



Neutral Citation Number: [2025] EWHC 76 (Admin)

Case No: AC-2021-LON-003037

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 January 2025

Before :

MR JUSTICE CONSTABLE

Between :

JOZSEF CSORBA

Appellant

- and -

BUDAPEST REGIONAL COURT, HUNGARY

Respondent

Jonathan Swain (instructed by Taylor Rose MW) for the Appellants
Amanda Bostock (instructed by
Crown Prosecution Service (Extradition)) for the Respondents

Hearing date: 15 January 2025

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 14:00 on Monday 20TH of January 2025.

Mr Justice Constable:Introduction

1. The Appellant, Jozsef Csorba, appeals against the judgment of District Judge Bristow on 9 November 2021, following a hearing which took place on 22 October 2021, to order his extradition to Hungary. The extradition is sought pursuant a European Arrest Warrant (“EAW”) issued on 10 December 2020 and certified by the National Crime Agency on 10 March 2021. The EAW is a conviction warrant, based on the decision of Central District Court of Pest on 30 September 2015, as then considered by the Budapest Regional Court acting “as a court of second instance” on 17 May 2016. Those proceedings imposed a sentence of two years’ custody, all of which remains, to be served in a “high-security penal institution”. That sentence arose from three offences, described as fraud, public deed forgery and using false private deeds committed as an abettor.
2. The application for permission to appeal was stayed a number of times in light of decisions pending in higher courts and in particular, in the context of the remaining aspects of this appeal, Bertino v Italy [2024] UKSC 9. Permission was granted at an oral hearing before Garnham J on 6 August 2024, pursuant to a single ground under the Extradition Act 2003 (“the Act”), namely section 20 of the Act.
3. The appeal against the decision of the District Judge focuses solely on the non-attendance of the Appellant at the appeal hearing. It is said the Judge erred in his finding that the Appellant was deliberately absent from the appeal hearing, which is, it is argued, the relevant hearing for the purposes of section 20. It is also said that the Judge erred in finding that the Appellant would, in any event, be entitled to a retrial.
4. There is no suggestion that the District Judge erred in his finding that, at least prior to the appeal hearing, the Appellant (a) was a fugitive and (b) deliberately absented himself from the prior substantive hearing at which the Appellant was convicted.

The ‘Initial’ Conviction and Sentence

5. The following facts and matters were found by the District Judge and it is not suggested on appeal that it was not open to the District Judge to have done so:
 - (1) Under Hungarian law the Requested Person was required to inform the proceeding court, the prosecutor’s office or the investigation authority about his residential address, communication address, actual place of stay, delivery address and any change therein within three business days of the relevant change. A travel restriction was not imposed on the Requested Person.
 - (2) On 26 February 2014, the Appellant and his co-Defendant (‘Kurcz’) attended the first hearing in relation to the prosecution against them. On 10 April 2014, the Appellant and Kurcz attended a second hearing. On 12 June 2014 Kurcz attended a third hearing. On 02 September 2014 the Appellant attended a fourth hearing. He, at this time, provided the court with a new residential address. On 08 October 2014 the Appellant attended a fifth hearing. On 20 November 2014 the Appellant

attended a sixth hearing. On 20 January 2015, the Appellant and Kurcz attended a seventh hearing. On 12 March 2015, the Requested Person and Kurcz attended the eighth hearing, at which he was verbally summoned to the hearing on 04 June 2015. He was “*warned about the legal consequences of omission*”. (There is no dispute that by ‘omission’ meant absenting himself. What ‘legal consequences’ should be taken to mean is considered further below).

