Case No.: U20241277

IN THE CROWN COURT AT SOUTHWARK

IN THE MATTER OF THE ESTATE OF FAHAD MAZIAD RAJAAN AL RAJAAN (DECEASED)

AND IN THE MATTER OF MUNA AL RAJAAN AL WAZZAN

AND IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND ORDERS) ORDER 2005

1 English Grounds, London, SE1 2HU

Date: 26 July 2024

Before:

HIS HONOUR JUDGE BAUMGARTNER
THE HON. RECORDER OF WESTMINSTER

- -

Between:

(1) THE ESTATE OF FAHAD MAZIAD RAJAAN AL RAJAAN (DECEASED)
(2) MUNA AL RAJAAN AL WAZZAN

Applicants

- v -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

- -
- -

Martin Evans KC with **Harry Adamson** (instructed by **PCB Byrne LLP**) for the **Applicants**
Jonathan Hall KC with **Fiona Jackson** (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing date: 18 July 2024

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Approved Judgment

I direct that pursuant to Crim.PR r.5.5(1) no official shorthand note shall be taken of this judgment and that copies of this version as handed down (subject to editorial corrections) may be treated as authentic.

HIS HONOUR JUDGE BAUMGARTNER:

Introduction

1. This is an application by Muna Al Rajaan Al Wazzan, brought on her own behalf and as administrator *ad litem* of the estate of her late husband Fahad Maziad Rajaan Al Rajaan (the **"Estate"**), for the discharge of a restraint order dated 5 March 2015 (the **"CRO"**) made pursuant to art.8 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (the **"2005 Order"**) by His Honour Judge Peter Clarke QC in this Court sitting at Blackfriars (the **"Application"**).

2. The Application is made pursuant to art.9(2)(b) of the 2005 Order and is supported by the First Witness Statement of Thomas Nicholas McKernan dated 2 April 2024 (**"McKernan 1"**). The assets restrained by the CRO are certain bank accounts held in the name of either Fahad Maziad Rajaan Al Rajaan or Muna Al Rajaan Al Wazzan with Ahli United Bank (UK) plc (**"AUB"**) in London with a combined credit balance of around USD 25 million.

3. In short, the Applicants submit the CRO must be discharged because an external order has not been registered under the 2005 Order "within a reasonable time" as art.9(6) requires. In any event, the Applicants submit the Kuwait authorities have recovered sums sufficient to satisfy the restitution and confiscation orders made by the Kuwait court and, accordingly, the CRO should be discharged.

4. The Director of Public Prosecutions (the **"DPP"**) opposes the Application on two grounds: he submits, first, it is premature because informal steps have been taken to enforce the orders of the Kuwait court; and, second, although substantial sums have already been recovered by the Kuwaiti authorities, the amount recovered is not sufficient to satisfy the restitution and confiscation orders made by the Kuwait court.

Background

5. I take the background facts relevant to the Application from McKernan 1, and the First and Second Witness Statements of Heather Chalk dated 24 May 2024 and 5 July 2024 (**"Chalk 1"** and **"Chalk 2"**, respectively) filed on behalf of the DPP.

Criminal Restraint Order

6. In early 2015 the DPP applied for the CRO pursuant to three mutual legal assistance (**"MLA"**) requests from the State of Kuwait dated 19 February 2015, 1 March 2015 and 4 March 2015 (together, the **"Kuwaiti MLA Requests"**) under the United Nations Convention Against Corruption 2003 and the United Nations Convention against Transnational Organised Crime 2000. The CRO was made on an *ex parte* basis, initially to 26 March 2015 but extended, most recently by an Order dated 17 November 2017, providing for an indefinite extension until further order of the Court. The criminal activity said to underlie the Kuwaiti MLA Requests is the receipt by Mr Al Rajaan of unauthorised commission payments in connection with his role as Director General of Kuwait's Public Institution for Social Security (**"PIFSS"**), amounting to theft, facilitating theft, unrightfully benefitting from public funds, harming public funds and money laundering.

