Neutral Citation Number: **[2024] EWHC 1895 (Admin)**

Appeal No: AC-2023-LON-001960
AC-2023-LON-001954

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

Royal Courts of Justice
Strand, London, WC20 2LL

Date: 23rd July 2024

Before :

MR JUSTICE LINDEN

- -

Between :

(1) GEORGETA GHINEA
(2) DENISA GHINEA **Appellants**

- and -

GAESTI LAW COURT, ROMANIA **Respondent**

- -
- -

Louisa Collins (instructed by Wells Burcombe Solicitors) for the **First Appellant**
Rebecca Hill (instructed by Lartey & Co, Solicitors) for the **Second Appellant**
Amanda Bostock (instructed by **Crown Prosecution Service**) for the **Respondent**
Hearing date: 17th July 2024

- -

Mr Justice Linden:

Introduction

1. This is an appeal from a decision of District Judge Pilling, dated 20 June 2023, to order the extradition of the Appellants after a hearing at the Westminster Magistrates' Court on 24 May 2023. Permission to appeal was granted by Cavanagh J at a hearing on 17 April 2024.

2. The Appellants are Romanian nationals. Georgeta is the mother of Denisa. I will refer to them as the first and second Appellants respectively, although they have appealed separately. They are wanted on Arrest Warrants which were issued on 19 January 2023 by the Respondent and certified by the National Crime Agency on 31 January 2023. The Warrants relate to their conviction for an offence which they committed on 4 May 2019, for which the first Appellant was sentenced to 1 year and 4 months' imprisonment, and the second Appellant to one year. The full sentences remain to be served.

3. The particulars of the offence are that the Appellants attacked a woman who was riding a bicycle. The first Appellant hit the woman with a thick piece of wood so that she fell off the bicycle, whereupon the second Appellant pulled her hair and held her down whilst her mother continued to assault her. The victim sustained injuries including a fractured forearm and bruises, such that she required 40-45 days of medical care.

4. The Appellants were arrested on 14 February 2023, brought before the magistrates' court on the same day and given conditional bail. They have been represented separately and have had the benefit of an interpreter throughout the extradition

proceedings. Both gave evidence at the hearing before the District Judge. At that stage they resisted extradition on the basis that the Respondent had failed to satisfy section 20 of the Extradition Act 2003 and that their extradition would be incompatible with Article 8 of the European Convention on Human Rights ("ECHR"), but the appeal is limited to the section 20 point.

The legal framework

5. It is common ground that Part 1 of the Extradition Act 2003 applies in this case.

6. Section 20 of the 2003 Act implements Article 4a(1) of Council Framework Decision 2002/584/JHA, as amended by Council Framework Decision 2009/2999/JHA, and should be interpreted in conformity with it and with Article 6 ECHR: *Cretu v Local Court of Suceava, Romania* [2016] EWHC 353 (Admin) at [14]-[18]. Article 4a(1) provides that an executing judicial authority is entitled to refuse to execute a European arrest warrant issued for the purpose of executing a custodial sentence if the requested person did not appear at the *"trial resulting in the decision"*, unless the warrant states that one of the exceptions set out in sub paragraphs (a)-(d) of Article 4a(1) – for example, that they deliberately absented themself from the trial - applies.

7. Section 20 itself provides as follows:

> *"**20 Case where person has been convicted***
>
> *(1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.*
>
> *(2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.*

(3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.

(4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.

(5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.

(6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 21.

(7) If the judge decides that question in the negative he must order the person's discharge.

(8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights –

(a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;

(b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

8. The section therefore provides that the Appellants must be discharged (section 20(7)) if they were convicted in their absence in circumstances where they did not deliberately absent themselves from their trial but will not be entitled to a retrial or, on appeal, to a review amounting to a retrial as defined in section 20(8).

9. It is common ground that the burden of proof is on the requesting judicial authority to answer the questions in section 20 to the criminal standard: see *Nowicki v Military Court of Gydnia, Poland* [2011] EWHC 1962 (Admin) and section 206 of the 2003 Act.

