Neutral Citation Number: [2025] EWHC 595 (Admin)

Case No: AC-2022-LON-000072

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/03/2025

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

ZA	**Appellant**
-and-	
CORNETU DISTRICT COURT, ROMANIA	**Respondent**

- -

Ben Joyes (instructed by **ITN Solicitors**) for the **Appellant**
Laura Herbert (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing dates: 4 March 2025

- -

Approved Judgment

This judgment was handed down remotely at 10am on 14 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1. This is a re-opened appeal. The questions for decision are:

   (a) whether it would be incompatible with Article 8 ECHR, and therefore contrary to s. 21 of the Extradition Act 2003 ("the 2003 Act"), to extradite the appellant to Romania; and

   (b) whether, in terms of s. 25 of the 2003 Act, "the physical or mental condition of the appellant is such that it would be unjust or oppressive" to extradite him to Romania.

Background

2. ZA is sought by Romania pursuant to an arrest warrant issued by the Cornetu District Court on 12 October 2021 and certified by the National Crime Agency on 15 October 2021. The warrant seeks the appellant's surrender to serve a two-year sentence of imprisonment imposed on 6 May 2021 for driving without a licence. The offence was discovered when the car the appellant was driving collided with a barrier at the side of the carriageway. The warrant does not say that the driving was dangerous or careless or that anyone was injured. The offence was, however, committed after the appellant had been released in 2017 from a previous sentence of 6 years and 8 months' imprisonment imposed in 2013 for rape and during the currency of that sentence.

3. The appellant came to the UK in December 2018 to join his partner, who had been in the UK since 2010. He applied for settled status on 20 May 2019 and did not declare his convictions in Romania. Separately from the extradition request, the appellant is the subject of a deportation order. He was first arrested under the warrant on 27 October 2021 and produced at Westminster Magistrates' Court, where he was granted bail subject to conditions. One of the conditions was an unmonitored curfew from 9pm to 7am. With effect from 8 June 2003, the curfew was varied to apply from 11pm to 7am. In total the appellant has been subject to these curfews for a total of three years and four months.

4. The extradition hearing took place on 4 February 2022 before District Judge Branston ("the judge"). The applicant, who was not represented, relied on Articles 3 and 8 ECHR. His application to adjourn the hearing to seek representation was refused. He said that he feared for his life if extradited to Romania, because when he was last in prison there he had been abused and tortured.

5. The judge said this:

> "28. [The appellant] stated that he fears for his life in Romania. He claimed that he was abused and tortured when arrested and in detention in Romania. He has provided no evidence of such matters.
>
> …
>
> 34. [The appellant] has suffered from panic attacks when he was in immigration detention. He has been taking some medication

> in that regard. He also suffers from bleeding from his bottom when passing stools. Other than that, he states that his health is okay."

6. The judge rejected the Article 3 argument for lack of evidence and in light of an assurance about prison conditions. As to the Article 8 claim, he found that the appellant was not a fugitive, though he had been aware of an investigation into the offence for which the prison sentence was later imposed at the time when he left Romania. The judge accepted that the appellant had a settled life in the UK and no convictions here. He accepted that extradition would cause emotional harm to the appellant's then partner, though pointed out that she was financially independent. The appellant's children were in Romania. The judge balanced the factors in favour of extradition and those against it and concluded there was nothing unusually onerous or out of the ordinary which outweighed the public interest in extradition.

7. The appellant appealed on three grounds: first, that extradition would be contrary to s. 20 of the Extradition Act 2003 ("the 2003 Act"); second, that extradition would be incompatible with the appellant's rights under Article 3 ECHR because of prison conditions in Romania; and third, that extradition would be incompatible with the appellant's rights under Article 8 ECHR.

