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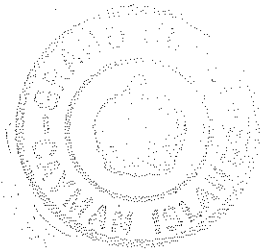
90182/2016

Originating Summons – general form (0.7, r.2)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
SITTING AS A COURT OF APPEAL FROM
A DECISION OF THE IMMIGRATION APPEAL TRIBUNAL**



BETWEEN



MIHAI TANJALA



AND

THE IMMIGRATION APPEALS TRIBUNAL

ORIGINATING SUMMONS

TO: THE IMMIGRATION APPEALS TRIBUNAL

LET THE DEFENDANT, within [14 days] after service of this Summons on him, counting the day of service, return the accompanying Acknowledgment of Service to the Courts office, P.O. Box 495G, George Town, Grand Cayman.

By this Summons, which is issued on the application of THE PLAINTIFFS APPEAL AGAISNT THE DICISION OF THE IMMIGRATION APPEALS TRIBUNAL for a decision to quash the determination of the Immigration Appeal Tribunal on the basis that the Immigration Appeals Tribunal erred in Law when determining the Plaintiff's asylum appeal.

THIS SUMMONS IS FILED BY AMELIA FOSUHENE OF BRADY ATTORNEYS AT LAW, THE ADDRESS FOR SERVICE IS B6 TRINITY SQUARE, EASTERN AVENUE, GRAND CAYMAN, CAYMAN ISLANDS. PO BOX 1671 APO, KY1-1109

If the Defendant does not acknowledge service, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the 3 day of OCT 20 16



[Signature of Plaintiff or his Attorney]

NOTE - This Summons may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

MIHAI TANJALA

AND:

THE OFFICE OF THE GOVERNOR OF THE CAYMAN ISLANDS

THE CAYMAN ISLANDS IMMIGRATION DEPARTMENT

ACKNOWLEDGEMENT OF SERVICE OF
ORIGINATING SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.

2. State whether the Defendant intends to contest or otherwise participate in the proceedings (tick appropriate box)

yes

no

Service of the Originating Summons is acknowledged accordingly

This document is filed by Amelia Fosuhene of Brady Attorneys At Law on behalf of Mihai Tanjala The address for posting is B6 Trinity square, Eastern Avenue, Grand Cayman Ky1-1109 PO Box 1671 APO

(Signed).....

[Attorney] for

[Defendant in person]

Address for service:

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Acknowledgement of service of originating summons (0.10, r.5)

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS

The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. If you wish to defend claims made in the originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the acknowledgment of service.
3. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Originating Summons)".
5. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
6. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
7. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
8. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
9. A Defendant acting in person may obtain help in completing the form at the Courts Office.

**IN THE MATTER OF AN APPEAL TO THE GRAND COURT
OF THE CAYMAN ISLANDS**

**IN THE MATTER OF AN APPEAL AGAINST
THE DECISION TO REFUSE ASYLUM**

IN THE MATTER OF MIHAI TANJALA

MIHAI TANJALA

-v-

IMMIGRATION APPEAL TRIBUNAL

APPEAL AGAINST THE DECISION TO REFUSE ASYLUM

GROUND

The Appellant Mihai Tanjala, date of birth of 1957 November 05, applied for political asylum in the Cayman Islands and in a letter dated 30th May 2016 was refused asylum by the Department of Immigration, the said letter was received on the May 31st, 2016.

He then appealed to the Immigration Appeal Tribunal and his appeal was filed on 9th June 2016.

The tribunal convened on 1st September for a hearing where Mr Tanjala was represented by counsel. They provided their reasons on 23rd September 2016. A copy of the reasons are attached to the notice of appeal.

