Neutral Citation Number: [2024] EWHC 385 (Admin)

**Case No: CO/685/2023**
**AC-2023-LON-000819**

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**
**In the matter of an appeal under section 26 of the Extradition Act 2003**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 February 2024

**Before** :

**MR JUSTICE GRIFFITHS**

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

**Between :**

**MARIUS-MIHAI NISIPEANU**

**Appellant**

**- and -**

**DISTRICT COURT OF DOLJ, ROMANIA**

**Respondent**

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

**Martin Henley** (instructed by AM International Solicitors) for the Appellant
**Victoria Shehadeh** (instructed by Crown Prosecution Service Extradition Unit) for the Respondent

Hearing date: 13 February 2024

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

# Approved Judgment

**Mr Justice Griffiths:**

1. This is an appeal against the order of District Judge (Magistrates' Court) Sarah-Jane Griffiths ("the Judge") on 17 February 2023 that the appellant be extradited to Romania under Part 1 of the Extradition Act 2003 ("the Act").

2. The order for extradition was made in response to a Warrant issued on 20 July 2020 and certified by the National Crime Agency on 26 August 2021 ("the Warrant"). It was pursuant to an order of the Court of Appeal Craiova which became final on 9 July 2020. The appellant was arrested on 8 September 2022 and appeared before the Westminster Magistrates Court the following day. He was initially remanded in custody but on 20 September 2022 he was granted conditional bail and remained on bail throughout the proceedings.

3. The Warrant was a conviction warrant which requested the appellant to serve a sentence of 4 years imprisonment, of which 3 years 10 months and 11 days remain to be served as a result of time initially spent on remand in these proceedings.

4. The Warrant relates to convictions for three offences, of which the third was discharged by the Judge ordering extradition, because it did not fulfil the dual criminality test in section 10 and section 65 of the Act.

   i) **Offence 1:** On 28 March 2012 and 2 April 2012, in Craiova, the appellant sold three amounts of cannabis, namely 0.68g, 0.21g and 0.86g, for the sum of 100 lei, 120 lei, and 100 lei respectively. 100 lei is equivalent to about £17 in pounds sterling at current exchange rates.

   ii) **Offence 2:** On 23 February 2016 at the appellant's home address in Craiova, he had a bottle containing 20ml of methadone, which was found during a search of his home address.

   iii) **Offence 3:** On 23 February 2016, in Craiova, the appellant stored 1.45g of vegetal fragments, packed in plastic foil, in which 5F-MDMB-PINACA was found and 2.73g of AB-CHIMINACA, both of which are psychoactive substances. Possession of these substances was not illegal under UK law at the material time, which is why this offence did not fulfil the dual criminality test. They were not substances scheduled in the Misuse of Drugs Act 1971 and the relevant provisions of the Psychoactive Drugs Act 2016 were not yet in force.

5. The Perfected Grounds of Appeal raise the following issues:

   i) Whether the extradition is barred by section 17 of the Act by reason of specialty, arising out of the fact that a single sentence has been imposed which includes a sentence for Offence 3, in respect of which extradition has not been ordered.

   ii) Whether the extradition is barred by section 2 of the Act by reason of lack of particularity.

   iii) Whether the Judge was wrong not to refuse extradition in view of the effect of Article 8 and the autism of the appellant's son on the balancing exercise. This

includes an issue about whether fresh evidence should be admitted and whether the effect of the fresh evidence is that extradition should not be ordered.

## Ground 1 – specialty

6. Section 17 of the Act provides, so far as material, as follows:

> "(1) A person's extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.
>
> (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."

7. The appellant argues that the impact of the principle of *res judicata* under the law of Romania means that the single sentence for all three offences cannot be reviewed or disaggregated under Article 598 of the Romanian Code of Criminal Procedure. Hence, it is argued that the appellant's specialty rights under section 17 of the Act are not

adequately protected. This is not a point that was argued before the Judge but it is an issue I may consider on appeal under section 27(4)(a) of the Act.

8. Article 598 of the Romanian Code of Criminal Procedure has not been placed in evidence although, as a matter of foreign law, it does have to be proved by evidence. Nevertheless, I have been referred to recent authority which has satisfied me that this Ground is not well-founded on the merits, leaving aside that technical point.

9. The operation of the specialty provisions in section 17 of the Act was summarised by the Divisional Court (Coulson LJ and Holgate J) in *R (Mihaylov) v Bulgaria* [2022] EWHC 908 (Admin) at paras 17 - 18 as follows:

> "17. Specialty, as set out in Article 27 of the Framework Decision, is the rule whereby a person surrendered under an EAW [European Arrest Warrant] may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender, other than that for which he or she was surrendered. Specialty can be infringed in two ways: where the individual is extradited and then subjected to unrelated charges or proceedings; or where the individual is prosecuted for enhanced charges based upon the conduct which gave rise to the EAW in the first place. It appears that it is the first possibility to which Ground 1 goes; there is no suggestion that the appellant in the present case faces enhanced charges arising out of his driving offence.
>
> 18. There are a number of well-established principles:
>
>> a) There is a strong presumption that EU Members States will respect specialty rights in accordance with their international obligations: see the judgment of Dyson LJ (as he then was) at [67]-[68] in *Ruiz and others v Central Court of Criminal Proceedings No5 of the National Court of Madrid* [2008] 1 WLR 2798 and *Brodziak* (citation below) at [46].
>>
>> b) Accordingly, this court will presume that the State in question will act in compliance with those obligations unless there is compelling evidence to the contrary: see *Arronategui v 1st, 2nd, 3rd and 4th Sections of the National High Court of Madrid, Spain and others* [2012] EWHC 1170 (Admin) at [47].
>>
>> c) The court must be satisfied that there are practical and effective arrangements in the requesting territory to ensure that specialty will not be infringed: see *Farid Hilali v Central Court of Criminal Proceedings No.5 Madrid* [2006] EWHC 1239 (Admin) at [46] .
>>
>> d) This primarily goes to the substantive law operating in the requesting territory. As Scott Baker LJ pointed out at [49] of *Hilali*, the basic question was whether the rule of specialty was catered for in the law of the requesting territory. The same emphasis was provided by Dyson LJ in *Ruiz* at [67]-[68]. He said that what was important was that Spain (the State in question in that case) had incorporated the specialty rule into their law; that there was no compelling evidence that the Spanish authorities would act in breach of the rule; and that the requested person had a remedy in domestic law.

e) The burden is therefore on the requested person to show that the presumption has been rebutted in the particular case and that appropriate speciality arrangements were not in place: *Brodziak and others v Circuit Court in Warsaw, Poland* [2013] EWHC 3394 at [42]."

10. The key provisions of Article 598 of the Romanian Code of Criminal Procedure, and their effect, were set out and commented upon by the Divisional Court (Holroyde LJ and Swift J) in *Enasoaie v Court of Bacau, Romania* [2021] EWHC 69 (Admin) at paras 28 and 29 as follows:

> "28. On 16 October 2020 the CPS asked specific questions as to whether violation of the speciality rule would be considered an obstacle to the enforcement of a judgment, and whether the remedy of a challenge to the enforcement would be available in this case. The questions related to Article 598 of the Criminal Procedure Code ("Article 598") which, so far as material, provides:
>
> "Challenges against enforcement
>
> (1) Challenges against enforcement of criminal sentences may be filed in the following situations:
>
> …
>
> (c) when ambiguities occur in respect of the sentence enforcement or when obstacles to enforcement occur; …
>
> (2) … challenges shall be filed … in the situation set under para (1) letter (c), with the court having returned the sentence that is being enforced. …"
>
> 29. The JA replied ("FI 5"):
>
> "1. The infringement of the speciality rule can be considered an obstacle to the enforcement of a decision.
>
> 2. The appeal against enforcement provided for by Article 598 of the Code of Criminal Procedure is available in this case. It is for the court with which the appeal against enforcement is lodged to decide whether the resulting sentence imposed cannot be enforced or whether it is possible to sever it in order to enforce only those sentences for which extradition has been granted."

11. *Enasoaie v Court of Bacau, Romania* [2021] EWHC 69 (Admin) also says, at para 39:

> "Romania is a signatory to the European Convention on Extradition 1957. Subject to exceptions which do not apply in this case, article 14 of that Convention provides as follows:
>
> "Article 14 – Rule of speciality
>
> A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he

> was extradited, nor shall he be for any other reason restricted in his personal freedom …"

12. At para 40, *Enasoaie* draws attention to Article 27 of the Council Framework Decision on the European Arrest Warrant to which Romania is still subject (as a continuing member of the European Union) and which states:

> "1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
>
> 2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
>
> 3. Paragraph 2 does not apply in the following cases:
>
> (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it; …"

13. It is not suggested that Romania has given a notification under paragraph 1 of Article 27, and, had it done so, the burden of putting that in evidence before me would have been on the appellant. It is also not suggested that para 3 applies. Therefore, under para 2, the appellant, if surrendered, i.e. extradited, to Romania, "may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered".

14. There was before the court in *Enasoaie* evidence confirming that Article 117 of the Romanian Criminal Code implements these principles and essentially regulates the principle of specialty under similar terms as Article 27(2) (*Enasoaie* at para 41).

15. *Enasoaie* rejected the specialty argument in paras 64 – 71, albeit *obiter.* It said:

> "64. When an offender has to be sentenced for a number of offences, it may often be the case that simple addition of the sentences which would be appropriate for each individual offence, if viewed in isolation, will result in a total sentence which is unjust and disproportionate to the seriousness of the offending as a whole. In England and Wales, the Sentencing Council's definitive guideline on Totality sets out overarching principles to be followed by judges and magistrates when sentencing for more than offence but does not suggest that those principles can be expressed in, or reduced to, an arithmetical formula. (…) Romanian law adopts a different approach to the cumulation of sentences: "the hardest sentence plus an increase of 1/3 of the total of other sentences". That approach results in a single final sentence: not, as in England and Wales, in a number of discrete sentences which are ordered to be served either concurrently or consecutively.