8. The papers were considered by Hill J, who on 21 April 2022 refused permission in relation to s. 20 and Article 8 and, in relation to Article 3, stayed the application for permission pending judgment by the Divisional Court in another case concerning prison conditions in Romania: *Marinescu v Romania.*

9. The Applicant renewed the application for permission to appeal to an oral hearing on 7 July 2022. In an *ex tempore* judgment which was transcribed and handed down ([2022] EWHC 1760 (Admin)), Fordham J said this at [4]:

> "…In my judgment there is no realistic prospect that this Article 8 appeal could succeed. The seriousness of the offending of driving without a licence is reflected in a two-year custodial sentence which it is appropriate for the extradition court to respect. The circumstances involved the Appellant crashing a car and being discovered by the police to have driven without a licence. That offence, moreover, had – as the Judge put it – been "committed during the currency of another sentence". That was because the Appellant was on probation – from 19 October 2017 – following release from the custodial element of a 6 year sentence arising from a February 2013 conviction for rape. Although the Appellant did not come to the United Kingdom as a "fugitive", as the Judge found and recorded, he did nevertheless come here having been questioned by police after the incident on 7 December 2018, and he was aware of the police investigation. He told the Judge he accepted he had been driving without a licence. He knew about the investigation, and he knew about the period of probation. He came here a short period after being questioned. Although not found to be a fugitive, these were relevant circumstances to be borne in mind. Other features

> are all properly relied on by Mr Hepburne Scott on behalf of the Appellant. But they were properly and carefully consideration considered by the Judge. The rupture of the family life with the partner also needs to be seen in context. The Judge recorded that they were in fact living separately, although in a relationship, and that the partner was financially independent of the Appellant. As the Judge also recorded, they have no children. So, as the Judge put it, the Appellant does not have 'dependents' here. To these features the Respondent's notice properly reminds the Court that, as the Judge also recorded, a 'settled status' application in May 2019 by the Appellant has failed to achieve durable status for him here, because of his non-disclosure to the UK authorities of his previous convictions in Romania. Standing back, there is in my judgment no realistic prospect that this Court would – in all the circumstances of the present case – accept that the Appellant's extradition would be a disproportionate interference with the Article 8 rights of himself or of his partner. The public interest considerations in favour of extradition decisively outweigh those capable of weighing against it and the contrary is not reasonably arguable."

10. On 10 October 2022, in the light of the Divisional Court's judgment in *Marinescu* ([2022] EWHC 2317 (Admin)), Sir Ross Cranston refused permission to appeal in relation to Article 3.

11. Meanwhile, the claimant had claimed asylum. To support that claim, the appellant obtained an expert report dated 4 November 2022 from Dr Bernadette Gregory. The report contained a diagnosis of post-traumatic stress disorder ("PTSD") and recorded that a physical examination had disclosed evidence consistent with the appellant's account of rape and assault in custody in Romania. The appellant then applied for permission to re-open his extradition appeal under Crim PR 50.27 and permission to adduce fresh evidence.

12. On 23 June 2023, Heather Williams J directed that the application to re-open be considered at a hearing. On 31 October 2023, the application to re-open was adjourned by Julian Knowles J, so that the appellant could apply for an extension to his representation order to cover the costs of a further expert report.

13. The appellant served a psychiatric report from Dr Marc Lyall dated 8 February 2024. On 14 May 2024, at a hearing, it was argued on the appellant's behalf that the appeal should be re-opened to allow the appellant to argue: first, extradition would be incompatible with Article 8 ECHR; second, that extradition would be unjust or oppressive within the meaning of s. 25 of the 2003 Act; and third that extradition was barred by s. 20 of the 2003 Act.

14. McGowan J acceded to the application as respects the Article 8 and s. 25 grounds, but refused it as respects the s. 20 ground: [2024] EWHC 1269 (Admin). The key part of her reasoning is at [14], where she said this:

> "The court will, as part of a balancing exercise, consider the nature of the offence, the type of the sentence, the fact that at least the equivalent of a year would have been deemed to have been served by the bail curfew if the matter were to be dealt with domestically. This applicant was unrepresented in the court below. The district judge heard some evidence of the physical injury which, on the face of Dr Gregory's statement appears, credibly, to have been caused by repeated anal rape whilst in custody. The district judge heard evidence of those physical injuries but went on to find that that was not probative or supportive of sexual abuse. That new information, if accepted on appeal, at its highest could arguably be determinative and if it were, it would be a factor which would avoid a real risk of injustice".

15. In an order dated 15 May 2024, McGowan J directed that "[t]he case is to be listed for a full appeal hearing". She also made an anonymity order, under which the appellant was to be referred to as "ZA".

