IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN

DISTRICT COURT OF BUCHAREST, ROMANIA

JUDICIAL AUTHORITY

AND

CRISTIAN VALENTIN FURCILA

REQUESTED PERSON

JUDGMENT

BACKGROUND

1. The Judicial Authority (JA) seeks the surrender of Mr Furcila, the Requested Person (RP), on a European Arrest Warrant (EAW) dated 10th March 2015 and certified by the NCA on 20th March 2015. These proceedings are governed by Part 1 of the Extradition Act 2003. Mr Hearn represents the JA and Mr Grandison, Mr Furcila. He also has the benefit of an interpreter.

2. The EAW is a conviction warrant for 5 offences. Mr Furcila was convicted on 30th October 2012 and sentenced to 3 years imprisonment, all of which remains to be served. This is an aggregate sentence. Mr Furcila was not present at the trial but was represented by Counsel. The offences are described at Box E of the EAW. He was convicted of 5 offences, one offence of swindling for which he received a sentence of 3 years and 3 offences of forgery for which sentences of 3 months were imposed. Two earlier sentences imposed in 2001 have been merged with the sentence for the swindling offence. Mr Hearn's opening note dated 11th June 2015

states that under Romanian law Mr Furcila's outstanding sentence is 3 years imprisonment, this being the length of the heaviest outstanding sentence.

3. It appears that this EAW had previously been discharged but from the arrest statement dated 6th May 2015, Mr Furcila attended Westminster Magistrates Court voluntarily on 6th May when he was arrested on this new EAW. He first appeared in court on the 6th May; no issues were taken in respect of sections 4 and 7, Mr Furcila did not consent to his extradition, the case was opened and he was granted bail.

4. The challenges to extradition are under section 2(6)(b), section 14 and 20. It is conceded that Mr Furcila did not deliberately absent himself from trial. Challenges under section 21 – Article 8 and Article 3, prison conditions are no longer being perused.

5. I have read the bundle of papers comprising two skeleton arguments on behalf of Mr Furcila, the JA's opening note, further information, a signed proof of evidence, assurances concerning prison conditions and references.

EVIDENCE

6. Mr Furcila adopted his signed proof of evidence dated 25th June 2015. In addition to the contents of his proof Mr Furcila told me he employees 28 people in the company he set up in March 2014, with Marian Nicolae, CM Constructions. They are dependant on him for finding work; he pays their wages and finds them accommodation.

7. He told me the first EAW was discharged in November 2013 and this has affected his health and that of his family and friends. He cannot start a family as he does not know what is going to happen to him.

THE CHALLENGE UNDER SECTION 2(6)(b) – DECISION

8. Mr Hearn and Mr Grandison's submissions are contained in their skeleton arguments and Mr Hearn's opening note. I also heard oral submissions

and have been referred to a number of authorities. In this case it is accepted that the EAW has been issued for a number of offences and it is accepted that the offences of "swindling" and "forgery" have been adequately particularised. The EAW also makes it clear that sentences for a number of other offences have been merged with the later most recent sentence of imprisonment. Mr Hearn submits that this court can order extradition for the offences of swindling and forgery as they are adequately particularised and, following the case of ***Brodziak and Ors v Poland (2013) EWHC*** 3394, the court can be satisfied that Romania will honour its speciality obligations and not detain Mr Furcila in respect of offences for which extradition has not been ordered.

9. Mr Grandison invited me to look at the case of ***Presecan v Cluj-Napoca Court [2013] EWHC 1609 (Admin)*** which is directly on point with this case. In that case, Mr Justice Cranston referred to the case of ***Echimov v Court of Babadag Romania [2011] EWHC 864 (Admin)*** and the principles to be applied in relation to challenges under section 2(6)(b) as set out by Davies, J (as he then was). The language of section 2 is mandatory, but the EAW had to be read purposively and the court should not adopt an unduly narrow or parochial approach when assessing a EAW. Sufficient particulars of conviction in respect of the two offences in that warrant had been set out for the warrant to be valid.

10. In this case I accept Mr Grandison's submissions that the warrant does not set out the particulars in respect of the drugs offence, as also accepted by Mr Hearn, and there is nothing in the warrant to show the particulars of the conviction for which Mr Furcila was sentenced to 2 years for contravening article 4 of law no. 143/2000. As set out in his skeleton argument and in the warrant, the conviction for the offence under reference 821/30.10.2012 led to the revocation of the conditional release for a 7 year sentence imposed under reference 802/25.12.2001 and he has to serve 884 days of that sentence. However, that sentence is comprised of two separate sentences, one for 7 years for an offence under article 2, paragraph 2 of law no.143/2000 and 2 years for contravening article 4 of law

no.143/2000. There are no details in the warrant particularising what that 2 year sentence was for. Mr Hearn's arguments in ***Prececan*** are similar to those advocated here and they were not accepted by the Divisional Court. I was specifically referred to paragraphs 11 and 13 of that judgment. At paragraph 14 Mr Justice Cranston stated, *"The warrant is not a valid warrant. It does not contain the particulars of the conviction in relation to the earlier offending".*

11. I also accept Mr Grandision's submissions in respect ***Arranz v Spanish Judicial Authority [2013] EWHC 1662 (Admin)*** that the case did not refer to ***Presecan*** which is a case based on a similar factual scenario as this case. In ***Arrantz*** it is clear from the warrant that Mr Arrantz would know why his return was sought and the offences are clearly set out in the warrant; they are not in this case as other offences are referred to by the imposition of the 2 year sentence but the particulars of the offences are not.

