Neutral Citation Number: [2024] EWHC 1602 (Admin)

Case No: AC-2023-LON-001596

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Wednesday, 26th June 2024

Before:
FORDHAM J

- -

Between:

VICTOR CONSTANTIN	**Appellant**
- and -	
COURT IN BUCHAREST (ROMANIA)	**Respondent**

- -

The **Appellant** in person
Jonathan Swain (instructed by CPS) for the **Respondent**

- -

Hearing date: 5.6.24
Draft judgment: 18.6.24

- -

Approved Judgment

- -

FORDHAM J

FORDHAM J:

Introduction

1. The Appellant is aged 46 and is wanted for extradition to Romania. That is in conjunction with a conviction Extradition Arrest Warrant (the ExAW) which was issued on 7 September 2021 and certified on 24 May 2022, on which he was arrested on 11 July 2022 and then released on conditional bail. After an oral hearing at which he gave oral evidence and cross-examined, his extradition was ordered on 17 May 2023 by DJ Heptonstall (the Judge) at Westminster Magistrates' Court (WMC), for reasons explained in a 27-page judgment (the Judgment). The Judgment includes a 5-page summary of the Appellant's written and oral evidence. The Appellant's written evidence was in the form of 3 proofs of evidence ("POE1" dated 17.11.22, "POE2" dated 21.11.22 and "PO3" dated 14.3.23).

Permission to Appeal

2. The Appellant's application for permission to appeal was refused on the papers by Wall J (13.10.23). At an oral hearing (7.12.23) Farbey J ordered that:

> ***The application for permission to appeal is granted on the single ground that the District Judge ought to have decided the Celinski balancing exercise differently and/or ought to have decided that the Appellant's extradition would be disproportionate under Article 8 of the European Convention on Human Rights.***

The Celinski case [2015] EWHC 1274 (Admin) [2016] 1 WLR 551 was referenced in the Judgment. The Judge adopted the familiar balancing exercise, concluding that "the clear weight of factors falls in favour of extradition", so that extradition was "compatible" with the Article 8 rights of the Appellant and his family members. In the reasons embodied within the Order, Farbey J said this:

> ***It is reasonably arguable that the District Judge was wrong to conclude that the Celinski balance sheet approach weighed in favour of extradition and/or that he was wrong to conclude that the Appellant's extradition was proportionate under Article 8 of the European Convention on Human Rights. I have reached this conclusion by taking into account that (i) the extradition offences were considered worthy of a fine; (ii) the Appellant was found by the District Judge to be far from a rogue lawyer; (iii) part of the conduct for which his extradition is sought took place before the November 2015 Romanian Supreme Court judgement; (iv) while he is not permitted in these proceedings to deal with questions of innocence and guilt, his failure to accept the new regulatory regime is arguably based on his conscientious belief that the regulation of the Romanian Bar was subject to undue interference from the government contrary to well established principles of the independence of the Bar (this seems to me to be the import of his grounds of appeal).***

3. Farbey J went on to order:

> ***Permission on other grounds, including the status of the Fourth District Court, is refused as being not reasonably arguable.***

Her reasons said:

> ***Permission on all other grounds is refused as no other grounds are reasonably arguable. In particular, while I appreciate the Appellant's strength of feeling, there is no arguable legal basis in his grounds of appeal for submitting that the Fourth Court cannot issue a warrant for his extradition.***

The Judge's Principal Findings of Fact

4. The Judge made these "principal findings of fact":

> ***(i) Mr Constantin qualified as a lawyer in Romania and joined the UNBR 2004 bar association. He was able to practise in some courts but others did not permit him to appear as he was not a member of the principal bar association. (ii) He had been expelled from his bar association but that was subsequently quashed in 2012. (iii) In 2015 the Romanian Supreme Court resolved the dispute against the UNBR 2004 so that Mr Constantin was not able to practise. He vehemently disagreed with that decision. (iv) Having spoken to a prosecutor, he knew that he was being investigated for these offences and that they could result in a prosecution, though he hoped not. (v) He was aware of the trial date and could have returned to Romania to answer the charges but consciously chose not to. He did submit his arguments to the court. I do not find that he was in fear for his life if he returned. (vi) He was convicted and ordered to pay a penalty. That was not paid, even though some payments had been possible and the prison sentence was imposed. (vii) I do not find that he left Romania to avoid proceedings, but solely to find work, his profession no longer being open to him. He has lived an open and law-abiding life in the UK. He has pre-settled status. (viii) He has been an industrious member of society in the UK and has been studying towards a qualification. He sends funds to his family in Romania and there would be limited opportunities to work, at significantly less reward, in Romania.***

