According to certain further information provided by the judicial authority on 24 October 2016, the appellant took over the smuggling operations of her husband after he died. The appellant's role in that operation was to cross the border with Ukraine at the Siret crossing point, obtain the cigarettes there, bring them back across the border into Romania and sell them there to a client or contact known to her.

8. From 7 January 2016, the appellant was detained and was then under house arrest up to 20 October 2016.

9. However, during that period, in June 2016, the appellant travelled to the UK. Despite the reference in the documents to house arrest, she was not prohibited from travelling but was obliged to notify the authorities of any change of address. She then returned to Romania, to house arrest and to her trial in Romania.

10. On 10 October 2016, the appellant was tried in person, with co-defendants, and was legally represented.

11. On 24 October 2016, she was convicted of taking part in a criminal organisation and smuggling.

12. After that, she was involved in various further judicial proceedings in Romania, including conviction for the two driving offences and an appeal against sentence.

13. The judge found that the appellant moved to this country from March 2017. Her sister was already here with her husband. The appellant obtained work as a cleaner and lived in a shared house.

14. A previous EAW (which I will call the "first warrant" or "EAW (1)") was issued at some point before 25 October 2017. I do not know when. It was said to relate to eight offences. However, it does not refer to either of the driving offences.

15. On 25 October 2017, the appellant was arrested in this country pursuant to the first warrant EAW(1). It was a conviction warrant.

16. On 29 November 2017, she was released on conditional bail.

17. On 15 December 2017, District Judge Gary Lucie discharged the appellant, pursuant to section 21 of the Extradition Act 2003 ("the Act") and Article 3 of the European Convention on Human Rights ("ECHR") for want of an adequate assurance concerning prison conditions in Romania.

18. On 30 May 2018 (according to the second EAW and here the operative one, to which I am coming), a sentence of imprisonment was imposed on the appellant. I do not here mention the length of that sentence because it was for multiple offending, was later appealed and it is

unnecessary to navigate the twists and turns of the complex sentencing exercise that took place.

19. It is necessary to mention here that the appellant had by this time formed a relationship in Romania with a Mr Indrai Coman. In about late July 2018, they conceived a child together. That was in the middle of the judicial process in Romania involving consideration at several separate first instance and appeal hearings reviewing the sentences of this appellant and of several of her co-accused.

20. I mention the timing of the child's conception because of the submission of the appellant, through Mr Henley, that Romania's failure to provide the prison assurance required by the court in the proceedings under the first warrant has, to quote from Mr Henley's skeleton argument, "resulted in the birth of a child".

21. On 17 December 2018, the appellant's sentence became "modified and final" in the Court of Appeal of Suceava (see EAW(2), box B). The explanation of this from the judicial authority came in later further information (provided on 29 August 2019) as follows:

> "By the penal sentence no. 281 of 30 .05.2018 of Suceava Court remained final by the criminal decision no. 1198 of 17.12 .2018 of Suceava Court of Appeal it was canceled the mandate for the execution of the prison sentence issued on the basis of file no. 832/91 12016 of Vrancea Court and a new mandate for the execution of the sentence was issued at the final stay respectively on 17.12.2018 Suceava Court."

22. While this is not easy to follow, the judge below managed to deconstruct the complex trial and sentencing process and found, in my view correctly, that the overall and final sentence for all the offences was, indeed, one of five years and two months' imprisonment (replacing earlier sentences) and that it was imposed on 17 December 2018. Thus, as the judge found, the appellant became unlawfully at large from that date, 17 December 2018.

23. A second conviction warrant (the second warrant or EAW(2)) was then issued. It referred to eight offences and these now included the two driving offences, which were treated as one, although the driving incidents occurred about six months apart, in April and December 2015.

24. The EAW(2) was certified by the National Crime Agency on 28 December 2018.

25. The appellant's daughter, Cielline Coman, was born on 21 April 2019. Therefore she is now two years ten months old.

26. On 26. June 2019, the appellant surrendered, by arrangement, voluntarily, at a police station in Belgravia, London, was arrested and brought before the Westminster Magistrates' Court that day. She was granted conditional bail.

27. The extradition hearing was listed three times in 2019: 8 August, 11 October and 10 December of that year. The purpose of the adjournments was threefold; first, for assurances relating to prison conditions to be obtained from Romania; second, for a welfare report from Brent to be provided on the issue of care for the child, Cielline; and third, to allow the judicial authority to provide information about whether there were any mother and baby unit prison places in Romania.