THE GROUNDS APPEAL

The tribunal erred in Law for the following reasons:

1. The Tribunal laid down the parameters of what was to be argued and limited the discussion on the evidence to 3 questions. The Tribunal then at page 5 the penultimate paragraph criticise the Appellant for not expanding on the reasons in the grounds set out by the Appellant. The Tribunal's again determined at page 8 paragraph 5 that the appellant did not raise issues which had been placed in his appeal document, however due to the outline by the Tribunal chair at the start of proceedings that the hearing was limited to their 3 questions, it is wrong for the tribunal to then attempt to criticise the Appellant for not detailing every aspect of his appeal. In order to further this ground of appeal a copy of the tape of hearing is requested by the Appellant in order to provided perfected and substantive grounds of appeal.
2. The Tribunal further erred in law by relying wholly upon the determination of Justice Swift, during the Writ of Habeas Corpus, hearing. However in doing so the Tribunal automatically limited themselves as to the facts as found by Justice swift. It is an important aspect of the Appellants case that he was wrongly convicted, therefore in limiting themselves to the issues which were determined by Justice Swift at page 9 paragraph 6 the Tribunal quotes from the reasons provided by Justice Swift. However in finding that the Respondent did not have to inquire into evidence which showed or tended to show the appellant could not have committed and offence the Tribunal erred in law. The tribunal limited the role of the Respondent thereby depriving the Appellant of a full and fair hearing.

3. In considering the Appellant the actions of the tribunal were biased. In that the tribunal chairman said 'im not fucking sitting here all afternoon for this" whilst counsel for the Appellant was speaking and making submissions on the Appellant's behalf. He had not treated the Respondent with the same discourtesy. In dealing with the Appellant in this way the Tribunal in its decision making showed bias. Particularly at the end of the hearing when one member of the tribunal felt it necessary to ask if the Appellant felt he had a fair hearing. A copy of the tape is requested in order for the Appellant to provide perfected and substantive grounds of appeal. The chairman finally calmed down when counsel for the Appellant remonstrated with him. His defence was that he had not used the word "fucking" but flipping. The Appellant submits that justice must not only be done but must be seen to be done. In this instance the Appellant contends that justice was not done.

In order to complete a full skeleton argument in relation to the grounds of appeal above, the Appellant must as a matter of urgency be provided with a copy of the tape of the proceedings. The Appellant also seeks time to obtain statements from the 2 witnesses present who heard the comment made by the Tribunal Chairman.

Therefore the Appellant seeks further information and time in order to set out his grounds in more detail.



Amelia Fosuhene

On behalf of the Appellant Mihai Tanjala

3rd October 2016

CIVIL FORM 1

Rule 11(1)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
SITTING AS A COURT OF APPEAL FROM
A DECISION OF THE IMMIGRATION APPEAL TRIBUNAL**

BETWEEN

MIHAI TANJALA

AND

THE IMMIGRATION APPEALS TRIBUNAL

NOTICE OF APPEAL

TAKE NOTICE that the GRAND COURT OF THE CAYMAN ISLANDS SITTING AS A Court of Appeal from the Immigration Appeal Tribunal will be moved so soon as Counsel can be heard on behalf of the above-named Appellant. On Appeal from the whole of the judgment herein of the Immigration Appeal Tribunal given on 23rd September 2016 after a hearing of an application for asylum by Mihai Tanjala on the day of 1st September 2016.

Whereby it was adjudged

(i) That the appellant did not qualify as an asylum seeker and therefore asylum was refused

For an Order *(ii) Quashing the decision of the Immigration Appeal Tribunal on the ground that the Tribunal erred in law*

Dated this 3RD day of October, 2016



Amelia Fosuhene – Brady Attorneys at law

Counsel for the above-named Appellant.

To: The IMMIGRATION APPEAL TRIBUNAL.

And to: THE ATTORNEY GENERAL'S DEPARTMENT,

His Counsel

IN THE MATTER OF AN APPEAL TO THE IMMIGRATION APPEALS TRIBUNAL

AND

IN THE MATTER OF AN APPEAL UNDER SECTION 84(6) OF THE IMMIGRATION LAW (2015 REVISION)

BETWEEN: MIHAI TANJALA
Appellant

AND: ACTING CHIEF IMMIGRATION OFFICER
Respondent

DECISION

This is an appeal by Mihai Tanjala ('the Appellant') brought pursuant to the provisions of Part V11 of the Immigration Law (2015 Revision) ('the Law') being the Law in force at the time of the hearing of this appeal.