65. The submission on behalf of Mr Enasoaie was that the resulting sentence cannot be disaggregated so as to avoid his serving any part of that sentence in respect of offences (vii), (viii) and (ix), which were said not to be extradition offences. The consequence of that submission, if correct, would seem to be that a Romanian offender who was subject to a resulting sentence imposed for multiple offences, not all of which were extradition offences, could not be returned to serve any part of his sentence because he could not be returned to serve all of it. That would lead to surprising results. It would mean, for example, that an offender who had been convicted of one offence could be returned to serve his sentence, but an offender who had convicted of multiple offences, all but one of which were extradition offences, could not be returned. It would mean that the principle of speciality, which protects a returned person against punishment for anything other than the offences in respect of which he has been extradited, would be used as a means to prevent his serving any sentence for his extradition offences.

66. (…) When FI 3 is read as a whole, we understand it to mean (a) that a resulting sentence, reflecting all the offences covered by a warrant, cannot be enforced against a defendant who has only been extradited for some of the offences; and (b) that it is not possible to disaggregate the resulting sentence so as to restore the original separate sentences if, cumulatively, they will lead to imprisonment for longer than the final sentence. Neither of those restrictions necessarily means that the Romanian courts are powerless to enforce the appropriate total sentence for the offences in respect of which a defendant has been extradited.

67. That understanding is strengthened by the later further information. FI 4 (see [27] above) confirms that the reason why the final sentence cannot be enforced in full is "due precisely to the application of the specialty principle". It goes on to describe the appeal procedures by which "the Court would be able to decide, to what extent, the punishments ordered against the convict, could actually be enforced". FI 5 (see [29] above) is to similar effect.

68. The further information demonstrates that Romania does have in place effective arrangements to comply with its international obligations as to speciality. Article 117 directly implements Article 27(2) of the Framework Directive, and Article 598 provides a remedy if there is an obstacle to enforcement of the resulting sentence. Whether there is such an obstacle will no doubt depend on the details of an individual case and the length of the sentences for individual offences which were taken into account in calculating the resulting sentence. The important point, however, is that the further information shows Romania to have complied with its international obligations as to speciality and to have put in place effective arrangements to implement the principle of speciality.

69. Mr Enasoiae has not been able to adduce any compelling evidence to the contrary. The reports of Dr Mares do not contain any clear evidence that Article 598 cannot be used as a means of ensuring that a returned person will only serve his sentence for the offence(s) for which he was extradited. Indeed, Dr Mares refers to a case in which Article 598 was used in that way. Other cases to which Mr Hall invited our attention do not in our view support his argument. The decision in *Edutanu* turned on the specific information provided in that case and does not in our view assist Mr Enasoaie in the circumstances of this case. We are not persuaded

> that there is any evidence of there being any real problem in practice in ensuring that the principle of speciality is observed. (…)
>
> 70. We are unable to accept the submission that the terms of FI 4 and FI 5 leave open the possibility that an appeal court in Romania might consider the matter pursuant to Article 598 but uphold the sentence in its entirety. There is in our view no compelling evidence that such a decision might be made in circumstances where exclusion of the sentences for any non-extradition offences should lead to a reduction in the resulting sentence. There is no compelling evidence that Romania, having put in place effective arrangements to implement the principle of speciality, will then abandon that principle.
>
> 71. For those reasons, if it had been necessary for us to decide this ground of appeal, we would have rejected it."

16. This *obiter* reasoning was adopted and applied by Wall J in *Nonea v Romania* [2022] EWHC 2217 (Admin) which likewise rejected an objection to extradition based on specialty. Wall J pointed to the absence, the burden being on the appellant, of evidence demonstrating that the principles considered and applied in *Enasoiae* in favour of extradition to Romania notwithstanding an aggregated sentence for offences including non-extraditable offences, should not be applied to the same effect in *Nonea*.

17. In *Gurau v Suceava District Court, Romania* [2023] EWHC 439 (Admin) the Divisional Court (Holroyde LJ and Jay J) again considered and rejected a speciality argument on the basis that the Requested Person had failed to discharge the burden of proof (see para 49). The cases I have cited were cited, also, in *Gurau*.

18. On the evidence in this case, and in all the circumstances, and considering and applying the principles and provisions set out in the authorities to which I have referred, I am satisfied that Ground 1 must fail. The appellant has failed to discharge the burden of disproving the presumptions against him.

## Ground 2 – Particularity

19. As Ground 2, the appellant argues that, irrespective of whether the appellant's extradition would be a breach of specialty, because the Judge discharged the appellant in relation to Offence 3, his extradition is barred by reason of lack of particularity under section 2 of the Act, as the sentence imposed in respect of the two extraditable offences are less than the sentence imposed.

20. Section 2(6) of the Act requires a conviction warrant to contain the following information:

> "(a) particulars of the person's identity;
>
> (b) particulars of the conviction;
>
> (c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

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

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

21. The appellant cites *Edutanu v Romania* [2016] EWHC 124 (Admin), [2016] 1 WLR 2933, at paras 126 – 129, in which the judgment of the Divisional Court (Beatson LJ and Cranston J) said:

> "126. In this case, it is to be recalled that box (e) of the EAW stated that it related to counts of aggravated theft and bribery, which were particularised. The sentence for those totalled one year and 11 months imprisonment, but was merged into the heaviest penalty of one year and six months imprisonment. That information was given in box (c). Box (c) stated that "the total penalty to be executed is of three years and six months imprisonment". That figure was the result of adding to the one year and six months for the offences that had been particularised in box (c) a sentence of two years imprisonment for earlier unparticularised offences, in respect of which suspended sentences were activated and a pardon and fine revoked. The penalties for the earlier, unparticularised offences were also merged into the heaviest penalty for those offences, two years imprisonment. There is no information as to what those offences are, and Pascariu is unable to raise any bars to extradition in relation to them.
>
> 127. Reading the EAW as a whole, as is required, and in particular the statement in box (c) that the total sentence was for a period that was two years longer than the sentence for the particularised offences, the total cannot only be for the particularised offences. This distinguishes the case from *Presecan's* case, where the 381 day sentence for the unparticularised offence was less than that for the particularised one, and it could be said that the position was ambiguous. It also distinguishes this case from *Brodziak's* case where (see *Brodziak* at [53]) there was no material difference as to the length of sentence to be served, whether the non-extradition offence was included or not. Accordingly, in Pascariu's case, I have reached the clear conclusion that since the total sentence in the EAW clearly reflects sentences for the unparticularised offences in the same way as the EAW in *Bohm's* case did, it does not meet the requirements of section 2.
>
> 128. I am reinforced in my conclusion by the fact that what I have referred to as the underlying matter of substance in the context of section 2 (see [100] – [102] and [125] above) has not been satisfied. The information in the EAW does not provide Pascariu with sufficient material to raise any bars to extradition. I accept Mr Wolstenholme's submission that Mr Knowles's submission, that extradition be granted only in relation to the particularised offences and that there is no risk of Pascariu serving a sentence for conduct for which he was not extradited, in effect runs the two stages of the process referred to in *Zakrzewski's* case (see [22] above), whether the mandatory requirements of section 2 have been satisfied and the EAW is valid and whether limited extradition should be granted in respect of a valid EAW because of concerns, together. *Brodziak's*

> case is distinguishable because in that case the EAW contained sufficient particulars of the conviction and sentences to satisfy the underlying matter of substance.
>
> 129. I consider that the material recently provided by the IJA confirms my understanding of the meaning of the EAW. Had the EAW been valid, then the strength of the presumption that Part 1 countries will abide by their obligations and the way that presumption was applied in *Brodziak's* case despite the unsatisfactory nature of the response received from the IJA in that case would have meant that the unsatisfactory response in this case would have had to have been discounted. The court may well have had to assume that, notwithstanding the terms of the response, since specialty is implemented into Romanian domestic legislation, there would be a remedy under Romanian law, even if the sentencing court or judge himself or herself had no power to fragment the serving of a sentence that had previously been issued as a total in a final sentence, as stated in the recent reply. But in any event, the recent response suggests that there is no remedy in Romania similar to the provisions of the Polish Criminal Procedure Code referred to in *Brodziak's* case, at para 56, for the protection of specialty and for a remedy should specialty rights be infringed. For these reasons, in my judgment the decision of the district judge should be affirmed and this appeal dismissed."

22. The final paragraph (para 129) indicates that where, as I have found in this case under Ground 1, there is no bar under section 17 of the Act by reason of specialty, the objection based upon particularity falls away, because of "the strength of the presumption that Part 1 countries will abide by their obligations".

23. Moreover, the objection in para 126 of *Edutanu* was that the warrant failed to particularise all the offences in question. In the present case, the Warrant does particularise each offence, and this is so both in respect of Offences 1 and 2, which are extraditable, and Offence 3, which is not.

24. *Edutanu* was an unusual decision which turned on the particular evidence in that case. It was subsequently distinguished and not applied in *Enasoaie* at para 69, which I have quoted above. There is no evidence in this case to justify a decision to the same effect as *Edutanu*.

25. The particularity point which was successful in *Edutanu* does not, therefore, on the facts of this case, get the appellant home on Ground 2.

