

IN THE WESTMINSTER MAGISTRATES COURT

JUDICIAL AUTHORITY OF ROMANIA

V

D1914

These proceedings concern three European arrest warrants:

EAW 1 is a warrant issued by a Judge in the Baia Mare Court in Romania on 9th July 2009 for an offence of [Sensitive/Irrelevant] by the Serious Crime Agency in England and Wales as a warrant issued by a judicial authority for a Category 1 territory pursuant to Part 1 Extradition Act 2003.

EAW 2 is a warrant issued by a Judge in the Bia Mare Court in Romania on 9th July 2009 for an offence of [Sensitive/Irrelevant] [Sensitive/Irrelevant] by the Serious Crime Agency in England and Wales as a warrant issued by a judicial authority for a Category 1 territory pursuant to Part 1 Extradition Act 2003.

EAW 3 is a warrant issued by a Judge in the Bia Mare Court in Romania on 18th February 2010 for an offence of [Sensitive/Irrelevant] [Sensitive/Irrelevant] by the Serious Crime Agency in England and Wales as a warrant issued by a judicial authority for a Category 1 territory pursuant to Part 1 Extradition Act 2003.

At an earlier hearing an appropriate judge determined that there were no issues raised pursuant to Sections 4 or 7 of the Act and consent to his extradition on any of the offences contained in any of the three warrants was not forthcoming and so the matter was listed for an extradition hearing.

Section 2 Extradition Act 2003

One issue was raised at the hearing in respect of EAW 3. The short submission of the requested persons was that the warrant failed to disclose a period of time which the accused had spent on remand which should affect the amount of time left to be served as stated on the warrant. The requested person maintains that he spent [Sensitive/Irrelevant] in custody prior to his release on [Sensitive/Irrelevant] yet at box (c) on EAW 3 at paragraph numbered 2 the length of the custodial sentence imposed is given as [Sensitive/Irrelevant] with a remaining sentence to be served of [Sensitive/Irrelevant]. In fact although the time remaining to be served appears on the pro forma European Arrest Warrant it is not a required particular of Section 2(6)(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. I am therefore quite satisfied that the warrant does provide full particulars of the sentence imposed, namely [Sensitive/Irrelevant] of prison.

Section 10 Extradition Act 2003

I am satisfied that in respect of each EAW the offence(s) described have an equivalent offence in each case in England and Wales, no contrary submission having been made.

Section 11 Extradition Act 2003

No bars to extradition were raised.

Section 20 Extradition Act 2003

I am required by Section 11 of the Act to consider the provisions of Section 20.

EAW1

IN fact the EAW 1 states at box (d) that the decision was rendered in absentia. It states that the requested person "has been present to only one date of judgment namely on [Sensitive/Irrelevant] but he has not been heard concerning the cause for he has requested the postponement in order to hire a legal defender." Insofar as the [Sensitive/Irrelevant] [Sensitive/Irrelevant] is concerned I prefer the account given in evidence by the requested person, on which he was not challenged, that the [Sensitive/Irrelevant] date was a date on which he was summoned to the police station and said that he needed to obtain the services of a lawyer. I accept the requested person's evidence that he did just that. I am satisfied that the [Sensitive/Irrelevant] was not his trial date, it was a summons to a police station as part of a preliminary process which was to lead to trial but as a matter of fact was not his trial.

Thereafter it is the evidence of the requested person that he left for Italy leaving his lawyer to deal with the trial issues but that in fact he attended for his main trial which I find was on [Sensitive/Irrelevant]. The EAW 1 at box (b) details the penal sentence [Sensitive/Irrelevant] [Sensitive/Irrelevant] of the Baia Mare court of law.

However at trial the requested person adduced further evidence to support his contention that the original conviction had been set aside. In evidence he referred to being sent to prison for the [Sensitive/Irrelevant] offence in EAW1 on [Sensitive/Irrelevant] but appealing to the court in Cluj Napoca which appeal he said was determined in his favour on [Sensitive/Irrelevant]. He made reference to a website for the Court of Appeal in the County of Cluj which he said he had told his lawyers about but about which there was no filed evidence. I allowed a short adjournment so that enquiries could be made about what information was available on the website. The website was interrogated and the interpreter provided the following information:

“Request made by court of appeal Maremures; appeal allowed: Decision for retrial in different court of the county. Decision [Sensitive/Irrelevant] issued by Baia Mare, to be released immediately, no other case pending, dated [Sensitive/Irrelevant]”

It follows from the provision of this late information that I am not now satisfied, even though the defendant was present at his initial trial, that he was present at the retrial or that he was summoned to his retrial and so I must consider whether he had deliberately absented himself from his trial pursuant to section 20(3). I do not find that there is evidence to satisfy me that after his release on [Sensitive/Irrelevant] which I find was a release ordered by the court, that even though on his own account he left

Romania in April 2009 he was not deliberately absenting himself from trial. There is no evidence of his being summoned to attend or being provided with a trial date. On the basis of the decision in Ernest-Francisc Bohm v Romanian Judicial Authority [2011] EWHC 2671 (Admin) and applying the decision in Bicioc - v- Baia Mare Local Court, Romania [2014] EWHC 628 (admin) I find that the accused would not be entitled as of right to a retrial and so I discharge him in respect of the offence(s) disclosed in EAW1.

EAW2

I find here that the requested person made an initial appearance on [Sensitive/Irrelevant] at a time when he was in prison serving the sentence in respect of the offence at EAW1 but that once again that was a hearing which was merely preparatory for the trial at which he once again sought legal advice. Thereafter I am not satisfied that the requested person was present at his trial, nor am I satisfied that he was summoned or otherwise provided with court hearing dates as I know that he was released from prison on

[Sensitive/Irrelevant] I do not find that the requested person deliberately absented himself from the trial. On the basis of the decision in Ernest-Francisc Bohm v Romanian Judicial Authority [2011] EWHC 2671 (Admin) and applying the decision in Bicioc - v- Baia Mare Local Court, Romania [2014] EWHC 628 (admin) I find that the accused would not be entitled as of right to a retrial and so I discharge him in respect of the offence(s) disclosed in EAW2.

EAW3

The judicial authority concede that the requested person was not present at trial in respect of the offence the subject of this EAW and that On the basis of the decision in

Ernest-Francisc Bohm v Romanian Judicial Authority [2011] EWHC 2671 (Admin)
and applying the decision in Bicioc - v- Baia Mare Local Court, Romania [2014]
EWHC 628 (admin) the judicial authority concedes that the accused would not be
entitled as of right to a retrial and so I discharge him in respect of the offence(s)
disclosed in EAW3.

Section 21 Extradition Act 2003

The requested person asserts that his article 8 ECHR right to a family life as defined
by the Human Rights Act 1988 is engaged. If I had not discharged him in respect of
each EAW I would have come to the conclusion that the consequences upon him and
his family members would have been unfortunate but no more so than when any
period of legally enforceable detention is applied to a family member and certainly
not consequences at the level which should displace the obligations of the United
Kingdom in ensuring that the framework decision is given proper effect and that those
who have committed crimes and have been sentenced to imprisonment should be
returned serve the sentence so that there should be no safe havens for those convicted
and sentenced.