28. During that process, on 13 August 2019, the judicial authority provided a satisfactory prison assurance (for Article 3 purposes). Information was also provided about contact between mothers and young children in the Romanian prison system.

29. On 20 November 2019, Brent provided a welfare report in respect of Cielline. I need not go through it because it has been overtaken by events, as I shall explain.

30. The hearing was re-listed for 24 February 2020. The "mother and baby unit" issue remained outstanding and the district judge required further information on other matters, including an addendum welfare report from Brent.

31. It turned out that, as Romania clarified, the appellant would not be allowed to keep Cielline with her in prison, because Cielline had already reached the age of one year; however, visits to the appellant in prison by her daughter would be allowed.

32. The addendum report from Brent social services department was dated 17 March 2020. I need not go through it because it was dealt with in the judge's judgment and more recent welfare evidence is available, as I shall explain.

33. The case was re-listed, again, for 26 March 2020 (a few days after first national lockdown started). It was cancelled due to problems relating to coronavirus. Eventually, the case was again relisted for 8 September 2020, over six months later.

34. There was an effective hearing that day before District Judge Branston. The appellant was present and was cross-examined. She relied on Article 8 and abuse of process. Judgment was reserved.

35. On 15 October 2020 came the decision of District Judge Gareth Branston, in his reserved judgment he ordered her extradition.

36. In his judgment, he set out the facts and summarised the appellant's evidence. He was unpersuaded that she was a fugitive from Romanian justice. He set out her circumstances and considered the welfare reports.

37. He set out the law correctly, in relation to the Article 8 balancing exercise. He performed that exercise, using the correct technique of listing factors for and against extradition. He concluded that the case was "closely balanced" and recognised that "Extradition and separation will be an immense (negative) change in [Cielline's] circumstances at this time of her life." Nonetheless, he, ultimately, determined that extradition was proportionate, after performing the balancing exercise, to which I refer further below.

38. He rejected the suggestion that there was any abuse of process, finding that the process had been fair; the first warrant had been discharged, because of the absence of an appropriate prison assurance, but the assurance had then been forthcoming. It was then legitimate to issue the second warrant, EAW(2). There was no bad faith on the part of the judicial authority and no abuse of the court's process.

39. He therefore ordered the appellant's extradition. She appealed on 20 October 2020, in time.

40. It was at about this time (as Murray J's later order makes clear), that the father of the appellant's child, Mr Coman, split from the appellant and since then has not been involved any longer in the care of their daughter. He now lives and works in Romania.

41. On 20 February 2021, Steyn J refused permission on the papers. The grounds of appeal had not been perfected, apparently through an oversight; and no arguable case on appeal was at that stage raised.

42. The appellant then made a witness statement dated 26 February 2021 and applied for permission to rely on it. The grounds were perfected and the matter came before Murray J at

an oral hearing on 18 March 2021. He granted permission, regarding the grounds of appeal as arguable and noting, among other things, a material change of circumstances, namely "the effective disappearance of the child's father from their lives over a period of nearly half a year".

43. The appeal was listed for hearing before Whipple J (as she then was) on 4 November 2021. Counsel for the appellant was ill and was unable to attend. The judge adjourned the proceedings. In doing so, she directed a further welfare report on possible harm to Cielline should her mother be extradited, given that Cielline would not be accommodated within the prison facility with the appellant. The judge also directed that the report should cover parenting and care arrangements, should the appellant be extradited.

44. That third welfare report, dated 6 January 2022, was prepared by Ms Nazma Yugon Nassurally, a social worker in the Brent's social services department. She met the appellant and Cielline. She spoke by telephone to Romania (with the aid of an interpreter) to Mr Coman and both Cielline's grandmothers, Ms Onofrei on her mother's side and Ms Necula on her father's side. The report is detailed and well researched. I am grateful for it. The main findings are as follows.

45. In general, there are good family relationships and no concerns about Cielline's care or about her basic needs being met at present. Cielline's maternal aunt, living in this country, has a good relationship with her, but is not regarded as a suitable carer; she has a family of her own, with (at the time of the report) a further baby on the way.

46. Mr Coman is working in Romania. He would like to take care of Cielline but is prevented by his work. His relationship with the appellant is over and the separation has been difficult and stressful. He favours his mother, Ms Necula, caring for Cielline in Romania.

