

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE¹

3
4 CASE No: 06596/2015
5
6

7 IN THE MATTER OF THE ROUMANIA ORDER IN COUNCIL DATED 30th APRIL 1894,
8 SR No 119
9

10 AND IN THE MATTER OF THE EXTRADITION ACT 1989
11

12 AND IN THE MATTER OF A REQUEST FOR THE EXTRADITION OF TANJALA f/n
13 MIHAI
14

15 AND IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS BY
16 MIHAI TANJALA
17
18
19

20 **Appearances:**

**Mr. Mihai Tanjala, Applicant, In Person –
assisted by a Court-appointed Interpreter**

**Ms. Amelia Fosuhene of BRADY Attorneys at
Law, *Amicus Curiae*, for the Grand Court**

**Ms. Cheryll Richards Q.C., Director of Public
Prosecutions for the Crown/Respondent**

29 **Before:**

Hon. Justice Malcolm Swift Q.C. (Actg.)

30 **Preliminary Hearings in the Grand Court:** 7th, 14th, 21st January 2016; 5th, 9th May 2016

31 **Habeas Corpus Submissions heard:** 26th-31st May 2016
32

33 **RULING**

34 **ON AN APPLICATION FOR WRIT OF HABEAS CORPUS**



¹ This application for a Writ of Habeas Corpus is made pursuant to the Cayman Islands Civil Procedure Rules GCR O.54 but has not been filed in the civil division of the Grand Court as the origin of the application is the Applicant's appeal against a decision in the Criminal Division of the Summary Court. As the Defendant appeared unrepresented by counsel in these proceedings, all documents from the defendant were received via HMPS Northward and filed in the Criminal Registry.

- 1 1. Mihai Tanjala (hereafter referred to as “the Applicant” or “the Defendant”) applies for
2 a writ of Habeas Corpus in the context of extradition proceedings. His application is
3 under Order 54 of the Grand Court Rules 1995 (Revised) (GCR O.54) and was filed²
4 on the 5th January 2016 and lies against the decision of the Chief Magistrate of the
5 Cayman Islands to issue a warrant of committal to commit him to Her Majesty’s Prison
6 Service (HMPS) Northward (“Northward”) pending the consideration by Her
7 Excellency the Governor of his surrender to the Roumanian Authorities.
- 8 2. The Applicant also seeks to appeal the decision of the Chief Magistrate by way of a re-
9 hearing but there is no right of appeal against that decision, save by writ of Habeas
10 Corpus. This is because the hearing before the Chief Magistrate is in the nature of an
11 inquiry which does not involve findings of guilt or innocence.
- 12 3. The right to apply for a writ of Habeas Corpus is clearly provided by statute (paragraph
13 8(1) of Schedule 1 of the Extradition Act 1989) and no other appeal route is provided
14 by the law.
- 15 4. A Court might consider an application for judicial review of the decision of the Chief
16 Magistrate, but the likelihood is that such a review would be more restricted in its
17 scope than an application for a writ of Habeas Corpus. In any event there are no
18 grounds for an application for judicial review in this case, no basis therefore to return
19 the case for re-hearing by the Chief Magistrate and no other route to a re-hearing of the
20 evidence in the lower court.

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² See footnote #1.



1 9. On the 30th October 2015, the matter was adjourned to the 1st December 2015 to await
2 receipt of the formal request for his extradition and to allow his then Attorney time to
3 review the papers already received.

4
5 10. On the 1st December 2015, the case was mentioned and his Attorney was permitted to
6 come off record. The Applicant indicated that he had applied for legal aid and the
7 matter was further adjourned to the 15th December 2015 and again adjourned for
8 hearing on the 23rd December 2015 following the Applicant's decision to represent
9 himself.

10
11 11. On the 16th December 2015, Her Excellency the Governor issued an Authority to
12 Proceed to the Chief Magistrate of the Summary Court and the extradition hearing took
13 place over two days on the 23rd and 29th December 2015.

14
15 12. I have read the orders made by the Chief Magistrate and the warrant of committal and
16 they are in proper form.

17
18 13. Although it appears that there has been delay in dealing with this application between
19 January 2016 and the date of this hearing on the 26th May 2016, in fact the delay has
20 been at the request of the Applicant who had written to Her Excellency the Governor
21 seeking her intervention. Once a reply had been received by him, steps were
22 immediately taken to reinstate the case and matters have proceeded apace.

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1 14. I have been greatly assisted in this case by the submissions, both oral and written, of
2 Ms. Cheryll Richards Q.C., Director of Public Prosecutions, and Ms. Amelia Fosuhene
3 as Amicus Curiae (who has marshalled and drawn to my attention new documents
4 supplied by the Tanjala family). I am also indebted to the court-appointed Roumanian
5 interpreter who has performed a very difficult task in unfamiliar territory, and, of
6 course, to the Applicant himself who has left no stone unturned.

7
8 *DOCUMENTS BEFORE THE COURT*

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10 15. The documents before the Court on this application are:

- 11
12 i. A bundle ('the Roumanian bundle') embossed with the official seal of the Ministry
13 of Justice of the State of Roumania containing, *inter alia*, the Request for
14 Extradition, a warrant of arrest dated 20th December 2011, and the transcripts of
15 the judgments of the Local Court of Giurgiu, Romania and the Bucharest Court of
16 Appeal (13 items in all paginated from 1 to 328);
17
18 ii. A binder containing a copy of the relevant Order in Council affecting extradition,
19 the Extradition Act 1989 and various authorities (Binder A – 14 items in all);
20
21 iii. A further binder containing additional authorities (Binder B – 10 items + Crown
22 Note dated 6th January 2016);
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1 iv. The notes of evidence of the Applicant at the extradition hearing and notes of the
2 submissions made by him, together with 3 binders of documents and materials
3 supplied by him to the Summary Court:

4 (i) under cover of a letter dated 23rd November 2015;

5 (ii) headed "Additional Doc"; and

6 (iii) a bundle paginated 000526 to 001054.

7
8 v. In the course of the hearing I was also supplied with:

9 (i) a further bundle paginated 000001 to 000525 which also contains Ms.
10 Fosuhene's written submissions and various authorities supplied by her;
11 and

12 (ii) a bundle from the Applicant containing statements and affidavits, media
13 reports, selected documents relating to his dealings with the ICSID and a
14 report of a case in the ECHR (*infra*);

15
16 vi. The Habeas Corpus application dated 6th January 2016 with supporting documents
17 and the Supplementary Arguments and Evidences dated 20th January 2016 and the
18 argument also contained in bundle (v) which together I treat as the Applicant's
19 affidavits as if duly sworn;

20
21 vii. I have also at the start of the hearing been supplied with affidavits from Gabriella
22 Gyobiro and Mihai Barbuliceanu with supporting identification documents.



1 *THE APPLICATION*

2
3 16. The Applicant applies for release from the warrant of committal on four main grounds:

4
5 i. The offence of corruption of which he was convicted does not exist, is incorrectly
6 classified by the Summary Court as Fraud by Bailee and is not an extradition
7 crime;

8
9 ii. His conviction in Roumania was unjust, the offence was committed by someone
10 else and he is innocent of the offence;

11
12 iii. His conviction was obtained for political reasons and he will be subject to political
13 persecution if he is returned to Roumania; and

14
15 iv. There is an administrative error in the spelling of his name in one of the documents
16 transmitted by the Roumanian Authorities which requires to be corrected.



EXTRADITION IN THE CAYMAN ISLANDS

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2
3 17. Extradition from the Cayman Islands to Roumania is governed by Order in Council
4 dated 30th April 1894 SR No 119 (“the Order”) and Schedule 1 to the Extradition Act
5 1989 (“the Act”).

6
7 18. The Order was made pursuant to the Extradition Act 1870. The Order sets out the
8 terms of the Treaty concluded with Roumania on the 21st March 1893 and in this
9 judgment the terms ‘Treaty’ and ‘Order in Council’ are intended to be synonymous.