The appeal arose from the refusal of the Acting Chief Immigration Officer ('CIO') to grant asylum in the Cayman Islands to the Appellant, which decision was communicated to the Appellant by letter dated May 30, 2016.

It is the Tribunal's understanding that determination of asylum claims is a process which takes place in two stages. Firstly, it is necessary to ascertain the relevant facts of the Appellant's case. Secondly, the definitions in the 1951 Convention and the 1967 Protocol have to be applied to the facts thus ascertained.

The 1967 Protocol is a reference to Contracting States undertaking to apply the substantive provisions of the 1951 Convention to refugees but without the 1951 date line utilized in the Convention in the aftermath of the Second World War. The Convention was entered into force on April 21, 1954.

The Refugee Convention referred to in section 84(6) of the Law is defined in Section 2 of the Law thus:

" Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28 July, 1951 and the Protocol to the Convention.

“Refugee” is defined in section 2 of the Law as bearing the meaning ascribed to that expression in the Convention namely:

“ A person who owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself to the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return to it”.

BRIEF BACKGROUND

The Appellant is a Romanian national born on November 5, 1957. After some involvement in political life in Romania, he withdrew from the political scene and became a successful businessman.

In or around 2009, certain criminal charges were brought against the Appellant in relation, inter alia, to “obtaining for himself or someone else, money, goods or other undue advantages. At the trial in or around April, 2011, submissions were made by the prosecuting authorities as well the Appellant’s two lawyers and the Appellant himself. The local court at Giurgiu acquitted the Appellant but the Prosecutor appealed the acquittal and on a re-hearing before the Court of Appeal, he was convicted of the above offence and sentenced to 5 years imprisonment. The Appellant left Romania prior to his sentencing bound, via Europe, for the USA. The Appellant lived in the USA between 2011 and 2013.

In September 2015, the Appellant arrived in the Cayman Islands via Cuba. He remained in Cayman for one month as a visitor between Sept 16 and October 14, 2015. No claim for asylum was made at that time. He then traveled from Grand Cayman to Jamaica but upon arrival there the Jamaican immigration authorities observed that an Interpol arrest warrant issued at the request of Romania was extant. He was promptly returned to Cayman where upon arrival he was taken into custody by the Department of Immigration. He then applied for asylum in the Cayman Islands. Upon reviewing his application the CIO determined that the Appellant did not qualify for asylum because The CIO was not satisfied that he had demonstrated a well founded fear of persecution if returned to Romania. The CIO further found that the Appellant was a person not deserving of protection under the Convention as he had committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee. This is recorded in the Department of Immigration’s letter to the Appellant dated May 30, 2016. The Appellant filed an appeal to the Immigration Appeals Tribunal by notice of appeal dated June 9, 2016.

APPEAL BUNDLES

The Tribunal has reviewed various bundles from the Appellant and one from the Respondent. The Tribunal reviewed the Appeal Statement from the CIO dated July 21, 2016, the letter from the Department of Immigration dated May 30, 2016 as well as the Respondent's Detailed Grounds of Defense dated August 30, 2016.

The Tribunal also had the opportunity to review the Appellant's notice of appeal filed June 9, 2016 and supplemental to the notice of appeal filed June 17, 2016, Detailed Grounds to the Appeal Statement filed on August 17, 2016, (with exhibits), various bundles with translation, together with counsel's skeleton argument. New evidence which came to light were also included, with the Appellant and his counsel given the opportunity to address the Tribunal Tabs 8, 9 and 10 to the skeleton argument.

THE HEARING

The appeal was heard over two days, first, on August 25, 2016 being treated as a 'Directions Hearing' and secondly, on September 1, 2016 being the substantive hearing. The Appellant was represented by Ms. Amelia Fosuhene of Brady & Co, Attorneys-at-law, assisted by a Romanian speaking translator. The Respondent was represented by Ms. Rachel Hoare of the Attorney General's Chambers. The Respondent did not attend the hearing.