10. In *Cretu* (supra) Burnett LJ (as he then was) said this at [34]:

> *"In my judgement, when read in the light of article 4a section 20 of the 2003 Act, by applying a 'Pupino' conforming interpretation, should be interpreted as follows:*
>
> *(i) "Trial" in section 20(3) of the 2003 Act must be read as meaning "trial which resulted in the decision" in conformity with article 4a(1)(a)(i)…….*
>
> *(ii) An accused must be taken to be deliberately absent from his trial if he has been summoned as envisaged by article 4a(1)(a)(i) in a manner which, even though he may have been unaware of the scheduled date and place, does not violate article 6 of the Convention.*
>
> *(iii) An accused who has instructed ("mandated") a lawyer to represent him in the trial is not, for the purposes of section 20, absent from his trial, however he may have become aware of it.*
>
> *(iv)….*
>
> *(v) Whilst, by virtue of section 206 of the 2003 Act, it remains for the requesting state to satisfy the court conducting the extradition hearing in the United Kingdom to the criminal standard that one (or more) of the four exceptions found in article 4a applies, the burden of proof will be discharged to the requisite standard if the information required by article 4a is set out in the EAW."*

11. He also said this at [35]:

"It will not be appropriate for requesting judicial authorities to be pressed for further information relating to the statements made in an EAW pursuant to article 4a save in cases of ambiguity, confusion or possibly in connection with an argument that the warrant is an abuse of process. The issue at the extradition hearing will be whether the EAW contains the necessary statement. Article 4a is drafted to require surrender if the EAW states that the person, in accordance with the procedural law of the issuing member state, falls within one of the four exceptions. It does not contemplate that the executing state will conduct an independent investigation into those matters. That is not surprising. The EAW system is based on mutual trust and confidence." (emphasis added)

12. These passages were approved by the Supreme Court in *Bertino v Public Prosecutor's Office Italy* [2024] UKSC 9 and *Merticariu v Romania* [2024] UKSC 10: see *Bertino* at [26] and [44]. I note that what was said by Burnett LJ at [35] limits the scope for challenges to what is stated in the arrest warrant. Burnett LJ went on to say, at [38]:

"In this case, Mr Jones submits that the EAW is, at best, confusing because three boxes were ticked when the pro forma contemplates a series of four alternatives. To my mind, it does not follow from the structure of the EAW that the four alternatives are necessarily mutually exclusive. For example, an accused may be appropriately summoned (paragraph (1)(a)), or otherwise be aware of the trial, and instruct a lawyer to attend and argue the case in his absence: paragraph (1)(b). Thereafter, he might be served with the decision and be informed of his right to appeal and not pursue it: paragraph (1)(c). The question whether an accused is entitled to a retrial or appeal is answered very differently across the various

jurisdictions of the European Union. It is at least conceivable that an accused properly summoned might none the less be entitled to a retrial."

13. As for what constitutes *"the trial"* for the purposes of section 20, in addition to what Burnett LJ said at [34(i)] of his judgment in *Cretu*, in the subsequent case of *Tupikas* [2017] 4 WLR 188 the European Court of Justice addressed the position under Article 4a(1) where the criminal proceedings in the requesting country include an appeal. The preliminary question referred to the Court was:

"Are appeal proceedings – in which there has been an examination of the merits, and – which resulted in the passing of a (new) sentence on the person concerned and/or the confirmation of the sentence handed down at first instance, - where the [European arrest warrant] concerns the execution of that sentence, the 'trial resulting in the decision' as referred to in article 4a(1) of Framework Decision [2002/584]?"

14. At [98] and [99] the Court held that:

"98 ..the answer to the question referred is that, where the issuing member state has provided for a criminal procedure involving several degrees of jurisdiction which may thus give rise to successive judicial decisions, at least one of which has been handed down in absentia, the concept of "trial resulting in the decision", within the meaning of article 4a(1) of the Framework Decision, must be interpreted as relating only to the instance at the end of which the decision is handed down which finally rules on the guilt of the person concerned and

imposes a penalty on him, such as custodial sentence, following a re-examination, in fact and in law, of the merits of the case.