26. More recent authority also supports this conclusion. *Enasoaie v Court of Bacau, Romania* [2021] EWHC 69 (Admin) rejected the argument that is now advanced before me, at para 72, with the following reasoning:

> "We accept Miss Malcom's submission that the requirements of section 2 have been met: the EAW contained the necessary particulars of "the sentence which has been imposed". We are not persuaded by Mr Hall's submission that although valid and enforceable when issued, the EAW would cease to be enforceable if extradition was refused in respect of one or more offences. If that argument were correct, it would again mean that the principle of speciality would have the effect of preventing a defendant from being returned to serve his sentence for the offences

in respect of which he would otherwise be extradited. We cannot accept that an EAW which is enforceable at the start of an extradition hearing becomes unenforceable, on this basis, by the end of the hearing."

27. The Warrant was sufficiently particularised when it was issued because it gave particulars, amongst other matters, of "the sentence which has been imposed". It did not cease to be sufficiently particularised by reason of the subsequent exclusion of Offence 3 by the Judge.

28. Ground 2 must therefore fail.

## Ground 3 – Article 8

29. Ground 3 is that the Judge was wrong not to refuse extradition in view of the effect of Article 8 and the autism of the appellant's son (whom I will refer to as BRH) on the balancing exercise. The Ground is advanced, both on the basis of the evidence that was before the Judge and, *a fortiori*, on the basis of fresh evidence, some of which has already been admitted, and some of which I am asked to admit.

*The evidence before the Judge*

30. The Judge had evidence on the Article 8 point, with specific reference to BRH, from the appellant, and she had a statement from the appellant's new partner (not the biological mother of BRH) Nicoleta Hrincescu. The evidence was summarised in her judgment ("the Judgment").

31. The appellant's evidence was that BRH was born on 7 November 2019 and is autistic, and needs money for tests, therapy and to provide for him (Judgment para 18.g.). The appellant came to the UK on 19 March 2019 to provide for his son (para 18.i.). His ex-partner (the mother of BRH) and BRH himself joined him in the UK in December 2020 (para 18.j). The relationship with his ex-partner had already broken down but they remained friends because they had a son together (para 18.j). In May 2020, he met his current partner Nicoleta Hrincescu who at that time lived in Italy; she moved to the UK to live with him in about November 2020 (para 18.k.). His new partner bonded with BRH and she loves him very much, and he loves her (para 18.k.). He and his new partner moved to Liverpool in November 2021, living in rented property. He has a cousin in Manchester (para 18.l.). His son BRH began to stay with him more and more and, in April 2021, moved in with him and his new partner. His ex-partner would come to visit and take their son for a few hours, or a couple of days. She is studying, so does not have too much time to spend with BRH (para 18.m.). He feels like a complete family with his current partner and son (para 18.n.). His cousin works and lives nearby; they visit each other often and can count on one another. He also has other family and friends in the UK (para 18.o.).

32. The appellant said that he lived in the UK with his current partner and his son. His ex-partner lived in Derby and was still studying. BRH lived with his ex-partner when they first came to the UK but after a couple of months, his son came to live with him. (Judgment para 25). When he came to the UK, his ex-partner and son remained in Romania. She had the help of her mother when she was in Romania. When his partner came to the UK with their son, he helped them and would go and stay with them. He

took care of his son by helping and paying the bills. He would go to see his son after work and then would help before going back home in the evening. (Judgment para 26.)

33. The appellant said that, if he were to be extradited, he did not know who would take care of his son as there was nobody else to do it and he is a child with special needs. He conceded that there was no medical evidence from the GP to say this. He explained that the GP in the UK had said their son may have autism but that there was a 45 week waiting list. As his son's condition was getting worse, his ex-partner took their son back to Romania in November 2022 to see a doctor there. They returned to the UK in December 2022. The doctors in Romania have diagnosed his son with autism and he has a letter to confirm this but it had not been served as evidence in the case. His son had not received any therapy in the UK or Romania for his condition to date. (Judgment para 27.)

34. The appellant conceded that his son would be eligible for support from the state in the UK for his conditions. He also conceded that he had family and friends in the UK who he was close to. He said that he did not think that they could support his partner and son, should he be extradited, as they have their own lives and families. He agreed that he has a close relationship with his partner and that they can count on one another but he did not think his partner would take on the responsibility to raise his child. His current partner works full-time in the UK. (Judgment para 28.)

35. In re-examination, the appellant explained that when he is not at work, he is with his son all the time. He also explained that he is with his son even when he is at work. The appellant explained that he took care of his son, washed him, and gave him food and attention. The appellant stated that he was trying to be there for his son and to teach him to speak and that he spent time showing him colours and animals. (Judgment para 29.)

36. The appellant said that his partner is at home with his son when he is at work. When he returns from work, his partner goes to work and he remains at home with his son. The appellant stated that his son was scared to be with people he did not know. (Judgment para 30.)

37. In answer to questions from the Judge, the appellant said that his ex-partner has remained in Derby and that she is young and does not have the capacity to care for their son in terms of patience or financially. (Judgment para 32.). His son was 3 years and 3 months old at the time of the hearing. (Judgment para 33.) He said that his son was attached to his new partner as well as to him. His partner cannot cope with his son when he is in crisis and so he has to do this. The appellant was unable to tell the Judge what his partner did during the day, when he was at work, if his son had a crisis and he was not able to say how she dealt with this. The appellant said that he had not asked his partner how she coped or dealt with his son when he had a crisis whilst he was at work and she was home alone with his son. The appellant then conceded that his partner must cope and find a way to deal with his son but stated that when he is at home, it is left to him to deal with his son when he has a crisis. (Judgment para 34.)

38. The appellant told the Judge that he currently worked 12 hours a day, 3 days per week. He said that before his arrest on the Warrant, he worked from 6am until 4pm, 4 days per week but stated that he can no longer work a night shift due to his bail conditions, so he had to change his job. He said he was not working legally in the UK when he was

arrested on the Warrant. He said that he could work more hours in his new job but the other hours would be on a night shift, which he could not do because of his curfew. (Judgment para 35.) He said that his partner works night shift, from 9pm until 7 or 8am. When he is at work, his partner stays at home and cares for his son. (Judgment para 36.) The appellant said that he had made a claim for benefits but he was unable to make a claim as he did not have a passport (Judgment para 37.). His partner earned £400 per week. The rent on their property was £152 per week. (Judgment para 38.)

39. The appellant told the Judge that he wanted BRH to start nursery and had tried to do this but he had not yet obtained a national insurance number so was unable to register his son with a nursery. He said that it was his intention to have his son enrolled in nursery as soon as possible. (Judgment para 39.)

40. No other witnesses gave evidence (Judgment para 41.)

41. The appellant was not found to be a wholly credible witness by the Judge. For example, the Judge made a finding, which is not challenged now, that he was a fugitive, which was a point he denied in his evidence. She also noted that he gave evidence that he had no convictions in the UK, but in fact he had a conviction for drug driving in 2022, which resulted in a fine and disqualification. She also noted that, contrary to his evidence that he had turned his life around, his conviction showed that he had used drugs. This provided the Judge with a basis for assessing his evidence on other matters carefully, and not necessarily accepting them at face value.

*The findings of the Judge*

42. The Judge made the following findings in her Judgment.

43. The appellant was a fugitive. (Judgment para 42.a.)

44. The appellant came to the UK in March 2020. He lives with his partner in the UK, who moved to the UK to be with him. They began living together in November 2020. He also lives with in the UK with his son BRH, who has lived with his and his partner since April 2021. He has a settled intention to remain in the UK. (Judgment para 42.c.)

45. The appellant came to the UK on his own. His ex-partner and son remained in Romania. His son remained in Romania in the care of his mother until they came to the UK in December 2020. The appellant lived separately from his ex-partner and child at this time as by then he was in a new relationship with his current partner. The appellant would visit his son at his ex-partner's home. The appellant's ex-partner wished to study in the UK, so their son went to live with the appellant and his current partner in April 2021. BRH is cared for by the appellant and his partner and both have a close and loving relationship with their son.

46. Whilst the appellant said that his son spent time with his mother he said that she would not be able to care for their son as she was not able to do so. The Judge did not accept this. She said (Judgment para 42.d.):

> "The [appellant's] own evidence contradicted this statement in two ways. Firstly, [he] conceded that his son had remained in Romania with his ex-partner when he first came to the UK. His

> ex-partner was much younger then and she was alone to bring up a small child. There was some help from her mother but she did this without the [appellant] and whilst he was in another country. Further, the [appellant] stated that his ex-partner took their son back to Romania between November and December 2022 for a medical assessment. Again, she did this on her own and the evidence was that she coped. The [appellant's] partner also copes with his son during the day, for long hours, whilst he is at work. Again, whilst the [appellant] sought to say his son was difficult to manage and only he could manage his son when he was in crisis, he was unable to explain how his partner coped on a day to day basis for 12 hours a day whilst he was at work. The evidence before me was that she did cope. She clearly loves his son, as they both accept.
>
> I accept that there will be emotional distress to the [appellant], his partner and son should he be extradited. Emotional distress, sadly, is not unusual in extradition cases. Further, the [appellant's] son would likely remain with his current partner or indeed return to his ex-partner, the mother of his son, who would cope emotionally. There is no evidence from his ex-partner that she would not or could not care for her son, should the [appellant] be extradited. The [appellant] has friends and family in the UK. They are close. Again, I do not accept the [appellant's] evidence that they would not help. The [appellant] has sought to exaggerate his own role and importance in his son's life. I accept that he is an important figure in his son's life and that he lives with his son but this is not a sole carer case. The son would be able to be cared for by his current partner and/or ex-partner with the support of family and friends in the UK who are all close. The evidence before me, that whilst difficult, they would cope."