The hearing was chaired by a deputy chairman of the Immigration Appeals Tribunal and a quorum was established with four (4) other members of the Tribunal sitting. The Tribunal also had the opportunity to put questions to and elicit answers on oath from the Appellant as well as directing questions to and eliciting answers from both counsel during the appeal.

GROUND OF APPEAL

The Grounds of Appeal of the Appellant may be summarized and is addressed as follows:-

1. "The ground upon which the Appellant bases his application is that he has a well-founded fear of persecution on the basis of political opinion and former political status and the Appellant believes that if returned to Romania, his rights under Articles 2,3 and 5 of the Convention will be breached.

In his refusal letter to the Appellant dated May 30, 2016, the Respondent states that he is not 'satisfied ..that the Appellant had demonstrated a well-founded fear of persecution in the sense anticipated by the 1951 Convention and the 1967 Protocol relating to the status of Refugees'. He goes to state '...In reaching this decision, I am of the opinion that your fears appear to be largely related to the consequences that you might experience as a result of being extradited to Romania.....'.

The Tribunal has had the opportunity to review the appeal bundle containing, inter alia, the documents referred to above, and hear the Appellant's evidence in person concerning his ordeal in support of his well founded fear of persecution should he be returned to Romania.

The Tribunal has carefully considered the Appellant's evidence. His evidence is largely directed towards repeating and expanding upon the written submissions of counsel in her skeleton argument as well as in the bundles. It refers to a chronology which sets out a 'Factual Outline' of events in the Appellant's life between 1979 and 2011 together with a "Relevant Political Activity" outlining the Appellant's political involvement with, inter alia, the Romanian government until he left in 2011.

These consist of references to difficulties faced by the Appellant when he held high positions in Romania during the changeover from a communist to a democratic system of government, about his arrest and exoneration when his activities were thoroughly analyzed but later got released by the officials due to not finding culpable evidence.

Also cited were examples of the alleged perennial hatred for the Appellant by Romanian populace/authorities because of their perception that the killing of thousands of people in Romania during the revolution was perpetrated by former information officers such as the Appellant who was labeled 'securest' and 'terrorists' and relentlessly pursued by criminals avenging the death of their loved ones. According to the Appellant, he is said to have spent much time hiding from place to place in an effort to elude his pursuers. His giving of evidence before the ICSID in the USA against the interest of the Romanian government was among the matters leading to this well founded fear.

As member of a Romanian political party, the Appellant never felt the party truly embraced him or treated him fairly. This led to his resignation and the forming of his own private security company. The Appellant believes that both his former party members and security colleagues begrudged him for his success and prosperity and sought to undermine him.

References were also made to press articles concerning the Appellant resulting in several instances of investigations, interviews and surveillance by state officials, and government agencies, his refusal to pay bribes, his failure to accept compensation from the government at an undervalue amongst others.

The Tribunal noted that the Appellant had ventilated the same or similar complaints in his habeas corpus application before the Grand Court. The Judge dealt with the matter in the following terms:-

" The Applicant's evidence and his written submissions that the conviction was influenced by his claim for compensation from the state interference by agents of the President of Romania and the trouble he had caused to parties of influence amount to no more than a belief on his part that that the motivation behind his prosecution was political. There is no evidence to support his suggestion No documents produced by the Applicant establish in any way that his conviction

was political, or that his prosecution was influenced politically despite his assertions to that effect”.

The Tribunal takes a similar view as the Grand Court in relation to matters complained of by the Appellant as to the political motivation behind his conviction in Romania and rejects this ground.

2. The Appellant contends that in refusing his application the Immigration Authorities have acted unreasonably. The reason for refusing according to Sections D,E and F of Article 1“ he has committed a serious nonpolitical crime outside the country of the refugee prior to his admission to that country as a refugee..”