99 An appeal proceeding, such as that at issue in the main proceedings, in principle falls within that concept. It is none the less up to the referring court to satisfy itself that it has the characteristics set out above."

15. This approach was adopted by the Divisional Court in *Foster Taylor v the Prosecutor General's Office of Florence* [2019] EWHC 2938 where Lane J (with whom Hamblen LJ, as he then was, agreed) said, at [70]:

"70. Tupikas makes it plain that where conviction at trial at first instance is followed by an appeal on fact and law against that conviction, it is only the proceedings on appeal that comprise "the trial resulting in the decision" for the purposes of Article 4a . The fact that a person may have appeared in person at first instance is, for this purpose, irrelevant."

16. In relation to sentencing, at [74] Lane J noted that whilst there will only be one "trial" for the purposes of determining guilt, it may be necessary to look at a different set of proceedings for the purposes of interpreting Article 4a(1) as it applies to the sentencing aspect of the criminal process. At [76] he applied the following description of proceedings which involve the right of the person involved to be present, which was taken from [88] of the decision of the European Court of Justice in *Zdziaszek* (Case C-271/17PPU):

"... specific proceedings for the determination of an overall sentence where those proceedings are not purely formal and arithmetic exercise but entail a margin of discretion in the determination of the level of the sentence, in particular, by taking account of the situation or personality of the person concerned, or of mitigating or aggravating circumstances ..."

17. As for what would amount to a requested person *"deliberately absenting"* themself, in *Bertino* the Supreme Court considered the caselaw under Article 6 ECHR and, at [45], held that the phrase should be understood as being synonymous with the concept in Strasbourg jurisprudence that an accused has unequivocally waived his right to be present at trial. At [54] the Supreme Court said that for a waiver to be unequivocal and effective, knowing and intelligent as required by the Strasbourg Article 6 caselaw, ordinarily the accused must have appreciated the consequences of their behaviour. This will usually require them to have been warned in one way or another that if they did not attend their trial they could be tried in their absence. A manifest lack of diligence on the part of the accused is insufficient of itself to show an unequivocal waiver. However, at [58] the Supreme Court said that behaviour of an extreme enough form might support a finding of unequivocal waiver even if an accused cannot be shown to have had actual knowledge that the trial would proceed in their absence. The Supreme Court gave examples of such a case which were drawn from the Strasbourg caselaw.

The relevant parts of the District Judge's Judgment

18. Both Appellants gave evidence about the proceedings against them in Romania, what they knew about those proceedings and what they were told by their legal representative. Although they each gave different versions of what had happened in

their particular case they both maintained that they had attended some hearings but, believing that they were permitted to do so, they had left Romania to come to the United Kingdom before they had been convicted and sentenced. The District Judge did not believe either of them for reasons which she explained. At [21] of her Judgment she noted that the Appellants were represented by the same lawyer in Romania and they both attended the same hearings together, and at [26] she reached the following conclusion in relation to fugitivity:

> *"I find that both RPs were present when they were informed of their convictions and sentence on 10 June 2022. They both appealed against that conviction and were present at the hearings up until 5 October 2022. Knowing that they would have to serve a custodial sentence if the appeal were to be refused, they both left Romania on 10 October 2022 in order to avoid serving this sentence of imprisonment. I am sure that both RPs have not told the truth about what the lawyer told them or what they understood the proceedings to be. Both RP1 and RP2 were well aware they had appealed against conviction and sentence and they left knowing that if the appeal was unsuccessful that sentence of imprisonment would have to be served. I am satisfied so that I am sure that both RP1 and RP2 deliberately unknowingly placed herself beyond the reach of the legal process in Romania and find that they are both fugitives."*

19. As far as the section 20 issue was concerned, the District Judge then set out the section in full at [27]. At [28] she said this:

> *"The arguments advance by each RP are the same. The requirements of section 20 are not met as the information in Box D of the AW makes "multiple ambiguous statements" and it is said that as a result this court cannot be sure*

whether the RP was present, represented or deliberately absent from each and every hearing in the first instance proceedings and appeal. The court cannot be satisfied there is a right to a retrial."

