

THE HIGH COURT

RECORD NUMBER 2017/187 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

RADU IANCU

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 1st day of June, 2020.

1. By this application, the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 11th May, 2017 ("the warrant") issued by Lucian Balas, President of the Court of Arad, as the issuing judicial authority. The surrender of the respondent is sought for the enforcement of a Court Order imposing a sentence of 1 year and 4 months imprisonment in respect of three offences, viz. driving a motor vehicle without a license, forging of an official document and use of a forged official document.
2. The warrant was endorsed by the High Court on 17th July, 2017 and the respondent was arrested and brought before this Court on 17th February, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. This was not put in issue by the respondent.
4. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the minimum gravity requirements of the Act of 2003, as amended, are met. The term of imprisonment in respect of which the respondent's surrender is sought amounts to 1 year and 4 months.
6. I am satisfied that the warrant indicates the matters required by s. 45 of the Act of 2003.
7. The respondent delivered Points of Objection which can be summarised as follows:-
 - (i) that his surrender was prohibited by s. 37 of the Act of 2003 on the basis that there is a real risk that his rights pursuant to article 3 of the European Convention on Human Rights and/or article 4 of the Charter of Fundamental Rights of the European Union will not be respected in Romania due to the detention conditions in Romanian prisons, in that the respondent would be exposed to inhuman or degrading treatment;
 - (ii) that correspondence was not established in respect of the offence of driving without a licence;
 - (iii) that the respondent's surrender was prohibited on the basis that the proceedings herein constituted an abuse of process in circumstances where the surrender of the

respondent on foot of the same warrant had been refused by a Northern Ireland court.

At the hearing of the matter, the latter two grounds of objection were not pressed. I am satisfied that the offences referred to in the warrant correspond with offences in the State, and in particular the offence of driving without a license corresponds with the offence under s.38(1) of the Road Traffic Act,1961.

8. In essence the issue which the Court has to determine is whether it is satisfied that the respondent would be exposed to a real risk that his rights pursuant to article 3 of the European Convention on Human Rights ("the ECHR") or Charter of Fundamental Rights of the European Union ("the Charter") would not be respected, and specifically that he would be exposed to a real risk of inhuman or degrading treatment. If the Court is so satisfied, then the surrender is prohibited pursuant to s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the ECHR and/or the Constitution. Article 3 of the ECHR provides:-

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 of the Charter is in similar terms.

9. In addition to the warrant, the Court requested and was furnished with additional information by Romania dated 22nd June, 2017 and 16th March, 2020. The additional information dated 16th March 2020 dealt with the conditions in the particular prisons where it was stated the respondent was likely to be incarcerated.
10. The issuing judicial authority in Romania furnished a report to the Court dated 16th March, 2020. The more salient contents of the report were as follows:-
- (a) If surrendered, the respondent would initially be placed at Rahovan penitentiary to quarantine for 21 days [no issue was taken in respect of the conditions at Rahovan];
 - (b) The respondent would most likely serve the initial stage of imprisonment in a semi-open regime, possibly Focsani penitentiary given the respondent's domicile;
 - (c) All rooms in Focsani are provided with one or two windows depending on the size of the room as well as a window at the sanitary group. The windows of the detention rooms are over 1.5m each and allow natural light and room ventilation. All rooms are equipped with tableware, TV stand, shelves for storing dishes and personal food. Each detainee has an individual bed and bedding. Cleaning/disinfection was carried out regularly. The detention rooms are provided with a room for sanitation (water, sink, toilet, shower) that allows each person to carry out their physiological needs whenever needed in conditions of privacy. The rooms were equipped with a regulated heating system.

- (d) The main characteristics of the semi-open detention regime were that prisoners have daily access to courtyards, clubs, sports field, gymnasium, church, classrooms and other spaces for exercising their rights, including the possibility of walking unaccompanied in areas inside the detention centre on routes established by the administration; they also have the possibility of organising their free time available under supervision and in compliance with the programme established by the administration. The doors of the rooms are open throughout the day. There are specially arranged places for smoking. There are telephones for the use of prisoners being allowed up to 10 telephone calls per day with a maximum cumulative duration of 60 minutes; at electronic documentation and information points prisoners can check their prison situation (number of credits, education activities attended, legal status etc.). Prisoners can perform work and carry out educational, cultural, therapeutic, psychological counselling and social assistance, moral-religious activities, school or vocational training outside the penitentiary under supervision. Prisoners can receive five visits per month with a maximum duration of two hours. Prisoners have the right to purchase from the commercial points of the penitentiary, within the limit of $\frac{3}{4}$ of the value of the minimum gross salary, food, fruits and vegetables, mineral water, soft drinks, cigarettes and other goods. Prisoners might be required to work taking into account their qualification skills and abilities, health status and safety measures inside or outside the penitentiary. The work performed by prisoners is aimed at maintaining and increasing their ability to earn their livelihood after release and earn some income. The working time was eight hours per day and not more than 40 hours per week, with the exceptions provided by labour law. Prisoners serving semi-open sentences have the opportunity to spend their free time outside the detention room throughout the day and are only introduced to the rooms for lunch and half an hour before the evening call is made;
- (e) After the execution of one-fifth of the sentence, the convicted person will be re-examined in order to change the regime of execution of the sentence depending mainly on the behaviour adopted by the prisoner during detention. The respondent could then be moved to an open regime where he would most likely remain at Focsani penitentiary.
- (f) In the open regime, the doors of the rooms are permanently open except for the time intervals necessary for serving meals or carrying out administrative activities. Prisoners have unlimited access to the walking courts and places for smoking. They have access to telephones with the right to make telephone calls daily with a maximum cumulative duration of 60 minutes and access to electronic information where they can verify their prison situation. Prisoners can move unaccompanied inside the prison, can work and carry out educational, cultural, therapeutic, psychological counselling and social assistance, moral religious activities, school or vocational training outside the place of detention without supervision. Rooms are kept open during the day and night with rooms locked only during the call and when meals are served or when the entire staff had to attend activities. Prisoners in