5. POE1 told the Judge that the Appellant had come to the UK in June 2016, "because I couldn't stay in Romania with all the arguments and fights with the court and UNBR 1883 and the Supreme Court 2015 decision. I needed to work and earn money and because my bar licence was suspended." He explained that he had joined UNBR 2004 (also known as "the Bota bar") in 2008, whose fees were lower than "the main bar" (UNBR 1883); that he represented people between 2008 and 2015; and represented "a friend" in January to March 2016. He described UNBR 2004 as "rejected by the Supreme Court in 2015 as the court confirmed that to practise law in Romania you must take the enrolment procedure via UNBR 1883". All of this was relevant to the Judge's principal findings of fact (i) and (iii).

6. POE2 told the Judge that the Appellant "was expelled by the UNBR 2004 due to a disagreement with Mr Bota where I refused to pay him a donation of £1,000. I challenged my expulsion at the Appeal Court in Bucharest in 2012, the decision which I exhibit as VC/02. This decision suspended my expulsion. Mr Bota attempted to appeal to the Supreme Court but was unsuccessful. The new chair of UNBR 2004, Mr Nimerincu Viorel (chair from 3 January 2012) cancelled the decision of Mr Bota. I was therefore a member of UNBR 2004 between 2013-2016, during the period of the alleged criminal conduct". VC/02 is headed Court of Appeal in Bucharest (772/2/2012) and dated 6.3.12. POE3 exhibited a letter dated 14.11.12, said now to have been obtained from the "archives" of UNBR 2004, confirming the decision withdrawing the UNBR 2004 suspension. All of this was relevant to the Judge's principal finding of fact (ii).

The Chirita Report

7. The Appellant relied before the Judge on a report (October 2022) written by Dr Radu Chirita, a human rights professor and defence lawyer in Romania. Within the Chirita Report there are references – among other sources – to Romanian Law No.3 of 1948; Law 51/1991; Law 51/1995; and Law 255/2004.

8. In the Judgment, the Judge set out these 12 "core contentions" from the Chirita Report:

> ***(i) The Romanian legal regulatory framework was re-established after the fall of communism, initially in 1990 and thereafter through law 51/1995 detailing how lawyers are to be organised into bar associations; (ii) There was dispute as to whether the 1995 law regulated bar associations which had, in fact been abolished, and furthermore contained no provisions relating to the establishment of new bar associations. Such arguments were "accepted up to a point even in court". (iii) Law 225/2004 established for the first time the National Union of Romanian Bar Associations. It aimed for the first time to prohibit the establishment of bar associations outside the union. (iv) Meanwhile, in 2002, the Deva County Court recognised the establishment of an NGO named "Bonis Potra" by Mr. Pompiliu Bota. "Numerous persons (an exact number cannot be given) with law degrees have been admitted and enrolled in this Bar Association in compliance with the legal criteria of admission (educational documents, examination, oath). In these circumstances, the members of this Bar Association have exercised activities inherent to the legal profession, some of them being certain about the legitimacy of their status". (v) The "Bonis Potra" was dissolved in 2002. Mr. Bota, however, founded a new "National Union of Romanian Bar Associations (also referred to as UNBR 2004), which operates in parallel with the homonymous structure established by Law no. 51/1995. This union acquired legal personality through a final court decision." (vi) Mr. Bota also registered the trademark and name of the National Union of Romanian Bar Associations – the use of his name was not challenged until 2018, when a Court ordered its removal from the register of trademarks. (vii) Some of the members of the so-called "Bota bar" were "convinced that they were practising in a lawful manner". The Bota bar was founded by a court decision, and had admission procedures to be satisfied. At least at an early stage, they were permitted to practise and there was a lack of clarity around the legal provisions. (viii) The Romanian Courts have not applied a uniform approach to the issue of whether "Bota Bar" lawyers may assist and represent clients in Court. After an initial period in which Bota Bar lawyers were permitted to practise, the view of the judiciary changed, and prosecutions were pursued of persons practising under Bota Bar registration. Some of these prosecutions were not pursued, and others resulted in acquittals, including a finding in 2011 that the individual defendant could not be held responsible for the existence of "parallel" bar associations. (ix) Because the Courts were still taking a divergent approach to the prosecution of "Bota Bar" practice, the matter was referred by the Public Prosecutor to the Supreme Court of Romania in 2015. As at 2015, therefore, the Courts were still applying differing approaches to the prosecution of Bota Bar lawyers, and individuals were either not being prosecuted, or being acquitted. (x) In a decision published on 3rd November 2015, the Supreme Court ruled that membership of the Bota Bar did not confer rights of audience in Romania. (xi) Even after this ruling, individuals continued to be acquitted where they had practised under the umbrella of the Bota Bar, but the conduct took place before the November 2015 decision of the Supreme Court. These acquittals continued even as late as 2021. (xii) Mr. Bota tried to refer the matter to the Strasbourg Court, but his case was found to be baseless. He continues to run the "Bota Bar", now clearly unlawfully.***