7. On 30 July 2015 Mr Al Rajaan and Ms Al Wazzan applied to vary or set aside the CRO. This was refused on 7 August 2015, a decision which was appealed to the Court of Appeal (Criminal Division) and dismissed in that Court's judgment dated 23 March 2016: see *A v Director of Public Prosecutions* [2016] EWCA Crim 96, at [99] to [117] per Sharp LJ.

Kuwaiti criminal judgment

8. Mr Al Rajaan and Ms Al Wazzan were convicted *in absentia* by the Plenary Court in a judgment dated 27 June 2019 (of which an English translation is provided as exhibit "TNM1/19" to McKernan 1) (the **"Kuwaiti criminal judgment"**) and sentenced to, first, life imprisonment with hard labour; second, restitution to the value of USD 82.2 million; third, fines of USD 164.4 million and USD 147.6 million respectively; and, fourth, confiscation of vehicles, companies, shares and real estate used in the commission of money laundering. The confiscation provision (the "fourth" aspect of the sentence) refers to the property:

> "used in committing the crime of money laundering as indicated in the grounds of the judgment".

This is seemingly a reference to the assets identified at pp.27 to 31 and pp.75 to 77 of the judgment, namely shares, cars, companies and properties, but not the AUB accounts subject to the CRO. The unlawful conduct referred to in the judgment involves the receipt of commissions by Mr Al Rajaan in his role as Director General of PIFSS (the **"Commissions"**), and the receipt (laundering) of the proceeds of such commissions by Ms Al Wazzan.

High Court proceedings

9. Also in 2019, PIFSS issued civil proceedings against Mr Al Rajaan and others in respect of the same conduct referred to in the application for the CRO and the Kuwaiti criminal judgment, under consolidated lead Claim Number CL-2019-000118 (the **"High Court proceedings"**). Ms Al Wazzan is a party to those proceedings in her personal capacity, although she is not alleged by PIFSS to have committed any wrongdoing.

10. On 16 October 2019, PIFSS obtained a Worldwide Freezing Order (**"WFO"**) against Mr Al Rajaan (and now, following his death, the Estate) in the High Court proceedings freezing all his worldwide assets up to a value of USD 847.7 million. The WFO is subject to the usual exceptions as to legal, living and business expenses (the details of which were agreed and formalised in subsequent Consent Orders). The Estate's defence of the High Court proceedings is funded by the Estate's assets paid in accordance with this regime.

11. According to McKernan 1:

    (1) The Estate is unable to access the funds in Mr Al Rajaan's AUB accounts restrained by the CRO. If the CRO is discharged, those funds could be used to fund the Estate's defence and other expenses permitted under the exceptions to the WFO but would remain subject to the terms of the WFO in all respects. The Estate likely has insufficient liquidity to fund its defence in the High Court proceedings to the end of trial.

(2) Ms Al Wazzan is also the subject of asset freezing orders; however, these only apply to assets representing the proceeds of Commissions since, as noted above, she is not accused of any wrongdoing. The AUB accounts held in Ms Al Wazzan's name are not subject to the WFO. In March 2020, PIFSS applied for asset freezing relief against Ms Al Wazzan and this ultimately led to her providing consensual undertakings to the Court (formalised in Orders dated 3 June 2020 and 24 September 2021 (the **"Al Wazzan Undertakings"**)) not to deal with specific assets save on advanced written notice to PIFSS.

(3) In broad terms, the Al Wazzan Undertakings apply to assets that PIFSS allege she held as nominee for Mr Al Rajaan and/or that represent the proceeds of Commissions. They do not apply to her assets restrained by the CRO, and it is not alleged in the High Court proceedings that these assets represent the proceeds of fraud.

(4) Ms Al Wazzan does not currently have sufficient liquid assets to fund her defence of the High Court proceedings.

Enforcement Request

12. This Application was made on 2 April 2024. As at that date no formal steps (such as an application to register the Kuwaiti criminal judgment here) had been taken to enforce any of the orders made in the Kuwaiti criminal judgment, nor had notice of registration of the Kuwaiti criminal judgment in this country been given to Ms Al Wazzan pursuant to art.22(1)(b) of the 2005 Order (see McKernan 1).

