

## THE COURT,

### ***Deliberates on the request made and finds the following:***

The complaint made by the Prosecutor's Office attached to the Bucharest Court of Appeal in accordance with the provisions of article 42 and following of Law no. 302/2004, republished and of articles 2 and 3 of the European Convention on Extradition of December 13<sup>th</sup> 1957, was brought on December 24<sup>th</sup> 2019 before this court under no. 7353/2/2019, having as subject matter the request for extradition made by the judicial authorities of the Republic of Turkey regarding **Fatih GURSOY**, internationally prosecuted for committing the crime of setting up or running an armed criminal terrorist group, provided by article 314/1 of the Turkish Criminal Code, a person against whom the competent magistrate with the Peace Court of Criminal Jurisdiction no. 7 of Ankara issued on an arrest warrant in absentia on January 12<sup>th</sup> 2018.

It is also made clear that the detention measure has not been taken against the requested person and that the view is that the request for extradition is unfounded.

The Court proceeds to hear the extraditable person **Fatih GURSOY** on December 24<sup>th</sup> 2019, in the presence of his counsellor of choice, and the statement given is recorded and placed on the case file.

During the same court date, the extraditable person states that he formulates opposition to extradition, without requesting a court date in this respect.

Both the representative of the Public Ministry and the counsellor of the extraditable person request the dismissal of the request for extradition.

***Having analysed the documents and the proceedings of the case file***, the Court holds that the request for extradition in respect of **Fatih GURSOY** is based on the arrest warrant issued in absentia on January 12<sup>th</sup> 2018 by the Peace Court of Criminal Jurisdiction no. 7 of Ankara for committing the crime of setting up or running an armed criminal terrorist group provided by article 314/1 of the Turkish Criminal Code.

The documents provided by article 36 of Law no. 302/2004 were attached to the request for extradition, namely the arrest warrant issued in absentia, the applicable legal texts from the Turkish legislation, the extract regarding the marital status data of the requested person.

The content of the request for extradition describes the offence with which said person is charged, pointing out the activity of **Fatih GURSOY** of setting up or running a supposedly terrorist organisation, activity that has materialised in using a byblock encrypted communication programme with username RMNY and ID number 237602, receiving and sending several emails, carrying out several transfers to a supposedly terrorist organisation.

Regarding the request for extradition made by the authorities of the Republic of Turkey with respect to **Fatih GURSOY**, the Court holds that the European Convention on Extradition concluded in Paris on December 13<sup>th</sup> 1957, together with the two additional protocols concluded in Strasbourg on October 15<sup>th</sup> 1975 and March 17<sup>th</sup> 1978 respectively, ratified by both Romania and Turkey, as well as the provisions of articles 18 - 77 of Law no. 302/2004, republished, by which the provisions of the framework decisions of the European Union in the field of judicial cooperation in criminal matters were transposed into national law, are applicable.

Pursuant to the abovementioned European Convention, the contracting parties have undertaken to surrender to each other, in accordance with the rules and conditions determined therein, the persons who are being prosecuted for a crime or sought by the judicial authorities of the requesting party for the purposes of executing a sentence or a security measure.

Romania ratified the European Convention on Extradition of 1957, together with the two additional protocols by Law no. 80/1997, subject to the following reserves according to article 2, paragraph 1, letter d of the same regulatory act: "The person who has been granted the right of asylum in Romania cannot be extradited", respectively to article 6, paragraph 1, letter a and article 6, paragraph 1, letter b of the same regulatory act (introduced by article 2, paragraph 2 of the Law), texts that stipulate that "Any contracting

party has the right to refuse the extradition of its nationals” and that “The term national within the meaning of this convention, means the Romanian citizen or the person who has obtained asylum in Romania”.

Moreover, according to the provisions of article 21, paragraph 1, letter b) of Law no. 302/2004, republished, extradition will be refused if there are serious reasons to believe that it is requested in order to prosecute or punish a person on the grounds of race, religion, sex, nationality, language, political or ideological opinions or membership of a particular social group.

Furthermore, according to article 24, paragraph 1 of Law no. 302/2004, extradition may be accepted only if the offence for which the person whose extradition is requested is suspected or accused or convicted of is provided as a crime by both the law of the requesting state and the Romanian law.

Having regard to these legal provisions, the Court finds that, in relation to the way in which the offence of which the extraditable person is accused have been described in the documents issued by the Turkish authorities, their request is unfounded.

Thus, from a formal point of view, the offence of which the extraditable person is accused has a correspondent in the Romanian law, stipulated in article 35, paragraph 1 of Law no. 535/2004 on the prevention and combating of terrorism.