10
11 19. Following the repeal in the United Kingdom of the 1870 Act, Schedule 1 to the
12 Extradition Act 1989 preserved the provisions deriving from the 1870 Act which
13 continued to apply to give effect to Orders in Council previously made. Paragraph 2 of
14 the Schedule provides as follows:-

15
16 *“An Order in Council under section 2 of the Extradition Act 1870 shall be*
17 *conclusive evidence that the arrangement referred to in it complies with this*
18 *Schedule and that this Schedule applies in the case of the foreign state mentioned*
19 *in the Order.”*

20
21
22 20. The Extradition Act 1989 is repealed in the United Kingdom and replaced by the 2003
23 Act but is saved with respect to the Overseas Territories by virtue of the Extradition
24 Act 2003 (Commencement and Savings) Order 2003.

25
26 21. The entire scheme for extradition (in accusation cases) was considered by the House of
27 Lords in *Re: Evans*²:

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29
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² [1994] 1 WLR 1006, 1010 -1011





1 *“There are thus six steps in the extradition of a suspect from the United Kingdom.*
2 *First, the foreign court must consider that a charge of serious crime has been*
3 *properly laid against the suspect on the basis of information which justifies the*
4 *issue of a warrant for his arrest. Secondly, the administration of the foreign*
5 *country must consider that the charge, the law of the foreign country and the*
6 *circumstances justify a request for extradition in accordance with the provisions of*
7 *the Convention. Thirdly, the foreign state must identify the suspect, authenticate*
8 *the foreign warrant for his arrest, give particulars of the alleged conduct which*
9 *constitutes the offence and produce a translation of the relevant foreign law which*
10 *establishes the offence and makes it punishable by 12 months’ imprisonment or*
11 *more. Fourthly, the Secretary of State must satisfy himself that the request is in*
12 *order. The Secretary of State must then satisfy himself that equivalent conduct in*
13 *the United Kingdom would constitute an offence under the law of the United*
14 *Kingdom punishable by 12 months’ imprisonment or more. The Secretary of State*
15 *may then issue an authority to proceed and must identify and specify the relevant*
16 *law of the United Kingdom. Fifthly, the metropolitan magistrate sitting as a court*
17 *of committal must be satisfied, after he has heard representations, that the alleged*
18 *conduct would constitute a serious offence in the foreign state and in the United*
19 *Kingdom. In other words the magistrate must be satisfied that a charge of serious*
20 *crime offensive in the foreign country and offensive in the United Kingdom has*
21 *been properly laid against the accused. The suspect can then be committed and*
22 *the magistrate must certify the offence against the law of the United Kingdom*
23 *which would be constituted by his conduct. Sixthly, subject to any habeas corpus*
24 *proceedings, the Secretary of State may enforce extradition.”*
25

26 22. It is not argued that those principles do not apply equally to conviction cases, although,
27 in conviction cases, the fact of conviction is often easier to establish than where
28 extradition on the basis of an accusation is in issue.

29
30 23. An Authority to Proceed may be issued by the Governor under paragraph 4(2) of the
31 Schedule to the Act. By sub-paragraph (3), she may refuse to issue any such order if
32 she is of the opinion that the offence is one of a political character.

33
34 24. Paragraph 5(4) of the Schedule provides as follows:

35
36 *“A fugitive criminal apprehended on a warrant issued without the order of the*
37 *Secretary of State shall be discharged by the [District Judge (Magistrates’ Courts)*
38 *unless he], within such reasonable time as, with reference to he circumstances of*
39 *the case, he may fix, receives from the Secretary of State an order signifying that a*
40 *requisition has been made for the surrender of such criminal.”*
41

1 25. Upon the receipt of the signifying Order by Her Excellency the Governor, the
2 Magistrate must consider whether or not to issue a warrant of committal pursuant to
3 paragraphs 7(2) and (3) of the Schedule to the Act:

4
5 *“In the case of a fugitive criminal alleged to have been convicted of an extradition*
6 *crime, if such evidence is produced as (subject to the provisions of this Schedule)*
7 *would, according to the law of England and Wales, prove that the prisoner was*
8 *convicted of such crime, the [District Judge (Magistrate’s Courts)] shall commit*
9 *him to prison, but otherwise shall order him to be discharged.*

10
11 *If he commits such criminal to prison, he shall commit him there to await the*
12 *warrant of the Secretary of State for his surrender, and shall forthwith send to the*
13 *Secretary of State a certificate of committal, and such report upon the case as he*
14 *may think fit.”*

15
16
17 26. By paragraph 6 of the Schedule, in the course of the hearing of the case, the Magistrate
18 shall receive any evidence which may be tendered to show that the crime of which the
19 prisoner is convicted is an offence of a political character or is not an extradition crime.

20
21 27. Paragraph 1(2)(b) provides that a fugitive criminal shall not be surrendered if he proves
22 to the satisfaction of the Magistrate that the requisition for his surrender has in fact
23 been made with a view to try to punish him for an offence of a political character.

24
25 28. Applying those criteria to the Cayman Islands in the present case which is of course a
26 conviction case, the requirements are therefore:

- 27
28 i. the Roumanian court must certify that the Applicant has been convicted of a
29 serious crime (ie punishable by 12 months imprisonment or more) and that he is
30 unlawfully at large;



- 1 ii. the administration of the Roumanian state must consider that the charge of which
2 the Applicant has been convicted, the law of Roumania and the circumstances
3 justify a request for extradition in accordance with the provisions of the
4 Convention;
- 5
6 iii. the Roumanian state must identify the Applicant, authenticate his conviction by
7 appropriate documentation, giving full particulars of the offence and provide a
8 translation of the documents produced;
- 9
10 iv. the Governor must satisfy herself that the request is in order and that equivalent
11 conduct in the Cayman Islands would constitute an offence under the law of the
12 Cayman Islands punishable by 12 months' imprisonment or more;
- 13
14 v. the Governor may then issue an authority to proceed and must identify and specify
15 the relevant applicable law of the Cayman Islands. The Governor may refuse to
16 issue the authority to proceed if she decides that the offence of which the Applicant
17 was convicted is of a political character;
- 18
19 vi. the Chief Magistrate sitting as a court of committal must be satisfied, after hearing
20 representations, that the Applicant is a fugitive from justice and that he has been
21 convicted of a serious crime offensive in both Roumania and in the Cayman
22 Islands. The Chief Magistrate must also consider any evidence tendered to prove
23 that the request for extradition for the crime/offensive conduct, and/or the crime
24 /offensive conduct itself, was of a political character and/or was not an extradition
25 crime (the burden of proof being on the Applicant);
26



1 32. By Article X of the Order in Council, where a fugitive has been arrested in the British
2 Dominions, the practical requirements for admissibility are that the documents (set out
3 below) provided by Roumania must purport to bear the signature of a Judge,
4 Magistrate or Judicial Officer of Police of Roumania and must further be authenticated
5 by the oath of a witness or by being sealed with the official seal of the Minister of
6 Justice, or of Foreign Affairs of Roumania. Article X of the Order in Council provides
7 as follows:

8 *"In the examination which they have to make in accordance with the foregoing*
9 *stipulations, the authorities of the British dominions shall admit as valid evidence*
10 *the sworn depositions or the affirmations of witnesses taken in Roumania, or*
11 *copies thereof, and likewise the warrants and sentences issued therein, and*
12 *certificates of, or judicial documents stating the fact of, a conviction, provided the*
13 *same are authenticated as follows:-*

14
15 (i) *A warrant must purport to be signed by a Judge, Magistrate or Judicial*
16 *Officer of Police of Roumania.*

17
18 (ii) *.... (applies to depositions or affirmations)*

19
20 (iii) *A certificate of or judicial document stating the fact of a conviction must*
21 *purport to be certified by a Judge, Magistrate, or Judicial Officer of Police*
22 *of Roumania*

23
24 (iv) *In every case such warrant, deposition, affirmation, copy, certificate, or*
25 *judicial document must be authenticated either by the oath of some*
26 *witness, or by being sealed with the official seal of the Minister of Justice,*
27 *or of Foreign Affairs of Roumania; but any other mode of authentication*
28 *for the time being permitted by the law in that part of the British*
29 *dominions where the examination is taken may be substituted for the*
30 *foregoing."*



1 33. As a second step following on the examination of the documents to determine whether
2 they are authenticated as required, Article XII of the Order in Council provides that the
3 extradition shall not take place unless the evidence be found sufficient, according to
4 the laws of the State applied to, to prove that the prisoner is the identical person
5 convicted by the Courts of the State which makes the requisition, and that the crime of
6 which he has been convicted is one in respect of which extradition could at the time of
7 such conviction have been granted by the State applied to.