47. It was argued before me that these findings were wrong, and not supported by the evidence. I do not accept that submission. The findings were made after a detailed rehearsal of all the evidence, and the Judge gave good reasons for the findings she made, both based on positive evidence which supported her findings, and on the absence of evidence that might have been adduced to undermine her findings. It was a rational conclusion that was open to her on the evidence, and I see no reason to decide that these findings were wrong. I consider them to be correct on the evidence before the Judge.

48. I will consider in due course the effect of additional evidence that has been placed before me in support of the appeal, which was not before the Judge.

49. The Judge made the following observation about BRH's suspected autism (Judgment para 42.f.):

> "The [appellant] says that his son has autism. The [appellant] has produced a medical record from his GP in the UK. This shows a number of matters on the short document but it makes no reference to his son having autism. The [appellant] also said his

> ex-partner took his son to Romania in November 2022 until December 2022 to be medically assessed in Romania for autism. The [appellant] told me that he had a diagnosis of autism following this visit and whilst he said he had medical evidence this had not been served and has not been provided to me."

50. This was a correct statement of the evidence before her. I have, however, been shown a translation of the documents from Romania to which the appellant referred, although he did not produce them to the Judge.

    i) One of these is a document dated 13 December 20222 which states that BRH (who is given a Romanian address) falls under the degree of disability "Serious with personal assistant" and that a decision has been made approving a "complex evaluation report… issued by the Complex Child Assessment Service within the General Directorate of Social Work and Child Protection of Dolj, with the recommendations provided in: the habilitation-rehabilitation plan" (Appeal Hearing Bundle p 124). The document is said to be a "certificate" which is "valid" until 11 December 2024.

    ii) The other is a medical certificate dated 15 November 2022 certifying (following referral by a named Pediatric Psychiatry Primary Care Physician) that BRH "age 3 years… resided in Dolj County… is suffering of: AUTISM SPECTRUM DISORDER (F 84.9)" (Appeal Hearing Bundle p 125). This is said to be valid for 1 year.

51. The first of these certificates appears to entitle BRH to appropriate treatment and support in Romania, because it says: "The holder of this certificate benefits from all the rights and accessibility provided by the Law no 448/2006, … corresponding to the established disability degree. The certificate obliges all persons and authorities to comply with it in accordance with the provisions of the legislation in force." I have, however, been given no details of that legislation, and there is no expert evidence before me, as there was not before the Judge either, so that is a matter of inference on my part.

52. As to the second of these certificates, in submissions to me, Counsel for the appellant speculated that "F 84.9" might refer to a developmental disorder classification, although he was not able to be specific.

53. This suggestion appears to me to be well-founded. I think I can take judicial notice of the fact that the International Classification of Diseases, Tenth Revision ("ICD-10") produced and maintained by the World Health Organisation (although since 2022 replaced by ICD-11 which adopts a different coding format) covered "Pervasive developmental disorders" under code F84 and broke these down as follows:

    i) F84.0 **Childhood autism**.

    "A type of pervasive developmental disorder that is defined by: (a) the presence of abnormal or impaired development that is manifest before the age of three years, and (b) the characteristic type of abnormal functioning in all the three areas of psychopathology: reciprocal social interaction, communication, and restricted, stereotyped, repetitive behaviour. In addition to these specific diagnostic features, a range of other nonspecific problems are common, such as

phobias, sleeping and eating disturbances, temper tantrums, and (self-directed) aggression.

Autistic disorder
Infantile:

- autism
- psychosis

Kanner syndrome
Excl.:
autistic psychopathy (F84.5)"

ii) F84.1 **Atypical autism**

"A type of pervasive developmental disorder that differs from childhood autism either in age of onset or in failing to fulfil all three sets of diagnostic criteria. This subcategory should be used when there is abnormal and impaired development that is present only after age three years, and a lack of sufficient demonstrable abnormalities in one or two of the three areas of psychopathology required for the diagnosis of autism (namely, reciprocal social interactions, communication, and restricted, stereotyped, repetitive behaviour) in spite of characteristic abnormalities in the other area(s). Atypical autism arises most often in profoundly retarded individuals and in individuals with a severe specific developmental disorder of receptive language.

Atypical childhood psychosis
Mental retardation with autistic features
Use additional code (F70-F79), if desired, to identify mental retardation."

iii) F84.2 **Rett syndrome**

"A condition, so far found only in girls, in which apparently normal early development is followed by partial or complete loss of speech and of skills in locomotion and use of hands, together with deceleration in head growth, usually with an onset between seven and 24 months of age. Loss of purposive hand movements, hand-wringing stereotypies, and hyperventilation are characteristic. Social and play development are arrested but social interest tends to be maintained. Trunk ataxia and apraxia start to develop by age four years and choreoathetoid movements frequently follow. Severe mental retardation almost invariably results.

iv) F84.3 **Other childhood disintegrative disorder**

"A type of pervasive developmental disorder that is defined by a period of entirely normal development before the onset of the disorder, followed by a definite loss of previously acquired skills in several areas of development over the course of a few months. Typically, this is accompanied by a general loss of interest in the environment, by stereotyped, repetitive motor mannerisms, and by autistic-like abnormalities in social interaction and communication. In some cases the disorder can be shown to be due to some associated encephalopathy but the diagnosis should be made on the behavioural features.

Dementia infantilis
Disintegrative psychosis
Heller syndrome
Symbiotic psychosis
Use additional code, if desired, to identify any associated neurological condition.
Excl.:
Rett syndrome (F84.2)"

v) F84.4 **Overactive disorder associated with mental retardation and stereotyped movements**

"An ill-defined disorder of uncertain nosological validity. The category is designed to include a group of children with severe mental retardation (IQ below 35) who show major problems in hyperactivity and in attention, as well as stereotyped behaviours. They tend not to benefit from stimulant drugs (unlike those with an IQ in the normal range) and may exhibit a severe dysphoric reaction (sometimes with psychomotor retardation) when given stimulants. In adolescence, the overactivity tends to be replaced by underactivity (a pattern that is not usual in hyperkinetic children with normal intelligence). This syndrome is also often associated with a variety of developmental delays, either specific or global. The extent to which the behavioural pattern is a function of low IQ or of organic brain damage is not known."

vi) F84.5 **Asperger syndrome**

"A disorder of uncertain nosological validity, characterized by the same type of qualitative abnormalities of reciprocal social interaction that typify autism, together with a restricted, stereotyped, repetitive repertoire of interests and activities. It differs from autism primarily in the fact that there is no general delay or retardation in language or in cognitive development. This disorder is often associated with marked clumsiness. There is a strong tendency for the abnormalities to persist into adolescence and adult life. Psychotic episodes occasionally occur in early adult life.

Autistic psychopathy
Schizoid disorder of childhood"

vii) F84.8 **Other pervasive developmental disorders**

viii) F84.9 **Pervasive developmental disorder, unspecified.**"

54. I have quoted this section of ICD-10 in full because, if, as seems highly likely, the Romanian certification of BRH in the second certificate as "suffering of: AUTISM SPECTRUM DISORDER (F 84.9)" is a reference to ICD-10, the certificate is referring to "F84.9 **Pervasive developmental disorder, unspecified**" rather than the more specific diagnoses that precede this in ICD-10.

55. This (had it been before the Judge, which it was not) might have given some additional support to the following finding which she made at para 42.f (page 14ff) of the Judgment:

> "…I am prepared to accept that the [appellant's] son has suspected autism. The difficulty is that autism is a spectrum, which affects different people in different ways and to different extents. I have limited evidence, other than what the [appellant] and his partner tell me, about how his son is affected as a result of this condition."

56. The Judge noted (Judgment para 42.f, on p 15) that she had refused an adjournment for a referral to be made for BRH. This refusal is criticised before me. It is argued on behalf of the appellant that the Judge was thereby depriving herself of important evidence that might have informed her consideration of the interests of the child, which is recognised as of particular importance in a *Celinski* balancing exercise.

57. In *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338 Lady Hale said, at paras 31-33:

> "31. There are differences between extradition and other reasons for expulsion. (…) In particular, extradition is an obligation owed by the requested state to the requesting state in return for a similar obligation owed the other way round. There is no comparable obligation to return failed asylum seekers and other would-be immigrants or undesirable aliens to their home countries (which would sometimes be only too pleased never to see them again). But there is no obligation to return anyone in breach of fundamental rights. Furthermore, although domestic immigration policy does try to strike a balance between competing interests, article 8 typically comes into play when it has not done so. That is why an "exceptionality" test was disapproved in immigration cases in *Huang v Secretary of State for the Home Department* [2007] UKHL 11, [2007] 2 AC 167 , just as it was later disapproved in extradition cases in *Norris*. Hence, as Lord Hope observed, "there are [no] grounds for treating extradition cases as falling into a special category which diminishes the need to examine carefully the way the process will interfere with the individual's right to respect for his family life" (para 89).
>
> 32. The second main criticism of the approach in later cases is that the courts have not been examining carefully the nature and extent of the interference in family life. In focussing on "some quite exceptionally compelling feature" (para 56 in *Norris*), they have fallen into the trap identified by Lord Mance, tending "to divert attention from consideration of the potential impact of extradition on the particular persons involved … towards a search for factors (particularly external factors) which can be regarded as out of the run of the mill" (para 109). Some particularly grave consequences are not out of the run of the mill at all. Once again, the test is always whether the gravity of the interference with family life is justified by the gravity of the public interest pursued (see also Lord Wilson, at para 152). Exceptionality is a prediction, just as it was in *R (Razgar) v*