13. According to Chalk 1 and Chalk 2, however:

(1) On 27 October 2021, the United Kingdom Central Authority (a body within the Home Office responsible for coordinating overseas requests for MLA) (the **"UKCA"**) sent an email to the CPS enclosing a request from the Kuwaiti prosecuting authority dated 7 October 2021, sent under a covering letter of 22 October 2021, to enforce the Kuwaiti criminal judgment (the **"Enforcement Request"**). I am told this was an informal referral that sought the CPS's views on the Enforcement Request, and that the CPS responded to the UKCA on the same date with its preliminary views.

(2) The Enforcement Request sought enforcement of the Kuwaiti criminal judgment against the AUB accounts restrained by the CRO and real property at Flat G, 36 Eaton Square, London and Flat 806, 199 The Knightsbridge, London.

(3) On 28 March 2022, the UKCA made a further informal referral to the CPS seeking the CPS's views on whether more information would be required before the request could be executed, in the event the request was formally referred to the CPS by the UKCA.

(4) Mr Al Rajaan died on 6 September 2022.

(5) Further communication between the CPS, the UKCA, and the Kuwaiti prosecuting authority took place in September and October 2022, resting with additional queries by the CPS.

(6) The Kuwaiti criminal judgment was formally published in Kuwait on 8 January 2023.

(7) On 25 May 2023, the UKCA forwarded to the CPS on an informal basis a response received from the Kuwaiti prosecuting authority on 2 May 2023 to the queries the CPS raised in September 2022, and sought the CPS's views as to whether the Enforcement Request could now be executed, should it be accepted by the UKCA and formally referred to the CPS.

(8) On 12 December 2023, the CPS sent an email to the UKCA detailing the further information and material that was still required before the Enforcement Request could be executed, in addition to the material provided by the Kuwaiti prosecuting authority in May 2023. Those requirements were forwarded by the UKCA to the Kuwaiti prosecuting authority on 19 December 2023.

(9) The Kuwaiti prosecuting authority's response to the CPS's queries came by a memorandum dated 29 April 2024, in which the authority informed the CPS that appeals had been lodged by Ms Al Wazzan and other family members to suspend the procedures from implementing the confiscation order and to overturn Mr Al Rajaan's convictions. Further discussions between the CPS and the Kuwaiti prosecuting authority ensued.

(10) On 17 May 2024, the CPS confirmed that, should the Enforcement Request be formally referred to the CPS by the UKCA, it would be in a position to execute that request.

(11) On 23 May 2024, the UKCA informally notified the CPS that the Kuwaiti prosecuting authority had sent a fresh request seeking further restraint of the Applicants' assets. As at the date of the hearing before me, this fresh request had not been referred formally to the CPS but that is expected in the coming weeks. I am told this new request arises out of a "new" criminal investigation in Kuwaiti into the Applicants and their children Khaled, Fawaz, Fajer, and Farah for misappropriating public funds, facilitating the misappropriation of and damaging such funds, and money laundering. In this request, the Kuwaiti prosecuting authority seek restraint of the AUB accounts subject to the CRO. I am also told this "new" investigation commenced on 19 November 2019, and that the Kuwaiti Attorney General had ordered restraint of all funds and assets belonging to the suspects on 15 December 2022.

(12) On 7 June 2024, the UKCA formally referred the Enforcement Request to the CPS for enforcement under the 2005 Order. I am told that, currently, the Enforcement Request is being reviewed by the CPS.

14. It is against that background that the Application now falls to be determined.

Statutory framework

15. The statutory framework applicable in applications like this one is described exhaustively in *In Re Stanford International Bank Ltd* [2010] 3 WLR 941, per Sir Andrew Morritt C, at [68] *et seq.*; and by Gross J sitting in the Crown Court in *Re Al Zayat* [2008] Lloyd's Rep FC 390, at [8] *et seq*.

