APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 1
HCA/2025/0006/XM
HCA/2025/0007/XM

Lord Doherty
Lady Wise
Lord Armstrong

OPINION OF THE COURT

delivered by LADY WISE

in

Appeal under Section 26 of the Extradition Act 2003

by

GHORGHE MARCOCI

Appellant

against

THE LORD ADVOCATE
(representing the Romanian Judicial Authority)

Respondent

Appellant: Party
Respondent: Stalker; the Crown Agent

15 January 2026

Introduction

[1] On 21 March 2025 at Edinburgh Sheriff Court, the sheriff ordered the extradition of the appellant, a Romanian national, to Romania. He is subject to two outstanding sentences passed by different judges of Arad District Court, on 15 February 2018 and 16 December 2020 respectively. The earlier sentence was initially for a period of 3 years' imprisonment,

but on 14 May 2018, on appeal, it was increased to 8 years' imprisonment. The later sentence is for a period of 2 years' imprisonment. Each sentence follows a conviction in Romania for tax offences.

[2] The appellant advances three grounds of appeal: (i) that as he has made an asylum application these proceedings should be adjourned until that application is resolved; (ii) that his extradition to Romania would be incompatible with his rights under Articles 5 and 6 of the European Convention on Human Rights; (iii) that new information has become available which was not presented to the sheriff during the extradition proceedings.

Background

Proceedings in Romania

[3] The appellant lived in Romania until he moved to the United Kingdom on 14 May 2018. He is an accountant. In evidence before the sheriff, he explained that he ran an accountancy practice in Romania with around 160 clients, some of whom he described as persons of public standing or who had an important profile. He continued his accountancy practice remotely following his arrival in the United Kingdom. His firm operates in the name of his son as a means of maintaining the business in Romania.

[4] The appellant's evidence was that he experienced regular difficulties with the Romanian tax authorities. He often acted for clients in tax disputes and appeals. He was frequently asked by the tax authorities to disclose his clients' confidential financial information. He refused, given his duty of confidentiality. The tax authorities frequently suggested that it would be better for him to cooperate with them.

[5] The appellant was arrested in 2016. Police arrived at his office with a search warrant and took away his computers. They told him that they were looking for evidence of fraud.

He received a visit from the Romanian intelligence service, the SRI. The SRI wanted information about the appellant's clients, saying "we know everything anyway."

[6] The appellant was first prosecuted in 2018 on two charges of tax evasion between 2011 and 2013. He was present in court during the trial, he pled not guilty, and he was represented by a lawyer. He had received an indictment in advance of the trial, and he had prior notice of the evidence against him. On his conviction he was sentenced to a period of 3 years' imprisonment. The sentence was postponed. During the postponement period, he fled Romania on the advice of his wife. In his absence, but while represented by a lawyer, the sentence was increased on appeal by the Court of Appeal, Timisoara to a period of 8 years' imprisonment. That appeal exhausted the appellant's ordinary rights of appeal and the sentence became final on 14 May 2018. Ancillary orders were made concerning his right to hold certain public and professional positions.

[7] The appellant was prosecuted again in 2020 on another, separate, charge of tax evasion. Whilst he was not present at trial, he pled not guilty and was represented by a court appointed lawyer. An expert accountant gave evidence on his behalf. He insisted that one of his former clients had given false evidence against him. On conviction, he was sentenced by Arad District Court to a period of 3 years' imprisonment. This was reduced by the Court of Appeal, Timisoara to a period of 2 years' imprisonment. The appellant was represented by a lawyer at the appeal. That appeal exhausted the appellant's ordinary rights of appeal and the sentence became final on 16 February 2021.

[8] Under the Romanian Code of Criminal Procedure there are further extraordinary remedies which may be exercised, revision and annulment. Both are only available in very limited circumstances. The grounds for revision are set out in Article 453 of the Code. The gist of the grounds is that further facts or circumstances demonstrate that the judgment of

the court was unfounded. The grounds for annulment are set out in Article 426 of the Code. Broadly speaking, they involve situations where there has been a fundamental breakdown in fair trial procedure.

[9] European Arrest Warrants were issued by judges of Arad District Court on 15 June 2018 and 9 May 2022 respectively seeking to enforce the sentences of imprisonment. The appellant was arrested by UK authorities and he first appeared at Edinburgh Sheriff Court on 25 July 2022.

Proceedings before the sheriff

[10] The case called on more than 20 occasions before evidence was heard on 20 March 2025. The appellant argued that the prosecutions had been brought by the Romanian authorities due to his uncompromising stance on client confidentiality. The prosecutions were politically motivated given his difficult relationship with the Romanian tax authorities. Should he be extradited, he would experience the same treatment. It followed that extradition to Romania would be contrary to his rights under Articles 5 and 6 of the Convention. He adduced evidence from a witness who claimed to have overheard the SRI speaking to the appellant. The sheriff found, taking it at its highest, that this evidence did not amount to much.