8
9 34. The Court in the case of *R v. Governor of HM Prison ex parte Franco Barone*³ stated
10 that a Court in dealing with a conviction case (as opposed to an accusation case) must
11 first be satisfied of three main elements (paragraph 3):

- 12 i. That the offence in respect of which extradition is sought is an extradition crime
13
14 ii. That the person whose extradition is sought has been convicted of that offence; and
15
16 iii. That he appears to be unlawfully at large.
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³ [1997] (QBD) Transcript CO/2734/1996

EVIDENCE IN THE CASE

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35. The Request in the instant case was made by the Ministry of Justice of the State of Roumania (page 3 of the Roumanian bundle) and bore the seal of that Ministry (page 6 of that bundle).

36. The Request has the following attachments (the ensuing page references are to the Roumanian bundle):

- i. Case History dated 23rd October 2015 (pages 7 to 15);
- ii. Description of Acts Committed by the Sentenced Person dated 23rd October 2015 (pages 16 to 23);
- iii. Excerpts of the Applicable Legal Provisions dated 23rd October 2015 (pages 24 to 39);
- iv. Record of Court Proceedings- Local Court of Giurgiu dated 27th April 2011 (pages 40 to 54);
- v. Judgment of the Local Court of Giurgiu dated 12th May 2011 (pages 55 to 167);
- vi. Record of Proceedings of the Bucharest Court of Appeal dated 15th December 2011 (pages 168 to 174);
- vii. **Judgement** of the Bucharest Court of Appeal dated 16th December 2011 (pages 175 to 319);
- viii. Criminal Record of Mihai Tanjala dated 12th January 2012 (pages 320 to 323); and



1 ix. Warrant of Arrest issued by Local Court of Giurgiu dated 20th December 2015
2 (pages 324 to 327);

3
4 x. Photograph of the Applicant (page 328).

5
6 Each of these attached documents to the Request purports to bear the signatures of the
7 Judges of the respective courts of Roumania and each page of each document bears the
8 seal of the Ministry of Justice of Roumania.

9
10 37. On the basis of paragraph 12 of the Schedule to the Act and Article X of the Treaty the
11 Roumanian bundle containing the Request and documents as detailed was received in
12 evidence by the Chief Magistrate in proof of the matters contained therein. (*See in Re*
13 *Kiriakos*⁴ *where it was held that the evidence as a whole including the documents*
14 *supplied by the requesting State was sufficient to prove the case to the criminal*
15 *standard*).

16
17 38. The documents in the Roumanian bundle include judicial documents stating the fact of
18 conviction and of the 5 year sentence imposed and a warrant for the arrest of Mr.
19 Tanjala.

20
21 39. The Learned Chief Magistrate correctly concluded that the material presented in the
22 Roumanian bundle was evidence which was capable of properly being accepted as
23 proof of the matters contained in that material. Whether the evidence was in fact
24 properly accepted by the Chief Magistrate founding the decision to commit is the issue
25 to be determined.

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⁴ [1996] EWHC Admin 205



1 **PROOF OF CONVICTION**

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3 40. The fact of conviction is certified by the production of the full judgment of the
4 Appellate Court. Attachment VII shows that this document purports to bear the
5 signatures of the Judges of that Court (The President/Chairman and 2
6 Judges/Adjudicators). This document is under the seal of the Ministry of Justice
7 (Roumanian Bundle P319) and certified to conform to the original record.

8
9 41. The Schedule to the Act does not stipulate a form of certificate of conviction. In noting
10 that s.73 (1) of the Police and Criminal Evidence Act 1984 which states how a
11 conviction in the United Kingdom can be proved does not apply to convictions
12 recorded abroad, the Court in *Ex parte Barone* stated as follows (paragraph 3):-

13
14 *“In the current 8th edition of Cross & Tapper on Evidence, the problem is alluded*
15 *to at page 808 and following where the authors begin their section on Judgments*
16 *and Convictions saying:-*

17
18 *“If the proof of judgments and convictions were not exhaustively covered*
19 *by statutory provisions, it would be necessary to produce the actual record*
20 *of the court and to call evidence identifying the relevant parties with the*
21 *person mentioned in the record.”*

22
23 *Because of the provisions of Section 26 of the 1989 Act, the Magistrate did not*
24 *need to have a witness to produce the actual record of the court, he had it in*
25 *receivable form before him, and if necessary the English police officers who*
26 *arrested the appellant could have given sufficient evidence as to his identity to*
27 *enable the court to be satisfied that he was the person mentioned in the record.”*
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1 42. In *R. v. Governor of HM Prison Brixton and Government of the Republic of France*
2 *ex parte Delli*⁵, the judgment of the foreign Court of Appeal was proved by
3 authentication by the Court's seal as, under s.26 of the Extradition Act, foreign
4 documents:

5 “...shall in any case be deemed duly authenticated (a) if they purport to be signed
6 by a judge, magistrate or officer of the foreign state where they were issued; and
7 (b) if they purport to be certified by being sealed with the official seal of the
8 Minister of Justice or some other Minister of State of the foreign state”
9

10 and the committing court is required to take judicial notice of such certification so as to
11 receive such documents in evidence without further proof.

12
13 “In my judgment, if section 26 is to have the use intended for it, of enabling sure
14 but ready proof of foreign documents, whether orders of the court or otherwise, it
15 can only do so if, where appropriate and no subsidiary domestic issue of
16 admissibility arises, it makes admissible as proof in the proceedings documents
17 duly authenticated as the section provides.” (per Auld LJ in *ex parte Delli* at P6).
18
19

20 43. In *In Re Guisto (FC) application for a writ of Habeas Corpus*⁶, their Lordships held
21 that it was the function of the Secretary of State to ensure, before he issues the order to
22 proceed,

23 “... that the request is accompanied by a certificate or the judgment of
24 conviction in the case of a person convicted as this is one of the conditions for
25 extradition”⁷
26
27

28 44. In *Royal Government of Greece v. Governor of Brixton Prison and Another*⁸ Lord
29 Reid stated:

30 “In this case there were before the magistrate a duly authenticated copy of the
31 judgment of the Greek court, evidence that Kotronis was the person convicted, and
32 the crime set out in that judgment is an extradition crime.”

⁵ Transcript CO/3968/98

⁶ [2003] UKHL 19

⁷ (per Lord Hope at paragraph 32).

⁸ [1971 A.C. 250]

1 45. I therefore have no hesitation in deciding that the certified and stamped judgments
2 supplied by the Roumanian State with authenticated translations are proper records of
3 the Appellant's conviction and of the route of the case through the Roumanian courts
4 terminating in his conviction in the Court of Appeal in Bucharest.

5
6 **UNLAWFULLY AT LARGE**

7
8 46. The Court in *ex parte Barone*⁹ said:-

9
10 *"In precisely the same way, it seems to me that the Magistrate was entitled to be*
11 *satisfied that the appellant was unlawfully at large. Quite apart from the*
12 *enforcement order to which I have already referred, on 23rd March 1995 the*
13 *second Assize Court of Appeal of Turin, having considered the records formally*
14 *declared that "Franco Barone is in absentia so as to avoid arrest" and receivable*
15 *evidence of that judicial declaration formed part of the material before the English*
16 *magistrates' court."*
17

18
19 47. Similarly in *Re Kiriakos*¹⁰, Finnish documents evidencing that a warrant for the
20 apprehension of the Convict who had been released pending the completion of his
21 appeal and who had left the country were held to constitute admissible evidence of the
22 fact of his status.

23
24 48. In the instant case, attachment IX (Roumanian bundle P324) evidences the issue of a
25 warrant for the arrest of Mr. Tanjala to secure his attendance for the service of his
26 sentence and thus that he is unlawfully at large.



⁹ (*supra*)

¹⁰ [1996] EWHC Admin 205

1 49. The Court in *ex parte Barone* said that where a conviction was obtained in absentia,
2 the issue to be decided was whether it would not be in the interests of justice to return
3 him on the ground of the conviction. There is no evidence of injustice arising from the
4 circumstances outlined in the Request. The Applicant was present at his trial and was
5 represented by his attorney at the appeal hearing.