47. The appellant no longer supports this proposal, because Mr Coman has ceased his caring role and Cielline does not at present have any relationship with her paternal grandmother, Ms Necula. She favours her mother, Ms Onofrei, becoming Cielline's carer in Romania, should she be extradited. Ms Onofrei is willing to take on this role.

48. The appellant has attracted the attention of the police in this country on a few occasions, from 2017 to 2019, due to a concern that her address was suspected of being used as a brothel. The appellant, however, denies any involvement in this. She has no charges or convictions to her name since coming to this country. The police took no action against her.

49. The appellant has epilepsy, because of the car crash in August 2014, but no medication is currently prescribed for that condition. She has previously suffered from depression, dating back to 2014, but does not suffer from it any more.

50. Mr Coman is unwilling to agree to Cielline being cared for by Ms Onofrei, her maternal grandmother. He asserts that she has had involvement in the same criminal activity in Romania as her daughter and may be subject to a sentence. Ms Onofrei denies this. Mr Coman is seeking legal advice (I infer, in Romania) with a view to Cielline being cared for by his mother if the appellant is extradited.

51. The likely harm to Cielline, if the appellant is extradited, according to the findings of Ms Nassurally's report, is that she would be separated from her mother. If the appellant is not extradited, she can meet her daughter's needs in this country and continue caring for her. The appellant's accommodation and home conditions are adequate.

52. The recommendation in the report is that, if the appellant is extradited, Cielline should go into the care of Ms Onofrei in Romania. Not surprisingly, none of the family members consulted

favours Cielline going into local authority care in this country. Ms Nassurally also comments that, if they both "work together", the two grandmothers between them could safely meet the child's needs in Romania during the appellant's prison sentence. I should add that she would be eligible for parole after serving two thirds of the sentence of five years and two months' imprisonment, which would be after about three years and five months.

53. The appellant has made a further witness statement, dated 9 January 2022. She opposes her daughter being cared for by Ms Necula, the paternal grandmother. Mr Coman has not seen his daughter since September 2020, apart from a brief visit in March 2021. He no longer provides any financial support. He has a new family in Romania and is not involved in Cielline's life.

54. The appellant gives evidence of financial difficulties, with rent arrears of about £10,000. She struggles to pay the rent; her landlord, indeed, is seeking possession of the flat which she is renting with her daughter in Wembley, with a court hearing in the possession proceedings fixed during April 2022.

55. On the basis of that up-to-date evidence, the parties are agreed that the court must carry out a fresh Article 8 balancing exercise. The judicial authority was unable to dispute the following propositions from the appellant (in my paraphrase) arising from the updated welfare report, in the event of the appellant's extradition to serve her sentence.

    (1) The appellant cannot at present remove Cielline to Romania into the care of her mother, Ms Onofrei; her bail conditions require her to stay in this country.

    (2) It is most unlikely that Ms Onofrei would be allowed, if she arrived in this country now, to take Cielline back with her to Romania. Even if she did, legal proceedings in Romania could lead to a change of carer.

    (3) If the appellant is extradited, the local authority (Brent) would be likely to and, in practice, bound to bring "public law" proceedings (in the family court sense of the term) which would lead to Cielline being taken into interim care.

    (4) Any care arrangements in Romania arranged by Brent would be subject to approval by the courts of both countries, under reciprocal Hague Convention arrangements. There would need to be "mirror" court orders consistent with each other, for the arrangement to work smoothly.

    (5) It is unclear who would be granted care of Cielline if she were taken to Romania and there is no agreement. It could be Mr Coman's mother, Ms Necula. It is not clear whether care of Cielline would be restored to the appellant on completion of her sentence, or at all.

    (6) Difficult, complicated and time-consuming litigation in two jurisdictions concurrently would be likely. The appellant is without funds to pay for representation in private law proceedings, in which legal aid is not available.

    (7) There would be significant emotional harm to Cielline if her mother, the appellant, were now extradited. There is a risk that the appellant might not be able to resume caring for Cielline after her sentence. When the appellant comes out of prison, Cielline will be about six and a half years old, at least.