The appeal hearing

16. The hearing was listed before me on 4 March 2025. Ben Joyes for the appellant noted that, although her order did not say so in terms, McGowan J's reference to a "full appeal hearing" made it clear that she had intended not only to give permission to re-open the appeal, but also to grant permission to appeal. Laura Herbert for the requesting State accepted this. The appeal proceeded on that basis. I indicated that, if necessary, I could cure any defect in this regard myself. I accordingly grant permission to appeal, for the avoidance of doubt.

17. Mr Joyes sought permission to adduce the reports of Dr Lyall (8 February 2024) and Dr Gregory (4 November 2022), the appellant's medical records between September 2022 and September 2023, a letter from NHS Talking Therapies (14 November 2023), a witness statement from the appellant's solicitor Katy O'Mara explaining the lateness of the medical reports (9 May 2023) and an updating proof of evidence from the appellant (14 February 2025). I indicated that I would consider all this material de bene esse, hearing submissions on it and then deciding whether the test for admission in *Hungary v Fenyvesi* [2009] EWHC 231 (Admin), [2009] 4 All ER 324 was satisfied.

Law

Article 8

18. Article 8 ECHR confers the right to respect for one's private and family life. The approach to Article 8 in extradition cases is well-established and was not in dispute: see *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487; *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338; *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551.

19. Time spent on a curfew is not taken into account in reducing the sentence in Romania, but can be relevant to the Article 8 balance, even if the curfew would not qualify for the

purposes of reducing the sentence in this jurisdiction: *Brindusa v Romania* [2023] EWHC 3372 (Admin), [8]-[9] and [21].

Section 25 of the Extradition Act 2003

20. Section 25 of the 2003 Act is headed "Physical or mental condition" and provides as follows:

> "(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.
>
> (3) The judge must—
>
> (a) order the person's discharge, or
>
> (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

21. In *Gomes v Trinidad and Tobago* [2009] UKHL 21, [2009] 1 WLR 1038, the House of Lords had to consider the phrase "unjust or oppressive" in the context of s. 82 of the 2003 Act (which, like s. 14 in Part 1 cases) bars extradition if it would be unjust or oppressive to extradite him by reason of the passage of time. At [31], Lord Brown (giving the opinion of Appellate Committee) endorsed the statement of the Lord Diplock in *Kakis v Cyprus* [1978] 1 WLR 779, 784, that the gravity of the offence is relevant to whether changes in the circumstances of the accused were such as to render his return to stand trial oppressive. Lord Brown also noted that "the test of oppression will not easily be satisfied: hardship, a comparatively commonplace consequence of extradition, is not enough".

22. In *Dewani v South Africa* [2012] EWHC 842 (Admin), [2013] 1 WLR 82, Sir John Thomas P, giving the judgment of the Divisional Court, said this about s. 91 of the 2003 Act (the Part 2 equivalent of s. 25) at [73]:

> "In our view, the words in section 91 and section 25 set out the relevant test and little help is gained by reference to the facts of other cases. We would add it is not likely to be helpful to refer a court to observations that the threshold is high or that the graver the charge the higher the bar, as this inevitably risks taking the eye of the parties and the court off the statutory test by drawing the court into the consideration of the facts of the other cases. The term 'unjust or oppressive' requires regard to be had to all the relevant circumstances, including the fact that extradition is ordinarily likely to cause stress and hardship; neither of those is sufficient. It is not necessary to enumerate these circumstances, as they will inevitably vary from case to case as the decisions listed at para 72 demonstrate. We would observe that the citation of decisions which do no more than restate the test under section

> 91 or apply the test to facts is strongly to be discouraged. There is a real danger that the courts are falling into a similar error as courts fell into in relation to section 23 of the Criminal Appeal Act 1968 and as described by Lord Judge CJ in *R v Erskine* [2010] 1 WLR 183."

23. Despite the warning against reliance on the facts of previous cases, both sides referred to *XY v Netherlands* [2019] EWHC 624 (Admin). There, the appellant had been released having served two thirds of a 48-month sentence for armed robbery. The sentence had subsequently been increased on appeal. The district judge found that the appellant was not a fugitive, that he had been anally raped while in custody in the Netherlands, that he had PTSD and depression with anxiety and there was a very high risk of suicide if he were returned to custody in the Netherlands. He had pleaded guilty to possessing an offensive weapon in the UK.