The Appellant’s evidence about unreasonableness is said to be due to the fact that the ‘only real evidence being submitted (i.e. by the Respondent) was that evidence produced by the Romanian Authorities’, that the Appellant was thus deprived of fully presenting his case, that the interview was ‘superficial’ and only one time an interpreter was present to translate and was not represented by an attorney.

There is a suggestion on the part of the Appellant that the CIO in reaching his decision on the Appellant’s asylum application totally ignored evidence from the Appellant or any documentation which supported his claim. However, the Tribunal did not find any evidence to support this allegation. As argued by the Respondent it is neigh impossible for ‘any decision maker to refer to every relevant piece of evidence but this does not mean that it can be inferred that such evidence has not been taken into account’. The Tribunal has also read the interview and the interview transcripts. Upon review, the Tribunal finds that although there are nuances of words and expressions recorded in the interview such differences are not sufficient to establish that the interview was conducted unfairly or that an element of unreasonableness existed. The Tribunal also noted that the Appellant seems to have a working knowledge of the English language as it was observed that during the asylum hearing, there were instances when the Appellant gave the Romanian translator words to use either in English or in Romanian whenever she appeared to be in doubt about a word or phrase. Given those considerations, and the fact that they were allowed almost (six) 6 hours at the hearings to give oral evidence, the Tribunal does not believe that the Appellant was prejudiced by not having a translator throughout. Furthermore, the Appellant was not only cautioned before the interview, but was also given the opportunity of having counsel present.

We note that the Appellant has made passing reference to sections D, E & F of Article I of the Convention as a reason for the Respondent’s refusal of the asylum application but never expanded on this reason.

The Respondent, on the other had has urged the Tribunal to find that under sections D, E, & F of Article 1 (‘the exclusion clause’) the Appellant does not satisfy the inclusion criteria in

Article 1A (2) of the Convention and that even if he does, the Respondent says that the Appellant would be excluded from the benefit protection because he satisfies the exclusion criteria in Article 1F.

Article 1 (f) of the Convention refers to:-

"Any person with respect to whom there are serious reasons for considering that... he has committed a non-political crime outside the country of refuge prior to his admission to that country as a refugee".

With reference to the Appellant, he was convicted of a serious crime of a non-political nature in his country of Romania prior to travelling to the Cayman Islands and subsequently seeking asylum. He also lived and worked for some time in the USA.

The Tribunal, in examining the Appellant's refugee protection claim, must determine whether he is among the persons referred to by Article 1F ((b) of the Convention and as such whether or not he is eligible for refugee protection in the Cayman Islands.

3. The Respondent failed to take account of the fact that the Appellant may be required to serve his entire penal sentence upon return, irrespective of time spent in custody overseas.

The Appellant contends that he ought to be accorded refugee status because the Romanian authorities would not take into account time spent remanded in USA and the Cayman Islands. He refers to the (seven) 7 months and 13 days spent in detention in the USA and about 10 months at Northward Prison in the Cayman Islands and says that the time spent in prison in Romania plus the time in the USA and the Cayman Islands will result in him being in prison for a longer period than the time originally imposed if he were to return to Romania.

The Respondent on the other hand, argues that the Appellant's detention in each country has been in the capacity of an immigration detainee rather than a convicted prisoner which has served an entirely different non-punitive purpose. Neither has the Appellant identified any authority for the suggestion that Romania is required to deduct his time spent in custody in the USA and the Cayman Islands from his penal sentence.

In addition, the Tribunal notes that the Appellant was aware of the likelihood of his being imprisoned in Romania if convicted prior to his permanent departure and that it was his decision not to remain there to face any sentence likely to be imposed upon him.

4. Failure to afford the Appellant the benefit of the doubt.

According to the Appellant, he was not given the benefit of the doubt when he first submitted his application for asylum despite the voluminous documentation (2 binders of

documents) provided. He submits that he should benefit from clause 203 and 204 in the 'Handbook on Procedure and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the status of refugees.