56. The judicial authority states through Ms Hill's skeleton argument as follows:

> "The Appellant's submissions with regards the legal avenues available for resolution of Cielline's care are accepted; the matter will require resolution by either an order secured through private law proceedings or through a public law special guardianship order. It is unsurprising that the Social Worker has failed to engage with the latter option as unless and until Ms Prisacariu's extradition is upheld there is no extant risk to Cielline necessitating the intervention of the Council. It is however conceded that should Ms Prisacariu be extradited an Interim Care Order would be required with Cielline likely to be taken into foster care for the duration of the proceedings."

Issues, Reasoning and Conclusions

57. There are two grounds of appeal: that the judge should have found that the issue of the second warrant was an abuse of the court's process; and that he should have found that extradition of the appellant would not be compatible with her right under Article 8 of the ECHR to family life.

58. The authorities suggest that the abuse ground should only be considered, if necessary, after other bars to extradition have been considered. I can take that ground shortly. I hope that here I will be forgiven for taking the convenient course of disposing of it first.

59. Mr Henley did not press it hard, realistically recognising that it would be unlikely to succeed as a freestanding ground of appeal, should his stronger arguments in respect of Article 8 fail. In my judgment, there is no merit in the abuse ground.

60. Mr Henley took me to various of the authorities, notably the Divisional Court's decision in *Jasvins v. General Prosecutor's Office, Latvia* [2020] EWHC 602 (Admin.), also among the authorities he cited to the district judge below.

61. Applying the "broad, merits-based judgment taking account of the public and private interests as they are manifest on the facts of the particular case." (as it was put in the judgment of the court of Davis LJ and Swift J in *Jasvins* at [21], I find myself in complete agreement with the reasons of the judge below for rejecting the abuse of process argument. They were set out in his judgment at paragraphs 108 to 117.

62. In summary, his reasons were these. The issuing of a second warrant was not in itself necessarily an abuse, even if the first warrant could have embraced the evidence supporting the second. The presumption that Romania was acting in good faith was not rebutted.

63. Furthermore, the judge said that the second warrant encompassed two further offences - the driving offences - and a sentence of increased length. The appellant had been convicted of the two driving offences five months after the first warrant was discharged. The requesting authority was, by the time it issued the second warrant, in a position within a reasonable time to comply with the Article 3 requirement of a suitable prison assurance and had since done so.

64. The birth of the appellant's daughter between the first and second extradition requests in no way supported any suggestion of bad faith on the part of the requesting authority. It was relevant, if at all, to the strength of the Article 8 arguments against extradition.

65. There was no collateral attack, the judge noted, on District Judge Lucie's decision to discharge the first warrant. The case was not like that of Mr Jasvins, where the requesting authority had faced a clear order refusing an adjournment at the time of the first warrant and had sought to outflank that refusal by issuing a fresh warrant. Here, there was no evidence that the judicial

authority had tried to persuade District Judge Lucie to give it more time to comply with the requirement for an Article 3 prison assurance.

66. Finally, the judge noted, the offending was serious and the sentence substantial. The process had been fair. For those reasons, he found no abuse. I agree and cannot improve on his reasons.

67. I turn, therefore, to consider the real question in this appeal as the issues now stand. Does the Article 8 balancing exercise undertaken now lead to the same conclusion as the judge's, that extradition would not be a disproportionate interference with the appellant's family life and that of her daughter?

68. I was referred to the usual authorities. There was no disagreement between the parties about the applicable law. The judge below was also referred to the relevant authorities and set out extracts from them in his judgment (see paragraphs 79-90). They were, I record, section 21 of the Extradition Act 2003; *Agius v. Court of Magistrates, Malta* [2011] EWHC 759 (Admin.); *G v. District Court of Czestochowa, Poland* [2011] EWHC 1597 (Admin.); *Soering v. UK* (1989) 11 EHRR 439; Article 8 of the ECHR; *Norris v. Government of the USA (No.2)* [2010] UKSC 9, [2010] 2 AC 487; *HH v. Italy* [2012] UKSC 25, [2013] 1 AC 338, SC (in particular, the focus in Lady Hale JSC's judgment at [83] and Lord Judge's at [312] on sole or primary carer cases involving children); and *Celinski v. Slovakian Judicial Authority* [2015] EWHC 1274 (Admin.).

69. The judge below carried out the balancing exercise, as follows, as the evidence before him then stood. In favour of extradition, he noted, were the following features of the case:

(1) the public interest in extradition, always a factor of great weight; including the public interest in those convicted of crimes serving their sentences, the requirement to fulfil treaty obligations and to ensure that this country does not tempt criminals to regard this country as a place where they can come to avoid facing up to their legal responsibilities in the requesting state.