6
7 50. I am therefore satisfied that the conviction is properly established by certified and
8 authenticated documents and that the Applicant was unlawfully at large when arrested
9 at the airport.



10
11 *EXTRADITION CRIME*

12
13 51. The first issue raised by the Applicant on this application is whether his conviction was
14 for an extradition crime. His additional submission is that the crime does not exist by
15 reason of various changes in Roumanian Law and the absence of certain elements in
16 proof of the offence. He submits that the 'crime' of which he was convicted is different
17 from the offence said to be the equivalent offence under Cayman law, namely, fraud by
18 a bailee. The Crown submits that the conduct described in the documents received
19 from the Requesting State falls within the category of extradition crime as defined in
20 the relevant Treaty and that it is not for a Court in the Requested State to conduct an
21 inquiry into foreign law.

22
23 52. Article II of the Treaty between Roumania and the United Kingdom as extended to the
24 Cayman Islands (as a colony or foreign possession) by Article XVII as set out in the
25 Order, lists 31 specific offences as extradition crimes. These include "*Fraud by a*
26 *bailee, banker, agent, factor, trustee, or director, or member or public officer of any*
27 *Company, made criminal by any law for the time being in force.*"

1
2 Extradition is also to be granted for ‘*participation in any of the aforesaid crimes*
3 *provided such participation be punishable by the laws of both the Contracting*
4 *Parties*’.

5
6 53. Proof is therefore required that the conduct of which the Applicant was convicted
7 amounts to ‘*Fraud by a bailee, banker, agent, factor, trustee, or director, or member*
8 *or public officer of any Company, made criminal by any law for the time being in*
9 *force.*’

10
11 54. The case of *R. v. Chief Metropolitan Magistrate, Ex parte Government of Denmark*
12 *(Re: Nielsen)*¹¹ provides guidance in considering an extradition crime. It was held that
13 in considering whether the fugitive’s acts or conduct would amount to a crime in
14 England, the magistrate was not required to consider foreign law under sections 9 and
15 10 of the 1879 Act.

16
17 55. The Court in *ex parte Barone*¹² stated at paragraph 3 :-

18
19 “*The decision of the House of Lords in Evans (1994) 1 WLR 1006 is clear*
20 *authority for the proposition that a Magistrate may hear representations but may*
21 *not hear evidence as to whether or not the conduct alleged amounts to an*
22 *extradition crime, that is to say:*

23
24 *Conduct in the territory of a foreign state... which, if it occurred in the*
25 *United Kingdom, would constitute an offence punishable with*
26 *imprisonment for a term of 12 months, or any greater punishment, and*
27 *which, however described in the law of the foreign state... is also*
28 *punishable under that law.” (1959 Act Section 2 (1) (a))”*

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¹¹ [1984] 1 A.C. 606

¹² (supra)



1 56. In the case of *R v. Governor of Pentonville Prison Ex. P. Budlong*¹³ the Court
2 reviewed a number of cases before concluding that, if the offence for which extradition
3 was demanded and the offence for which it was granted would be recognized as
4 substantially similar in the foreign country and in England even though the definitions
5 of the offences in the laws of the two countries were not identical, the requirements of
6 the law were satisfied. The Court also said that the words in the Treaty stating an
7 offence were to be given a general meaning and further the fact that it is an English
8 Court which should decide whether or not a given set of facts constitute a crime
9 according to English Law supported that conclusion.

10 57. In the Privy Council case of *Johannes Deuss v. the Attorney General for Bermuda*¹⁴
11 the Board stated as follows (at paragraph 57):
12

13
14 *“The key to applying the difficult provisions of the 1870 Act is to appreciate, as*
15 *Robert Goff LJ pointed out in Nielsen, that the focus is on the conduct that the*
16 *fugitive is alleged to have committed in the country seeking extradition. In a*
17 *British possession such as Bermuda the following questions had to be answered in*
18 *order to decide whether a fugitive was accused of an extradition crime:*

19
20 (i) *What was the conduct alleged to be a crime in the foreign country?*

21
22 (ii) *Did that conduct constitute a crime under the law of Bermuda at the time*
23 *that it was committed? If so,*

24
25 (iii) *Did the Bermudan crime fall within the generic description of one of the*
26 *crimes in the schedule?*

27
28 *If the second and third questions were answered in the affirmative, the conduct of*
29 *which the fugitive was accused constituted an “extradition crime”.*
30
31
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36



¹³ [1980] 1. W.L.R. 1110

¹⁴ [2009] UKPC 38

1 *FACTUAL CIRCUMSTANCES*

2
3 58. The Request for Extradition sets out the following factual details.

4
5 i. Mihai Tanjala has been convicted in Roumania of the offence of corruption. From
6 the documents submitted the facts appear to be as follows:

7
8 ii. On the 10th June 2009 the Prosecuting Authority in Bucharest, Romania filed an
9 indictment against him for an offence allegedly committed pursuant to Article 10
10 (a) of Law no. 78/2000 which provides for a sentence of between 5 and 15 years
11 imprisonment for acts of corruption defined as *'the establishing deliberately of a*
12 *reduced value, compared to the real market value of the goods belonging to the*
13 *economic units in which the state or an authority of the local public administration*
14 *is a shareholder committed during the privatization activity or on the occasion of a*
15 *commercial transaction, or of the goods belonging to the public authorities or*
16 *public institutions during a selling activity of these, committed by those holding*
17 *management, ruling or administration duties'* (see Roumanian bundle Page 1-2).

18
19 iii. The description of the acts charged alleged that on the 14th October 2004, whilst he
20 was the sole administrator of SC ICMUG SA Giurgiu, formerly a state owned
21 company, the Defendant sold an immovable property made up of ground floor and
22 4 upper floors for the total price of 660,000,000 lei (old money) to his wife's
23 company, then on the 1st November 2004 the property was sold by her company to
24 his wife Tanjala Niculina in person (so that the property became a joint asset) and
25 then on the 25th November 2004 his wife resold the property for 15,964,290,000 lei
26 (old money) thus benefiting him personally (Roumanian bundle page 17).



1 iv. The complaint in the case was first registered on the 18th May 2006 and
2 investigations were carried out. On the 4th March 2008, the case was passed to the
3 National Directorate for Fighting Corruption to decide whether to prosecute and on
4 the 23rd March 2009 prosecution was authorized (Roumanian bundle page 7) and
5 filed at court on the 19th June 2009 (page 8).

6
7 v. A trial then took place at which the Applicant (who was on bail) appeared and was
8 legally represented and by decision made on the 27th April 2011, the local Court of
9 Giurgiu (“the court of first instance”) found the factual circumstances proven *inter*
10 *alia* as follows:



11
12 *“Consequently, the G + 4 asset, the property of SC “ICMUG” SA*
13 *Giurgiu, the former manager of which was the defendant, Tanjala Mihai,*
14 *was first offered for purchase by the defendant for the price of 49,*
15 *504,312,800 ROL, and later on for 450,000 Euro (18, 461,250,00 ROL), to*
16 *SC “ADMINISTRATIA ZONEI LIBERE GIURGIU” SA, but it was*
17 *actually sold to SC “DUNAV INTERNATIONAL TRANSPORT” SRL, the*
18 *rightful manager of which was the defendant, Tanjala Mihai, for the*
19 *amount of 660,000,000 ROL (under the circumstances that SC*
20 *“ADMINISTRATIA ZONEI LIBERE GIURGIU” SA, had in principle*
21 *accepted to purchase the asset for the price of 450,000 EURO, i.e.*
22 *18,461,250,00 ROL), and then re- sold to natural person Tanjala Niculina*
23 *for the amount of 680,000,000ROL –becoming shared asset of the spouses*
24 *Tanjala Mihai and Tanjala Niculina – and later on sold to SC*
25 *“ADMINISTRATIA ZONEI LIBERE GIURGIU” SA, for 15,964,290,000*
26 *ROL, money paid to the spouses Tanjala Mihai and Tanjala Niculina.”*
27

28
29 vi. However the Court acquitted the Defendant on the basis that a legal element of the
30 offence had not been made out namely that the circumstances did not constitute
31 engagement in a commercial transaction within the meaning of the Law as
32 submitted by the Defendant.