16. Article 9 of the 2005 Order provides, in relevant part:

> "(2) An application to discharge or vary a restraint order … may be made to the Crown Court by—
>
> …
>
> (b) any person affected by the order.
>
> (3) Paragraphs (4) to (7) apply to an application under paragraph (2).
>
> (4) The court—
>
> (a) may discharge the order;
>
> (b) may vary the order.
>
> …
>
> (5) If the condition in article 7 which was satisfied was that proceedings were started, the court must discharge the order if, at the conclusion of the proceedings, no external order has been made.
>
> (6) If the condition in article 7 which was satisfied was that proceedings were started, the court must discharge the order if within a reasonable time—
>
> (a) an external order has not been registered under Chapter 2 of this Part; …
>
> …
>
> (7) If the condition in article 7 which was satisfied was that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started."

17. Article 7 sets out two conditions:

> "(2) The first condition is that—
>
> (a) relevant property in England and Wales is identified in the external request;
>
> (b) a criminal investigation has been started in the country from which the external request was made with regard to an offence, and
>
> (c) there are reasonable grounds to suspect that the alleged offender named in the request has benefited from his criminal conduct.
>
> (3) The second condition is that—

> (a) relevant property in England and Wales is identified in the external request;
>
> (b) proceedings for an offence have been started in the country from which the external request was made and not concluded, and
>
> (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct."

18. Section 447(1) of the Proceeds of Crime Act 2002 (the **"2002 Act"**) defines an "external request" as a request by an overseas authority to prohibit dealing with relevant property which is identified in the request.

19. An "external order" is defined in s.447(2) of the 2002 Act as an order which:

> "(a) is made by an overseas court where property is found or believed to have been obtained as a result of or in connection with criminal conduct, and
>
> (b) is for the recovery of specified property or a specified sum of money."

20. Article 18 of the 2005 Order provides that, where an external order arising from a criminal conviction in the requesting country concerning relevant property in England or Wales is received, it may be referred by the Secretary of State to the DPP "to process". Once received, the DPP may apply to "give effect to the external order": art.20(1); such application must include a "request to appoint [the DPP] as the enforcement authority for the order": art.20(3).

21. Article 21 of the 2005 Order gives discretion to the Court to give effect to an external order by registering it if (1) the external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction; (2) the external order is in force and no appeal is outstanding in respect of it; (3) giving effect to the external order would not be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1988) of any person affected by it; and (4) in respect of an external order which authorises the confiscation of property other than money that is specified in the order, the specified property must not be subject to relevant charges.

Discussion and analysis

Reasonable time

22. The CRO was made under the first condition, *i.e.* that a criminal investigation had been started in Kuwait, but extended indefinitely by His Honour Judge Clarke QC's Order dated 17 November 2017 because of the criminal proceedings in Kuwait.

23. I am not aware of the learned judge's reasons for the 17 November 2017 Order, but it seems to me that that Order must have been made upon the second condition being satisfied. The point is not an academic one, because the tests applicable to the two conditions are different: under art.9(7) (the test applicable where the first condition was satisfied), the Court must discharge the order if within a reasonable time proceedings for

the offence are not started; under arts.9(5) and 9(6) (the tests applicable where the second condition was satisfied), the Court must discharge the order if, at the conclusion of the proceedings, no external order has been made, or if within a reasonable time an external order has not been registered.

24. The Kuwaiti criminal judgment requires the Applicants to refund USD 82.2 million, a sum proven in the Kuwait criminal proceedings to be funds misappropriated from PIFSS. This amount has at times been referred to as the "restitution order" or "restitution penalty". The judgment does not trace the ultimate destination of that USD 82.2 million as I am told that it was not necessary under Kuwaiti law to prove the crime or the amount. It seems to me that, at least in regard of the restitution order, the Kuwaiti criminal judgment is an "external order" as defined in s.447(2) of the 2002 Act, made before the Kuwait criminal proceedings have concluded. In those circumstances, art.9(5) is not engaged. I am also told that, of the recoveries made by the Kuwait authorities in Bahrain and Kuwait, none of these sums are yet to be allocated to PIFSS or to pay any fines imposed upon Ms Al Wazzan (Mr Al Rajaan's fines having lapsed upon his death), and that the Kuwaiti authorities intend to use the monies restrained in the AUB accounts to satisfy the restitution order.