20. At [29] she found as follows:

"The JA has provided information in Box D following the 'pro forma' options. I agree with Miss Bostock that, as Burnett LJ noted in 'Cretu v Romania' [2016] EWHC 353 (Admin), it is possible for several of the options provided for in Box D to apply in respect of the proceedings in Romania. I am satisfied so that I am sure that the RPs were summoned and warned the trial could proceed in their absence, that they did appear at the trial, that they were informed in person of their conviction on 10 June 2022, that they did appeal against that conviction and that they had the right to a retrial and took it, that appeal being refused on 25 October 2022 and that they were represented throughout. Mutual trust requires me to accept what is stated so clearly by the JA." (emphasis added)

21. It was common ground before me that the District Judge therefore concluded that it was clearly stated in the Arrest Warrants that the Appellants had been present and/or were represented at all material stages of the criminal proceedings in Romania. She did not base her conclusion in relation to section 20 on her findings in the context of the issue of fugitivity. I also note that although the District Judge did not refer to *Tupikas*, which was cited to her, she appeared to accept that the Respondent was required to satisfy her under section 20 in relation to the appeal process. Moreover, although she said that the position was clearly stated in the Arrest Warrants, she did

not set out the relevant parts of the text of these documents in her Judgment or engage with the detail of the arguments of the Appellants that the position was not clearly stated.

The appeal

22. The Appellants' argument is essentially that the Arrest Warrants in this case, which are in materially the same terms, do not show that they were tried in their presence or, if they were tried in their absence, that they had deliberately absented themselves. This is because the Warrants address the first instance trial whereas the Appellants appealed. The Arrest Warrants say nothing about whether they attended or were represented in the appeal proceedings and if not why not or, at best, they are ambiguous on these matters. Applying *Tupikas* and *Foster Taylor* the Arrest Warrants therefore do not address or, at least, prove the Respondent's case on the questions which they are required by section 20 to address. Comparisons were made with the decision of Cutts J in *Paiva v Tribunal da Comarca da Setubal, Portugal* [2024] EWHC 980 (Admin) where it was held that the arrest warrant did not make clear whether there had been an appeal, although it appeared from the chronology that there had been, and therefore did not address the Article 4a(1)/Article 6 considerations in relation to any appeal.

23. The Appellants submit that the District Judge's reference to *Cretu* at [29] of her Judgment misses the point. It is true that Burnett LJ said that more than one option in the pro forma may be ticked, and that the options are not necessarily mutually exclusive, but *Cretu* was decided before *Tupikas*. Moreover, submit the Appellants, Burnett LJ's observations were on the basis that all of the options ticked on the pro forma related to the same hearing and that this hearing was "the trial" for all relevant

purposes; or, at least, he was not considering the position where there is a right to a rehearing on appeal or the trial took place over the course of more than one hearing. The problem which arises in this case therefore did not arise in *Cretu*. That problem is that, even if the Appellants attended the trial on 6 June 2022, as the Warrants say they did, that does not satisfy section 20 as there was then an appeal which involved a rehearing on fact and law: see [70] of Lane J's judgment in *Foster Taylor* which I have cited at [15] above. This was the relevant trial which resulted in the decision, but it is not addressed by the Arrest Warrants.

The argument on behalf of the Respondent

24. This analysis is, however, challenged by Ms Bostock on behalf of the Respondent. She argues that the District Judge's decision on the section 20 point at [29] of her Judgment, including her reliance on *Cretu*, was entirely correct. The requesting judicial authority may tick more than one option on the pro forma and the options are not mutually exclusive. Suggestions that the statements in Box D apply only to the first instance trial have no evidential basis and the Appellants' submissions in relation to deliberate absence are irrelevant given that they were tried in their presence. There is no ambiguity and the Respondent has unequivocally satisfied section 20 by the information in the Arrest Warrants, which were not contradicted by any other evidence.