24. The key part of Elisabeth Laing J's reasoning was as follows:

> "50. I consider that on these unique facts, the interference with the appellant's Art. 8 rights would be exceptionally severe. This is an exceptional case in which it would be disproportionate to extradite the appellant, having regard to those aspects of this private life which would be interfered with by extradition; specifically, as emerges from the medical evidence, his chances of receiving appropriate therapy for his PTSD as against the chances of it becoming untreatable; the very high risk of suicide; and the recent deterioration in his mental health. I am conscious of the great importance of honouring extradition arrangements, but take into account that the appellant was free to leave the Netherlands when he was released, and had no obligation to cooperate with serving the longer sentence after he was released. One cannot under-estimate, with his history, which the DJ accepted, the anguish he must feel at the prospect of return to a Dutch prison and the fact that he may have, in effect, to serve part of the 4-year sentence he thought he had already served as well as the additional sentence.
>
> 51. In my judgment, the DJ's decision on s.25 was also wrong in the very unusual circumstances of this case. Two factors lead me to that view. The appellant's PTSD, depression, and very high risk of suicide were, in large measure, caused by the failure of the Dutch authorities to protect him when he was in prison in Holland. Second, if extradited, his PTSD could not be treated effectively, because he would be in the very environment which had caused his trauma. The appellant's surrender to return to that environment in which the Dutch authorities had failed to protect him could lead to complex PTSD which does not respond to treatment.
>
> 52. For what it is worth, I consider that the DJ erred in equating the presumption about suicide with the considerations that arise

> under s. 25... I consider that s. 25 requires a wider focus and, on the unique facts of this case, that extradition would be oppressive because of the appellant's condition.
>
> 53. I consider that the appellant has shown that his precarious mental health is such that it would be unjust and oppressive to extradite him. This does not depend on the risk of suicide alone, and in that sense the presumption that the Dutch authorities will adequately guard against the risk of suicide is of limited relevance. It is not an answer to the appellant's argument, contrary to the reasoning of the DJ. Dr Dreyer's evidence, which the DJ accepted, shows that the appellant cannot receive effective treatment in a Dutch prison, not because the Dutch authorities cannot, in theory, provide treatment, but because such therapy would not be effective because it would be provided in the very place that had triggered the symptoms."

The new evidence

Dr Gregory's report

25. Dr Gregory is a General Practitioner with a special interest in the assessment and documentation of torture. Her detailed report was completed after a face-to-face interview and physical examination lasting some four hours and a follow-up remote appointment lasting two hours.

26. Dr Gregory set out the appellant's account of the abuse he suffered in detention in Romania and described how distressed he was when giving that account. In the summary section of her report, Dr Gregory said this:

> "[The appellant] gives an account that when he was arrested he was subjected to 48 hours of ill treatment which included being handcuffed to a radiator, being beaten and threatened. He said that as a result he was forced into a statement admitting his guilt and he was transferred to prison.
>
> In the prison [the appellant] was subjected for the following forms of ill treatment
>
> - He was repeatedly anally raped by other men in his cell
> - He was forced to wash their socks and underwear in the bathroom
> - He was burned on his hands with burning plastic
> - He was burnt with hot metal
> - He was hit and stabbed with pieces of metal taken from the beds
> - He was stabbed and cut with a knife manufactured from the sharpened handle of a toothbrush

- He was bitten by another prisoner
- He was forced onto his knees and sustained cuts on the knees
- He was punched and sustained a broken nose and lost two teeth

> After nine months [the appellant] was moved to a different prison where he was not [subject to] ill treatment and was given support by his cellmate. [The appellant] was then moved to an open prison and subsequently released."

27. Dr Gregory then went on to identify 21 relevant lesions which the appellant attributed to his ill-treatment in prison and 12 that he did not seek to explain in that way. Dr Gregory concluded that the nature, pattern and distribution of the lesions were typical of the account of ill-treatment given. He also met the diagnostic criteria for PTSD and for depression and had "specific symptoms relating to sexual abuse, including shame, guilt impacts on how he feels about his body and effects on his relationships". She found no evidence of fabrication. The history, timeline and findings were all clinically congruent. The physical examination showed no evidence of exaggeration or embellishment. He would need "considerable medical knowledge" to fabricate the symptoms of PTSD.