- (3) On 9 May 2015, the Appellant travelled to the UK.
 - (4) On 04 June 2015 Kurcz attended the ninth hearing, but the Appellant did not, given that he was now in the UK. The Appellant’s defence counsel did attend, however, and told the court that the Appellant had telephoned him that morning, said he was ill and would supply a medical certificate later. The court issued an order to bring the Appellant to court on 23 June 2015. The Appellant did not appear. On 29 June 2015 the court rejected an application for certification of the Appellant in connection with his failure to appear on 04 June 2015. A certificate purporting to confirm that the Requested Person was under treatment and that his treatment was reasonable from 03 to 08 June 2015, was rejected by the court as it had been annotated with a visibly different writing utensil, to describe him as “bedridden”.
 - (5) On 30 June 2015 Kurcz attended the tenth hearing. The court established that the Appellant failed to appear at the hearing despite being duly summonsed. A police search did not yield any result, as the Appellant had already moved to the UK from the address provided previously. The Appellant’s defence counsel told the court, that as far as he knew, the Appellant was in London, United Kingdom (“the UK”). The Appellant had not informed the court of his intention to travel abroad. The court issued an arrest warrant for the Appellant, and decided that there was no legal impediment to proceeding in his absence.
 - (6) On 30 September 2015 the Central District Court of Pest handed down judgment. Kurcz attended the hearing. The Appellant was absent. The court conducted the hearing in the absence of the Appellant at the request of the prosecution. The Appellant was sentenced to 2 years imprisonment to be carried out in a high security institution. The whole of that term remains to be served by the Appellant. The court sent the judgment of 30 September 2015 to the Appellant via consolidated notice.
6. At this point, I note that in his witness statement, the Appellant said that he had the permission of his probation officer to do travel to the UK and that *‘Had I known there was a court hearing I would have definitely travelled to Hungary. Had I known I was convicted and sentenced I would have definitely gone to Hungary to serve the sentence.’* However, that evidence was rejected by the Judge, who found:

“I am sure that the Requested Person is a fugitive. This is for the following reasons: he knew of the proceedings for the offences in the AW; he was interviewed about them; he was present at hearings on 26 February 2014, 10 April 2014; 08 October 2014, 20 November 2014; 20 January 2015 and 12 March 2015; on 12 March 2015 the court verbally summoned the Requested Person to the hearing on 04 June 2015 and warned him about the consequences of omission; he entered the UK on 09 May 2015 during the

course of proceedings; he did not inform the court of his intention to travel abroad; he was under a duty to notify the proceeding court, the prosecutor's office or the investigation authority about any change of address within three business days of the relevant change; he did not comply with that duty when he went to the UK; he accepted in cross examination that he did know he should have told the court and did not do so; he may have informed a probation officer but I am sure that did not discharge his duty to notify the proceeding court, the prosecutor's office or the investigation authority; the reason asserted for his non-appearance on 04 June 2015, that he was unwell, is unreliable. He was by then in the UK; and the purported medical certificate provided in the proceedings, after he failed to appear on 04 June 2015, was rejected by the Hungarian Court because it had been annotated with a visibly different writing utensil."

7. The Judge then considered whether the Appellant deliberately absented himself from the trial on 30 September 2015. He reminded himself that the Judicial Authority again had the burden of proving, to the criminal standard, that the Appellant was deliberately absent from the trial. For the same reasons that he concluded that the Appellant was a fugitive for the reasons given, he concluded that he was (as a matter of fact) deliberately absent from the hearing on 30 September 2015. Given, however, that he was represented at this hearing, it is of course to be noted that the Appellant was not in law 'deliberately absent' for the purposes of section 20(3) of the Act.

The Appeal Against Conviction and Sentence

8. The Appellant's defence counsel lodged an appeal against the 30 September 2015. The Appellant was summoned to attend the appeal hearing on 17 May 2016 by public notice. Plainly, given that the Appellant had moved to the UK without notifying the authorities, in breach of his obligations, it is unsurprising that a public notice was the only way in which the summons could be effected. It was the evidence of Mr Csorba that he was unaware of his conviction, and also unaware of any appeal proceedings. The appeal hearing, on 17 May 2016, was not attended by the Appellant, although it was attended by a court-appointed lawyer, and was unsuccessful.
9. There was evidence before the District Judge as to the circumstances in which it came to be that an appeal was lodged on the Appellant's behalf without his instructions. The original lawyer for the Appellant (not the lawyer who lodged the appeal) explained (indirectly, through evidence given by the Appellant's lawyer at the extradition hearing) that:

'in such cases where the defendant is sentenced to custody defence counsel is expected to lodge an appeal in the absence of the defendant: "the defence counsel's obligation to lodge an appeal in the absence of the defendant laid in the Act nr XIX of 1998 (old Criminal procedure code, then in force), 50&(l) b and 93), which required the defence counsel to /(1) b/, use all possible means of defence that may be at the advantage of the defendant (this includes appeal in his favour) and /(3)/ the defence counsel is entitled to exercise the defendant's own rights (incl lodging an appeal), ie alone, with his own decision the defence counsel can lodge an appeal without the defendant's instructions (or even against thereof)." And that is a well established expectation from the bar association that in the case where the defendant was convicted in absence the

defence counsel is to lodge an appeal, especially if the sentence is one of custody.’