25. In the course of her oral argument, Ms Bostock confirmed that her case stood or fell on the terms of the Arrest Warrants and the fact that what was said in those documents was not contradicted by the Appellant's evidence. Ultimately she accepted that this meant that her case depended on whether the Arrest Warrants proved the Respondent's case before the District Judge. If they did not, the question whether they

were contradicted by the Appellant's evidence did not arise but, in any event, the Appellants had put section 20 in issue. They had indeed given evidence that they were not present at, and were unaware of, their convictions and sentences when they left Romania, albeit the District Judge had not believed that evidence.

26. As to the approach which should be taken to interpreting the Arrest Warrants, Ms Bostock submitted, and I accept, that I should bear in mind that the Warrants were filled in by a judge operating in a different legal system, in a different language, and then translated into English. I should look at the wording with a cosmopolitan perspective rather than construing the English version using English legal techniques. Ms Bostock also submitted that I should work on the assumption that the judge of the requesting judicial authority knew the purpose of the questions in Box D and, by filling in the pro forma in the way that they did rather than stating that the considerations relevant to Article 4a(1)/Article 6 could not be satisfied, should be taken to be confirming that the requisite standards had been met. I should work on the basis that the requesting judge knew what needed to be proved and their answers should therefore be taken to relate to the hearings in the criminal proceedings which were relevant for the purposes of this issue.

27. Ms Bostock argued that there is no information in the Arrest Warrants as to whether the appeal was against conviction or sentence, whereas section 20 applies only to appeals against conviction. Nor do the Arrest Warrants make clear whether the appeal was a rehearing. It therefore was not apparent from the Arrest Warrants that there had been any appeal hearing to which Article 4a(1)/Article 6 applied.

28. She also argued that it is clear from the Warrants that the decision to which the requesting judge is referring in their answers in Box D is the decision on which the

Warrant is based i.e. the appeal. This is apparent from the fact that the date referred to in C.1 is 25 October 2022 i.e. the date on which the judicial decision was held to be definitive: see C.2.

29. Ms Bostock's submission was that, by the information in the Arrest Warrants, the requesting judge had given a guarantee that Article 4a(1), Article 6 ECHR and section 20 had been complied with. The District Judge could not go behind this guarantee and nor should I as to do so would be contrary to [35] of *Cretu*. However, she accepted that her references to "a guarantee" begged the question what was being guaranteed, and that depended on the terms of the guarantee i.e. how the Arrest Warrants should be understood. Even under *Cretu* her argument only worked if the Arrest Warrants provide the relevant information and/or are not ambiguous or confusing.

Preliminary point

30. When reading in for the purposes of the appeal hearing, I saw the possibility that, whether or not the Arrest Warrants addressed what happened at the appeal stage, in the context of her findings on fugitivity, and particularly at [26] of the Judgment (see [18] above), the District Judge had found that the Appellants were tried in their presence even on the extended meaning given to this term by the *Tupikas* and the *Taylor Foste*r decisions. The District Judge had noted that the Appellant had said, in her written evidence, that she attended a "trial" on 5 October 2022 and had travelled to the United Kingdom shortly afterwards assuming that she would be informed in writing of her judgment and sentence. On the District Judge's findings, both of the Appellants attended this hearing and on the second Appellant's evidence it appeared that all that remained of the process thereafter was for the decision on the appeal to be handed down.

31. However, this point was not pleaded by the Respondent or argued in Ms Bostock's skeleton argument. Both Counsel for the Appellants resisted this interpretation of the District Judge's findings, and submitted that the District Judge could not be sure that the Appellants were tried in their presence on the basis of evidence which she had found was untruthful and which did not provide a complete account of the appeal proceedings. They also pointed out that if the District Judge was finding, at [26], that she was sure that the Appellants were present at all relevant hearings, she would have relied on this finding when it came to the section 20 issue, rather than rely on the Arrest Warrants and *Cretu*. Very fairly, Ms Bostock also made clear that she was not taking this point on the basis that the finding at [26] did not eliminate the possibility that there were other relevant hearings in the appeal process between 5 and 25 October 2022 when the decision on the appeal was made.