The ExAW

9. The ExAW includes the following description:

> ***Nature and legal classification of the offence(s) and the applicable statutory provision/code:***
>
> ***[1] The offence of unlawful practice of a profession or of any other activity, in continuing form, provided by Article 25 para. (2) of Law no. 51/1995.***
>
> ***[2] The offence of unlawfully using of the names "Bar", "National Union of Romanian Bars", "UNBR", "Romanian Bar Union" or names specific to the forms of practicing the profession of lawyer, as well as the use of symbols specific to this profession or wearing a lawyer's robe in other conditions than those provided by Article 59 para. (6) of Law no. 51/1995.***

By way of shorthand, I will call these [1] "Unlawful Practice of a Profession" and [2] "Unlawfully Using Names and Robes".

10. The ExAW includes a description of a judgment of the Fourth District Court in Bucharest No.1741 (10.7.20) in relation to "three material acts between August 2013 and June 2014", committing the offences of Unlawful Practice of a Profession and Unlawfully Using Names and Robes. The July 2020 judgment imposed a fine (Lei 5,750), to operate concurrently to a previous custodial sentence (256 days). In the Judgment, the Judge found that these 2013 and 2014 offences "fail the criterion in s.65(3)(c)" of the Extradition Act 2003, as "only fines were imposed in relation to those matters".

11. The ExAW included a description of a judgment of the Fourth District Court in Bucharest No. 2356/2019 (31.7.19) declared final by Decision 605/C (23.6.20). This was the judgment under which the custodial sentence (256 days) had arisen. It had been preceded by judgments of the Fourth District Court in Bucharest No. 108 (17.1.18) and No. 2356 (31.7.19). The July 2019 judgment replaced an unpaid fine (Lei 6,900) with 276 days custody. The June 2020 judgment reduced this to 256 days custody (because of a part-payment of Lei 500). The fine (Lei 6,900) and custody (256 days) had in turn arisen out of "two material acts between February 2015 and January 2016" committing the offences of Unlawful Practice of a Profession and Unlawfully Using Names and Robes.

12. As to the "two material acts between February 2015 and January 2016", the ExAW included the following description:

> ***[Offence 1] During February 2015 and January 2016, based on the same criminal intent, the defendant Constantin Victor performed acts specific to the profession of lawyer by drafting legal actions and pleas that he filed in case no. 33894/4/2014 before the Fourth District Court of Bucharest, in defence of the party filing a civil action Apostolescu Adrian (defendant in that case) and case no. 39349/4/2015 before the Fourth District Court of Bucharest, in defence of the party filing a civil action $erban Viorel (defendant in that case), although he was not part of a bar included in the National Union of Romanian Bars and the 1831 Bucharest Bar, as he was not enrolled on the lists of that bar.***
>
> ***[Offence 2] In the same circumstances, the defendant Constantin Victor, based on the same criminal intent, wore without being entitled the lawyer's robe and used without being entitled the names of "Bar", "National Union of Romanian Bars" applied on the powers of attorney series B 1 no. 122202/2016 and series B 1 no. 120117/2015, attached to the legal documents submitted in case no. 33894/4/2014 before the Fourth District Court of Bucharest, in defence of the party filing a civil action Apostolescu Adrian (defendant in that case) and case no. 39349/4/2015 before the Fourth District Court of Bucharest, in defence of the party filing a civil action Serban Viorel (defendant in that case).***

Other Findings by the Judge

13. I have set out the Judge's principal findings of fact (§4 above). I have explained that the Judge found that the 2013 and 2014 offences failed the criterion in s.65(3)(c) (§10 above). Other findings of the Judge were that the Appellant was not a fugitive (linked to principal finding (vii)), but that he was aware of the proceedings and was deliberately absent from the trial (linked to principal findings (iv) and (v)).