(2) The principle of mutual confidence and respect shown by the English courts for the decisions of the Romanian judicial authority.

(3) Respect for the independent prosecutorial decision made in Romania.

(4) Factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will take into account.

(5) Those factors raised by the appellant in her Article 8 submissions can be considered by the judicial authority upon surrender.

(6) The fact that the judge did not possess the detailed knowledge of the proceedings or background of the requested person which the sentencing judge had before him.

(7) Respect for the sentencing regime of the requesting state. The court will assume that the sentence reflects the gravity of the offending in all the circumstances as seen by the court with all necessary knowledge.

(8) The length of sentence remaining; the appellant has a very substantial sentence still to serve.

(9) These offences are serious; participation in a criminal organisation is recognised in the Framework Decision as a serious offence intended for expeditious extradition; the smuggling offences represent repeat and substantial offending; these sorts of offences harm the entire state even if they do not harm an identifiable individual victim.

(10) Although the judge did not find that the appellant left Romania in breach of an obligation to remain, she had known for over three years that she had been made subject to substantial prison sentences; her legal obligation to serve further prison time for her offending does not come as a surprise to her.

(11) An alternative care plan for her daughter has been established; the child will remain in the care of the family by being in the care of the paternal grandmother; in the alternative, the father himself might decide, once extradition is ordered, that he will take responsibility for the child.

(12) The appellant's parents and brother still live in Romania; she has family support there in addition to that which can be provided by her partner's mother.

(13) The appellant's health is good.

(14) The state is capable of providing for families who are left in financial or other need due to extradition.

70. Against extradition, the judge noted the following factors:

(1) The appellant had a settled family life here in the UK which she had developed over the last three and a half years or so.

(2) The Article 8 interests of the appellant, her partner (i.e. Mr Coman) and also her daughter are engaged by these proceedings; the interests of the child in particular are of primary importance.

(3) Her daughter has been born since the Romanian proceedings were completed; she represents a wholesale change in the life of the appellant.

(4) Extradition and consequent separation will cause emotional harm to the appellant and her family; the separation of mother and daughter at 18 months old is particularly serious.

(5) Extradition is likely to require Cielline to travel also to Romania; as such, she will be separated from her father also.

(6) The appellant has no convictions or cautions in this country; there is no suggestion either of any further offending in Romania.

(7) The appellant has lived an open life in this jurisdiction; she has worked here in paid employment; she now engages in one of the most important jobs of all and social services have no concerns regarding her ability to meet the needs of her young daughter.

(8) The appellant has endured the emotional turmoil of extradition proceedings on two occasions now; the latter proceedings, in particular, have been subject to significant delays; he did not underestimate the stresses that these proceedings cause.

(9) The appellant spent nine months under house arrest in relation to these offences.

(10) The appellant suffered significant trauma and mental health difficulties in 2014 and thereafter; this may well suggest that she is vulnerable to similar afflictions through the trauma of separation from her daughter.

71. The judge concluded that the case was closely balanced but that the factors in favour of extradition outweighed those against it. He started with the proposition that "the child is the central issue here". He accepted that the separation of child from mother "will be an immense (negative) change in her circumstances at this time in her life".

72. Still, he concluded that the offending was "simply too serious for this court to stand in the way of Romania's request". He was "reassured " that there was "an alternative care plan, which would keep Cielline closer to her mother and allow her to visit her mother in Romania. Mr Coman, then in Romania, could decide to become involved with caring for his daughter, to live there to that end and "to be close to his partner", i.e. the appellant.

73. If the father, Mr Coman, became involved in her daughter's care, the case would not be a primary or sole carer case. In addition, Mr Coman's mother, Ms Necula, would be able to take care of Cielline. The agreement of the parents on caring arrangements would mean Cielline would not need to be taken into local authority care.

74. For the appellant, Mr Henley submitted that the district judge was wrong to find that the balance came down on the side of extradition. Alternatively, he submitted, even if it had, the position had changed materially and the balance was now clearly the other way.

75. For the judicial authority, Ms Hill recognised that the evidence now before the court makes extradition more harmful to Cielline than it would have been on the evidence as it stood at the time of the judge's decision; but she submits that the up-to-date evidence does not invalidate the conclusion that extradition would be a proportionate interference with, and compatible with, the appellant's Article 8 rights and those of her daughter. Ms Hill submits that the harm that will come to Cielline, though regrettable, must be endured.