25. Martin Evans KC, who appears for the Applicants with Harry Adamson, submits that the case has moved into the second condition and subparagraph (6) of art.9 is now engaged. I think that must be right, given the 17 November 2017 Order. In any event, art.9(6) makes it plain that where a restraint order is made at the request of an overseas authority on the ground that the restrained assets may be needed to satisfy any external order made, it is subject to a "reasonable expedition" condition to ensure that the interference with the person's property rights under the Convention is not disproportionate: see *S* [2020] 1 WLR 109, at [33] per Davis LJ.

26. Thus this Application turns upon what is a "reasonable time" for an external order to be registered under Chapter 2 of Part 2 of the 2005 Order. If it is shown by the Applicants that an external order has not been registered "within a reasonable time", the Court "must" discharge the order.

27. In *S* (where the question was whether proceedings had not been started within a reasonable time), the Court of Appeal (Criminal Division) observed (at [27]) that the wording in s.42(7) of the 2002 Act was not to be glossed, so that there was no requirement of exceptionality before discharging an order, and the words "reasonable time" were not to be read restrictively.[1] The Court held (at [39]) that the words "within a reasonable time" required regard to the practical realities of litigious life and to all the circumstances of the particular case, which would usually include:

    (a) the length of time that had elapsed since the order had been made;

    (b) the reasons and explanations advanced for such lapse of time;

    (c) the length (and depth) of the investigation before the order was made;

[1] The equivalent "legislative steer" in art.46 is necessarily subordinated to the provisions of art.9(6) themselves: for in such a scenario, where it is adjudged to arise, the Court is not exercising a power but is under a statutory obligation to discharge.

(d) the nature and extent of the order made;

(e) the nature and complexity of the investigation and of the potential proceedings; and

(f) the degree of assistance or of obstruction to the investigation.

The Court held (at [40]):

> "It is the obligation of the judge to evaluate all the relevant circumstances of the particular case in reaching his or her judgment as to whether or not proceedings have been started within a reasonable time. If they are adjudged not to have been started within a reasonable time then the restraint order must be discharged; and accordingly the consequences flowing from such discharge are then irrelevant."

28. As to the required approach in assessing reasonableness, the Court endorsed (at [34]) the observations of Lord Bingham in *Dyer v Watson* [2004] 1 AC 379, at [55].

> "It is plain that contracting states cannot blame unacceptable delays on a general want of prosecutors or judges or courthouses or on chronic under-funding of the legal system. It is, generally speaking, incumbent on contracting states so to organise their legal systems as to ensure that the reasonable time requirement is honoured. But nothing in the Convention jurisprudence requires courts to shut their eyes to the practical realities of litigious life even in a reasonably well-organised legal system. Thus it is not objectionable for a prosecutor to deal with cases according to what he reasonably regards as their priority, so as to achieve an orderly dispatch of business. It must be accepted that a prosecutor cannot ordinarily devote his whole time and attention to a single case. Courts are entitled to draw up their lists of cases for trial some time in advance. It may be necessary to await the availability of a judge possessing a special expertise, or the availability of a courthouse with special facilities or security. Plans may be disrupted by unexpected illness. The pressure on a court may be increased by a sudden and unforeseen surge of business. There is no general obligation on a prosecutor, such as that imposed on a prosecutor seeking to extend a custody time limit under section 22(3)(b) of the Prosecution of Offences Act 1985, to show that he has acted 'with all due diligence and expedition'. But a marked lack of expedition, if unjustified, will point towards a breach of the reasonable time requirement, and the authorities make clear that while, for purposes of the reasonable time requirement, time runs from the date when the defendant is charged, the passage of any considerable period of time before charge may call for greater than normal expedition thereafter."

29. In this regard, Mr Evans KC submits it is striking that no formal steps have been taken to enforce the external order since the Kuwaiti criminal judgment was given in June 2019, more than five years ago. Mr Evans points out:

(1) Although Kuwait has twice sought advice from the CPS (through the UKCA) as to the enforcement of the external order manifest in the Kuwaiti criminal judgment (in October 2021, and March 2022), no formal steps have been taken to enforce the

order, despite the CPS providing advice as to what would be required (in September 2022, and again in December 2023). To date, although an application to register the Kuwaiti criminal judgment has been threatened, it has yet to materialise, notwithstanding its purported drafting by no later than October 2021.