[11] The sheriff continued the case for submissions to 21 March 2025. It had become known to the appellant and to the court that a further hearing had been scheduled in Romania in one of the cases. It was not clear what the purpose of the hearing was.

[12] The sheriff ordered the appellant's extradition. The onus was on the appellant to prove that he had not enjoyed a fair trial: *Janovic* v *Lithuania* [2011] EWHC 710 (Admin). There was very little evidence to support the appellant's contention that the prosecutions

were politically motivated. He had successfully managed a tense relationship with the tax authorities for many years without any state interference in his life. There was no evidence of state intimidation or wrongful prosecution. The incident with the SRI gave the impression of an opportunistic attempt to probe for evidence rather than a planned campaign of state harassment. The trials had been conducted with the usual recognised safeguards. The evidence in support of the appellant's argument that extradition was contrary to his Convention rights fell far short of the high bar required.

The new information

[13] The appeal first called for a substantive hearing on 24 September 2025. The appellant, who was unrepresented, made a motion to adjourn the hearing because his agents and counsel had withdrawn from acting and he wished to find alternative legal representation. He explained that appeal processes were ongoing in Romania in respect of both sentences. He was able to produce vouching for his position, although the supporting documents had not been translated into English. In addition, he had made an asylum claim, and he had attended a screening interview at the Home Office.

[14] Counsel for the Lord Advocate confirmed that the Crown Office had received correspondence from the Romanian authorities explaining that there was an appeal process ongoing in respect of one of the sentences to which the EAWs related. However, no such correspondence had been received in respect of the other sentence. It was accepted that the appellant had attended a screening interview at the Home Office.

The asylum application

[15] The appellant first claimed asylum on 25 June 2025, more than 3 months after the sheriff had issued his decision. He had had a screening interview, but no decision had yet been taken by the Home Office on his application.

Ongoing proceedings in Romania

[16] The appeal called for an adjourned substantive hearing on 24 October 2025. On 21 October 2025 the court had received correspondence from the Romanian authorities confirming the position regarding the outstanding proceedings in Romania. A letter dated 14 October 2025 from the District Court of Arad confirmed that there were ongoing proceedings relative to both of the sentences to which the EAWs relate.

[17] In relation to the sentence of 8 years' imprisonment, the appellant had filed a request for revision. His request was dismissed as inadmissible by the Arad District Court on 24 June 2025. At the time of the adjourned hearing, an appeal against that decision was pending before the Timisoara Court of Appeal, with an appeal hearing assigned for 8 December 2025. Should the appellant's application for revision be allowed, he would be entitled to a re-trial in Romania.

[18] In relation to the sentence of 2 years' imprisonment, the appellant had filed an appeal for annulment. A hearing date had been assigned for 29 October 2025. A successful appeal for annulment could result in the conviction being quashed and a re-trial being ordered.

[19] In both the court's letter of 14 October 2025 and an undated letter from the Timisoara Court of Appeal, it was made clear that neither of the ongoing proceedings had the effect of suspending the outstanding sentences.

Submissions

The appellant

[20] The extradition appeal should be adjourned until the asylum claim was determined because in terms of section 39(3) of the Extradition Act 2003 the appellant could not be returned while the asylum claim remained outstanding.

[21] The sheriff erred in finding that there had been no interference by the Romanian authorities during the proceedings against the appellant in Romania. The prosecutions were politically motivated. During the proceedings he had been pursued by other state institutions. The first sentence had been increased on appeal because of suspected involvement in organised crime. There was no evidence to support such involvement. Nevertheless, the sentence was increased to the maximum level.

[22] The requesting state was unable to guarantee the observance of the appellant's Convention rights under Articles 5 and 6. There were a number of cases across Europe where requested persons had been discharged from extradition requests to Romania on the basis of Convention non-compliance: *Popoviciu* v *Romania* [2023] UKSC 39, [2023] 1 WLR 4256; *Dragos Savulescu* v *Romania* Court of Appeal of Naples (unreported but commented on at 13 New J. Eur. Crim. L. 252 (2022) at 262); *Sorin Oprescu* v *Romania* Court of Appeal in Thessaloniki (unreported). It was likely that, should he be extradited, the appellant would spend a considerable period of time on remand until the appeal proceedings were completed. Priority was not given to the rights of the individual in Romania. One appeal hearing had already been postponed due to industrial action in the justice system. Had he been extradited at that time, he would have required to spend additional time on remand.

[23] A significant period of time had elapsed since the sentences were first passed. The appellant had lived in Scotland for 7 years, with a new life and a new family. He was not subject to any criminal proceedings in the UK. An asylum claim had been made, and he had attended a screening interview at the Home Office.