However, the nature of the accusations made against the requested person cannot be ignored, keeping in mind that his activity of setting up or running a supposedly terrorist organisation has materialised in using a using a byblock encrypted communication programme with username RMNY and ID number 237602, receiving and sending several emails, carrying out several transfers to a possibly terrorist organisation.

Thus, the activity allegedly attributable to the requested person does not fall within the scope of the provisions of article 35, paragraph 1 of Law no. 535/2004, especially where the extraditable person left the territory of Turkey several years ago and was not involved in any illegal activity on the territory of Romania, being a member of the Board of Directors of the Lumina Instituții de Învățământ SA, which operates according to the Romanian law.

Moreover, from the case file examination report submitted by the Turkish authorities it follows that the mere use of the programme called By-Lock is implicitly the proof that its users are members of the terrorist organisation Fethullah. As a consequence, the crime described by the Turkish authorities consists, in fact, mainly in the use of this mobile application, which does not meet the verbum regens of the crime provided by article 35, paragraph 1 of Law no. 535/2004 or of another regulatory act of criminal character of the Romanian legislation.

Under these circumstances, the manner of formulating these accusations justifies the holding of the conclusion that there are serious reasons to believe that the request is made for the purpose of prosecuting or punishing a person on the grounds of political or ideological opinions or membership of a particular social group, referring in this case to the suspicion of membership of an organisation led by the cleric Fethullah Gulen.

Consequently, the Court holds that the reason for refusing the extradition provided in article 24, paragraph 1 of Law no. 302/2004 (lack of double criminality) is applicable to the matter at hand, as long as the concrete offences attributed to the extraditable person do not have a correspondent in the Romanian criminal law, and the reasons for refusal provided by article 21, paragraph 1, letters b, c of Law no. 302/2004 also apply, since there are serious reasons to believe that extradition is requested for the purpose of prosecuting or punishing a person on the grounds of political or ideological opinions or membership of a particular social group, where the situation of the requested person is likely to worsen as a result of the aforementioned reasons.

In addition, the reason for refusal provided by article 19, paragraph 1, letter b of Law no. 302/2004 also apply, since **Fatih Gursoy** has provided proof of submission of an application for political asylum in Romania.

**Having regard to the above**, based on article 52, paragraph 1, letter c, article 19, paragraph 1, letter b and article 21, paragraph 1, letters b, c of Law no. 302/2004,

republished, article 3 of the European Convention on Extradition of December 13<sup>th</sup> 1957, the Court will find that the conditions for extradition regarding Turkish citizen **Fatih GURSOY**, citizen of the Republic of Turkey, son of Hasan and Rabia, born on November 22<sup>nd</sup> 1969, in Adana - Republic of Turkey, holder of the personal number 7691122400020, are not met.

The Court will dismiss the complaint of the Prosecutor's Office attached to the Bucharest Court of Appeal.

The Court will dismiss the request for extradition made by the judicial authorities of the Republic of Turkey regarding Turkish citizen **Fatih GURSOY**.

The expenses for the Turkish interpreter's fee for 1 hour are to be borne by the state from the specially allocated judicial expense fund.

The judicial expenses advanced by the state will remain its responsibility.

FOR THESE REASONS,  
IN THE NAME OF THE LAW,  
THE COURT DECIDES

Based on article 52, paragraph 1, letter c, article 19, paragraph 1, letter b and article 21, paragraph 1, letters b, c of Law no. 302/2004, republished, article 3 of the European Convention on Extradition of December 13<sup>th</sup> 1957, finds that the conditions for extradition regarding Turkish citizen **Fatih GURSOY**, citizen of the Republic of Turkey, son of Hasan and Rabia, born on November 22<sup>nd</sup> 1969, in Adana - Republic of Turkey, holder of the personal number 7691122400020, are not met.

Dismisses the complaint of the Prosecutor's Office attached to the Bucharest Court of Appeal.

Dismisses the request for extradition made by the judicial authorities of the Republic of Turkey regarding Turkish citizen **Fatih GURSOY**.

The expenses for the Turkish interpreter's fee for 1 hour are to be borne by the state from the specially allocated judicial expense fund.

The judicial expenses advanced by the state will remain its responsibility.

With a right to appeal within 5 days from delivery, under article 52, paragraph 8 of Law no. 302/2004, republished.

Delivered in public hearing today, December 24<sup>th</sup> 2019.

PRESIDING JUDGE,  
DUMITRACHE ADINA PRETORIA

COURT CLERK,  
GHEORGHE ALINA LUMINIȚA

*I, the undersigned, **GRECU SIMONA-OANA**, a Sworn Translator, authorized by the Ministry of Justice by License no. 12906, certify this is a true and accurate translation of the document copy in Romanian that was translated by me.*

**SWORN TRANSLATOR,**