14. The Judge found that the 2015 and 2016 offences were extradition offences in terms of s.65(3)(b), which requires that "the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom". This was a finding by reference to the Legal Services Act 2007, for the following detailed reasons in the Judgment. First as to Offence 1:

> ***35. As to offence 1, the judicial authority asserts that the conduct would constitute an offence contrary to s.14 of the Legal Services Act 2007, by carrying on a reserved legal activity when not entitled to do so: "14 Offence to carry on a reserved legal activity if not entitled (1) It is an offence for a person to carry on an activity ("the relevant activity") which is a reserved legal activity unless that person is entitled to carry on the relevant activity." 36. Reserved legal activity, and legal activity, are defined by section 12 of the Act, as supplemented by Schedule 2. "12 Meaning of 'reserved legal activity' and 'legal activity' (1) In this Act 'reserved legal activity' means – (a) the exercise of a right of audience; (b) the conduct of litigation; (c) reserved instrument activities; (d) probate activities; (e) notarial activities; (f) the administration of oaths. (2) Schedule 2 makes provision about what constitutes each of those activities. (3) In this Act "legal activity" means – (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and (b) any other activity which consists of one or both of the following – (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes. (4) But 'legal activity' does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator). 37. Schedule 2 defines "the conduct of litigation" as: "(a) the issuing of proceedings before any court in England and Wales, (b) the commencement, prosecution and defence of such proceedings, and (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)." 38. Authorised persons are defined by section 18 of the 2007 Act, as those who are authorised by the relevant approved regulator for the relevant activity (section 18(1)(a)). Approved regulators are those designated by Part 1 of Schedule 4 (which lists the approved regulators for the reserved legal activities), or the Board as defined by section 62(1)(a), which provides for designation by the Lord Chancellor.***

Then as to Offence 2:

> ***39. The judicial authority's case in relation to offence 2 is that the conduct again amounts to the conducting of litigation when not authorised to do so, as there was such an overlap with offence 1, highlighting that Mr Constantin submitted documents to the Court, which comes under the scope of 'conducting litigation' when he was not authorised by the appropriate body to do so. Mr Smith sought to focus on the wearing of the lawyer's robes and noted that in the later instance, Mr Constantin had not approached the litigant but had been approached himself, with him only making the approach prior to the 2015 ruling. He invites me to excise the 2016 wearing of the lawyer's robes. 40. There are further relevant provisions of the 2007 Act which create the offence of pretending to be entitled to carry on a reserved legal activity. "17. Offence to pretend to be entitled (1) It is an offence for a person – (a) wilfully to pretend to be entitled to carry on any activity which is a reserved legal activity when that person is not so entitled, or (b) with the intention of implying falsely that that person is so entitled, to take or use any name, title or description." 41. I agree with the judicial authority that the use of the descriptions were intrinsic to offence 1. Further, the use of the robes was within the precincts of the court and were akin to the uniform of the profession. I find that in those circumstances he was pretending to be entitled to carry on the activity of a lawyer, which would be an offence contrary to section 17(1)(a). It is a distinction that does not make a difference that he was approached in 2016 rather than making the approach himself: he would not have been approached by Ferban Viorel if he did not think that Mr Constantin was a lawyer and it is plain that the robes were part of that apprehension.***

The Judge's Article 8 Evaluation

15. This was the Judge's Article 8 proportionality evaluation (§§55-57):

> ***55(i) Factors militating against extradition: (a) Mr Constantin is not a fugitive. (b) There has been a period of 7 years since the commission of the last offence and this hearing, in which he has been able to build his life here and thus diminish the public interest in his extradition. That must only be significantly tempered by his knowledge of the investigations and then the proceedings, so that a large part of that life has been built when he knew that he was at risk. (c) The offending is not the most serious, but it is, as Mr Smith acknowledged unattractive: Mr***