[24] The extradition order was premature. The appeal processes in Romania could result in the convictions and sentences being quashed. The respondent's insistence on extradition prior to the conclusion of the appeal processes was oppressive. That there were ongoing appeal processes in Romania was new information not made available to the sheriff. Had it been, it would have resulted in him deciding the case differently.

Respondent

[25] The existence of the asylum claim did not prevent the extradition appeal being disposed of. The effect of section 39(3) was that the appellant would not be extradited until the asylum claim was finally determined.

[26] The sheriff did not err in ordering the appellant's extradition. Articles 5 and 6 each set a high test. The presumption was that states which are signatories to the ECHR will ensure that there are sufficient protections in place to allow those appearing before the courts a fair trial. The onus on the requested person to prove otherwise was a heavy one: *Van der Kramer* v *Belgium* [2013] EWHC 560 (Admin); *Janovic* v *Lithuania* [2011] EWHC 710 (Admin) at paragraph 24. In order for extradition to be incompatible with the Article 5 and Article 6 rights of the appellant, it required to be shown on the balance of probabilities that there were substantial grounds for believing that there was a real risk of flagrant denial of the right in question: *R(Ullah)* v *Special Adjudicator* [2004] UKHL 26; [2004] 2 AC 323 at

para [24]. This test was one of unfairness, going beyond mere irregularities: *Janovic* v *Lithuania* at para [24].

[27] The appellant had the opportunity to lead evidence before the sheriff and argue that his extradition would be contrary to his Convention rights. He had given a good deal of evidence on how he had conducted his accountancy practice and his difficult relationship with the tax authorities. The sheriff found, however, that there was very little reliable evidence in support of the proposition that the two prosecutions were politically motivated. That was a finding the sheriff was entitled to make.

[28] The appellant had advance notice of the charges against him. He was represented by a lawyer at each of his trials and he was able to lead evidence, lodge documents and challenge the evidence for the prosecution. The judges presiding over the trials were professional judges. There was no evidence to support the applicant's position that there had been a flagrant denial of his Article 6 rights.

[29] The issue of ongoing proceedings in Romania was raised by the appellant at the extradition hearing. The information came after the conclusion of evidence and far too late in the proceedings, which had a substantial procedural history. The sentences to which the EAWs relate had not been suspended by the Romanian authorities. It followed that the EAWs remained valid and enforceable.

[30] In any event, a requested person having an appeal pending in the requesting state was not a bar to extradition under the 2003 Act. The bars to extradition were set out at section 11 of the 2003 Act. No specific reason had been advanced by the appellant for believing that his appeals in Romania would not be dealt with in accordance with his Convention rights. The cases cited by the appellant in support of his argument that the requesting state would not observe his Convention rights each turned on their own facts and

circumstances. No explanation had been given as to why those cases were analogous with the instant appeal. Similarly, the fact that appellant had made an application for asylum was not a bar to extradition under section 11 of the 2003 Act.

Decision

[31] We refuse the appellant's motion to continue the appeal pending determination of his asylum claim. Section 39(3) will prevent his removal until that time. In our opinion it will rarely be appropriate to grant a motion to adjourn because of the existence of an asylum claim. In that regard we agree with the observations of Ousely J in *Kozlowski* v *District Court of Torun, Poland* [2012] EWHC 1706 (Admin) at paragraphs 7 – 22 and in *R (Troitino)* v *National Crime Agency & Others* [2017] EWHC 931 (Admin) at paragraphs 56 – 57. Extradition appeals ought to proceed expeditiously and courts should be on their guard against delaying tactics. The asylum claim here was made very late in the day indeed - 7 years after the appellant's arrival in this country and more than 3 months after the sheriff's decision.

[32] In terms of section 27 of the Extradition Act 2003, this court can allow an appeal only if certain conditions are met. The conditions relevant to this case are in subsections (3) and (4) which provide that:

> "(3)(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently; - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge"

and

> "(4)(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."

[33] Addressing first the question before the sheriff at the hearing, we are not satisfied that any material error in the sheriff's analysis or conclusions has been identified. His decision correctly records that Articles 5 and 6 each set a high test for the appellant to overcome before it could be concluded that the rights they protect had been breached. Under reference to *Van Der Kramer* v *Belgium* [2013] EWHC 560 (Admin) and *Janovic* v *Lithuania* **[**2011] EWHC 710 (Admin), the sheriff recorded the well-established presumption that countries that are signatories to the ECHR will ensure that there are sufficient protections in place to allow those appearing before their courts to secure a fair trial. The issue was whether the evidence led by the appellant and his witness was adequate to persuade him that there had been oppressive conduct against the appellant by the state and/or unfair proceedings in Romania.