> *Secretary of State for the Home Department* [2004] UKHL 27, [2004] 2 AC 368, and not a test. We are all agreed upon that.
>
> 33. These two points clarified, what more needs to be said about the interests of children? There appears to be some disagreement between us about the order in which the judge should approach the task. I agree entirely that different judges may approach it in different ways. However, it is important always to ask oneself the right questions and in an orderly manner. That is why it is advisable to approach article 8 in the same order in which the Strasbourg court would do so. There is an additional reason to do so in a case involving children. The family rights of children are of a different order from those of adults, for several reasons. In the first place, as *Neulinger* and *ZH (Tanzania)* have explained, article 8 has to be interpreted in such a way that their best interests are a primary consideration, although not always the only primary consideration and not necessarily the paramount consideration. This gives them an importance which the family rights of other people (and in particular the extraditee) may not have. Secondly, children need a family life in a way that adults do not. They have to be fed, clothed, washed, supervised, taught and above all loved if they are to grow up to be the properly functioning members of society which we all need them to be. Their physical and educational needs may be met outside the family, although usually not as well as they are met within it, but their emotional needs can only be fully met within a functioning family. Depriving a child of her family life is altogether more serious than depriving an adult of his. Careful attention will therefore have to be paid to what will happen to the child if her sole or primary carer is extradited. Extradition is different from other forms of expulsion in that it is unlikely that the child will be able to accompany the extraditee. Thirdly, as the Coram Children's Legal Centre point out, although the child has a right to her family life and to all that goes with it, there is also a strong public interest in ensuring that children are properly brought up. This can of course cut both ways: sometimes a parent may do a child more harm than good and it is in the child's best interests to find an alternative home for her. But sometimes the parents' past criminality may say nothing at all about their capacity to bring up their children properly. Fourthly, therefore, as the effect upon the child's interests is always likely to be more severe than the effect upon an adult's, the court may have to consider whether there is any way in which the public interest in extradition can be met without doing such harm to the child."

58. The appellant criticises the Judge for not expressly referring to this passage or, it is submitted, applying the important principles set out within it.

59. I do not think that is fair. The judge expressly referred to *HH* in para 53 of the judgment as one of the three leading cases, the others she cited being *Norris v Government of*

*USA (No2)* [2010] UKSC 9, and *Celinski & Others v Slovakian Judicial Authority* [2015] EWHC 1274 (Admin). Although the Judge did not at that point reference or quote particular passages from *HH*, it is not always necessary for a judgment to do so. It is inconceivable that this very experienced judge would have expressly cited a case as important and well-known as *HH* without being fully aware of what it says. I see no sign in the Judgment that the Judge failed to make the careful enquiry about the effect of extradition on BRH which the judgment of Lady Hale in *HH* requires. On the contrary, my own extensive citations from the Judge's Judgment, including some I have yet to reach, demonstrate to my satisfaction that the Judge gave the impact on BRH her most careful attention, both by examining and evaluating the evidence she had from which she could make findings about what that impact could be, and by treating the interests of BRH as "a primary consideration, although not always the only primary consideration and not necessarily the paramount consideration" as Lady Hale put it in *HH*.

60. The Judge gave cogent and sufficient reasons for refusing an adjournment for a referral to made for the appellant's son and, if appropriate, for a diagnosis to be made in the UK (Judgment para 42.f on p 15). She made the following points:

i) She had been told that it would take at least 45 weeks for an initial appointment to even take place "and no doubt a diagnosis would take even longer". She was entitled to consider this an unacceptable delay in the context of the general need to proceed expeditiously with extradition proceedings.

ii) She had not been given evidence from Romania (despite being told it existed) that BRH had been diagnosed there with autism. No explanation was apparently given to her, and certainly none was given to me, for the appellant and his representative (who was not Counsel appearing before me) knowing about the existence of the document and referring to it, but not producing it to the Judge (with or without translation, given that a translator was available at the hearing). Now that I have seen the document, it did not go much further than the finding the Judge in fact made, which was that BRH "has suspected autism". It did not provide more detail than she had about the extent and implications of that, which was very little.

iii) She had no information from the GP in the UK that the appellant's son was to be placed on a waiting list or even that there had been discussions as to whether the son had autism. There was nothing in the GP print out given to the Judge that referred to autism at all.

iv) Therefore, Judge found that it was "not proportionate to delay this case for such an assessment, as I had nothing to say that it was thought necessary by a GP in the UK and not least because a diagnosis does not alter how the [appellant's] son presents on a day to day basis. There had been plenty of time for medical records to be obtained and served in this case but they had not been."

v) The Judge also referred to an application to adjourn the final hearing for a psychological or psychiatric assessment of the appellant's son. Again, she refused that application. She noted that the appellant

> "…had suggested for some time that his son had suspected autism and yet no expert had been identified or instructed at the time of the final hearing. There has been plenty of time for an expert to be instructed and this was the second time a final hearing had been listed for this case. The reason for not instructing an expert before now was not explained".

vi) The Judge said that appellant and his solicitors knew that the matter was listed for a final hearing and directions had been made for the service of evidence. Nothing had been done to instruct an expert for a report to be prepared for the final hearing and the delay was not explained.

vii) The Judge had regard to the Criminal Procedure Rules, including the overriding objective and the Special Rule in extradition cases. She decided it was "not in the interests of justice to adjourn the case for such an assessment to take place now."

viii) She said "a diagnosis does not alter how the condition, should the [appellant's] son have autism, affects him day to day."

ix) Further, other than the evidence of his partner and the appellant, no evidence had been served regarding this. Therefore, whilst the Judge accepted that she had "limited evidence of how the condition affects his son on day to day basis, should his son have autism, there has been plenty of time to get such evidence and to serve it, such as evidence from the GP in the UK or indeed the document from Romania, which has not been served in this case."

61. These appear to me to have been impeccable reasons for refusing an adjournment to obtain further evidence.

62. That, then, was the state of the evidence as to BRH's autism and its effects, so far as relevant to the extradition and Article 8 balancing exercise.

63. On this evidence, the Judge concluded (Judgment para 42.f at p 16) as follows:

> "Therefore, other than the evidence of the [appellant] and his partner, that his son can be difficult to manage and does not like being with strangers, there is no evidence in this case that that the son requires attention over and above any other child of his age. Of course, I also accept that the separation of a young child, of the [appellant's] son's age, will be emotionally distressing and difficult. This is not, as I have said, unusual in extradition cases. There is no evidence that the emotional distress will be any more in this case than with any other child of this age, who faced a separation from his father in such circumstances. The [appellant's] son, has the love and support of the [appellant's] partner, who he has lived with since April 2021. They have a close bond. It is his partner who cares for his son during the day on her own when the [appellant] is at work. Whilst it may be difficult for her, she copes. His son also sees his mother and she spends time with her son. There was no evidence from the mother of his son that she could not and/or would not be able to

> take care of her son, should the [appellant] be extradited. She is her son's life and would no doubt be there to support him should the [appellant] be extradited. Further, it was clear from the [appellant's] evidence that his partner and ex-partner are, able to cope with his son on a day to day basis. Further, the [appellant's] intention was for his son to start nursery as soon as possible, the only reason this had not happened already was because the [appellant] did not have the documents to enrol his son in nursery and so it is not his medical condition that has meant his son cannot start nursery but a practical one.
>
> In conclusion, as I have said, this is not a sole carer case. Should the [appellant] be extradited, the son would remain with the [appellant's] partner or could return to his mother. Between them, the [appellant's] son would cope with their love and support. The [appellant's] son could start nursery, which would enable his partner to work in the day so she can look after him at night. Alternatively, as I have said, his son could return to live with his mother. The [appellant] has family and close friends in the UK who would no doubt rally around and offer support to the family. The evidence before me is that whilst difficult, it is no more difficult than in many other extradition cases and I find that the [appellant's] son would be cared for and loved and would be supported."

64. These findings were supported by the evidence, including the gaps in the evidence, which was before the Judge. I am not persuaded that they were wrong. Nor were they in any way inattentive to the interests of BRH. On the contrary, they considered his interests, carefully, and at length, and reached conclusions which were rational and evidence-based in support of where those interests were in due course to be placed in the balance, and with what weight.

65. Before conducting a *Celinski* balancing exercise, and before reaching a conclusion on the Article 8 question, the Judge made the following further findings:

    i) The appellant had worked illegally in the UK and there would be some financial hardship to him and his family should he be extradited as he would lose his employment (Judgment para 42.g).

    ii) However, BRH would be eligible for some financial assistance as a result of his medical condition, should he have autism (Judgment para 42.g.)

    iii) The appellant's partner worked and her income covered the rent and bills. There were also family and friends in the UK and the appellant's ex-partner "who I have no doubt would rally around to help". Therefore, whilst there would be some financial hardship should the appellant be extradited, "I find the [appellant's] partner would cope and would be able to financially support the [appellant's] son." (Judgment para 42.g.)

    iv) Alternatively, BRH could return to live with his mother who whilst at college could send her son to nursery or she could claim benefits. There was no evidence

from the mother that she could not care for her son financially or emotionally or that she would not do so. (Judgment para 42.g.)

v) There had been no real delay in the case (Judgment para 42.h.). Further, the appellant was a fugitive, which had contributed to such delay as there may have been (Judgment para 42.h.)

66. The Judge was satisfied to the criminal standard that Offence 1 and Offence 2 were extradition offences within the meaning of sections 10 and 65(3) of the Act. She was not so satisfied in relation to Offence 3. (Judgment paras 43-51.) It was submitted to me that she then failed to take into account the absence of Offence 3 from her assessment of the seriousness of the offending, as part of her balancing exercises. I reject that submission. Nothing can have been more to the forefront of her mind by this point in the Judgment. It is fanciful to suggest that she proceeded to forget it. Indeed, she returned to this point at the very end of the Judgment (paras 73-75).