(2) There is evidence of repeated inaction and/or delay on the part of Kuwait, the CPS and UKCA.

(3) Chalk 1 and Chalk 2 do not address the failure to take any steps as regards, *e.g.* notification of the Kuwaiti criminal judgment. It is apparent that the CPS were provided with an address for Ms Al Wazzan in Kuwait's responses of 2 May 2023, but failed to serve it and instead sought the address again in light of this application.

(4) Throughout, formal steps have been taken in Kuwait, Bahrain, France and Switzerland to recover assets through confiscation, restraint, and (through PIFSS) by issuing the High Court proceedings to which the Applicants are party.

(5) That, in Chalk 1, where Ms Chalk states:

> "Whilst it is correct to say that as at the date of this statement, no formal referral has been made by the UKCA to the CPS to enforce the [Kuwaiti criminal judgment], preparatory steps have been taken to ensure that should such a referral be made, it could be executed as swiftly as possible",

this merely reinforces the point that there has been no practical impediment to the registration of the Kuwaiti criminal judgment for a long time; no explanation is provided as to why not, and no detail is provided as to the "preparatory steps" that have been taken.

30. Jonathan Hall KC, who appears for the DPP with Fiona Jackson, submits that much action and litigation has occurred since the making of the restraint order, and all of the time taken has been reasonable and proportionate: the Applicants were investigated, convicted and sentenced in Kuwait in circumstances where they voluntarily absented themselves from the jurisdiction; the Kuwaiti prosecuting authority has pursued the recovery of assets in numerous jurisdictions to satisfy the Kuwaiti criminal judgment; and has for years been liaising with the CPS about the potential to use the restrained assets in this jurisdiction to satisfy that judgment.

31. Having very carefully considered the facts and matters underpinning the parties' submissions, I accept the DPP has acted without unreasonable delay for these reasons:

(1) The delay in this case from conviction to the date of the Application is obvious. But this is not a case where no steps have been taken. To the contrary, and as I have summarised at [13] above, the Kuwaiti prosecuting authority has taken what appears to me to be careful steps to ensure the Enforcement Request when formally made accords with the law in this jurisdiction.

(2) The Enforcement Request dated 7 October 2021, sent to the UKCA under covering letter of 22 October 2021, requested that the United Kingdom enforce the Kuwaiti criminal judgment. Although the Enforcement Request was submitted previously

to the UKCA, it was not referred formally to the CPS until 7 June 2024 (see Chalk 2). It seems to me that the process of informally consulting on a request such as this one before it is formally referred is a sensible and reasonable approach to mutual assistance in cases of this complexity. This is, on any view, a multinational, multi-million dollar fraud and money laundering prosecution; although the Kuwaiti criminal judgment was delivered over five years ago, the practical realities of enforcing such a judgment in a foreign jurisdiction are apparent from the chronology which has unfolded. I do not consider the lapse of time to be unreasonable in light of the steps taken by the CPS and the Kuwaiti prosecuting authority as set out in Chalk 1 and Chalk 2.

(3) The inherent complexity of the Applicants' criminal conduct as set out in the Kuwaiti criminal judgment adds to the number of complicating factors lending additional explanation to the delay. Those complicating factors include the fact that Mr Al Rajaan has since died, the existence of the related High Court proceedings, variation applications regarding tax, Ms Al Wazzan and her family's attempts to challenge the convictions in Kuwait, and the role of two different legal systems and sets of prosecutors in UK and Kuwait in the mutual assistance process.

(4) The Enforcement Request now seeks to enforce the Kuwaiti criminal judgment against the AUB accounts that are the subject of the CRO, and two real properties in central London that are both caught by the WFO.

32. For those reasons, despite the obvious delay which I have pointed out, I do not consider the Applicants have shown that the time taken to reach the stage of the formal request for enforcement of the Kuwaiti criminal judgment is unreasonable. It follows that the Application fails on this ground.