32. All Counsel therefore agreed that the appeal turns on an analysis of the Arrest Warrants.

Analysis of the Arrest Warrants

33. The Arrest Warrants were in standard form. As is usual, they contained a number of boxes or questions which required to be answered by the requesting judicial authority ticking a box and providing an explanation as appropriate. Box D dealt with the potential issues under Article 4a(1)/section 20 by setting out a sequence of questions which sought to ascertain whether the requested person was tried in their presence and, if not, whether any of the exceptions to this requirement apply.

34. I will take the Arrest Warrant in relation to the first Appellant for the purposes of illustration, it being agreed that there is no material difference between the information in the two Warrants. This says the following, at Box C (Box B in the case of the second Appellant). The pro forma questions are in ordinary print and the entries made by the judge at the Gaesti Law Court are in bold:

> *"c) The decision on which the arrest warrant is based*
>
> *1. Arrest warrant or judicial decision having the same effect:* ***the warrant for the execution of the prison sentence no. 713 issued on 25.10.2022 by the Gaesti Law Court.***
>
> *Type:*
>
> *2. The judicial definitive and enforceable decision:* ***the judicial decision no. 663 of 06.06.2022 pronounced by the Gaesti Law Court. The judicial decision remained definitive by the criminal decision no. 1141 of 25.10.2022 of the Ploiesti Court of Appeal***
>
> *Reference:* ***the decision pronounced in the file no. 2917/232/2021 of the Gaesti Law Court****."*

35. I note that Box C therefore suggests that there was a first instance trial at the Gaesti Law Court followed by an appeal to the Ploiesti Court of Appeal. Entry C.1 suggests that although the appeal was to the Ploesti Court of Appeal, the warrant for the execution of the sentence was issued by the Gaesti Law Court. Moreover, contrary to Ms Bostock's argument, the word "decision", when it is used in the passage set out above, appears to refer to the decision of the first instance court which "remained definitive" as a result of the outcome of the appeal.

36. Box D then states, so far as material:

> *"d) Specify if the person was present in person at the trial following which the decision was pronounced:*
>
> ***1.[x] Yes, the person was present in person at the trial following which the decision was pronounced.***
>
> *2. [ ] No, the person was not present in person at the trial following which the decision was pronounced.*
>
> *3. If you have checked the box in point 2, please confirm the existence of one of the following elements:*
>
> ***3.1a the person was summoned in person and therefore she was informed about the date and place established for the trial following which the decision was pronounced, and she was informed that a decision might be pronounced if she does not appear at the trial;****"*

37. Contrary to Ms Bostock's argument, I note that the references to the decision or trial "following which the decision was pronounced" in Box D, bearing in mind that in Box C.2 this terminology is used to refer to the first instance decision by the Gaesti Law Court rather than the decision of the Ploiesti Court of Appeal, supports the conclusion that "the trial" referred to in Box D.1 is the first instance trial and D.1 is confirming that that trial took place in the presence of the first Appellant.

38. The Arrest Warrant goes on to say this:

"3.3 [x] the person was informed in person about the decision on 10.06.2022, and she was expressly informed about the right to a retrial or to an appeal, within which she has the right to be present, and which allows that the factual situation of the case, including the new evidence, to be reexamined, and which may lead to the annulment of the initial decision; and the person has expressly indicated that she declares an appeal against this decision;

Or

[x] the person introduced a judicial remedy within the appropriate time frame;"

39. I note that these passages draw a distinction between "the decision", which was notified to the first Appellant on 10 June 2022, and the appeal stage. As I have pointed out, the word "decision" also appears consistently to be used by the requesting judge, in Boxes C and D, to refer to the first instance decision made by the Gaesti Law Court on 6 June 2022.

40. Entry 3.3 also makes clear that there was a right to a retrial, or an appeal which was effectively by way or a retrial, and therefore a right to a *'trial resulting in [a] decision'* for the purposes of *Tupikas* and *Foster Taylor*. That right was exercised by the Appellants, as is apparent from 3.3 as well as Box C.2 (recited at [34] above), and as the District Judge found: see [26] of her Judgment. The appeal was unsuccessful, as a result of which the "judicial decision remained definitive". It follows from this that Ms Bostock's submission that the Arrest Warrant does not say whether there was any relevant hearing for the purposes of section 20 in the course of the appeal process, is incorrect. The Arrest Warrants indicate that there was a retrial, albeit the dates of the hearing(s) is not clear.