10. Mr Swain submitted before the District Judge, as he has done before me, that the Appellant was not deliberately absent from the appeal hearing on 17 May 2016 because he was not properly notified of it – the public notice not being sufficient. The District Judge rejected the submission in circumstances where, as he had found, the Appellant fled Hungary around 09 May 2015 to avoid the proceedings and the potential punishment which would follow, and did so both in breach of his duty to surrender to the court on 04 June 2015 and to notify any change of address within three business days. The District Judge concluded that it would be unconscionable to permit the Appellant then to rely on his decision to flee as a means for him to assert that he was not then aware of subsequent proceedings including the appeal proceedings which were automatically lodged on his behalf: the Appellant was deliberately absent from the hearing on 17 May 2016 because he had deliberately absented himself from the proceedings around 09 May 2015. If he had not done so, the Appellant would have been aware of the subsequent proceedings and the appeal hearing. The District Judge further concluded that the Hungarian court sought to notify him by public notice and moreover, concluded that nothing had, in effect, changed on 17 May 2016: the conviction and sentence remained as pronounced on 30 September 2015.

The Law

11. Section 20 of the Act governs cases where requested persons have been convicted in their absence. It provides:

“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.”

12. In Cretu v Local Court of Suceava, Romania [2016] EWHC 353 (Admin), the Court considered the meaning of ‘deliberately absenting himself from his trial’ in section 20 by reference to article 4a of the 2002 Framework Decision 2002/584/JHA. This refers to in paragraph 1 as, ‘*the trial resulting in the decision*’ and at 1(a)(i) to ‘*the scheduled date and place of that trial...*’. At paragraph [27], Burnett LJ (as he was then) sitting in the Divisional Court considered that the natural meaning of "scheduled date and place of the trial which resulted in the decision" and "scheduled date and place of that trial" suggests that it is referring to ‘*an event which resulted in the person's conviction and sentence*’, rather than a broad concept of a trial process. At [34], he went on to conclude that Section 20 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 paragraph 1.(a) (i). That suggests an event with a "scheduled date and place" and is not referring to a general prosecution process, Mitting J was right to foreshadow this in Bicioc.*

ii) *An accused must be taken to be deliberately absent from his trial if he has been summoned as envisaged by article 4a paragraph 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 ECHR;*

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) *The question whether an accused is entitled to a retrial or a review amounting to a retrial for the purposes of section 20(5), is to be determined by reference to article 4a paragraph 1(d).*

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.”*

13. The Supreme Court in Bertino at [46] expressly endorsed the ‘*conclusions at para 34 in Cretu*’. The Supreme Court went on to consider, at [45], that the phrase “deliberately absented himself from his trial” should be understood as being synonymous with the concept in Strasbourg jurisprudence that an accused has unequivocally waived his right to be present at the trial, and at [54] that the standard imposed by the Strasbourg Court was that for a waiver to be unequivocal and effective, knowing and intelligent, ordinarily the accused must be shown to have appreciated the consequences of his or her behaviour. This will usually require the defendant to be warned in one way or another. At [58], the judgment continued:

“*The court recognised the possibility that the facts might provide an unequivocal indication that the accused is aware of the existence of the criminal proceedings against him and of the nature and the cause of the accusation and does not intend to take part in the trial or wishes to escape prosecution. Examples given were*

where the accused states publicly or in writing an intention not to respond to summonses of which he has become aware; or succeeds in evading an attempted arrest; or when materials are brought to the attention of the authorities which unequivocally show that he is aware of the proceedings pending against him and of the charges he faces. This points towards circumstances which demonstrate that when accused persons put themselves beyond the jurisdiction of the prosecuting and judicial authorities in a knowing and intelligent way with the result that for practical purposes a trial with them present would not be possible, they may be taken to appreciate that a trial in absence is the only option.”