Necessary and proportionate

33. The Applicants further argue that the CRO should be discharged in any event, because the USD 82.2 million "restitution order" or "restitution penalty" element of the Kuwaiti criminal judgment is also pursued under other confiscation aspects of the judgment. Moreover, Kuwait has already recovered amounts sufficient to satisfy the USD 82.2 million "restitution order" but have been allocated to other penalties. Thus, in seeking to recover the funds restrained under the CRO, the Kuwaiti prosecuting authority seeks double recovery, which under English law is disproportionate and impermissible under a line of authority following *Waya* [2013] AC 294 and including *Andrewes* [2022] 1 WLR 3878.

34. I can deal with this argument shortly. The Court is not yet being asked to decide on enforcement against the AUB accounts and, accordingly, the question of double recovery does not strictly arise. It may be that if any future enforcement activity would inevitably lead to double recovery (and therefore amount to a disproportionate and unlawful interference with the Applicant's Convention property rights), then it would be contrary to the interests of justice to maintain the CRO. But it is likely that the value of the ill-gotten USD 82.2 million has increased significantly since its original misappropriation, most likely through investment by the Applicants. It is not double recovery to confiscate the full value of the stolen assets at current value, but, as I said, such questions do not yet arise.

35. In any event, I note:

    (1) Ms Al Wazzan has provided no evidence to show the amounts recovered by the Kuwaiti prosecuting authority in Kuwait and Bahrain relate to the underlying criminal conduct in support of her argument that those recoveries should be offset against the value of any assets purchased using the USD 82.2 million as funds misappropriated from PIFSS;

    (2) it appears that at least Ms Al Wazzan's AUB accounts presently restrained by the CRO are not covered by the WFO or her undertakings to the High Court, and therefore the CRO remains necessary to preserve these assets for the enforcement of the Kuwaiti criminal judgment;

    (3) the Kuwaiti criminal judgment is in force, is not the subject of an appeal within time, and is enforceable in Kuwait. The CRO was obtained before the WFO and the Kuwaiti prosecuting authority is entitled to ask the United Kingdom to enforce its judgment against the restrained accounts; and

    (4) the trial in the High Court proceedings is not due to commence until the Spring of 2025 and may, of course, result in dismissal of PIFSS's claims. If this Court were to discharge the CRO now, simply on the basis that some or all of the restrained accounts are covered by the WFO, and if PIFSS' claim were to be unsuccessful, this would leave the AUB accounts unrestrained and highly likely to be unavailable for realisation to satisfy the Kuwaiti criminal judgment.

36. On the evidence before me, I am satisfied the provisions of art.7(3) remain met:

    (a) "relevant property" in England and Wales has been identified in the external request. Property is "relevant property" if, pursuant to the definition contained in s.447(7) of the 2002 Act, there are "reasonable grounds to believe that it may be needed to satisfy an external order which has been or which may be made". The AUB accounts were identified in the Kuwaiti MLA Requests dated 19 February 2015 and 4 March 2015. There remain reasonable grounds to believe that the monies in these accounts may be needed to satisfy an external order that has been made. Indeed, as I mentioned, on 7 June 2024 the Enforcement Request was formally referred to the CPS in relation to these assets and others within the jurisdiction;

    (b) proceedings for a criminal offence have been started in the country from which the external request was made and have not been concluded. There was a criminal investigation in Kuwait, and the Applicants were subsequently convicted and sentenced. The Kuwaiti criminal judgment has yet to be enforced, and so proceedings have not concluded; and

    (c) there is reasonable cause to believe that the defendant named in the request has benefited from his criminal conduct. Section 447(8) of the 2002 Act applies, and so conduct must be criminal in both the requesting state and England and Wales. The Applicants were convicted by a competent criminal court of fraud and money laundering charges, which criminal conduct would also be criminal offences if they occurred in this jurisdiction.

37. I am further satisfied there is a real risk of dissipation if the order is not maintained, for it is inherently likely in the circumstances that Ms Al Wazzan will dissipate the funds as she admits that she will use them to meet her and the Estate's litigation expenses in the High Court proceedings.

38. In my judgment, the very large sums involved in the Kuwaiti criminal judgment make the ongoing restraint of the c. USD 25 million under the CRO just and reasonable in order to ensure that it is available for enforcement of the judgment. There is no evidence before me that the Applicants' riches have any source other than their criminality.

Disposal

39. For all those reasons, the Application is dismissed.