> ***Constantin was a qualified lawyer of good standing in a bar association and there was a degree of uncertainty prior to 2015; he was far from a rogue lawyer. (d) The seriousness of that conduct was reflected in an initial sentence of a financial penalty. (e) He has committed no other offences in Romania. (f) There is no suggestion that he lived anything other than an open life in the UK. (g) He has developed roots in the UK since arriving in 2017. (h) He has brought his family here, though they have returned to Romania where he continues to support them and they rely on that income. There are hopes for the children to come back to the UK once these proceedings have been resolved. (i) He has been industrious here and has embarked on studies, entering into significant student debt. (j) He has a substantial worthwhile life in the UK.***
>
> ***55(ii) Factors in favour of extradition: (a) There is a weighty public interest in upholding all extradition requests and treaty obligations, thereby ensuring that there are no 'safe havens' to which individuals can flee in the hope they will not be sent back. This public interest is not easily displaced. That is reduced to some extent where the requested person is not a fugitive. (b) The principle of mutual confidence and respect shown by the English courts for the decisions of the Romanian judicial authority. (c) Factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will have taken into account. (d) Respect for the sentencing regime of the requesting state. The court should assume that the sentence reflects the gravity of the offending in all the circumstances as seen by the court with all necessary knowledge. It should not seek to apply its own sentencing regime. (e) Although this was not the situation of a rogue lawyer, he continued to hold himself out and act as a lawyer after the final determinations of Romania's highest courts and still does not accept those decisions. (f) The length of sentence remaining is significant, though not particularly long. (g) The family life here is derived through financial support rather than the emotional and practical elements of living together in a stable household.***
>
> ***56. The balancing of those factors is not a simple matter of arithmetic, but an evaluation of the weight to be attached to each. The interest in honouring treaty obligations is very high; some weight must be attached offending as reflected in a sentence measured in months and resulting from the refusal to recognise the rulings of the court. Those are all factors of great weight. These are not recent matters so the public interest is diluted by the passage of time which allowed him to develop his family life in the UK, but tempered by knowing that he had proceedings hanging over him for much of that time; he had not sought the UK as a safe haven; if extradited there will be a financial impact on him and his family, but not one which I regard as severe, rather the ordinary consequences of extradition; he has been an industrious member of society. 57. Weighing those matters, I find that this is not a finely-balanced case but one in which the clear weight of factors falls in favour of extradition. Accordingly, extradition is compatible with Mr Constantin's and his family's Convention rights under Article 8.***

The Appellant's Fundamental Points about the ECHR

16. At the forefront of his submissions to me, the Appellant has made and maintained a number of what I will call "fundamental points" about the European Convention on Human Rights. These were, in essence, as follows:

    i) First, as to Article 6(3)(c) ECHR (the right to a fair trial), which provides that the "minimum rights" of "everyone charged with a criminal offence" include "to defend himself … through legal assistance of his own choosing". Correctly understood and applied, this means (i) any litigant has an inalienable human right to choose any other person to assist them; and (ii) that other person has an inalienable human right to provide that assistance. It follows that no law and no court can – compatibly with Article 6 – prevent the litigant from having or the other person from giving assistance, acting as a lawyer. In turn, it follows that Law 51/1995, the Supreme Court's 2015 decision and the Appellant's convictions were all inconsistent with Article 6.

ii) Secondly, as to Article 11(1) ECHR (freedom of assembly and association), which provides that "everyone has the right to … freedom of association with others, including the right to form and to join trade unions for the protection of his interests; and Article 11(2), which provides that "no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society …" Correctly understood and applied, this means it was incompatible with Article 11: (i) to require the Appellant to be a member of UNBR 1883; and (ii) not to recognise as sufficient the Appellant's membership of UNBR 2004. Again, it follows that Law 51/1995, the Supreme Court's 2015 decision and the Appellant's convictions were all inconsistent with Article 11.

iii) Thirdly, as to Article 5(1)(a) (the right to liberty and security), which allows deprivation of liberty where it is the "lawful" detention of the individual after a conviction by "a competent court". Correctly understood and applied, the 256 day custodial sentence in this case is not "lawful" detention. That is because Law 51/1995, the Supreme Court's 2015 decision and the Appellant's convictions were all inconsistent with Article 6 and/or Article 11. It is also because, in any event, the conviction was not by "a competent court". That is because the Fourth District Court at Bucharest is not a competent court.

iv) Fourthly, as to Article 7(1) (no punishment without law), which provides that nobody shall be held guilty of any criminal offence which "did not constitute" a criminal offence "under national law" at the time it was committed. Correctly understood and applied, Law 51/1995 was not a valid or legitimate "law". That is because it was inconsistent with Article 6 and/or Article 11, and in any event.

v) Fifthly, as to the function of the ECHR in extradition proceedings. Correctly understood and applied, any extradition arrest warrant is required in law to specify what provision of the ECHR the requested person is said to have violated. In this case, the ExAW does not do so. It is therefore deficient in law. The Respondent in this case has never, at any stage, identified what ECHR provision the Appellant is said to have breached. It follows that extradition cannot be lawful.

vi) Sixthly, as to Article 8(2) (the right to respect for private and family life), which provides that "there shall be no interference by a public authority except such as in accordance with the law and is necessary in a democratic society …" Correctly understood and applied, the Article 8(2) requirement of "accordance with the law" has this consequence: each of the previous points means extradition would also violate Article 8. A further consequence of this is that all of the fundamental points are within the scope of the grant of permission to appeal.