14. In respect of the existence of a re-trial, the leading authority is the Supreme Court’s decision in Merticariu v Romania [2024] UKSC 10. The issue in that case was whether, for the purposes of Section 20(5) a requested person is entitled to a retrial or (on appeal) to a review amounting to a retrial where the law of the requesting state confers a right to retrial which depends on a contingency such as a finding by a judicial authority, in the requesting state, as to whether the requested person was deliberately absent from his trial. The Supreme Court held that the natural and ordinary meaning of the words in section 20(5) are plain. The judge must decide whether the requested person is “entitled” to a retrial or (on appeal) to a review amounting to a retrial. The answer to the question in section 20(5) cannot be “perhaps” or “in certain circumstances”. A requested person may have the right to a retrial even if the domestic law of the requesting state requires him to take “procedural steps” to invoke the right. But if the entitlement to a retrial is contingent on a finding that the requested person was not deliberately absent from his trial, the proceedings leading to that finding would not naturally be referred to as a “procedural step”.

The Appeal: Deliberate Absence

15. The central argument advanced ably by Mr Swain is that the relevant hearing for the purposes of the application of Section 20 is the appeal hearing against conviction and sentence on 16 May 2016, given that it is at this hearing that the conviction and sentence became final. It is indeed this date which is given in the appeal document as the date upon which the conviction became final and it is the date referred to in the arrest warrant.
16. It is then said that he could not be taken to have deliberately absented himself from it in circumstances where he was unaware of it, when it was lodged without his instructions and he was not properly summonsed in respect of it. It is said that his failure to remain for his first instance trial cannot be held to necessarily indicate that he had knowingly waived his right to any legal remedy in the event of conviction. Mr Swain argues that the limited information about the warning ‘*concerning the legal consequences of omission*’ given to the Appellant at the hearing on 12 March 2015 is insufficient to satisfy the test set out in *Bertino* (handed down subsequent to the Judge’s decision in this case). It is clear from *Bertino* at [54] that ‘*for a waiver to be unequivocal and effective, knowing and intelligent, ordinarily the accused must be shown to have appreciated the consequences of his or her behaviour. That will usually require the defendant to be warned in one way or another.*’; at [55] that ‘*a general manifest lack of diligence which results in ignorance of criminal proceedings*’ is of itself insufficient; and at [56] that it is too broad to conclude that a requested person will be taken to have deliberately absented himself from his trial where the

fault was his own conduct in leading him to be unaware of the date and time of the trial.

17. The factor that, Mr Swain states, marks this case out is the fact that by way of (failed) appeal lodged without his knowledge, and which proceeded in his absence, the Appellant lost substantive rights. He cannot knowingly be taken to have waived those rights (having absented himself from the process) in circumstances where he did not know about their existence or that they were being exercised on his behalf, without his instructions.
18. An initial question in this context is the effect of the warning given on 12 March 2015. The District Judge was entitled to proceed on the basis that it is correct that the Appellant was warned ‘*of the legal consequences*’ of non-attendance at the hearing to which he was summonsed. There is no dispute that the legal consequences of non-attendance at trial include, as a matter of fact, proceeding with the trial and convicting in the Appellant’s absence. It is also the case that the legal consequences of being convicted in his absence, in Hungary, are that an appeal can be lodged in a defendant’s absence and without instructions and that appeal can be determined in his continued absence. Where an appeal is lodged, that is itself part of the ‘trial’ leading to the final conviction. The Appellant gave no evidence to go behind the statement by the Respondent that he was warned of the legal consequences of non-attendance at trial. He did not suggest, for example, he was not so warned, or that he was warned of some consequences and not others, or that he was told that there were consequences but it was not explained to him, and he did not understand, what they were. It is also relevant in this context that the Appellant was represented at the first hearing at which he did not attend, and presumably in contact with his lawyers after that hearing when he provided them with the doctored evidence about his medical condition. Had the matter been argued in front of the Judge in the way arguments have developed in this Court, he would have been entitled to take the statement by the Respondent as sufficient to prove to the criminal standard that the Appellant was warned of all the ‘legal consequences’ which flowed his non-participation in the criminal proceedings.
19. It is plain, of course, that the Judge did not have the benefit of the decision in *Bertino*. However, had he framed his decision by reference to that case, it is clear that looked at in the round, the facts present themselves as falling squarely in the situation envisaged at [58] of the Supreme Court’s Judgement. The facts, as found by the Judge, provide an unequivocal indication that the Appellant was aware of the existence of the criminal proceedings and of the nature and the cause of the accusation and that he did not intend to take part in the trial and that he wished to escape prosecution. The Appellant was represented, and taking part in the proceedings, until he took the deliberate decision to flee to the UK, with full knowledge of the upcoming trial and in the face of a warning as to the legal consequences of non-participation. He provided no information as to how he could be contacted, in breach of his obligations. He deliberately submitted false information through his lawyers to mislead the Court to explain his first non-attendance, when in fact he had already fled to the UK, which the Court rejected. He evidently stopped communicating with his lawyers. The only reason that he was unaware of the appeal submitted on his behalf was that, in a knowing and intelligent way, he had removed himself from the jurisdiction, moved to the UK and decided to cease contact with his legal team. It is entirely artificial in these circumstances to rely upon the existence of the appeal and