[34] The sheriff found the appellant's evidence, claiming that the criminal prosecutions against him were politically motivated, unpersuasive. His general position on that was not supported by the evidence of his witness, who corroborated only his account of a single visit by a member of the SRI. As the sheriff put it, "There was simply no nexus between the visit from the SRI and the outcome of the two trials". The appellant has not advanced any convincing basis for interfering with the sheriff's conclusion that there did not appear to be any planned campaign of harassment against him.

[35] It is not sufficient merely to cite, as the appellant did, examples of cases where individuals may have succeeded in being discharged from extradition requests by Romania. For example, in *Popoviciu* v *Romania* [2023] UKSC 39, [2023] 1 WLR 4256 a significant amount of evidence was available and had been led in relation to alleged judicial corruption on the part of a named judge who had convicted Mr Popoviciu of conspiring to obtain the transfer of certain land and sentenced him to 9 years' imprisonment. The High Court quashed the

subsequent extradition order made pursuant to a European Arrest Warrant, having accepted that there was a real risk that the trial had been flagrantly unfair and so had breached Mr Popoviciu's Article 6 rights, as a result of which his imprisonment following conviction would necessarily breach Article 5. The respondent was permitted to appeal to the UK Supreme Court, where the arguments focused on fresh evidence issues. There had been expert evidence on the issue of whether, in the particular circumstances of that case, there was an effective remedy available to Mr Popoviciu in Romania. The Supreme Court was persuaded that the point raised on behalf of Romania about effective remedy was arguable and would have remitted the matter to the High Court for its consideration had the European Arrest Warrant not been withdrawn during the proceedings.

[36] In contrast with *Popoviciu*, the present case is founded on assertions by the appellant about alleged general noncompliance with the Convention by Romania. *Popoviciu* does not provide support for that general assertion. The sheriff analysed the evidence led in this case and found that it did not raise a concern about a risk of the type of flagrant breach of the right to a fair trial that would overcome the high hurdle facing the appellant. There was no evidence of general state interference with the activities of Romanian accountants, far less of concocted prosecutions against them.

[37] So far as the specific procedure that led to the appellant's first conviction in Romania is concerned, the sheriff heard and recorded detailed evidence about that. The appellant had legal representation as soon as he became a suspect. He was present and legally represented at his trial. Witnesses were led for the prosecution and witnesses were led on his behalf. He was able to use documents he produced in his defence. The same lawyer represented him on appeal. The trial to which the second warrant relates took place in his absence because he had left Romania, but he was again legally represented. In both cases he

had been entitled to challenge the position taken by the state. No evidence was led before the sheriff that would have justified a conclusion that the appellant had been denied a fair trial.

[38] In the whole circumstances the sheriff was entitled to make the adverse credibility finding against the appellant and reject his account. We are not persuaded that the sheriff should have reached a different conclusion. That deals with the application of section 27(3) of the 2003 Act.

[39] Turning to the new information that resulted in a delay in this court, it is now agreed that there are ongoing proceedings in Romania. The appellant had raised this late in the proceedings before the sheriff, after the conclusion of the evidence, although more detailed information is now available. His argument is that it would be both premature and oppressive to extradite him when the outcome of those proceedings is not yet known. However, as counsel for the Lord Advocate pointed out, such ongoing proceedings are not listed as a bar to extradition in terms of section 11 of the 2003 Act. Some years have passed between the convictions and the recent applications. Those applications were not made until after these extradition proceedings were commenced and after ordinary appeal procedures had been exhausted and the sentences had become final. Revision and annulment are both extraordinary remedies granted only on very limited grounds. It has been confirmed that enforcement of neither custodial sentence has been suspended pending the appeal, the warrants remain valid and enforceable, and extradition continues to be sought. There has been some delay in concluding those processes, for the reasons described, but that has not altered the warrants' validity and enforceability.

[40] There is simply no support for the argument that the appellant will be denied a fair hearing in the ongoing appeal processes following extradition. Any period on remand

pending their determination is a matter for the judicial authorities in Romania. We have concluded that the additional information about those proceedings does not engage the condition specified in section 27(4) of the 2003 Act. We are not satisfied that the additional information now available about the extraordinary form of appeal processes ongoing in Romania would have resulted in the sheriff deciding the question before him at the hearing differently.

[41] For completeness we record that the appellant sought to rely on Article 8 ECHR as an additional basis for opposing extradition. He has been in the UK for 7 years "with a new life and a new family". That was something raised before the sheriff but ultimately (and rightly, in our view) not insisted on by his solicitor. There is no suggestion of any features of the appellant's private and family life that would result in anything beyond the usual personal hardship that accompanies extradition. We are entirely satisfied that the strong public interests in giving effect to extradition arrangements and preventing disorder and crime justify (in terms of Article 8(2)) any interference with the appellant's Article 8(1) rights which may be caused by his extradition.

[42] For the reasons given we shall refuse this application for leave to appeal.