17. I am unable to accept these points. I will explain why. I will start with Articles 6(3)(c) and Article 11. The Appellant says – based on Article 6(3)(c) – that there is an inalienable human right of any individual who is a litigant in legal proceedings to instruct any other individual to be their representative in any legal proceedings in any court. He says that this inalienable human right belongs to the litigant and also to the other person who is the chosen representative. He says – based on Article 11 – that no person can be required to join any association, or any particular association, to give

legal assistance for a fee in legal proceedings. No state action can curtail these fundamental rights.

18. The logic of this is far reaching, as the Appellant confirmed. The Appellant says he has an inalienable human right – under Article 6 and/or Article 11 – to agree, for a fee, to act as a representative giving legal assistance for any individual who wished him to do so, in any court (within an ECHR state). He told me, straightforwardly, that if he – or anyone else – were to operate within the precincts of, say, the Royal Courts of Justice in London (or any other court in the Council of Europe) – including wearing a lawyer's robes – he could agree to assist any litigant for a fee, and any measure which impeded this, including any refusal by any Court to hear him addressing that Court, would breach his ECHR rights as well as the rights of the litigant. Any legislation, rule or judicial ruling which precluded these inalienable rights, or criminalised such conduct, would be a violation of Article 6. Any legislation, rule or judicial ruling which required – as a precondition – that the individual giving legal assistance belong to a bar or other association would be a violation of Article 11.

19. This is not a position which can be derived from Article 6 or Article 11. If it were, the provisions of the 2007 Act which the Judge discussed (§14 above) would be incompatible with the ECHR. Public interest regulation of rights to conduct proceedings and rights of audience, including regulatory authorities and regulated associations, are very well-established for good and legitimate reason.

20. Article 6(3)(c) is a minimum human right of a criminal defendant. It is their right to defend themselves in a criminal prosecution, through "legal assistance" of their "own choosing". Even in that setting, the Appellant has cited no authority or commentary in support of this being absolute. Absent any support, I would reject that contention. In fact, the European Court of Human Rights publishes a Guide on Article 6 (right to a fair trial: criminal limb), available online and updated on 31.12.20. This explains (§458) that the right of everyone charged with a criminal offence to be defended by counsel of their own choosing is "not absolute" and can be overridden for "relevant and sufficient grounds" which are "necessary in the interests of justice". There are hyperlinked references to relevant cases.

21. Article 11 is a qualified right. The Appellant cited no authority or commentary in support of the contention that it precludes obligations which pursue aims of public regulation. Absent any support, I would reject that contention. In fact, the European Court of Human Rights publishes a Guide on Article 11, also available online and updated on 31.12.20. This explains (§§124-126), under a heading "public law institutions, professional bodies and compulsory membership", the permissibility of "professional associations" with statutory objects to "regulate and promote the professions whilst exercising important public-law functions for the protection of the public", including "bar associations". The hyperlinked citations even include Bota v. Romania. This is the case described in the Chirita Report (§8 point (xii) above), where Mr Bota brought the unsuccessful claim in the ECtHR, arguing that a requirement to be a member of the Romanian Lawyers' Union to be able to practise as a lawyer violated Article 11 freedom of association.

22. Pausing there, the Appellant's Article 6 and 11 arguments face a second problem. In extradition proceedings, the question is whether the extradition would be incompatible with ECHR rights. That is not a roving responsibility to enquire into any human rights

question having any connection with the case. Suppose there is a conviction ExAW and the requested person says "my trial violated my Article 6 rights to a fair hearing". They would have to establish that the trial was "flagrantly unfair" and "not merely that it contravened Article 6". Cases where this has been explained include Elashmawy v Italy [2015] EWHC 28 (Admin) at §38. Each ECHR state is responsible for the acts of its own public authorities. The starting point is that it is for the state judicial authorities to secure ECHR-compatibility. That responsibility will have been on the Supreme Court in Romania when it decided the 2015 case.

23. There is another problem. Farbey J's grant of permission to appeal was expressly restricted, in her order and her reasons, as to what was and what was not being given permission. The Appellant's Article 8 point invokes "in accordance with the law" as a component of Article 8. But that is not a back-door route to rely on other legal points which have been, or could have been, ventilated. Farbey J was clear that it is the "proportionality" limb of Article 8 which has permission to appeal, and nothing else.

24. This problem about the scope of the appeal is fatal to the Appellant's Article 5(1)(a) point, his Article 7(1) point. It is also fatal to the various other submissions made by the Appellant, about what he says is the true legal position in Romania. He has variously argued that: (1) the Romanian Parliament abolished UNBR 1883 in 1948; (2) the Romanian Parliament abolished the State in 1991; (3) the Romanian Parliament abolished every court (but not tribunals or the court of appeal) in 2004; and (4) Law No. 51/1995 does not exist as a law. These are plainly outside the scope of this appeal. But, I should make clear, I can find no legal merit in any of the points to which I have referred. Nor, I add, are they supported by the key points in the Chirita report (§8 above).