33
34 vii. The Prosecutor appealed.
35

1 viii. By decision delivered 16th December 2011, the Bucharest Court of Appeal, in a
2 closely argued and highly detailed judgment, found that the arguments made by the
3 defence and repeated by the court of first instance were not supported by the
4 doctrine and case law and that the purchase of a building representing an asset of
5 the trading company was a business act covered by the criminal law (page 43 –
6 Roumanian bundle P234). The Court of Appeal also found that the Defendant
7 knew the real market value of the real estate when he sold it to his spouse at an
8 under-valuation and that the sale was deliberately done (page 45-6 – Roumanian
9 bundle P236-7). The Court of Appeal explained the rationale behind the
10 criminalization of the acts of the Applicant (page 46-7 – Roumanian bundle P237-
11 8) and held that the Defendant's behaviour was not a speculative lawful transaction
12 selling at a higher price goods obtained at a lower price. Instead it was a case of
13 the Defendant knowing the true value of the real estate being aware of a prior true
14 real market value (page 48 – Roumanian bundle P239). Accordingly the Court of
15 Appeal held that the constituent elements of the offence referred to in Article 10
16 (a) of Law no. 78/2000 were met and convicted him of the offence, imposing a
17 sentence of 5 years imprisonment which was said to be the minimum sentence
18 possible (Roumanian bundle P242-3).



19
20 ix. On 20th December 2011, the Local Court of Giurgiu following upon the ruling of
21 the Court of Appeal issued a warrant for the arrest of the Defendant in order for
22 him to serve the sentence of imprisonment imposed.

23
24 x. The said warrant could not be enforced because the Defendant had absconded from
25 the jurisdiction.

1 59. The conduct of which the Applicant was convicted is therefore clearly that in 2004
2 while serving as the administrator or director of a company he committed a fraud on
3 the company by arranging the sale of company-owned property in such a way as to
4 ensure his personal benefit.

5
6 60. Under Cayman law, fraud by a bailee, banker, agent, factor, trustee or director or
7 member or public officer of a company would be committed in the circumstances
8 outlined in the foregoing paragraphs and would be charged as theft contrary to s.229 of
9 the Penal Code (1995 Revision) (now s.241 of the Penal Code 2013 Revision) and/or
10 conspiracy to defraud contrary to the common law. The likely particulars of the
11 offences are set out in the Certificate of Committal of the Chief Magistrate.

12
13 61. The conduct as described by the respective judgments of the Roumanian Courts would
14 plainly fall within the general category of theft and conspiracy to defraud.

15
16 62. The Applicant seeks to enquire further into the facts supporting his conviction and to
17 argue that his conviction should not stand for a variety of reasons which, as now
18 explained, I do not need to explore further.



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1 *INQUIRY INTO THE FACTS OF THE CASE*

2
3 63. The Defendant asserts his innocence saying that his conviction was unjust and that the
4 offence, if established, was in fact committed by another person. However, subject to
5 what follows in relation to offences or prosecutions of a political character, it is well
6 established by authority that it is not for the Chief Magistrate or for this Court to
7 inquire into evidential proof leading to the conviction, into the possibility of new
8 evidence or of other relevant facts, possibly indicating that the conviction may have
9 been wrong or wrongly based or into any potential defence open to the Applicant either
10 at his trial or arising subsequently. As the House of Lords said in *Royal Government*
11 *of Greece v. Governor of Brixton Prison and Another*¹⁵:

12 *“the court is not entitled to inquire whether a foreign conviction is a nullity by*
13 *reason of denial of natural justice.”*
14

15 64. Similarly the Court of Appeal in *Budlong*¹⁶ said at P1125 that the court will not
16 entertain allegations of bad faith on the part of the requesting State where the offence
17 has not been shown to be of a “*political character*”. Therefore, once the conviction is
18 properly established, the court in the requested state will not seek to go behind the fact
19 of the conviction. This applies equally therefore to allegations of unfairness in the trial
20 process including allegations of an improper non-political motive for proceeding with a
21 prosecution.
22

23 65. I do not therefore enquire into the propriety of the Roumanian conviction.
24
25
26

¹⁵ [1971] A.C. 250 per Lord Reid at P278E

¹⁶ (*supra*)



1
2
3 **OFFENCE OF POLITICAL CHARACTER**

4 66. The phrase “*offence of a political character*” encompasses crimes incidental or integral
5 to political disturbances, crimes arising out of disputes between political adversaries,
6 one of whom is the State, or an attempt to punish an offender for a political purpose,
7 crimes in certain jurisdictions created in order to imprison political opponents and
8 possibly prosecutions for what may on the face be non-political crimes but which are
9 driven by a political agenda rendering the prosecution biased and/or unfair or the
10 evidence in support of the allegation suspect. That list is not exhaustive. Excluded
11 from the meaning of ‘*political character*’ are cases of political significance where the
12 offence was not committed for a political purpose (*Schtraks v. Government of*
*Israel*¹⁷):

13 “*The remaining question is, what constitutes an “offence of a political character”*
14 *for the purposes of the Act? I can clear the ground a little by saying that in my*
15 *opinion the Act allows for no exception under this head unless it establishes the*
16 *political nature of the very offence for which extradition is sought. In other words,*
17 *neither the Secretary of State nor the court is entitled to inquire under section 3(1)*
18 *whether the requesting state is asking for extradition under one charge while*
19 *really intending to try or punish the fugitive for another and different offence.”*

20
21
22 And later at P588:

23
24 “... subsection (1) envisages two alternative ways of identifying a political offence
25 – one, a charge that on the face of it smacks of the “political”, say, caricaturing
26 the Head of State or distributing subversive pamphlets, and the other, a charge
27 which, ostensibly criminal in the ordinary sense, is nevertheless shown to be
28 “political” in the context in which the actual offence occurred.”

29
30
31 And later at P591:

32
33 “...the idea that lies behind the phrase “offence of a political character” is that
34 the fugitive is at odds with the State that applies for his extradition on some issue
35 connected with the political control or government of the country.”

17 [1964] AC 556). In that case, Lord Radcliffe said (at P587

1 67. At their highest the Applicant's allegations are that he was prosecuted to conviction
2 because State officials were upset at his persistent efforts to obtain compensation from
3 the State arising out of the privatization of formerly nationalized assets.

4
5 68. In the case of *In Re Arton*¹⁸ Lord Russell in considering whether a request for
6 extradition based on offences of fraud involved an offence of a political character
7 stated:-

8
9 *"Let us consider whether there is any real ground for either of the suggestions*
10 *made. First is this an offence, or is any of the offences in respect of which the*
11 *order of committal was made, one of a political character? The bare enumeration*
12 *of them seems to afford a sufficient answer to that suggestion: they are falsification*
13 *of accounts and using falsified accounts, fraud by an agent, fraud by a trustee,*
14 *fraud by a director of a company and by a public officer; obtaining money and*
15 *goods by false presences, offences against the bankruptcy laws, larceny and*
16 *embezzlement. The mere enumeration of these offences shews that they are*
17 *completely divested of any trace of a political character."*
18

19
20 69. Next, in considering whether these are false charges made with the intention to effect
21 punishment for a political motive, the decided cases suggest that this is not a matter
22 which the courts can assume. Such a contention would require proof by the clearest
23 possible evidence. In *Royal Government of Greece v. Governor of Brixton Prison*
24 *and Another*¹⁹, a case in which the Respondent was a determined opponent of the
25 Greek Government and who had three times been detained in Greece without trial or
26 charge being raised against him, the headnote puts the matter in this way:

27
28 *"Should the Applicant be detained by the Greek Government for political motives,*
29 *that would be a breach of article 7 of the treaty and an English court cannot*
30 *assume that a Government in diplomatic relations with Her Majesty's Government*
31 *would so act."*
32

¹⁸ [1896] QB 108

¹⁹ *supra*



1 70. Lord Reid (with whom Lords Morris, Guest, Upjohn and Donovan agreed) said at
2 P278H:

3 *“it appears to me to be impossible for our courts or for your Lordships sitting*
4 *judicially to assume that any foreign Government with which Her Majesty’s*
5 *Government has diplomatic relations may act in such a manner.”*
6
7