The Respondent submits that the concept of benefit of the doubt can require a decision maker to find in favour of a claimant where they are generally credible and have presented a coherent and plausible account with documentary proof. The Respondent further submits that the concept is neither applicable nor decisive in relation to the Appellant's claim for the reasons given by the Hon. Mr. Justice Swift (Acting) in his 3 June 2016 decision to refuse the Appellant's separate application for a writ of habeas corpus.

The case law seems to offer some support for the Respondent's view. In *KS (benefit of the doubt) [2014] UKUT, 552*, the two issues which fell for consideration was, first, whether in assessment of credibility, benefit of the doubt should be a guiding principle and, secondly, whether a tribunal judge erred in law if he fails when assessing credibility of a minor to give that person's evidence a liberal application of the benefit of the doubt.

In the present case, the Tribunal is concerned more with the first of the two issues.

The principles emanating from that case are summarised thus:-

(1) In assessing the credibility of an asylum claim, the benefit of the doubt as discussed in paragraphs 203 and d 204 of the 1979 UNHCR Handbook on Procedures and Criteria for determining Refugee Status, is not to be regarded as a rule of law. It is a general guideline expressed in the Handbook in defeasible and contingent terms;

(2) ...

(3)....

(4) The proposition in paragraph 219 of the Handbook, that when assessing the evidence of minors there may need to be a 'liberal application of the benefit of the doubt.....As a reminder about what the examiner should bear in mind at the end point of an assessment of credibility, the proposition adds nothing of substance to the lower standard of proof, If, for example an applicant possesses the same level of maturity as an adult, it may be appropriate to resort to a liberal application of benefit of the doubt."

It is therefore a discretionary matter for the Respondent whether or not to apply this concept in reviewing the evidence of the Appellant in his asylum application. If the Respondent found that either the Appellant was not credible, never presented a coherent or plausible account, or is unable to support some aspect of his evidence with documentary proof, the Tribunal cannot find fault with the Respondent's conclusions and would be hard put to replace the Respondent's decision with its own unless it found that the Respondent fettered his discretion in some way the Tribunal finds that the CIO did not.

The Tribunal notes that the Appellant is said to have sought to interfere with witnesses at his trial in Romania thus giving rise to credibility issues which gave the Respondent the right to exercise his discretion not to afford any benefit of doubt to the evidence of the Appellant.

5. The Chief Immigration Officer erred in not seeking further information from the Appellant, it is submitted that the Chief Immigration Officer ought to have had regard to the case of *MM (Unfairness E&R) Sudan v SS Home Department (2014 UKUT 00105*.

No discussion of or any evidence was presented by the Appellant in support of this ground of appeal. The Tribunal found no evidence of unfairness in the conduct of the Department of Immigration interview or in the conduct of the asylum claim hearing before the Respondent. Neither is there any evidence that the Respondent had no regard to the principles of the case law cited above. The Respondent had to decide the application on the basis of whatever evidence was before him.

6. That the Appellant is entitled to present evidence which tends to show that he did not commit or could not have committed the offence for which he was convicted.

The Appellant submitted various documents in support of this contention, among which are the following:

- a. Trade Register certificate (01 11, page 641-643)-excerpt from the Trade Register of Giurgiu Romania proving the period when the Appellant was the administrator of ICMUG SA;
- b. Statement of Ciuclea Catalan dated November 19th, 2015 which was considered in the context of the habeas hearing and rejected.
- c. Evidence from the S & TB Oil Equipment and Machinery Ltd statement from May 26, 2014 filed in case no.314/236/2014 from the Giurgiu Court in Romania.

The Tribunal notes that one of the grounds upon which the Appellant applied for release from the warrant of committal issued against him in the Summary Court was that his conviction in Romania was unjust, the offence was committed by someone else and he is innocent of the offence, (see page 7, Para 16(ii) of the Ruling of Swift, J. (Acting) In the course of hearing into the facts of the conviction, all of the supporting documents now relied upon by the Appellant in his asylum application were also submitted at Grand Court. Having reviewed the case and analysed the authorities the Judge concluded that:

" It is well established by authority that it is not for the Chief Magistrate or for this Court to inquire into evidential proof leading to the conviction, into the possibility

of new evidence or of other relevant facts, possibly indicating that the conviction may have been wrong or wrongly based or into any potential defense open to the Applicant either at his trial or arising subsequently.