12. Mr Hearn submitted that the sentences for which 3 months were imposed are section 10 compliant as the sentences are aggregated to the total of 3 years and as long as one offence is an extradition offence then extradition can be ordered. I totally accept this submission as in the case of ***Pilecki v Circuit Court of Legnica, Poland [2008] UKHL 7*** it was held that *"The problem lies only in the wording of section 10 as modified in the case of multiple offences. Section 10(2) requires the judge to decide whether "any of the offences" specified in the Part 1 warrant is an extradition offence. I would hold that it is unnecessary, in a conviction case to which section 63(3) applies, for the judge to ask himself whether the sentence that was passed for each offence satisfies the test that is set out in section 65(3)(c). If the other requirements of section 65(3) are satisfied, all he needs to do is to determine whether the sentence for the conduct taken as a whole meets the requirement that it is for a term of at least four months. If it does, he must answer the question in subsection (2) in the affirmative and proceed to section II: section 10(4)".*

13. It has further been accepted by Mr Hearn that the offences for which Mr Furcila was conditionally released, namely the 884 days, do not comply with section 2. Given my conclusion at paragraph 10 I am not satisfied that the warrant complies with section 2. There is no particularisation of the drugs and it does not contain the particulars of the conviction for which Mr Furcila was sentenced to 2 years imprisonment and therefore the warrant does not comply with section 2.

THE CHALLENGE UNDER SECTION 20 – DECISION

14. In respect of this challenge it is conceded by the JA that Mr Furcila was not deliberately absent from his trial. The Further Information dated 31st October 2014 makes it clear he was not arrested or questioned by police about the offences mentioned in the EAW. I am satisfied so I am sure, on the evidence before me, that Mr Furcila did not deliberately absent himself from his trial. However he was summonsed to attend court and his sentence was sent to his last known address in Bucharest.

15. Mr Hearn submitted that the issue about retrial rights was provided in the case of ***Romania v Marcel Arava*** in which the Further Information dated 29th December 2014 confirms that legislation has been enacted within Romania to ensure that their domestic legislation is compatible with the "2009 Framework Decision". In that Further Information Judge Azait confirms that "*after 1st February 2014 Article 5221 of the Criminal Procedure Cod of 1986 is no longer applicable. The applicable provisions are those of Art. 466-470 of the current Criminal Procedure Code. The above provisions are true to the Council Framework Decision No. 2002/584/JHA of 13th June 2002 on the European warrant and the surrender procedures between Member States, as amended by the Framework Decision No. 2009/299/JHA in Art. 4A*". Procedural steps are set out as to how to apply for a retrial and it was submitted the procedure is in accordance with the 2009 Framework Decision and Mr Furicla could only be refused a retrial if the court determines he was unaware of the

original proceedings or if he failed to lodge his request for a retrial within the stipulated time limit of one month.

16. In the case of ***Zeqaj v Government of Albania [2013] EWHC 261 (Admin)*** it was stated by Mrs Justice Gloster at paragraph 16 vi), *"as this Court held, in Nastase v Office of the State Prosecutor, Trento, Italy [2012] EWHC 3671 (Admin), the mere fact that a person's entitlement to a retrial is restricted if the requesting Court is satisfied on the evidence that he knew of proceedings and voluntarily renounced his right to appear or to file an appeal, does not prevent compliance with a person's Article 6 rights. The existence of procedural steps, which an extradited person is required to satisfy before being afforded a right of retrial (ie demonstrating that he did not voluntarily absent from trial and filing notice of appeal within the stipulated time), does not remove the entitlement to a retrial for the purposes of section 85(5): see Nastase at paragraph 45".*

17. Mr Hearn submitted that as there is no suggestion Mr Furcila was deliberately absent then there is no reason to believe the Romanian court would determine that but if evidence did emerge to the contrary he could be denied a retrial.

18. Mr Grandison submitted that the key words to be looked at in the Further Information are contained under 3 in which it is stated that Mr Furcila "was summonsed" at his registered address. Article 466 "Reopening criminal proceedings in the absence of the convicted person" sates at paragraph 2 "*A person convicted in absentia is the person who was not summonsed to attend trial and who was not informed of the trail by any other means or, although the person was aware of the proceedings he/she had good reasons not to attend trial and was unable to inform the Court accordingly*". In light of this, Mr Furcila would not be entitled to a retrial as he was summonsed even though he did not receive it.