25. Although it too is outside the scope of the appeal, I will deal separately with the argument that an ExAW must specify a relevant breach of an ECHR right by the requested person. Again, no source of law or commentary was provided by the Appellant in support of this. The ECHR is not a set of criminal or extradition offences by private individuals. The ECHR is a set of human rights to be protected by state authorities. State protection certainly requires having, and enforcing, criminal law. So, for example, having and enforcing a crime of murder is one important way of protecting Article 2 (the right to life). What are needed, in an accusation extradition case, are particulars as to "any provision of the law of the category 1 territory under which the conduct is alleged to be an offence (reflected in s.2(4)(c) of the 2003 Act). In a conviction extradition case, there must be details of the conviction and any sentence (reflected in s.2(6) of the 2003 Act). In this case, the relevant provisions of Romanian criminal law were, in any event, identified (§9 above). Extradition proceedings involve controls as to whether the offence is an extradition offence (s.65), and the Judge applied those tests (§§13-14 above). The Appellant at one stage argued that there is a minimum 12 month custodial sentence; but the Judge correctly identified the 4 months minimum, in this as a conviction ExAW case (s.65(3)(c)).

26. Before I turn to the issue within the scope of the appeal, I will record that the Appellant made a number of further points. He told me he does not recognise the authority of WMC. He says he should have been asked whether he did recognise the authority of that Court. He also told me that he never agreed for his Counsel (Mr Smith) to represent him at WMC. He also told me he does not accept the lawfulness of the electronic tag and pre-release security which were conditions of his bail. These points, and advancing

them, do not assist him on this appeal and I will put them to one side. I will turn to the issue on which permission to appeal was granted.

Article 8 Proportionality

27. The Appellant came to the UK in the context of difficulties in seeking to continue to practise in Romania as a lawyer. He was not a fugitive. He has developed roots in the UK. He brought his family here. He still supports his 15 and 9 year old children after their mother returned to Romania following his divorce from their mother, his ex-wife. They rely on that income. They would wish to come back to the UK at some stage in the future, with him here. The Appellant has committed no offences in Romania other than the ones to which the ExAW relates. He has no offences in the UK. He has been industrious here. He embarked on studies and entered into significant student debt. He has a substantial worthwhile life in the UK. The Judge specifically identified all of these points, within the Article 8 evaluation. The question is whether that evaluation was wrong as to its outcome, because relevant features should have been weighed so significantly differently.

28. The points which underpinned the grant of permission to appeal (§2 above) in essence relate to the nature and seriousness of matters for which extradition is being sought, in the context of Article 8. The offences were originally considered worthy of a fine. But it was a fine imposed within a legal framework whereby default could trigger custody, as it did. The Appellant was found by the Judge to be "far from a rogue lawyer", and part of the conduct for which his extradition is sought took place before the 1995 Supreme Court judgment. There is then the possible characterisation of him as a conscientious objector to regulation of the Romanian bar seen as undue government "interference" with "independence" of the Bar. That characterisation was not, however, substantiated at the hearing of the appeal. The "independence" which the Appellant continues to protest is what I have taken time to explain, seen in his "fundamental" ECHR points. He says he – and anyone else – ought to be able to act for clients, giving legal assistance. That would be armed with his 2002 diploma in law, or for that matter without it. It would be as a member of UNBR 2004, or for that matter without belonging or being subject to any bar association or regulatory organisation. His 'principled position' is that he does not, in truth, recognise any 'interference'. He does not recognise the Strasbourg Court's rejection of Mr Bota's Article 11 claim. He does not recognise the Romanian Supreme Court's 2015 judgment. He had an opportunity to make his points to the Romanian courts. He has continued to try to have the conviction and sentence reopened (refused on 13.9.21) and the sentence commuted back to a fine (refused on 6.2.23). He was in a position to argue, and to evidence, that his December 2011 suspension had been overturned in 2012, which the Judge accepted in his favour as a principal finding of fact (§§4, 6 above).