As the House of Lords said in **Royal Government of Greece v Governor of Brixton Prison and Another (1971, AC, 250)**

"The court is not entitled to inquire whether a foreign conviction is a nullity by reason of denial of natural justice (para 63, page 27)

The Learned Judge went on to state that in the English Court of Appeal case of **Budlong**, it was held that 'the court will not entertain allegations of bad faith on the part of the requesting State.....Therefore once the conviction is properly established, the court in the requested state **will not seek to go behind the fact of the conviction.** (emphasis provided) (Para 64, p.27)

Finally, the Judge concluded "I do not therefore inquire into the propriety of the Romanian conviction." (Para 65, p.27)

The Tribunal is of the view that the Respondent was under no obligation to inquire into the evidence which showed or tended to show that the Appellant did not commit or could not have committed the offence. The Tribunal will not seek to go behind the fact of the Romanian conviction.

7. That the Appellant is likely to be tortured and abused in prison if sent back to Romania.

The Appellant has the belief that if returned to Romania, he will be subjected to torture and abuse, will have the effect of sentencing him to death because his conviction was politically motivated (see para 3, line 4, final page of Skeleton Argument- "...the reason for the said conviction was political", (also final para of final page, line:... which further masks a political motive for the Appellant's conviction.". Country Report, 2915, Romania, was partly relied on for this purpose.

Again, referring to the decision of Mr. Justice Swift (Acting) in the habeas corpus application, it will be noted that another of the four grounds relied upon by the Appellant in that application bears close resemblance to item 7 above. It reads as follows:-

16. (iii) his conviction was obtained for political reasons and he will be subject to political persecution if he is returned to Romania."

In considering this ground of appeal, the Judge made a careful examination of all the evidence and documentation provided by the Appellant including the Report of Dr. Ph.D Associate Professor Nicolai Spirera Zamfirescu and the Romania 2015 Human Right Report, among others. The Judge came to the conclusion that although the Human Rights report

revealed shortcomings in the judicial system, some lack of independence, some susceptibility to political pressure and other problems, 'it is only necessary to examine the instant case to see that there is insufficient evidence of such issues arising here'. He stated:-

"The Appellant was not in custody; he was represented by a lawyer and was able to call expert witnesses. The court of first instance acquitted him and the Court of Appeal where he was also represented gave a careful, detailed and closely argued decision explaining why conviction was necessary. The minimum sentence was passed. These facts appear to be totally inconsistent with a politically motivated prosecution or judgment. There is nothing in the documents provided by Romania to suggest that the proceedings were otherwise than completely fair and nonpolitical (Para 84, page 40)

Later the Judge observed that the Appellant's human rights were 'taken into account as necessary in that the fairness of his trial process was considered.....and his personal human rights were not infringed".

The Judge also recommended, in an effort to allay the fears or concerns of the Appellant, that Her Excellency "may consider seeking assurances from the Romanian government as to the conditions in which the Appellant will be detained while serving his sentence".

On the question of a politically motivated conviction or prosecution the Judge stated commented as follows:-

"on the basis of the evidence given and following the principles from the authorities cited, the Learned Magistrate was correct in her findings that the request for his surrender has not been made with a view to punish him for an offence of a political character and that the offence for which he was convicted is not an offence of a political character. Nor is there evidence to show that the prosecution was politically motivated. The Applicant has failed, on the balance of probabilities, to establish that the offence or his prosecution and/or his conviction were of a political character or politically motivated."

The Judge concluded by stating," that it is not for the requested state to decide upon the innocence of the Appellant or to re-examine the evidence and arguments adduced at his trial or at the appeal hearing(as indicated earlier in this ruling), to consider Romanian Law or to investigate issues of fairness, abuse of process or procedural errors. These are all matters to be considered in the course of the Romanian trial process or if necessary in proceedings in the European Court."