8 71. In the case of *Roman Orechovsky v. the Government of Slovakia*²⁰ where the
9 Applicant contended that if he was returned to Slovakia he might be prejudiced or
10 punished because of his race, the Court approved the formulation postulated by Lord
11 Diplock in the case of *R v. Governor of Pentonville Prison ex. p Fernandez*²¹ that
12 there should be evidence that there was a reasonable chance or substantial grounds for
13 thinking and a serious possibility that the fugitive would be prejudiced in the way
14 alleged. The Court concluded that an allegation of general prejudice was insufficient.
15 Kennedy L.J said at paragraph 4:

16 *“Where that issue (prejudice) is raised, it is common ground that the burden of*
17 *proof lies upon the fugitive who makes the allegation, but he does not have to*
18 *prove that conduct of the type envisaged by section 6(1)(d) (detention, punishment*
19 *or deprivation of liberty by reason of race, religion, nationality or political*
20 *opinions) is more likely than not Lord Diplock at page 994G said that because*
21 *of the gravity of the potential consequences, a lesser degree of likelihood is*
22 *sufficient. He accepted as appropriate formulations used in the lower courts – a*
23 *reasonable chance, substantial grounds for thinking and a serious possibility.”*
24
25
26

27 72. and made the following findings (at paragraph 36):
28
29
30
31
32



²⁰ [2003] EWHC 2758

²¹ [1971] 1 W.L.R 987

1 *“Putting all of that material together with the evidence considered by the district*
2 *judge, it seems to me that it is possible to reach a number of conclusions.*

3
4 (i) *The applicant is charged with a series of offences which have no political*
5 *or racial dimension of any kind, and there is no suggestion that the*
6 *application for extradition is not made in good faith.*

7
8 (ii) *The application is made by a sovereign democratic state which is regarded*
9 *by the English legislature in the context of immigration and asylum as a*
10 *country where, in general, there is no serious risk to persons entitled to*
11 *reside there, so that removal to that country will not contravene the*
12 *international obligations of the United Kingdom.*

13
14 (iii) *That it is of considerable importance to good relations between nations*
15 *and to the administration of justice in Europe and beyond, that those*
16 *allegedly responsible for the commission of serious offences should not be*
17 *able by crossing borders to escape trial.*

18
19 (iv) *That although there is evidence of anti-Roma prejudice in Slovakia, the*
20 *Authorities do not support it and there is no reliable evidence that it would*
21 *affect an ordinary criminal trial.*

22
23 (v) *Specifically, in the case of the applicant, there is no evidence that it has*
24 *ever affected his encounters with the criminal justice system in the past,*
25 *and in relation to present matters, the fact that he was granted bail is clear*
26 *evidence to the contrary.*

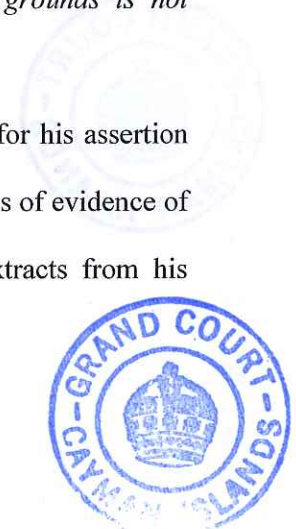
27
28 (vi) *.... (not applicable to the instant case)”*
29

30 73. In *Antonov and Baranauskas v. Prosecutor General’s Office Lithuania*²² the Court
31 held at paragraph 25 that:

32 *“a vague argument that there was a political decision to prosecute in order to*
33 *justify a nationalisation which was itself ordered on political grounds is not*
34 *enough to establish the necessary causal link.”*
35

36 74. The evidence given by the Applicant in the instant case as the basis for his assertion
37 that he will be subject to political persecution is set out first in the notes of evidence of
38 the Learned Chief Magistrate. It can be found in the following extracts from his
39 evidence:
40

²² [2015] EWHC 1243



1 *"I consider that the conviction in Roumania was given for political matters not for*
2 *something I did."*

3
4 *"I was convicted politically or my crime does not exist..."*

5
6 *"Three weeks before I was convicted I got a message proposing that I sell my*
7 *rights (to the State) for between one and three million euros. I refused to sell. I*
8 *did not give an answer, I just delayed him."*

9
10 *"The messenger arrived in the company of bodyguards of the President. He*
11 *continued to give me the proposal. I left my attorney with him. I contacted the*
12 *Prosecutor"*

13
14 *"The Prosecutor said I made a complaint against the President and that I was*
15 *crazy..."*

16
17 *"I have been asking for political asylum in Cayman"*

18
19 *"... if I was convicted by abuse, what do you imagine will happen to me in*
20 *Roumania?"*

21
22 *"I was afraid for my personal security. I was convinced I was prosecuted and*
23 *convicted for political reasons."*

24
25 *"I was a member of the Roumanian Parliament between 1992-96. I was co-*
26 *founder of the secret service of Roumanian Police after 1999. I was arrested*
27 *during Roumania's revolution in 1989 because I was part of the Secret Service*
28 *during the Communist party. After the revolution, I became head of police in 9*
29 *counties I was in the new structure."*



1 *"The second reason I say I was being politically charged is that I was part of a*
2 *group claiming compensation."*

3
4 *"I opened 200 cases in Roumania suing the state. The Roumanian state sued me*
5 *in over 300 cases. I won 299 cases."*

6
7 75. And in his written submissions the Applicant states:

8 *"The judge wrongly considered that this is not a political conviction although the*
9 *simple connection between my erroneous and abusive conviction and the reasons I*
10 *invoked as political and that I proved with documents at the immigration service*
11 *were sufficient and undoubted to prove such fact."*

12
13
14 76. The acts constituting his conviction are, he says, legal and were in fact carried out by
15 Ciuclea Catalin. He says:

16 *"...the conviction is abusive, the accusations brought to me by Roumania ... have*
17 *been committed by other persons or are legal acts that cannot be incriminated.*
18 *My conviction was performed by judges that are undercover agents, justice being*
19 *controlled by the intelligence services. A member of the judges that convicted me*
20 *was promoted to the High Court of Justice the second day after my conviction."*

21
22 77. He goes on to say that the President, Prime Minister, General Prosecutor and former
23 General Prosecutor of Roumania are all undercover agents. He says his allegations are
24 well-known and have appeared in the media, some extracts from which have been
25 provided to me.



1 78. The Applicant also asserts that he has been threatened with death and says he was
2 prosecuted only because he was requesting vast sums in compensation from the
3 Roumanian State and was a thorn in the side of corrupt individuals within the
4 machinery of State.

5
6 79. In his submissions in the course of this hearing, the Applicant has concentrated upon
7 the motive of the Roumanian State in prosecuting him to conviction allegedly in bad
8 faith with what he describes as a political motive, the conduct of the prosecutor who
9 was allegedly corrupt, the surrounding circumstances which are alleged to show that
10 the Applicant was, by this prosecution, being silenced by the State following his
11 litigation successes in hundreds of cases pursued by him and against him involving the
12 distribution of property formerly nationalized when Roumania was a communist
13 country. He says there is evidence that what he was alleged to have done was not an
14 offence and that, in any event, the acts were done by another person. Finally the
15 Applicant dismisses the Bucharest Court of Appeal judges (who unanimously re-
16 instated his conviction after the court of first instance had acquitted him) as mere
17 agents of the State.

18
19 80. The Applicant also argues that his points are established by his complaint(s) made to
20 the International Centre for Settlement of Investment Disputes (ICSID) concerning
21 privatization issues affecting the company Nitramonia SA of which he was the former
22 general manager thus providing the motive for the Roumanian State to wish to silence
23 him. He has also pursued similar complaints, he says, on behalf of others seeking vast
24 sums in compensation from the Roumanian State. He says it was only when he
25 approached the ICSID that he was prosecuted for this crime of which he was innocent.