28. Dr Lyall is a Consultant Forensic Psychiatrist and Honorary Clinical Senior Lecturer in Psychiatry. His report was prepared after considering all the appellant's relevant medical records and the report of Dr Gregory and after examining the appellant with the aid of an interpreter for 1 hour and 50 minutes. The opinion section of his report contains the following relevant passages:

> "1. Does [the appellant] qualify for a diagnosis of PTSD?
>
> [The appellant] has given a consistent account of experiencing physical and sexual abuse when detained in prison in Romania between 2013 and 2017. This account has been consistent across the course of a number of different interviews conducted with different interviewers and across time: [the appellant] has given the same account to his local mental health team in Portsmouth, to his GP, to the primary care psychology service in Portsmouth, to Dr Gregory and to myself.
>
> His account is consistent with him experiencing symptoms of PTSD as described by Dr Gregory.
>
> To make a diagnosis of PTSD the person needs to be exposed to death, threatened death, actual or threatened serious injury or actual or threatened sexual violence: [the appellant] has been exposed to actual serious injury, and actual and threatened sexual violence.
>
> He persistently re-experiences the trauma in the form of unwanted upsetting memories by way of nightmares and flashbacks.

He shows avoidance of trauma related thoughts and physical reminders of the abuse he suffered.

He manifests negative thoughts and feelings that began or worsened after the trauma he experienced, showing a negative affect and a difficulty experiencing a positive affect.

He manifests trauma related arousal and reactivity that began or worsened after the trauma, being hypervigilant, showing a heightened startle response and having difficulty sleeping.

[The appellant]'s symptoms had lasted more than a month, and have caused him distress and functional impairment and are not due to medication or substance misuse or other illnesses – hence, he meets diagnostic criteria for PTSD.

2. If so, why and what effect does his PTSD have on him?

Please [sic] answer to question 1.

Symptoms of PTSD appear preoccupying for [the appellant] and cause him high levels of anxiety and distress.

3. What treatment options are open to him?

The NICE Guidelines for the treatment of PTSD suggest interventions including Cognitive Processing Therapy, Cognitive Therapy for PTSD, Narrative Exposure Therapy and Prolonged Exposure Therapy. The NICE Guidelines suggest that EMDR should be offered to adults with a diagnosis of PTSD who present with non-combat related trauma. It is noted by NICE that EMDR for adults should typically be provided for eight to 12 sessions but more if clinically indicated, for example if the patient (as in the case of [the appellant]) has experienced multiple traumas.

[The appellant] appears partway through a treatment course of EMDR. The effect of this will need to be assessed in due course.

4. What would be the likely effect of returning him to a Romanian prison?

This is likely to significantly aggravate symptoms of PTSD given that it would mean [the appellant] returning to an environment where he experienced the trauma that caused symptoms of PTSD to develop. He is likely to experience a significant increase in his level of anxiety. I think there is a possibility that he will become overwhelmed with distress and thoughts of suicide, leading to a significant risk that [the appellant] will attempt to end his life. His GP records note relatively recent attempts at suicide which have occurred at least

> partly in the context of [the appellant] experiencing symptoms of PTSD and one attempt seemingly related to the prospect of him returning to Romania.
>
> 5. Is it likely that treatment in a Romanian prison could alleviate any such effect?
>
> I think it will be very difficult, likely impossible, to offer treatment in a Romanian prison that could alleviate [the appellant]'s distress and anxiety. I would respectfully suggest that what is needed is for [the appellant]'s symptoms of PTSD to be effectively treated, and even if this were possible in a Romanian prison, I think such treatment is highly unlikely to be effective given that it would be being offered in an environment which is very likely to be highly triggering to [the appellant]'s symptoms of PTSD.
>
> 6. What would be the suicide risk if [the appellant] is returned to prison in Romania? Ie how does he assess [the appellant]'s suicide risk if returned, how strong would be the urge, and would he be able to resist the urge to attempt suicide?
>
> It is not possible to assess the risk of suicide entirely accurately. However, clinically, I think [the appellant] would be at significant risk of suicide if he were returned to prison in Romania: his symptoms of PTSD stem from his experiences in prison in Romania and the content of the symptoms directly relate to these earlier experiences; symptoms of PTSD cause him profound distress and anxiety; the prospect of returning to Romania has played a significant part in the suicidality that he has demonstrated in recent years; returning to Romania is likely to further aggravate symptoms of PTSD and hence exacerbate his distress and anxiety."