41. There is then the following entry at 4:

> *"If you have checked the box in points 3.1b, 3.2, or 3.3, please provide information on how the relevant condition has been fulfilled:*
>
> *From the evidentiary point of view, in the judgement phase, the present defendant was heard, and the court proceeded to read the notification document, notifying the defendant of the provisions of the art. 374 par. 4 of the Criminal Procedure Code reported to the art. 396 par. 10 of the Criminal Procedure Code, concerning the judgement in the simplified procedure, as well as the possible solutions as a result of this procedure.*
> *The defendant stated that she did not request that the judgement took place according to the simplified procedure, provided by the art. 374 par. 4 of the Criminal Procedure Code, because they do not recognize the accusations against them, which is why the court ordered the judgement of the case in the usual procedure."*

42. These entries were presumably made on the basis that Box 3.3 had been ticked given that 3.1b and 3.2 had not been. On the pro forma, 3.3 states:

> *"[_] 3.3 the person was served with the decision on … (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and*
>
> *[_] The person expressly stated that he does not contest this decision,*

OR

[_] The person did not request a retrial or appeal within the applicable time frame;"

43. Given that the request in 4 was for information as to how 3.3 was met, the answer provided is unclear. However, it appears that what is being explained (in greater detail) by the requesting judicial authority is how the first Appellant was told, on 10 June 2022, of her right of appeal, and her response. It appears that she was told that she could appeal by way of a simplified procedure, and the implications of this were explained. However, she rejected this procedure and the court therefore ordered that the appeal be dealt with under the usual procedure.

44. Box F, which allows for the provision of other relevant information for the case, was left empty.

Conclusion

45. On the analysis set out above, the Arrest Warrants show that the Appellants attended the trial at the Gaesti Law Court. There was then an appeal by way of a retrial but the Warrants do not say what hearings there were after 10 June 2022 or anything about the Appellants' attendance or representation at such hearings. The Warrants therefore do not prove that the Appellants attended all material hearings nor, if they did not attend, that they had deliberately absented themselves within the meaning given to this concept in *Bertino*. The Warrants therefore do not satisfy the conditions for section 20(7) of the 2003 Act to be inapplicable, the burden being on the Respondent to do so.

46. I do not consider that this reading of the Warrants fails to take into account the need for an approach to interpretation which recognises that the document was drafted by a judge whose experience and training is in a different legal system and who is filling in the warrant in a different language. Nor does it place inappropriate weight on linguistic analysis or involve an English approach to interpretation. The working assumption which I have adopted is that the requesting judge is highly competent, but I know nothing about their experience and it is a truism that mistakes may be made. I also consider that I am entitled to take the view that a drafter who had the *Tupikas* point, and its importance, in mind would have dealt clearly with all of the relevant hearings in the appeal process so as to put the matter beyond doubt. Contrary to Ms Bostock's protestations that the pro forma made this difficult to achieve, the point could have been dealt with clearly in Box C or in Box F or by way of the subsequent provision of further information. It was not.

47. Whether or not I am right that the requesting judge was clearly confirming no more than that the Appellants attended the first instance trial and that there was then an appeal/retrial, it can hardly be said that they clearly or unambiguously stated that the Appellants were present at all relevant hearings for the purposes of Article 4a(1). The Warrants therefore did not meet the standard for *Cretu* [35] to be applicable. Whatever the expertise and experience of the requesting judge, in my view the Arrest Warrants were not capable of making the District Judge sure that section 20(7) was inapplicable in the case of either of the Appellants. As I have noted, nor, with respect, does the Judgment explain how she reached this conclusion by reference to the text of the Warrants.

48. I am therefore persuaded, for the purposes of section 27(3)(a) of the 2003 Act, that the District Judge ought to have decided the section 20 question differently. If she had done so, she would have been required to order the discharge of both the Appellants pursuant to section 20(7) (section 27(3)(b)).

49. The appeals are therefore allowed and the Appellants are discharged.