his absence at the appeal hearing to negate the obvious truth that this Appellant, as the Judge was plainly entitled to find, deliberately put themselves beyond the jurisdiction of the prosecuting authorities and judicial authorities in a knowing and intelligent way such that they may be taken to appreciate that the trial would continue in his absence. The lack of knowledge of an appeal on which the Appellant's argument turns was the direct consequence of his own deliberate decision to put himself beyond the jurisdiction of the authorities and stop communicating with his legal team.

20. As such, on the basis of the factual findings by the Judge in respect of the motivation by his flight to the UK on 9 May 2015 – specifically to evade his prosecution and subsequent incarceration – it was plainly open to the Judge to conclude that it was by the Appellant's own, knowing and conscious decision, that he absented himself from any and all parts of the prosecutorial process which was to follow, including any 'automatic' appeal which may be submitted on his behalf in his absence.
21. A conclusion to the opposite effect on the facts of this case would have the startling conclusion (which, to his credit, Mr Swain did not demur from) that, because the lodging of an appeal without instructions is often automatic when a person is convicted in their absence in Hungary, the very act of deliberately absenting themselves from the 'initial' trial, moving abroad and ceasing all contact with their legal team and/or the judicial authorities, would almost as a matter of course give rise to the absolute right to avoid extradition. It is plain that such an unattractive outcome is not one which the law demands in circumstances where the requested person has deliberately disengaged from the criminal proceedings as a whole and made it impossible for any further information to be imparted about those proceedings (including any appeal) to the requested person. The commencement and determination of any appeal, itself unknown to the offender by reason of that offender's own flight and cessation of contact with the authorities and his own lawyers, plainly cannot be taken to rescue that person from extradition if extradition would otherwise have been warranted in respect of the conviction.

Appeal: Retrial

22. Pursuant to Section 20, if a requested person has deliberately absented themselves from trial, as the Judge was entitled to find, it is not necessary to consider whether the Appellant has a right to a re-trial. The Judge did so, nevertheless, and found that the Appellant did. Although not strictly necessary to do so given my finding above, I will go on to consider the Appellant's argument that the Judge was wrong in finding that he did have such a right.
23. Mr Swain argues that the sum of the information provided to the Judge was inconsistent and unclear as to either (a) whether the Appellant has a right to a retrial at all in circumstances where an appeal has been submitted (at which he was deliberately absent) and/or (b) when the time period of 'one month' in order to apply runs from (and whether it has already expired). In these circumstances, Mr Swain submits that the Judge cannot have been sure to the criminal standard that the Appellant would be entitled to a retrial.
24. The information before the Judge was as follows:
 - (1) The Arrest Warrant itself:

- (a) The Arrest Warrant is in the standard form of Consolidated version of the European arrest warrant form (13297/11). The information inputted by the authorities is emboldened. Under Section 2(d), the warrant has emboldened the standard words, ‘*No, the person did not appear in person at the trial resulting in the decision*’. This has an ‘X’ next to it, although it is to be noted that the standard form itself does not have a box for ticking, it merely requires the document to indicate which of the standard answers applies. There is no reason why emboldening the appropriate is not, of itself, a sufficient method of indication. The standard form question 3.4 states:

“the person was not personally served with the decision, but

– the person will be personally served with this decision without delay after the surrender; and

– when served with the decision, the person will be expressly informed of his or her 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 will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be days.”