76. Ms Hill relies on the weight to be given to the factors in favour of extradition mentioned by the judge; and points out that, in addition, the entitlement to parole after serving two thirds of the sentence; that the offending is not particularly old, having been committed within the last six years or so; that the judicial authority acted expeditiously; that the health of the appellant remains good, as is that of her daughter; and that Cielline will probably be returned to the care of her family after a period spent in foster care.

77. I come to my reasoning and conclusions. First, although it is not determinative of this appeal, I should say that I agree with the judge's approach to the balancing exercise and can find no fault with that exercise or the conclusion he drew from it. There was nothing wrong with the reasoning. The conclusion in favour of extradition was unimpeachable.

78. Although it does not matter, I add that I would have reached the same conclusion as he did. If the evidence were now as it stood then, I would dismiss this appeal. However, the parties are agreed that I must revisit the balancing exercise in the light of the updated evidence. I now do so, using as a starting point the factors that weighed with the judge, updated as necessary by reference to the fresh evidence.

79. The first three considerations in favour of extradition - the weighty public interest in extradition, the principle of mutual confidence and respect for decisions of the judicial authority and respect for the original prosecutorial decision - are unaltered.

80. The fourth - that mitigating features are ordinarily for the court of the requesting state - remains valid except in relation to subsequent events that had not yet occurred when the sentences were passed.

81. The fifth consideration may go some way to address this: that the appellant's Article 8 points, principally concerning her daughter, may be considered by the judicial authority upon surrender.

82. The information supplied by the judicial authority to date includes the fact of eligibility for parole after serving two thirds of the sentence and the possibility of relatively- frequent prison visits by Cielline once she is in Romania and out of any local authority care in this country. Beyond that, there is no evidence of willingness of the judicial authority to consider further the appellant's Article 8 points.

83. The judge's sixth factor was the superior knowledge of the proceedings and background of the appellant. The seventh is respect for the sentencing regime of the requesting state. The force of these points remains the same now. Like the judge, I do not know nearly as much about the facts as the Romanian sentencing judges did. For example, I do not know how serious were the "trauma injuries" suffered by the three victims of the appellant's driving on 26 December 2015.

84. By a rough calculation, I do know that the value of the 300,000 cigarettes smuggled in the first seven offences corresponds to about 72,000 leu (or RON) or about £12,000 sterling at today's exchange rate; but I do not know whether that figure represents the duty evaded, the purchase price, the sale price or something else. It is fair to regard the figure of about £12,000 in sterling as the maximum figure for the appellant's ill-gotten gain.

85. The judge's eighth and ninth points are that the length of the sentence is substantial and that this reflects participation in a criminal organisation, repeat offending and conduct that harms the state, even though not any identifiable individual. Those points remain equally valid now.

86. The tenth point was that the appellant left Romania, not as a fugitive, but knowing that she had unfinished business with the Romanian justice system and could have to return to face the music. That remains the case now, though for a mixture of miscellaneous reasons ranging from the pandemic to Romanian prison conditions a lot more time has elapsed since then.

87. The judge's eleventh and twelfth points both concern the care arrangements for Celliene and have been largely overtaken. I will return to this. The thirteenth point is that the appellant's health is good. It remains so. Finally, the fourteenth point was that the state (i.e. the United Kingdom) can provide for families left in need due to extradition. This remains true.

88. On the other side of the balance, the judge's first five points, weighing against extradition, all relate centrally to the welfare of Celliene. The appellant's family life here has now developed over about five years, rather than three and a half as was the position at the time of the judge's decision. Celliene was then aged about 18 months; she is now two years and ten months old.

89. The period of enforced separation of mother and daughter would now be approximately from the age of three to the age of six and a half. During that period, the first part would be spent in local authority care here. For at least as long as that lasted - perhaps a year or more, I do not know - Celliene could, at the most, speak to her mother by telephone or video call. She would not be able to hug or touch her mother.

90. Celliene would be able to receive occasional visits from other family members, such as Ms Onofrei and, perhaps, Ms Necula and/or Mr Coman, though that is less clear. Ms Necula has

not come so far and Mr Coman has not seen his daughter for nearly a year. Cielline could presumably receive occasional visits from her maternal aunt and that lady's family here.