19. He also stressed the importance of being "personally summonsed" under the Council Framework Decision 2009/299/JHA. Under the amended Article 2, Article 4a is inserted and states that in relation to decisions rendered following a trial in absence the RP was "summonsed in person". This does not appear in the Romanian version of Article 466 which states "summonsed" but not "summonsed in person" as in the English translation of Article 466. Mr Hearn submitted that this is an opinion under Romanian law and expert evidence would need to be called about interpretation and this court could not predict how a Romanian court will apply this but that it would follow the Framework Decision and Article 6.

20. I agree that it is not for me to predict how a Romanian court will interpret this. However, in determining whether Mr Furcila has the benefit of a retrial, there are procedural steps he will have to undertake, but the important point being raised is not the procedure that has to be undertaken but the fact that under Article 466 "a person convicted in absentia is the person who was not summonsed to attend trial and who was not informed of the trial by any other official means…" In this case it is clear that Mr Furcila was summonsed and it was sent to his registered address in Bucharest. I am urged to accept the evidence of Judge Boroi in the Further Information when the rights afforded a RP are set out in respect of a retrial. However, on reading that information, the judge recites the procedural steps required of Article 466 but not what is actually set out in Article 466 about being summonsed, and on the evidence before me I cannot be satisfied the provisions of Article 466 entitle Mr Furcila to a retrial. I therefore discharge him under section 20(7).

THE CHALLENGE UNDER SECTION 14 – DECISION

21. Section 14 of the Extradition Act 2003, Part 1, states that: A person's extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have –

(a) committed the extradition offence (where he is accused of its commission), or

(b) become unlawfully at large (where he is alleged to have been convicted of it).

22. The burden is on the requesting JA to prove that an individual is a fugitive to the criminal standard. The burden rests on the RP to show that on the balance of probabilities it would be unjust or oppressive to extradite him.

23. In the case of Kakis v Government of Cyprus [1978] 1 WLR 779, Lord Diplock said: "Unjust" I regard as primarily directed to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping and between them they cover all cases where to return him would not be fair". The Learned Judge added that the person cannot rely on the passage of time argument if he had been responsible for the delay by either fleeing the country, concealing his whereabouts and/or deliberately evading arrest.

24. The House of Lords in Gomes and Goodyear v Government of Trinidad and Tobago [2009] UKHL 21 stated that any delay in the commencement or conduct of extradition proceedings brought about by the accused fleeing the requesting country, concealing his whereabouts or evident arrest cannot be relied upon as a ground for holding it to be either unjust or oppressive to return him unless the circumstances are exceptional.

25. The passage of time in respect of a conviction warrant is the period between the impositions of the sentence until the present day.

26. In this case it is clear Mr Furcila is not a fugitive. He was never arrested or interviewed about the offence. Mr Hearn submits that the very high threshold that has to be met by the RP to show oppression has not been met and Mr Furcila's circumstances do not go beyond ordinary hardship.

27. In respect of oppression I accept this is the third time Mr Furcila has been arrested on this warrant, the first being in 2013. It appears on the warrant that the offence of "swindling" took place in 2006, some 9 years ago. It

also appears from a document that has been supplied today and translated by the interpreter that in respect of that offence the full amount has been repaid. Some of the other offending date from what appears to be 2001, at least when the sentences were imposed. Mr Furcila's proof of evidence reveals that in 2001 he went to prison for possession and supply of drugs. He served 4 years, 8 months of a 7 year sentence and was released on licence with no conditions.

28. The decision to prosecute the "swindling" offence taken in 2012 and no explanation has been given why it took 6 years to do so. I am told that Mr Furcila came to the UK in February 2009 and obtained a national insurance number shortly after arrival. He has returned to Romania on several occasions and has not been arrested, renewing his passport there in 2012. He has not hidden from the authorities and in effect has been given a false sense of security through the inaction of the authorities in Romania in taking 6 years to decide to prosecute. He has been living openly in the UK and in March 2014, with Marian Nicolae, set up his own construction company which provides work for 20 people.

29. The delay in this case rests with Romania. I am satisfied that Mr Furcila has shown on the balance of probabilities that it would be oppressive to extradite him due to passage of time. He is not responsible for any delay. A false sense of security has been raised given the inactivity of Romania. The money in respect of the swindling case has been repaid. It has taken 6 years to prosecute the case and no reason has been given for the delay. Mr Furicla lives with his mother, is of good character in this country and owns his own business employing 20 people. I do not have any details about the drugs offences save for the length of sentence but again they go back to 2001. Therefore I am of the view in these circumstances it would be oppressive to extradite Mr Furcila and I discharge him under section 21(2).

District Judge (Magistrates' Court) Tempia. 21st July 2015.