In the English version the ‘...days’ has been replaced with an emboldened ‘1 month’. The court was informed that the Hungarian version also included ‘1 month’, but this was not emboldened. In neither version was there an ‘X’ next to 3.4.

- (2) An RFFI Question, submitted to the Respondent specifically in the context of these extradition proceedings, which stated:

‘...We note that you have indicated that the time for a re-trial to be lodged is one month – could you confirm, therefore, whether [the Appellant] is entitled to a retrial within the meaning of Article 4a [of the Framework Decision]...?...’

The answer dated 13 May 2021 was:

‘Pursuant to Section 637(1)(g) of Act XC of 2017 on the Code of Criminal Procedure ..., retrial may be granted regarding [the Appellant] if the 1st defendant is available and submits a motion for retrial within one month after the day when he learns that the conclusive decision concluding the underlying case became final’.

The answer also attached copies of the English translation of the first and second instance decisions. The second instance decision said on its face:

‘If the defendant’s place of residence becomes known after delivery of the final decision, a motion for retrial may be submitted for his benefit’.

- (3) An RFFI Question and answer (dated September 2021) from the Hungarian Ministry of Justice in a different case, which were relied upon by the Respondent as answering a general point of law and procedure in Hungary.

The Questions were:

‘Is it correct that, following conviction in absence, a defendant who as been extradited back to Hungary has 1 month to submit a motion for retrial from the day he is served with the judgment delivered in his absence after the surrender per CCP 639(3);

Is it also correct that, if this timeframe is complied with, the ordering of a retrial is mandatory where an individual has been has been tried in absentia?’

The Answer was:

‘...who was convicted in absence has 1 month to submit a motion for retrial from the day he is served with the judgment. The retrial is mandatory only in case if it is requested and the defendant can be summoned from his address (in order to take part at the trial).’

25. The Judge relied upon the documents dated 13 May 2021 and September 2021 to conclude that he was sure that the Appellant will be granted a retrial if he submits a motion for retrial within one month after the day when his served with the judgment. He also concluded that there was no evidence that the Appellant has been served with the judgment, and as such the Appellant remains entitled to a trial.
26. It is said by Mr Swain, first, that it was wrong for the Judge to rely upon the September information as a matter of principle because it related to a difference case. He relied upon the decision of Johnson J in Cretu when he declined to take account of an assurance relating to prison conditions which assurance had been given in a different case, by a different respondent and relating to a different requested person. Johnson J said:

“Further, the Gheorghe material had not formally been produced in this case by the Respondent as a promise (whether by way of assurance or further information) as to what the prison conditions would be in Rahova. Rather, it had been produced by counsel, and there is no suggestion that it was obtained directly from the Respondent, or that it was produced to the court with specific instructions from the Respondent. The Respondent had been explicitly asked to provide information about the conditions at Rahova in a context where it was clear that what was expected was that the Gheorghe material (or something similar) would be provided. The Respondent did not reply to the request within the time allowed. When its very late response was provided it did not include the Gheorghe material. Given that the second assurance materially differs from the Gheorghe material, I do not think it can safely be inferred that the Gheorghe material is an accurate reflection of the way in which the Appellant will be treated at Rahova prison.”