Submissions for the appellant

29. Mr Joyes for the appellant submitted that Dr Lyall's report, taken with Dr Gregory's, fundamentally altered the factual matrix as the judge understood it. He relied on Dr Lyall's conclusion that a return to Romania would be likely significantly to aggravate his symptoms of PTSD and anxiety, leading to a significant risk that he would attempt to end his life. It would be very difficult to offer treatment that would alleviate his anxiety and distress because the abuse which caused the PTSD occurred in a Romanian prison.

30. Mr Joyes noted that, on the evidence, the appellant was at significant risk of suicide if returned to Romania. He accepted that there was a presumption that the Romanian State would put in place measures to prevent the appellant from completing any suicide attempt. But the risk of a completed suicide attempt should not be the focus of the court's analysis. By analogy with *XY*, which was factually similar, the question whether extradition would be oppressive, or would constitute a disproportionate interference with the appellant's Article 8 rights, fell to be answered separately from the question whether there was a real risk of a completed suicide attempt.

31. In addition, it should be borne in mind that the offence for which the sentence was imposed was not imprisonable in this jurisdiction. Moreover, when the judge considered the appellant's case, he had served only two months on bail subject to a curfew. Now, however, he had served three years and four months. Had the question arisen in this jurisdiction, and had the curfew been a qualifying one, he would have been entitled to half of that as credit.

32. Taking all these matters into account, extradition would be oppressive and or would constitute a disproportionate interference with the appellant's Article 8 rights.

Submissions for the Respondent

33. Laura Herbert for the respondent submitted that neither Dr Lyall's report nor Dr Gregory's diagnoses the appellant's PTSD as "complex" or "severe". The medical evidence shows that he is more resilient now as a result of the treatment he has received for PTSD.

34. XY was a very different case, where the appellant had been detained under the Mental Health Act 1983 and had additional extensive mental health trauma, including the suicide of his housemate, significant history of self-harm, a "very high risk of suicide". The appellant in that case also had not benefited from therapy in the same way as the appellant here. In this case, the medical reports did not substantiate the submission that there was a "substantial" risk of suicide.

35. The court should not assume that the offence was not serious. The Romanian court plainly regarded it as serious, as reflected in the 2-year sentence of imprisonment. Furthermore, although the curfew could be considered as if it were a qualifying curfew, there was no evidence that it had any particularly severe effect on the appellant's private or family life. In any event, under Romanian law, it did not serve to reduce the sentence.

36. The Romanian authorities had given assurances about prison conditions and the court should assume that they would be able to keep him safe from non-state actors.

37. In all the circumstances, the circumstances did not meet the high threshold for oppression, nor could it be said that extradition would be a disproportionate interference with the appellant's Article 8 rights.

Discussion

38. When the appellant appeared before the judge, he was unrepresented and had not taken steps to obtain proper medical evidence. Accordingly, although the judge recorded the appellant's claim that he had been abused and tortured in detention in Romania, he also noted that he had "provided no evidence" of this. The judge cannot be criticised for this, but as a result of the expert reports of Dr Gregory and Dr Lyall, and McGowan J's decision to re-open the appeal on the basis of those reports, the factual picture before me is significantly different.

39. Dr Gregory conducted a very detailed examination and interview. She sets out not only the appellant's account of what happened to him in detention in Romania, but also how

distressed he was when describing these events. Her conclusions are meticulously evidenced and explained by reference to the lesions which the appellant attributed to his abuse. She considered in terms whether the appellant might be fabricating any part of his story and concluded that he was not, giving cogent reasons for that view. Particularly striking, in my judgment, were her descriptions of the appellant breaking out into a sweat and shaking during the perianal examination. These, as Dr Gregory says, are spontaneous physical signs that cannot be fabricated.

40. It was open to the Romanian authority to file evidence disputing the appellant's account of what happened to him. No such evidence has been filed. That being so, I must proceed on the basis that the appellant suffered the abuse he described to Dr Gregory when in detention in Romania. For a period of nine months at the start of his prison sentence, he suffered repeated anal rape and other seriously violent and humiliating treatment at the hands of other prisoners. This treatment left visible marks on his body nearly 10 years later and caused him to develop PTSD. Although not a necessary part of the analysis under s. 25 of the 2003 Act, it is right to record that what the appellant experienced would have comfortably exceeded the high threshold for "inhuman and degrading treatment" for the purposes of Article 3 ECHR. The Romanian state wholly failed to protect him from this treatment.