67. The fact was that the rejected offence was the least serious of the three Offences. Offence 1 was street dealing of a Class B drug. Offence 2 was possession of a Class A drug. The offences attracted a custodial sentence, as to which the Judge made an explicit finding, which tended to support their seriousness. Since that finding was made after she had ruled out Offence 3, I see no reason to believe that, in making her assessment, she wrongly included Offence 3.

68. This section of the Judgment (paras 43-51) is under the heading "Section 21 – Human Rights" and "Section 10 – Extradition Offence". Therefore, the Judge was expressly considering the extent to which all the offences were extraditable in the context of the assessment of the question of seriousness of offending to be balanced against the impact of extradition on the appellant's Article 8 and other human rights.

*The Judge's Article 8 assessment and* Celinski *balancing exercise*

69. The Judge then turned to consider the Article 8 question which is re-argued before me. She correctly directed herself as to the relevant authorities, including, in particular, *Norris v Government of USA (No2)* [2010] UKSC 9, *HH* [2012] UKSC 25 and *Celinski v Slovakian Judicial Authority* [2015] EWHC 1274 (Admin) (Judgment paras 53-55). She noted the transition from the Framework Decision to the Trade and Cooperation Agreement (Judgment para 56) and the importance of human rights including Convention rights in the decision she had to make (Judgment paras 56-57).

70. She identified the following as factors favouring extradition being granted (Judgment para 58):

i) The strong public interest in this country complying with its international extradition treaty obligations and not being regarded as a haven for those fleeing foreign jurisdictions or seeking to avoid criminal proceedings in other countries.

ii) The cooperation provided for in this Part of the Act being based on the Parties and Member States longstanding respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European

Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.

iii) Decisions of the issuing judicial authority should be accorded a proper degree of confidence and respect.

iv) The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8.

v) The appellant's extradition was sought in relation to drugs offences, which are "not insignificant". He had been sentenced to 4 years imprisonment, of which 3 years, 10 months and 11 days remained to be served which is "not an insignificant sentence of imprisonment."

71. She identified the following as factors against extradition being granted (Judgment para 59):

i) The appellant came to the UK in March 2020. He lives with his partner in the UK, who moved to the UK to be with him. They began living together in November 2020. He also lives with in the UK with his son BRH, who has lived with the appellant and his partner since April 2021. He has a settled intention to remain in the UK.

ii) The will be emotional distress to the appellant, his partner and his son should he be extradited. The appellant came to the UK on his own. His ex-partner and son remained in Romania. The appellant's son remained in Romania in the care of his mother until they came to the UK in December 2020. The appellant lived separately from his ex-partner and child at this time as by then he was in a new relationship with his current partner. The appellant would visit his son at his ex-partner's home. The appellant's ex-partner wished to study In the UK, so their son went to live with the appellant and his current partner in April 2021. The appellant's son is cared for by the appellant and his partner and both have a close and loving relationship with their son. The Judge accepted that there would be emotional distress to the appellant, his partner and son should he be extradited. The Judge was "prepared to accept that the [appellant's] son has suspected autism". Other than the evidence of the appellant and his partner, that his son can be difficult to manage and does not like being with strangers, there was "no evidence in this case that that the son requires attention over and above any other child of his age". The Judge, however, also accepted that the separation of a young child, of BRH's age, would be emotionally distressing and difficult. She said that is not unusual in extradition cases. "There is no evidence that the emotional distress will be any more than with any other child of this age, who faced a separation from his father in such circumstances."

iii) The appellant had had a number of jobs in the UK and worked illegally in the UK. There would be some financial hardship to the appellant and his family should he be extradited as he would lose his employment.

iv) There has been no real delay in this case. Whilst the offences go back to 2016, the appellant was arrested in 2016 in relation to these matters. He was aware of these offences, he admits he was guilty of these offences and he was present at

the Court hearing in 2019, when he was convicted and sentenced for the offences. The appellant then appealed. The appeal was dismissed on 9 July 2020 and the appellant could not be found in Romania, having left in breach of his obligation to notify any change of address of more than 3 days. The Judicial Authority then issued the Warrant soon after on 20 July 2020, very quickly after the appeal had been dismissed. The Judge accepted that any delay weighed in the appellant's favour. But there had been little delay in this case and, moreover, the appellant was a fugitive which had undoubtedly contributed to the delay. He had not lived openly, he worked illegally, and he did not apply for a national insurance number. These factors reduced the impact of any delay in this case, such as it was.

72. That was, in my judgment, a rigorous, careful, thorough, evidence-based, fair and reasonable balancing exercise.

73. However, the Judgment did not stop there. It proceeded to make further points, between paras 60-69 of the Judgment, which re-capped and re-considered the various elements on both sides of the balancing exercise and made some additional points, with particular reference to the impact on BRH and the Article 8 question. Avoiding some repetition, I refer in particular only to the following passages in paras 60 – 66 of the Judgment:

> "60. I have firmly in mind the guidance given by the former Lord Chief Justice in *Celinski and others* in considering whether it is incompatible with the RP's [i.e. the appellant's] Article 8 rights to order his surrender. I remind myself that there is a very high public interest in ensuring that extradition arrangements are honoured as is the UK not being regarded as a haven for those fleeing foreign jurisdictions or seeking to avoid criminal proceedings in other countries.
>
> 61. I give weight to the emotional distress that the RP, his partner and child would undoubtedly suffer should he be extradited. The RP came to the UK on his own. His ex-partner and son remained in Romania. The RP's son remained in Romania in the care of his mother until they came to the UK in December 2020. The RP lived separately from his ex-partner and child at this time as by then he was in a new relationship with his current partner. The RP would visit his son at his ex-partner's home. The RP's ex-partner wished to study in the UK, so their son went to live with the RP and his current partner in April 2021. The RP's son is cared for by the RP and his partner and both have a close and loving relationship with their son. Whilst the RP said that his son spent time with his mother he said that she would not be able to care for their son as she was not able to do so. I do not accept this. The RP's own evidence contradicted this statement in two ways. Firstly, the RP conceded that his son had remained in Romania with his ex-partner when he first came to the UK. His ex-partner was much younger then and she was alone to bring up a small child. There was some help from her mother but she did this without the RP and whilst he was in another country. Further, the RP stated that his ex-partner took their son back to

Romania between November and December 2022 for a medical assessment. Again, she did this on her own and the evidence was that she coped. The RP's partner also copes with his son during the day, for long hours, whilst he is at work. Again, whilst the RP sought to say his son was difficult to manage and only he could manage his son when he was in crisis, he was unable to explain how his partner coped on a day to day basis for 12 hours a day whilst he was at work. The evidence before me was that she did cope. She clearly loves his son, as they both accept.

62. I accept that there will be emotional distress to the RP, his partner and son should he be extradited. Emotional distress, sadly, is not unusual in extradition cases. Further, the RP's son would likely remain with the RP's current partner or indeed return to his ex-partner, the mother of his son, who would cope emotionally. The RP has friends and family in the UK. They are close. Again, I do not accept the RP's evidence that they would not help. The RP has sought to exaggerate his own role and importance in his son's life. I accept that he is an important figure in his son's life and that he lives with his son but this is not a sole carer case. The son would be able to be cared for my his current partner and/or ex-partner with the support of family and friends in the UK who are all close. The evidence before me, that whilst difficult, they would cope.

63. The RP says that his son has autism. The RP has produced a medical record form his GP in the UK. This shows a number of matters on the short document but it makes no reference to his son having autism. The RP also said his ex-partner took his son to Romania in November 2022 until December 2022 to be medically assessed in Romania for autism. The RP told me that he had a diagnosis of autism following this visit and whilst he said he had medical evidence this had not been served and has not been provided to me. That said, I am prepared to accept that the RP's son has suspected autism. The difficulty is that autism is a spectrum, which affects different people in different ways and to different extents and I have limited evidence, other than what the RP and his partner tell me, about how his son is affected as a result of this condition. Therefore, whilst I accept that I have limited evidence of how the condition affects his son on day to day basis, should his son have autism, there has been plenty of time to get such evidence and to- serve it, such as evidence from the GP in the UK or indeed the document from Romania, which has not been served in this case. Therefore, other than the evidence of the RP and his partner, that his son can be difficult to manage and does not like being with strangers, there is no evidence in this case that that the son requires attention over and above any other child of his age. Of course, I also accept that the separation of a young child, of the RP's son's age, will be

emotionally distressing and difficult. This is not, as I have said, unusual in extradition cases.

64. There is no evidence that the emotional distress will be any more than with any other child of this age, who faced a separation from his father in such circumstances. The RP's son, has the love and support of the RP's partner, who he has lived with since April 2021. They have a close bond. It is his partner who cares for his son during the day on her own when the RP is at work. Whilst it may be difficult for her, she copes. His son also sees his mother and she spends time with her son. There was no evidence from the mother of his son that she could not and/or would not be able to take care of her son, should the RP be extradited. She is in her son's life and would no doubt be there to support him should the RP be extradited. Further, it was clear from the RP's evidence that his partner and ex-partner are able to cope with his son on a day to day basis. Further, the RP's intention was for his son to start nursery as soon as possible, the only reason this had not happened already was because the RP did not have the documents to enrol his son in nursery and so it is not his medical condition that has meant his son cannot start nursery.

65. In conclusion, as I have said, this is not a sole carer case. Should the RP be extradited, the son would remain with the RP's partner or could return to his mother. Between them, the RP's son would cope with their love and support. The RP's son could start nursery, which would enable his partner to work in the day so she can look after him at night. Alternatively, as I have said, his son could return to live with his mother. The RP has family and close friends in the UK who would no doubt rally around and offer support to the family. The evidence before me is that whilst difficult, it is no more difficult than in many other extradition cases and I find that the RP’s son would be cared for and loved and would be supported.