26
27





1 81. The Applicant relies in particular upon the following affidavits (not before the
2 Magistrate):

3
4 i. Gabriella Gyorburo (sworn 23rd May 2016) – the Applicant had assisted her in the
5 ultimately unsuccessful attempted recovery of property taken from her family by
6 the former communist Roumanian State. She claims to have witnessed efforts to
7 bribe her to abandon her case and says the Applicant was also threatened by what
8 she describes as an ‘*organized criminal group*’. That phrase recurs elsewhere used
9 by the Applicant. She says that ‘*therefore Mr Tanjala was penally convicted in*
10 *Romania for a deed he did not commit ...*’ She believes that in Roumania the
11 Applicant’s life will be in danger. She provides no evidential basis for the
12 assertion that the Applicant did not ‘*commit the deed*’;

13
14 ii. Mihai Barbuliceanu (affidavit appears to be dated 23rd May 2016) – He describes
15 problems he says the Applicant had trying to recover assets in similar
16 circumstances to Gabriella Gyorburo. He describes how the Applicant was beset
17 with civil actions designed to undermine his efforts to recover property. He says
18 that the actions of the Applicant ‘*drew repercussions for him consisting in a 5*
19 *years conviction for purchasing a steel hall and a block foundation in a border*
20 *town ... by his daughter’s company*’. I assume this is a reference to the facts of the
21 disputed conviction but, if it is, there are differences. Later this deponent says
22 ‘*Tanjala Mihai was accused in 2010 so over 7 years from the time of purchase by*
23 *his daughter’s company that he acquired under-valued public goods, settled by*
24 *DNA (National Anti-Corruption Directorate) experts named by the state*
25 *prosecutor (because of what I know an official expertise was not allowed) a*
26 *prejudice of about 500 thousands of euros.*



1 *From data and information received from close friends and the attorney, turns out*
2 *this prejudice was covered by Tanjala Mihai*. He goes on to profess some
3 knowledge of the acquittal at first instance and says *'this court order was not taken*
4 *into account in the conviction file*'. He says that *'these properties were legally*
5 *bought at their fair value of year 2003*' which runs directly counter to the
6 prosecution case and the conviction. Once again, the asserted knowledge of the
7 instant case is patchy, inaccurate and, at best, based on hearsay or surmise. Mere
8 assertions such as those quoted above lack evidential support but, if they have any
9 validity, that should be addressed by seeking leave to re-open the case in
10 Roumania (a course I understand the Applicant to be taking) to introduce fresh
11 evidence;

12
13 iii. Mihai Dogaru (this affidavit – date uncertain - was before the Magistrate at pages
14 000551 to 000562) – He was the defence attorney representing the Applicant in
15 Roumania. He asserts that the original prosecution was politically motivated
16 saying that attempts were made to prejudice the court of first instance (where the
17 Applicant was acquitted thus tending to support rather than to undermine the
18 independence of the judiciary) by implying that he was an enemy of the State. He
19 then asserts that the court was subjected to *'a certain political lobby*' so as to *'ask*
20 *for the re-initiation of the criminal prosecution*'. The subsequent acquittal
21 therefore appears to be in the face of the allegedly underhand behaviour of agents
22 of the State seeking to persuade the court to convict. The deponent explains this
23 by saying *'I suspect the existence of certain political and/or professional pressures*
24 *upon the court intended to alter the act of justice and to lead to an unfair*
25 *settlement*'.

1 He also criticises the experience of the first instance judge who he accuses of
2 ‘*dilletantism*’. He further complains that the Appeal Court procedures and pre-
3 hearing rulings prejudiced the Applicant and that at the hearing the judges were
4 ‘*not paying attention, proving to be very impatient, looking to the courtroom*
5 *ceiling or to the room windows and twiddling their thumbs*’. He says he was filled
6 with bitterness and disappointment. He says the courts in Roumania are interested
7 only in speedy hearings and disposals of cases. He says there was no evidence to
8 support the conviction and points to various alleged breaches of procedure and
9 incorrect application of the law. Finally he says that he himself has been placed
10 under pressure to ease off his support for the Applicant;

11
12 iv. Ciuclea Catalin (sworn on 19th November 2015 at request of Mihai Dogaru) – who
13 asserts that the prosecutor Cristudor Dumitru tried to prevent him from telling the
14 truth in a witness statement and attempted to persuade him to implicate the
15 Applicant. His affidavit does not appear to accept responsibility for the matters
16 constituting the Applicant’s conviction and does not deal with the transaction
17 details underlying the conviction. I find this strange bearing in mind that he claims
18 to have been the Economic Manager and Administrator of ICMUG SA at the time
19 and so, according to the Applicant, the person who authorised the very acts
20 forming the basis of the conviction;



1 v. Valerian Simirica (a statement dated 20th May 2014) – who describes himself as
2 sole shareholder and president of S & T Oil Equipment and Machinery Ltd, gives
3 his opinion that the conviction of the Applicant is no longer valid as it was
4 “brought for the cause in the absence of clear evidence, based on information
5 provided by the former management of the company which acted as an agent of
6 AVAS and which had an interest in misinforming me and hiding the truth that the
7 company SC ICMUG Giurgiu SA (had severe financial shortcomings and
8 misrepresented its assets and share capital)”. He says he, Valerian Simirica,
9 acted alone without the involvement of the Applicant in the company’s affairs;

10 vi. Vinod Doddmani (statement unsworn dated 25th May 2016) – a lawyer who, it
11 appears, represented the Applicant in his application for political asylum in the
12 United States and gives his hearsay opinion on the reasons for the conviction and
13 also says that the Applicant was forced to agree to voluntary departure from the
14 United States under threat of indefinite incarceration and a lengthy appeal process.
15 He states as a fact (though this must be opinion) that the Applicant fled Roumania
16 to avoid political persecution. He describes the offences of which the Applicant
17 was convicted as ‘purely political offenses’. He describes the International Arrest
18 Warrant as ‘so-called’. His statement regurgitates the assertions made by the
19 Applicant. I find the terminology used by this legally qualified witness to be
20 unusual to say the least. Although the statement is dated 25th May 2016 it appears
21 to be part of an application for a re-hearing before the United States Court of
22 Appeal based on alleged defects in his long defunct and superseded asylum
23 application.
24
25



1 82. I have been referred to *European Commission decision 2015/1470 (Micula v*
2 *Roumania)*. That decision concerned anti-competitive State aid granted to S.C
3 European Food S.A. and the withdrawal of incentives by the Roumanian State. It also
4 involved consideration of whether Roumanian State aid given via execution of a
5 judgment or an award was contrary to EU law. Significantly the Court expressly did
6 not find that the State had acted in bad faith but found that the State had failed to
7 ensure fair and equitable treatment by the manner in which it dealt with the premature
8 revocation of incentives and so had not acted in a reasonable and transparent manner. I
9 note that the beneficiaries were ordered to repay the unlawful State aid. It is also
10 noteworthy that the Bucharest Court of Appeal at one stage in the protracted
11 proceedings froze assets of the Ministry of Finance in an effort to enforce a part of an
12 award of damages. I am unable to see how this case provides succour to the Applicant
13 as he is not mentioned in it and, even if he was involved in the case in some way, it is a
14 giant leap to speculate that this motivated his prosecution or his conviction. At best it
15 shows the Roumanian State not acting in accordance with EU rules and regulations and
16 being held accountable after submitting to due process.

17
18 83. More pertinently, I have been referred to the 2012 and 2015 US Country Report on
19 Human Rights in Roumania. In 2012 it appears that Government corruption was a
20 widespread problem, there was a '*continuing lack of judicial independence and*
21 *impartiality and vulnerability of the judiciary to political influence*' and tardiness in
22 dealing with compensation claims. Prison conditions were unsatisfactory. There were
23 no reports of politically motivated disappearance.



1 However the Government was making efforts to effect improvements in detention
2 conditions and generally respected judicial independence. Parliament was working to
3 strengthen judicial accountability and liability and to grant more independence to the
4 judiciary's self-governing body. It is clear that the judiciary did not then enjoy total
5 public confidence. I have been supplied only with a part-copy of the 2015 report
6 dealing only with prison conditions and allegations of corrupt Government practices.