29. I have seen and read all the translated judgments of the Romanian courts. He encountered a Mr Apostolescu at a court in February 2015. The Appellant was wearing lawyer's robes. He drafted two documents for a fee and filed a power of attorney, but he did not attend a hearing. He encountered a Mr Serban at a court in January 2016. Again, he was wearing lawyer's robes. He drafted a civil application for a fee and filed a power of attorney, but again he did not attend a hearing. That January 2016 incident was after the Romanian Supreme Court had given its ruling, and – in the words of POE1 – it "confirmed that to practise law in Romania you must take the enrolment procedure via UNBR 1883". The Appellant did not – then or when sentenced or now –

accept the legitimacy of that ruling or of the criminal Law which has been held to be enforceable. The Bucharest Fourth District Court (17.1.18) and Court of Appeal (8.5.18) considered it significant that the Appellant "did not go to court to represent and assist the parties", which would have meant "the judge could find out that [his] activity was not lawful". They thought it significant that the material acts committed in January 2016 "were carried out after the publication in the Official Gazette of [the Supreme Court] Decision No 15/2015 of 21 September 2015".

30. A recognised feature of the Article 8 proportionality assessment, discussed in authorities to which the Judge referred, concerns the relative seriousness of the matters in respect of which extradition is being sought. However, as the Judge recognised, and as Farbey J made clear, having regard for Article 8 purposes to the relative seriousness of the offending in a conviction ExAW is not a forum for debating or revisiting questions of "guilt or innocence". In my judgment, the Judge dealt fully and fairly with all the features of this case as relevant to Article 8 proportionality. He found in the Appellant's favour – in the principal findings of fact – that the Appellant had joined a Bar Association, that there had been a degree of uncertainty prior to 12 September 2015, and that the Appellant was very far from being a rogue lawyer. But as the Judge also convincingly pointed out, the offending is "unattractive" and, importantly, the Appellant had continued to hold himself out and act as a lawyer even after the final determination by the Romanian Supreme Court in 2015. The relevant custodial sentence of 256 days was characterised by the Judge as significant although not particularly long. The Judge rightly recognised that it had originally been a fine. He also rightly emphasised that the extradition Court should assume that that sentence reflects the gravity of the offending in all the circumstances as seen by the requesting state court with all necessary knowledge; and should not seek to superimpose its own sentencing regime.

31. In circumstances of the Appellant's full knowledge of the proceedings in Romania, and where there is no period of time unaccounted for – still less attributable to – any lack of appetite on the part of the Romanian authorities, the Judge was right to say that the extent to which the passage of time diminished the public interest in extradition was significantly tempered by the Appellant's knowledge of the investigations and proceedings. It was also right, in that context, that the building of private and family life in the UK by the Appellant took place, knowing that he was at risk.

32. The Judge recognised all the features capable of weighing against extradition, including the private and family life implications of the 7 years in the UK, now 8 years. There is the Appellant's good character and lack of offending. There is his industrious life, and studies, here; and what the Judge described as the substantial worthwhile life in the UK. There are the significant impacts of extradition for the Appellant and for the family (albeit in Romania) who rely on him for continued financial support; and the implications for his children coming to the UK in future, with him here. It was right to recognise, as the Judge did, that the family life was derived through financial support rather than the emotional and practical elements of living together in a stable household.

33. There were and are, as the Judge rightly recognised, the weighty public interests in upholding extradition requests and treaty obligations, ensuring that there are no safe havens from accountability under criminal justice systems making those requests and with whom the UK has those treaty obligations. There is the principle of mutual

confidence and respect shown by the English extradition courts for the decisions of the Romanian judicial authorities. The Judge found that the public interest considerations in favour of extradition decisively outweighed all of the factors capable cumulatively of weighing against extradition. He said this was not a finely balanced case, but one in which the clear weight of factors falls favour of extradition. In my judgment, that conclusion and that outcome were not wrong. No relevant feature or features should have been weighed differently; still less significantly differently. Even applying a substitutionary approach and retaking the decision, I would find it to be correct. In these circumstances and for these reasons, I will dismiss the appeal.

Consequential Matters

34. I explained at the hearing and at the end of the draft judgment that, having circulated it as a confidential draft (18.6.24), I will be able to deal here with any consequential matter arising. Mr Swain submits that I should order that the Appellant's appeal is dismissed pursuant to s.27(1)(b) of the 2003 Act. That is plainly correct, and I will make that Order. The Appellant has sent a series of emails. So far as matters properly consequential on the judgment, some of the emails clearly ask to be permitted to appeal to the Supreme Court (formerly the House of Lords). I have considered this, but there is no point of law of general public importance involved in my decision – it is a case-specific Article 8 evaluation applying well-established principles – and so I will refuse certification (s.32(4)(a) of the 2003 Act) and dismiss the associated application for leave to appeal (s.32(4)(b)).