66. The RP works. The RP has had a number of jobs in the UK and he has worked illegally in the UK. That said, there will be some financial hardship to the RP and his family should he be extradited as he would lose his employment. I note that the RP conceded that his son would be eligible for some financial assistance as a result of his medical condition, should he have autism. Further, his partner works and her income covers the rent and bills. There are also family and friends in the UK and the RP's ex-partner who I have no doubt would rally around to help. Therefore, whilst there would be some financial hardship should the RP be extradited, I find the RP's partner would cope and would be able to financially support the RP's son. Alternatively, the RP's son could return to live with his mother who whilst at college could send her son to nursery or she could claim benefits.

> There is no evidence from the mother that she could not care for her son financially or emotionally or that she would not do so."

74. The Judge then concluded as follows (Judgment paras 70-71, with emphasis added):

> "70. These cases are often finely balanced, not least when the RP has a young child, as in this case, as he is the one who will be most affected by the RP being extradited. **The child's interests are at the forefront of my mind**. That said, when I carry out the balancing exercise in this case, as I must, I find that the balance falls in favour of extradition.
>
> Conclusions on Article 8:
>
> 71. On the evidence before me, there is nothing to suggest that the negative impact of extradition of the RP is of such a level that the court ought not to uphold this country's extradition obligations. Hardship, both emotional and financial, will be suffered to the RP and his family, especially his son, as is almost always the case."

75. I find it impossible to say that, on the evidence before the Judge, these passages omitted anything material, included anything immaterial, made any error of judgment, or were wrong.

76. Thus far, therefore, I am not persuaded that there is any substance in the appeal against the Judge's decision to order extradition in relation to Offences 1 and 2.

## Fresh evidence

77. Granting leave to appeal on 26 September 2023, Kerr J also granted an unopposed application for permission to adduce further evidence dated 16 May 2023, namely, updated witness statements from the appellant, from his current partner, and from his former partner (the mother of BRH).

*Fresh evidence admitted by order of Kerr J*

78. The appellant's updated witness statement makes the following new points:

    i) He fears BRH being moved to social care or given for adoption so that he will not see him again.

    ii) BRH has been diagnosed with Autism Spectrum Disorder and shows a permanent deficit in communication and social interaction and often displays a restricted pattern of repetitive physical/verbal activities (stereotypies - motor movements that stimulate excessive attachment to routine).

    iii) BRH (who was at the date of the statement in about May 2023 aged about 3 ½ years old) still did not talk properly, wears diapers, does not eat by himself and does not sleep alone. He does almost nothing that a child of his age should do. During breakdowns he gets agitated, he fusses, he fidgets and it is very hard to calm him down. He has several breakdowns a day, and at night had to be put to sleep just by rocking him on their legs, sometimes for two hours.

iv) BRH was being looked after by the appellant and his partner, working different shifts so that one was available.

v) The appellant's current partner would not look after BRH if the appellant was extradited. Nor would the appellant's ex-partner, BRH's biological mother. "She is refusing to look after him now or to have contact with him". So were her parents.

vi) The appellant's parents are in Romania but his father has Alzheimer's. The appellant's mother "is barely able to look after him". She could not look after BRH.

vii) The appellant has a sister in Romania, but she has her own family and has not shown any interest in helping the appellant with BRH.

viii) He does not refer to any help that may or may not be available from his other relations in the UK.

79. The fresh evidence witness statement of the appellant's current partner, Nicoleta Hrincescu, makes the following new points:

i) She has her own daughter who is 18 and currently still in Italy. She raised her daughter on her own. Her daughter plans to move to the UK and live with Ms Hrincescu in order to study.

ii) BRH (who is not, of course, her biological child) has been diagnosed with Autism Spectrum Disorder and shows a permanent deficit in communication and social interaction and often displays a restricted pattern of repetitive physical/verbal activities (stereotypies - motor movements that stimulate excessive attachment to routine).

iii) As the appellant's fiancée, she has been caring for BRH with him for the past two years "and love them both dearly. He is a wonderful child, smart and very beautiful" but very ill. He still does not talk, wears diapers, does not eat by himself and does not sleep alone. He does almost nothing that a child of his age should do. Many times, she could not even go to the toilet because BRH doesn't sit alone or when he has breakdowns. During breakdowns he gets agitated, he fusses, he fidgets and it's very hard for her to hold him to calm him down, he pulls the hair out of her head, he scratches her and the only one who manages to calm him down is his father. BRH is much more agitated and irritable with her than when he is with the appellant.

iv) She works night shifts and the appellant works day shifts so one of them can always keep an eye on BRH. They are only together at weekends. "we are very, very happy then, we are together, and we support each other."

v) BRH has several breakdowns a day, and at night they have to put him to sleep just by rocking him on their legs, sometimes for two hours. He sleeps with his head on his dad and his feet on her, that's how he's comfortable.

vi) BRH is hyper all day long and has his own diet, with very healthy foods and not too much sugar. She is exhausted at the end of the day and most of the time has to go to work like that.

vii) They receive no help from the state, financial, medical or otherwise. She earns £380 a week and the appellant earns about half of that. They applied for some benefits but unfortunately were refused.

viii) She has pre-settlement status for five years and a national insurance number, so she can live and work legally in this country. The appellant has pre-settlement status for five years but does not seem to have a right to work legally.

ix) She loves BRH. He is a wonderful child in every way, but unfortunately, he is also very sick. “I will not be able to take care of this child alone physically, emotionally, and financially, I will not be able to cope. Even if I got help from the state, I wouldn't be able to commit so much, I wouldn't be able to look after BRH on my own.”

x) BRH’s mother has not “in my presence” visited BRH or helped them financially, physically or in any other way. When she was in the UK and BRH was already staying with them, the appellant used to take BRH to visit her, but she never came to visit him where they are now. However, “I can't say anything bad about [BRH’s] mother because I'm not in a position to do so, and because I've never had direct contact with her.”

xi) She says: “I love my partner and his son equally with all my heart, these two hard-tried souls have given me a family, a family I never had even as a child, and I think if I were to lose them I might have a nervous breakdown.”

xii) For the appellant and her “at this moment [BRH] is the most important, for his sake we have sacrificed and we want to continue fighting for him and his life.”

xiii) She would not have given up a life in Italy, where she had everything, to raise a child with special needs, that is not her biological son, if the appellant “was not a wonderful father and a wonderful fiancé.”

xiv) She grew up without her parents and was raised by her grandmother who is now dead.

80. The appellant’s former partner, the mother of BRH, (Rebecca Slobodniciuc), did not give evidence to the Judge. In a witness statement now allowed as fresh evidence by the order of Kerr J, she makes the following points:

i) She is a Romanian citizen born in December 1988 (so she is now 25 years old).

ii) She met the appellant when she was 17 and had his child (BRH) when she was 21, in 2020.

iii) She lived for 9 months in the UK with the appellant and BRH and then returned to Romania. The appellant had assured her that, if she had his child, although their relationship was failing, he “would take care of him and take full responsibility for his upbringing”.

iv) While she was still living in the UK, BRH's unusual behaviour was noticed and a GP suggested possible autism. This was why he was taken to Romania and given the diagnosis to which I have already referred. She says it was a diagnosis of "Autism Spectrum Disorder, being classified as the highest grade of disability".

v) Lately, she and the appellant have "seen some improvement" in BRH. He has started to say a few words and seems a little calmer than before.

vi) She has not seen BRH in person for about 6 months, but she stays in touch via the appellant, and is sent videos.

vii) She is currently back in the UK and plans to apply to study at a UK university. She has pre-settlement status in the UK, so she can live, work and study here, "but unfortunately I can't take [BRH] with me".

viii) "I don't want and can't take care of [BRH] in any way, financially, physically or emotionally. I'm a very young girl and I can't take on such a responsibility and I know for sure that [the appellant] and his current fiancée won't leave him".

ix) She could not help BRH and the appellant with money. She never earned more than £400 a month.

x) Her father is in the UK but she is not in touch with him and he did not look after her or her sister.

xi) The appellant has no other family members in the UK.

*Additional fresh evidence*

81. Additional fresh evidence has been placed before me which it is agreed I should consider *de bene esse*, in order to apply the test for admission in section 27 of the Act and *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin). The effect of section 27(4) of the Act is that fresh evidence will be admitted if (a) it was not available at the extradition hearing and (b) it would have resulted in a different decision and (c) that decision would have required an order for the requested person's discharge.

82. The additional fresh evidence is at pp 211-234 of the hearing bundle and consists of the following:

i) A letter from a nursery school in St Helen's dated 22 January 2024 stating that BRH now attends the nursery school for 15 funded hours, on Monday, Tuesday and Wednesday afternoons. He started in October 2023. He is usually dropped off and picked up by the appellant, but his partner comes on occasion. BRH "is happy when he sees his Dad collecting him".

ii) An assessment by Ms Charlotte Saunders from the nursery dated 6 February 2024 (when he was 4 years and 3 months old). This notes that BRH has developing communications skills with a limited vocabulary, some of which may be due to English being an additional language for him. He has limited attention. He is still wearing a nappy. His self help skills are limited and he often needs someone to sit with him at meal times. He can feed himself, depending

on the food. He is interested in mark making and paints but his attention does not last long. He has settled in well and explores different toys. He will play alongside his peers and will at times select the same activity. He does not interact much with his peers. He responds better to adults and will seek them out (at the nursery) for cuddles and reassurance. He loves his family and always runs over to his father at the end of each session, with smiles and cuddles.

iii) An early years developmental checklist which shows what appear to be relatively low scores for social interaction and attention and learning; somewhat higher scores for hand skills, self help skills, feeding, play, understanding, talking, and hand skills; and slightly higher scores than that for standing, ball skills, other movement and sitting.

iv) An assessment by Ms Lauren Goldthorpe from the nursery dated 15 December 2023. This says that when he gets upset he requires support from the adults and will closely hug them. He does not interact with his peers and tends to move away from them. This is a briefer and older document than Ms Saunders' assessment of February 2024.

v) An individual education plan by Ms Saunders dated 22 January 2024, noting development targets and some progress.

vi) A speech and language therapy referral form dated 5 February 2024, identifying some communication and language deficits that BRH has exhibited.

vii) A letter indexed as dated 8 February 2024 stating that the appellant has since November 2023 been attending a Community Network group supported by NHS Cheshire and Merseyside Integrated Care Board and the local authorities which has been teaching him "all about his autistic son's needs".