It is therefore quite clear from the foregoing that neither the requested state court nor this Tribunal should usurp the function already exercised by the courts of the requesting state in determining the Appellant's guilt or innocence. Nor should it re-examine the evidence and arguments adduced at his trial in Romania. As indicated earlier, these are all matters for the courts of the Requesting state.

The submission of the Appellant that the Respondent failed to take into account matters of procedural errors, prosecutorial misconduct, corruption in the judicial systems and related matters cannot be entertained.

Appellant's counsel further submitted that the Respondent erred in adopting the findings of the Hon. Mr. Judge Swift (Acting) instead of conducting his own proper investigation into the Appellant's conduct, in that the evidence and considerations are different in an asylum application than in a writ of habeas. Counsel urged the Tribunal not place any reliance on certain findings of the Grand Court as the assessment of the evidence is limited in its application as the scope of the proceedings for a writ of habeas corpus is somewhat more restrictive than that of an asylum application and that the latter is governed by wholly separate piece of legislation.

While we accept that to be the case, we believe that any findings or conclusions by the Grand Court on matters of facts, which facts are the same in both applications, can be relied upon by this Tribunal. The bulk of the evidence presented by the Appellant before the Tribunal is the same as that presented before the Grand Court. The Appellant himself has made a number of references to the Ruling in that case.

In his letter "To Her Excellency Mrs. Governor", under 'The Solutions that are legally possible are', the Appellant states "... make sure this will be carried out as the Grand Court decided through their decision from the 3rd of June, 2016 when the Court advised me to "ask Her Excellency the Governor that should the Appellant be extradited to consider seeking some assurances from the Romanian government as to the conditions in which the Applicant will be detained whilst serving his sentence".

In his Supplemental Brief to Appeal Against the Decision to Refuse, the Appellant again makes reference to the Grand Court ruling stating that there were 'no securities or guarantee' 'prison time double', 'sufficient references that all the time served in the prisons of the two countries will not be taken into account'; 'will serve double prison sentence with strong possibilities of him being murdered'.

Further, it appears that the Appellant himself acknowledges or implicitly accepts the factual similarities between the matters canvassed by him in the Grand Court and those at the Tribunal when he states "aspects that have not been resolved by the Grand Court be solved by the Appeal Tribunal".

If the Appellant accepts that there were several matters of fact in his habeas corpus application on which the Grand Court made certain factual conclusions, which facts are also part of his asylum application, we see no justifiable reason why reliance should not also be placed on those matters in the Tribunal hearing.

Finally, on the basis of all the oral and written evidence this Tribunal takes the view that the basis provided in one of the reason given in the decision of the Respondent, ie the finding

that the Appellant's well-founded fears of persecution by the Romanian Authorities if returned to Romania, " appear to be largely related to the consequences he might experience as a result of being extradited to Romania on charges of corruption finds some support in the facts that the Appellant did not apply for asylum in the USA where he remained from 2011 to 2013 until the last minute and that the Appellant was a visitor in the Cayman Islands for almost one month and never applied for asylum during that time. Further, the suffice of the Director of Public Prosecutions in the habeas corpus application is telling at page 41 of the Ruling:-

"The DPP says the Applicant withdrew his asylum application in the United States because he knew the likely outcome. His conduct after using a US\$50,000.00 bond to secure voluntary departure from the US does not suggest someone desperately seeking political asylum. Rather it suggest someone seeking to escape justice whose plans were disrupted by his enforced return from Jamaica to Grand Cayman.

CONCLUSION

While members of the Tribunal are sympathetic to the situation in which the Appellant finds himself, upon careful review of the bundles and documentation provided, and hearing the appellant's evidence on oath, on balance, it is not satisfied that the Appellant satisfies the criteria of being a refugee for purposes of the 1951 Convention. Wherefore the decision of the Chief Immigration Officer (Acting) as recorded in the Department of Immigration's letter dated May 30, 2016 is upheld.

The Tribunal wishes to thank counsel for both the Appellant and the Respondent for their very helpful and thorough submissions.



Immigration Appeals Tribunal

September 23, 2016.