41. Dr Lyall's diagnosis of PTSD is consistent with Dr Gregory's. He concludes that returning the appellant to a Romanian prison would likely significantly aggravate the symptoms of his PTSD, leading to a significant risk that he would attempt to end his life. I do not regard it as material that the qualifier used to describe the risk is "significant" rather than "substantial". Medical reports of this kind should not be parsed as if they were statutes. The key point is that the conclusion about the "significant" risk of suicide attempts is not mere speculation. It is based on a history of such attempts including in the context of the appellant's fears about being returned to Romania.

42. I accept, as Mr Joyes did, that it must be assumed that the Romanian prison system has the means to reduce to an acceptable level the risk that any suicide attempt would be successful. However, as Elisabeth Laing J made clear in *XY*, "oppression" in s. 25 is not established only by the prospect of a successful suicide attempt. As in *XY*, the appellant is suffering from a mental illness attributable to the failure of the requesting state's authorities to keep him safe from attack in prison. As in *XY*, there is direct evidence that the symptoms of that illness would be significantly aggravated by being returned to the custody of those authorities. In this regard, it is not material that Dr Lyall's report does not discuss the prospect of the appellant's PTSD becoming untreatable. Even if one could expect a psychiatrist to foresee the triggering of an untreatable illness, that is not a necessary condition for a conclusion that extradition would be "oppressive". Finally, and again in common with the appellant in *XY*, even if treatment were in principle available, it would be very difficult, likely impossible, to offer effective treatment for the appellant's PTSD symptoms in the very environment which triggered the PTSD in the first place.

43. It is true that the appellant has received some treatment in this country for his PTSD, which appears to have had some beneficial effects. I do not accept, however, that this undermines the conclusions in the reports of Drs Gregory and Lyall about the effect which return to a Romanian prison is likely to have. It was open to the Romanian judicial authority to seek directions for further expert evidence about this, but they have not done

so. In any event, there is further treatment which will be offered to the appellant if he remains in this jurisdiction.

44. The aggravated symptoms of PTSD which the expert reports suggest will be the likely result of extradition, leading to a significant risk of suicide attempts, go well beyond the stress and hardship which are the usual sequelae of extradition. On these exceptional facts, it would, in my judgment, be oppressive to extradite the appellant to Romania to serve a two-year sentence for driving without a licence. I bear in mind that the offence was committed during the currency of a sentence imposed for a much more serious offence. It may be that, in this jurisdiction, a similar custodial outcome could have been achieved by recalling the appellant to prison. Nonetheless, the authorities show that the gravity of the offence may be taken into account. In this case, the offence is, on any view, at the lower end of the scale of seriousness, particularly where – as here – the appellant has already served three years and four months under curfew.

45. I have reached this conclusion applying the test set by Parliament in s. 25 of the 2003 Act, as elucidated by the appellate courts. This makes it strictly unnecessary to consider Article 8, though in my judgment, the considerations relied upon under s. 25 also support the conclusion that extradition would be a disproportionate interference with the appellant's Article 8 rights.

46. I have considered carefully whether this conclusion is affected by the appellant's precarious immigration status. In my judgment, it is not. Although the appellant's deportation appeal was unsuccessful, I understand that he has made further representations that his deportation should not be carried out. Those representations have not yet been considered. They fall to be considered under a different statutory regime, under which different considerations may be relevant. The deportation order may or may not be maintained. If it is, the appellant may have to leave the UK or face compulsory removal. That, however, is not the same as extradition to Romania in custody. This appeal falls to be considered independently.

Conclusion

47. For these reasons, the reports of Dr Gregory and Dr Lyall make a decisive difference to the outcome of the case. The test in *Fenyvesi* is satisfied. I therefore admit those reports into evidence. Because they were not before the judge, I must decide for myself whether extradition would be oppressive for the purposes of s. 25 and whether extradition would be incompatible with Article 8 ECHR. To both questions, the answer is "Yes". The appeal is therefore allowed. Given the long-standing nature of the appellant's condition, and its exacerbation by the fear that the appellant will be removed to Romania, it would not be appropriate on the facts of this case to adjourn the extradition hearing until the condition in s. 25(2) is no longer met. Accordingly, the appellant will be discharged pursuant to s. 25(3)(a).