27. The Judge rejected the invitation to disregard the September 2021 information on the basis that it deals generally with Hungarian legal process generally and not with any specific factual or legal position relevant to the Requested Person. The starting point is that it is obviously right that where there is a question of general application which may be relevant to many cases generally, as a matter of law or procedure, the relevant authorities are not required to obtain and provide the same information again and again. The position was obviously quite different in the context of an assurance in Cretu, particularly where the authority had then specifically responded in a way inconsistent with the ‘general’ information. Cretu is not authority for the proposition that it will in all circumstances be inappropriate to provide information which is truly of general application which has been generated by an appropriate body in the context of a different case.
28. That does not mean of course that the applicability of non-case specific information provided to the particular case must not be examined with particular care. Specifically, Mr Swain developed his submissions orally to argue that the (general) information provided in the September 2021 information was:
- (a) inconsistent with the (specific) May 2021 response, in that the September 2021 information states that one month runs from ‘*the day he is served with the judgment*’, and the May 2021 information states that one month runs ‘*after the day when he learns that the conclusive decision concluding the underlying case became final*’;
 - (b) is ambiguous (by reason of the fact it was not obtained specifically in the context of this case) as to whether it applies where the requested person was convicted in absence and appealed in absence;
 - (c) refers to section CCP 639(3) rather than CCP 637(1).
29. These are plainly factors, in my judgment, which are to be taken into account in determining whether, in all the circumstances, the Judge can be sure that the Appellant was entitled to a retrial. The points of specific inconsistency/ambiguity were not addressed within the Judgment, although in fairness to the Judge there was some lack of clarity before me as to the extent to which these points were put, or at least put in quite this way, before the Judge.
30. I have concluded that the Judge did not err in his finding that he was sure that the Appellant presently retains the right to a retrial for the following reasons:
- (1) the suggestion that the fact of the unsuccessful appeal itself endangers of the requested person’s right to a retrial can be clearly discounted by the statement on the appeal judgment itself which states in terms that the right to a retrial following conviction in absence of the first and/or second instance hearings remains;
 - (2) Mr Swain’s central argument as to whether the one month had already expired by the date of the extradition hearing, such that the right to retrial had been lost, is dependent upon the looseness of the language, ‘*when he learns that the conclusive decision concluding the underlying case became final*’ in the May 2021 information. Taken in isolation, it is right that this could mean, for example,

when the Appellant learns by any informal means that the conviction had become final.

- (3) However, the standard form Arrest Warrant based upon the European standard form makes clear at 3.4 that, in Hungary, the service of the decision takes place without delay after surrender, and that the period of one month runs from this date. Any apparent ambiguity caused by the absence of an 'X' or the lack of emboldenment on the Hungarian version of 'one month' inserted at 3.4 is significantly overstated: objectively it is clear that the authorities have identified that section 3.4 was applicable by specifically changing the standard '... *days*' to '*one month*'. Whether it has been put in bold or not is little to the point. The insertion of this period is an unambiguous and conscious indication, construed objectively, that section 3.4 is applicable and that the one month period runs from the service of the decision, which takes place after surrender.
 - (4) The Judge was correct – and there is no appeal in this regard – in his finding that there is no evidence that the Appellant *has* been served with the judgment. This is entirely consistent with the Arrest Warrant: he will not be served until surrender. On this basis, the conclusion that the right to a retrial remains a conclusion the Judge could properly have been sure about even without referring to the September 2021 information.
 - (5) However, this conclusion is also entirely consistent with and supported by the September 2021 general information (particularly when read in light of the question), which states that one month runs from the date upon which the Appellant is "served with the judgment". As set out on the Arrest Warrant, the judgment is not served until after the requested person surrenders; and there is no evidence that the Appellant has been served.
 - (6) The date of service (post surrender) is the date upon which the Appellant formally learns from the authorities that the underlying case has become final: no doubt the May 2021 information could have been worded better, but it is not itself *inconsistent* with the other information if read in this way.
 - (7) The other criticisms of the September 2021 information do not detract from this conclusion, even it was necessary for the September information to be considered in order for the Judge to have been sure of the answer he arrived at.
31. In the circumstances, the Judge was not just entitled but correct to conclude that the Appellant's right to a retrial has not been lost. That right is not conditional on anything other than procedural matters, and this is consistent with the Supreme Court decision in *Merticariu*: namely, living somewhere from which the Appellant can be summoned (as would be the case upon surrender) and lodging the motion.
32. For these reasons, the appeal is dismissed.