91. Eventually, if and when the issue of parental responsibility were sorted out to the mutual satisfaction of the Romanian and English courts, Cielline would be able to travel to Romania, see her family members there and visit her mother in prison. I would estimate that by then, she would be about four or nearly four years old.

92. The judge's fourth point was that the separation of mother and daughter at the then age of 18 months would cause serious emotional harm. I think that the same is true now. I believe that the separation would be worse now that Celliene is older and faces an initial period in care.

93. The judge's fifth point - that travel to Romania would separate Celliene from her father - is no longer valid; she is separated from him anyway, at least for the time being.

94. The sixth point is that the appellant has no convictions or cautions in this country or anywhere else. This remains the case 20 months after the judge's decision. The seventh point also remains valid: that the appellant has lived an open life, has worked productively for a living and is considered well able to meet her daughter's needs; although she is in financial difficulty.

95. The last three points concern the welfare of the appellant herself. She has now had this process hanging over her since 2017, through the course of two sets of proceedings. The stresses of the proceedings have now been prolonged for over four and a half years. The appellant spent nine months in Romania under house arrest. She has also been on conditional bail here since late 2018.

96. Finally, she has a history of depression and mental health difficulties following the trauma of her injuries in 2014. These could recur if she is imminently separated from her daughter.

97. I have reflected carefully on these considerations and weighed them. I have come, with some reluctance, to the conclusion that this has become one of those exceptional cases where extradition would be a disproportionate interference with the Article 8 rights of the appellant and, more importantly, of Cielline.

98. The reason for my reluctance is that the appellant ought, in an ideal world, to have to serve her sentence and my decision means she will not have to do so. Her offending was serious and I regret that consequence of my decision. I intend no disrespect to the Romanian justice system.

99. The points that have driven me to my conclusion are as follows. The principal point is that I am not prepared, at this stage and in all the present circumstances, to require the separation of daughter from mother for three and a half years or more when the appellant is the primary and, at present, the sole carer and there is no clear plan for what will become of Cielline.

100. I say, with no disrespect whatever to Brent social services, that it is likely that Cielline may have to endure a pretty miserable period of uncertainty, without family nearby and certainly without her mother, for a good year or so. I accept that the harm from that would be lasting and serious: probably permanent.

101. If the appellant had killed or deliberately caused serious injury to someone, I would have said, without hesitation, that separation from her daughter during her prison sentence is a misfortune that must be endured. As I have said, I do not know how serious the injuries to the victims of the appellant's driving in December 2015 was; but I do know that it is not suggested that they were deliberately inflicted.

102. I know that the cigarette smuggling operation was part of an organised criminal enterprise, in which the appellant took over her husband's role after he died. The value attributed to the smuggled cigarettes is quite substantial, but I do not really know how substantial beyond that it cannot, realistically, be above the equivalent of about £12,000, probably shared between the appellant and others.

103. If she had, instead of cigarettes, smuggled what would here be called "class A drugs" across the border, again I would not have hesitated to require her extradition, even at the cost of separating her daughter from her from aged about three to six and a half years. The smuggled merchandise, though, is not illegal *per se* in this case.

104. That is not to diminish in any way the seriousness of engaging in contraband operations or causing injury by driving dangerously. The former is, effectively, stealing money from the state through evasion of duty. The latter is a menace to individuals and society. However, the smuggled product, though harmful, is not itself illegal as a prohibited drug is, either in Romania or elsewhere.

105. The delay and prolongation of the extradition proceedings and the corresponding stress to the appellant also weighs with me, though to a much lesser extent than does the welfare of Cielline. The initial cause of the delay was the absence of a satisfactory prison assurance, making the second warrant necessary. That was not a matter for which the appellant can be held responsible.

106. The delays that occurred after that were partly related to coronavirus and partly due to the birth of Celliene, in April 2019, and the consequent need for further investigations and reporting. I do not think it would be right to hold against the appellant the fact that she conceived and bore a child while under the cloud of the extradition proceedings. A young person of childbearing age cannot be expected to put her life on hold for year on year to await the outcome.

107. In the end, while the case remains closely balanced, as it was before the judge, the balance is now narrowly but clearly the other way. It gives me no pleasure to say so, but, mainly for Cielline's sake, I will therefore allow the appeal and discharge the appellant under section 21 of the Extradition Act 2003.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the judge.