7
8 84. The DPP points out that, although the Human Rights reports may show short-comings
9 in the judicial system, some lack of independence, some cases of susceptibility to
10 political pressure and other problems, it is only necessary to examine the instant case to
11 see that there is no evidence of such issues arising here. The Applicant was not in
12 custody, he was represented by a lawyer and was able to call expert evidence, the court
13 of first instance acquitted him and the Appeal Court, where he was also represented,
14 gave a detailed and careful, closely argued decision explaining why conviction was
15 necessary. The minimum sentence was passed. These facts appear to be totally
16 inconsistent with a politically motivated prosecution or judgment. There is nothing in
17 the documents provided by Roumania to suggest that the proceedings were otherwise
18 than completely fair and non-political.

19
20 The DPP says the affidavits and statements relied on by the Applicant post-date his
21 conviction and there is evidence in the papers of him seeking to interfere with
22 witnesses (Roumanian bundle page 89). It is also clear from the Roumanian papers
23 that the Applicant was not disputing the basic facts of the case against him (page 102-
24 3) saying that the scheme was his own idea. It is difficult therefore to understand how
25 the case was politically motivated and orchestrated against him.



1 The case simply involved the correct interpretation of his admitted acts and whether
2 they amounted to an offence. The DPP also points out that the Applicant's case in the
3 US asylum application involved an allegation that his conviction was '*an error, abuse*
4 *or even a political conviction ... made because the real culprits are those who acted*
5 *together as an 'organized criminal group' or on command, namely Simirica Valerian,*
6 *Cazacu Mariana, Nitulescu Emil and prosecutor Cristudor Dumitru*'. He omits
7 Ciuclea Catalan who he now claims to have been the perpetrator and relies on Simirica
8 Valerian who he was accusing of involvement with his prosecutor and others in an
9 organized crime group. The DPP also says that the suggestion that the prosecution was
10 triggered by the Applicant aggravating State Officials by his complaints to the ICSID
11 does not bear examination against the history of the inception of the case many years
12 earlier. The DPP says the Applicant withdrew his asylum application in the United
13 States because he knew the likely outcome. His conduct after using a USD\$50,000.00
14 bond to secure voluntary departure from the US does not suggest someone desperately
15 seeking political asylum. Rather it suggests someone seeking to escape justice whose
16 plans were disrupted by his enforced return from Jamaica to Grand Cayman.

17
18 85. The Applicant's evidence and his written submissions that the conviction was
19 influenced by his claim for compensation from the state, interference by agents of the
20 President of Roumania and the trouble he had caused to parties of influence amount to
21 no more than a belief on his part that the motivation behind his prosecution was
22 political. There is no evidence to support his suggestion. No documents produced by
23 the Applicant establish in any way that his conviction was political or that his
24 prosecution was influenced politically despite his assertions to that effect.

1 86. It does seem odd, against a background of alleged political intrigue and corrupt
2 motivation, that the Applicant was on bail throughout the legal proceedings and that
3 the trial court acquitted him on what might appear to have been a technical ground.
4 Then the Appeal Court was required to enter a conviction after ruling that the trial
5 court had erred in its decision. The ruling of the Appeal Court was as I have already
6 indicated careful and detailed and certainly does not appear on the face of the ruling to
7 have been politically motivated.

8
9 87. The human rights of the Applicant must be taken into account. Although not
10 specifically addressed by the Chief Magistrate, there is no evidence that the issue was
11 raised on behalf of the Applicant but, even if it had been, I find that human rights were
12 taken into account as necessary in that the fairness of his trial process was considered,
13 the extradition process was fair and lawful and his personal human rights were not
14 infringed.

15 88. On the basis of the evidence given and following the principles from the authorities
16 cited, the Learned Chief Magistrate was correct in her finding that the request for his
17 surrender has not been made with a view to punish him for an offence of a political
18 character and that the offence for which he was convicted is not an offence of a
19 political character. Nor is there any evidence to show that the prosecution was
20 politically motivated. The Applicant has failed on the balance of probabilities to
21 establish that the offence or his prosecution and/or conviction were of a political
22 character or politically motivated.
23
24
25
26



FURTHER MATTERS RAISED

1
2
3 89. The Applicant raises allegations of prosecutorial misconduct on the part of the
4 Romanian prosecutor. These are not matters for the Requested State to consider on a
5 conviction request.

6
7 90. In *Symeou v. Greece*²³ the Court stated that the abuse jurisdiction of the requested state
8 does not extend to considering misconduct or bad faith by the police of the requesting
9 state in the investigation of the case or the preparation of evidence for the trial
10 (paragraph 34). The Court also noted that it is within the exclusive jurisdiction of the
11 Requesting State to try the issues relevant to the guilt or otherwise of the individual.

12
13 91. It is therefore not for a Requested State to decide upon the innocence of the Applicant
14 or to re-examine the evidence and arguments adduced at his trial or at the appeal
15 hearing (as indicated earlier in this ruling), to consider Roumanian Law or to
16 investigate issues of fairness, abuse of process or procedural errors. These are all
17 matters to be considered in the course of the Roumanian trial process or if necessary in
18 proceedings in the European Court.

19
20 92. The Court in the case of *Sobczk v. Poland*²⁴ put the matter in the following way:



²³ [2009] EWHC 897

²⁴ [2011] EWHC 284

1 “13. It is a far cry from that decision to argue that it is the duty of the
2 requested state considering an EAW to entertain allegations about the
3 fairness of the trial process in the requesting state. The framework of the
4 Convention is built on mutual trust that states who are party to it will fulfil
5 their own Convention responsibilities to ensure that a defendant is treated
6 in a way compatible with Article 6. It is no longer any part of the function
7 of the requested state to investigate whether there is a sufficient case on
8 which to prosecute the person concerned, in cases of an accusation
9 warrant. It would be equally inconsistent with the framework of the
10 Convention if it were for the requested state to investigate the fairness of a
11 conviction, in the case of a conviction warrant. Those are matters for the
12 requesting state. In this case, the matter was considered at an appellate
13 level. Ultimately, of course, a citizen aggrieved by the trial process in the
14 courts of a country subscribing to the European Convention can bring a
15 complaint to the Strasbourg Court.”

16
17 93. The Court also stated at paragraphs 14 and 15 (following the decision in *Symeou*²⁵:

18
19 “14. By similar reasoning, in cases where the defendant asserts that his
20 conviction was unsafe, it is for the appellate court of the requesting state
21 to examine the merits of the complaint. Were it not so, the consequences
22 would make the scheme potentially unworkable in a large number of cases
23 of conviction warrants. The present case is an illustration.

24
25 15. The appellant’s statement contains assertions that the trial process was
26 flawed in various ways. If those were proper matters for the district judge
27 at City of Westminster Magistrates’ Court to have investigated, he would
28 have had to have taken on a role akin to that of the Court of Appeal
29 Criminal Division in this country in reviewing the safety of his conviction
30 in Poland, with production (and translation) of all relevant papers and
31 submissions from both parties. Any such procedure would be wholly
32 inappropriate.”

33
34
35 94. The final issue raised by the Applicant relates to the spelling of his name in various
36 documents. This is an issue without merit. The documentation refers to him as he has
37 admitted in evidence. There are invariably mis-spellings in documents. There are 2
38 ways in which the name of the state of Roumania is spelled in the documents. I have
39 adopted the alternative spelling “Roumania” instead of “Romania” but there is no
40 doubt about the identity of the Requesting State however its name is spelled.

41

²⁵ *supra*

1 *CONCLUSION*

2
3 95. The decision of the Chief Magistrate to issue the warrant of committal was appropriate
4 in all the circumstances of the case and the matters raised in this application for Habeas
5 Corpus by the Applicant are without foundation. I can find no causal link between the
6 allegations of impropriety raised by the Applicant and his prosecution/conviction.
7 There is no credible evidence that the Roumanian proceedings were conducted
8 otherwise than in accordance with natural justice or were unfair or were political or
9 that it would be unjust or oppressive to return the Applicant to Roumania to serve his
10 sentence. The application is refused and the warrant of committal stands.

11
12 96. In the light of what I have read in the 2012 Country Report on Human Rights
13 concerning prison conditions in Roumania, Her Excellency the Governor may (and it is
14 a matter for her) consider seeking some assurances from the Roumanian Government
15 as to the conditions in which the Applicant will be detained whilst serving his
16 sentence.

17
18
19 **Dated this the 3rd day of June 2016**

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21
22 



23 **Honourable Mr. Justice Malcolm Swift Q.C. (Actg.)
Acting Judge of the Grand Court**