83. Since this evidence relates to attendance at nursery and other interventions after the hearing before the District Judge, I accept that it was not available at that hearing.

## Legal principles

84. This appeal is governed by section 27 of the Act. I have rejected the grounds which argued that the District Judge ought to have decided differently based on the material before him (section 27(3) of the Act). In view of the receipt of fresh evidence (some of which has already been admitted by Kerr J, and some of which I am considering for admission), section 27(4) now applies.

> "**27 Court's powers on appeal under section 26**
>
> (1) On an appeal under section 26 the High Court may—
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(…)

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) order the person's discharge;

(b) quash the order for his extradition."

85. The Appellant referred me to *Love v USA* [2018] EWHC 172 (Admin) at para 26:

> "The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong".

86. So far as the substance of the issues is concerned, like the District Judge, I recognise *Norris v Government of the USA (No 2)* [2010] 2 AC 487, [2010] UKSC 9, *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338, [2012] UKSC 25 and *Polish Judicial Authority v Celinski* [2016] 1 WLR 551, [2015] EWHC 1274 (Admin) as the leading cases where, as here, the interests of a child are relevant to the Article 8 contribution to the balancing exercise. There is no need for me to set out the principles enunciated in those cases, which are lengthy and well-known.

**Balancing exercise with the fresh evidence**

87. I will re-examine the *Celinski* balancing factors in the light of the fresh evidence. I will pay due regard to the findings of the District Judge who had the benefit, as I have not, of hearing the Appellant and assessing (adversely) his credibility. As Lord Thomas LCJ said in *Celinski* at para 24, "Findings of fact, especially if evidence has been heard, must ordinarily be respected".

88. Factors in favour of extradition:

i) The constant and weighty public interest in extradition that those accused of crimes should be brought to trial; that those convicted of crimes should serve their sentences; that the United Kingdom should honour its international obligations and the UK should not become a safe haven: *Celinski* para 6, summarising *Norris* and *HH*.

ii) The Appellant is a fugitive, and "…the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice": *Celinski* at para 9.

iii) The proper degree of mutual confidence and respect due to the requesting Judicial Authority: *Celinski* at para 10.

iv) The independence of prosecutorial decisions, which must be borne in mind when considering issues under Article 8: *Celinski* para 11.

v) This is a conviction warrant and concerns a significant sentence, even taking account of the District Judge's removal of Offence 3 from the extradition analysis: *Celinski* para 13.

vi) There has been no real delay in the case (Judgment para 42.h.). Further, the appellant was a fugitive, which has contributed to such delay as there may have been (Judgment para 42.h.)

89. Factors against extradition:

i) The Article 8 rights of the Appellant and his family including, particularly, the interests of BRH. These rights have developed since his arrival in the UK relatively recently, in March 2020. There will be distress to the appellant, and to BRH, and to the appellant's current partner, if he is extradited to serve his prison sentence in Romania. However, all three of them are Romanian and his partner could move to Romania with BRH if she chose to do so; for example, in order to be closer to the appellant and to be able to visit him. This would, however, require her to give up her present life and work in the UK and it does not seem from the latest evidence that she contemplates doing so. The loss of the appellant's financial and parental support will be felt both by BRH and his current partner. He will also feel the separation from his son and be concerned about him should he be extradited to serve a prison sentence.

ii) Only Offences 1 and 2 are extraditable. Offence 3 is not.

iii) Offence 1 is not the most serious offence of drugs supply. The drug supplied in Offence 1 was cannabis and the quantities in question were relatively small. Offence 2 is a possession only offence but the drug in question, methadone, would be a Class A drug in the UK. Supply of cannabis (a Class B drug in the UK) for money, even by way of street dealing or in smaller quantities, is a serious crime. The illegal possession of methadone is also not insignificant. The sentence passed by the Judicial Authority demonstrates that the criminality of Offences 1 and 2 is regarded as serious in Romania, even after discounting for the removal of Offence 3, which would have been the least serious offence of all. Offences 1 and 2 are not offences at the bottom of the scale of gravity (cf *Norris* at para 63 per Lord Philllips of Worth Matravers PSC).

90. The question in this case is whether the interference with the private and family lives of the appellant and members of his family (particularly BRH) is outweighed by the public interest in extradition. The child's best interests are a primary consideration.

91. BRH has been diagnosed with ASD in Romania. At nursery, he is exhibiting some development and behavioural deficits. However, he engages well with nursery staff and it does not appear that he is dependent on his father or his father's partner for care when he is at the nursery or to develop trusting and constructive relationships with appropriate adults. Notwithstanding some abnormal features noted in the nursery records, his difficulties are not at the extreme end of the spectrum. This is consistent with the diagnosis in Romania, which also diagnoses ASD in general terms and not the more specific forms in the International Classification of Diseases. The fact that BRH appears to be responding well to the nursery setting shows both that the demands on his current household (his father and his father's partner) can be reduced by community care which does not entirely displace the family, but gives them some respite, and also that such care can be of positive benefit to BRH.

92. I agree with the District Judge that, should the appellant be extradited and BRH remain in the UK, both UK social services and the UK benefits system are likely to provide support for BRH subject to any applicable means tests and needs assessments. Whilst benefits have so far been refused (according to the latest evidence of the appellant's current partner), the benefits position may change if the appellant is extradited.

93. The District Judge found that the appellant has family and friends in the UK who can be expected to help with BRH, without necessarily having to take over full care. This aspect is not addressed in the appellant's latest (fresh evidence) witness statement and I find on the evidence as a whole that it remains the case.

94. The appellant gave evidence to the District Judge that he has a sister in Romania although he said she has her own family and has not shown any interest in helping the appellant with BRH. That is some way short of showing that, if needs must, she would not do so. The Romanian authorities have given BRH an appropriate diagnosis and indicated that, if he were in Romania, he would be entitled to appropriate treatment and support as a result.

95. There is no support in the evidence for the appellant's concerns that BRH may be moved to social care or given for adoption so that he would not see him again. This is in my judgment a most unlikely outcome whilst other means of supporting BRH's family or BRH's other chosen carers are available.

96. The appellant's current partner appears to be genuinely devoted to BRH and to want to look after him to the best of her ability. She has already been doing that to a considerable extent, not least because of the appellant's own long working hours while he was working. She can live and work legally in this country. Although she says she could not look after BRH on her own, the evidence suggests that, were the appellant to be extradited, she would get support, and would not be left entirely on her own. This has already been shown by BRH's attendance at nursery. So far as justified, there will be support from the benefits system and social services, as I have mentioned. There might also be support available from other family members. She is not a biological parent and does not, at present, have parental responsibility, but as BRH's *de facto* carer she would be able to access support for BRH and, to the extent necessary, formalise her position. She expresses no disinclination for that to happen. She has no other children under 18 (although she has an 18-year old daughter in Italy who plans to move to the UK to study) and she sees BRH as part of her own family.

97. The evidence of BRH's biological mother also offers possibilities of support in the event of the appellant's extradition. She had the child willingly and was active in taking BRH to Romania for the diagnosis which has been referred to. She is not, therefore, indifferent to her son. She remains in touch with him through the appellant and sees videos of him. There was evidence before the District Judge of visits to him. She has seen some improvement in BRH's behaviour, which shows an interest in him. She has not washed her hands of him. She is now moving to the UK and seems to have no other commitments in the UK save her own intention of studying. She has no other children or dependents. She was young (17) when BRH was born, but she is now 25, and (as her description of her own life and plans shows) she has grown up and is an independent person. She has pre-settlement status in the UK and can live, work and study here. Her father is also in the UK, although she says he cannot help with BRH. Although she says she does not want to and cannot take care of BRH, she does so in the context of her understanding that "I know for sure [the appellant] and his current fiancée won't leave him". She did not give evidence to the District Judge. I think it is reasonable to infer from her evidence and the evidence as a whole that, if the appellant is extradited, and the appellant's current partner continues to love and care for BRH with such help from social services as is necessary, BRH's biological mother will also be able to play some part now she is settling in the UK, and without being expected to take him into her sole care.

98. After careful consideration, I have concluded that the balance in this case is in favour of extradition. I have particularly focussed on BRH's best interests. These are better served by the appellant remaining with him but the factors in favour of extradition also have to be taken into account. I am satisfied on the evidence that BRH will be properly looked after even in the event of extradition. There are a number of people close to him who can be expected to help look after him, in addition to the help already being accessed from the state, with potential for more in the event of extradition. BRH's needs will be met and the effect on him of extradition will not be disproportionate. The interference with the private and family lives of the appellant and other members of the appellant's family, particularly including BRH, is in this case outweighed by the public interest in extradition.

99. It follows that the most recent fresh evidence is not decisive in the appellant's favour and should not be admitted, although I have fully considered it and given it weight when reaching my decision.

100. The appeal is dismissed.