the open regime organise the time they have available and household activities. They can attend a course of education and participate individually, or in groups, in cultural, educational, sports, artistic, religious and local programs in or outside the prison without supervision. With the approval of the Director of the penitentiary, prisoners may take part in cultural, educational, sports, artistic and religious activities together with family members or representatives of society;

(g) All prisoners receive free medical care;

(h) *"[T]he national penitentiary administration guarantees that during the entire period of execution of the mandate, he will benefit from an individual minimum space, including the bed and the related furniture, related to the regime of execution of the deprivation of liberty sentence, without including the space for the sanitary group, as following: 2 sqm in the case of the execution of the sentence in semi-open regime; 3 sqm in the case of the execution of the sentence deprived of liberty in the open regime. Also, the penitentiary system ensures the proper exercise of the rights, as they are stipulated by the criminal law enforcement framework."*

11. In support of his objection, the respondent relied upon a report from Mr. Bugnariu Danut-Ioan, a criminal defence lawyer based in Bucharest, Romania. This report considered, *inter alia*, conditions in five different prisons in which it was considered the respondent might be incarcerated following surrender, viz. Arad, Focsani, Braila, Galati and Margineni prisons. It should be noted that the additional information was furnished by the Romanian authorities prior to the report of Mr. Danut-Ioan being prepared and that he had the benefit of that additional information when drawing up his report.

12. At hearing it was accepted that upon his surrender, the respondent would be required to undergo a period of quarantine of 21 days in Rahova penitentiary and that no issue arose in respect of conditions in that facility. It was further accepted that if the respondent filed an appeal he would most likely be detained pending determination of same in Arad prison and that no issue arose in respect thereof. Mr. Danut-Ioan did not accept unequivocally that the respondent would most likely be required to serve the remainder of his sentence in Focsani. He drew the Court's attention to the fact that in correspondence with the Northern Irish court, Braila prison had been nominated as the prison where the respondent was most likely to be required to serve the remainder of his sentence. He did not accept unequivocally that it was most likely that the respondent would be subject to a semi-open or open regime.

13. The conclusions of Mr. Danut-Ioan's report were as follows:-

"1. *The Romanian law provides a legal right/entitlement to a retrial or appeal for a person tried in absentia on certain conditions;*

2. *Mr. IANCU may have a right to appeal his First Sentence and for retrial of his Subsequent Trial but, most probably at the end his imprisonment sentence of 1 year and 4 months shall stand;*

3. *During appeal/re-trial Mr. IANCU may apply for bail but there are small chances of success;*
4. *Pending retrial/appeal Mr. IANCU will most probably be held in Arad prison;*
5. *The conditions of Arad prison are quite one of the best in the Romanian prison system with overcrowding affecting just one of the six prison facilities;*
6. *There were some ECHR and domestic cases identified regarding improper prison conditions in Arad prison;*
7. *The reports regarding Arad prison conditions are rather positive;*
8. *I have identified no discrimination cases of Roma or half-Roma prisoners in Arad prison;*
9. *In case of semi-open and open prison regimes the prison were most probably Mr. IANCU would serve his sentence should be, according also to Romanian authorities input in 2020, Focsani prison which is closer to Mr. IANCU Romanian domicile (and has overall better conditions than Braila prison indicated by the Romanian authorities in 2017);*
10. *Focsani prison has one prison facility with proper prison conditions and two other prison facilities with improper prison conditions (overcrowding, lack of daylight and fresh air, bad hygiene);*
11. *There were domestic cases identified regarding improper prison conditions in Focsani prison but the Prison Administration seems to have correctly applied to the compensatory appeal mechanism (valid for improper prison conditions until December 23, 2019);*
12. *The reports regarding Focsani prison conditions are highlighting especially the overcrowding;*
13. *I have identified no discrimination cases of Roma or half-Roma prisoners in Focsani prison;*
14. *In case of closed and maximum security prison regimes the closest prison to its Romanian domicile(s) where Mr. IANCU would serve his sentence should be Galati prison but the new prisons enactments indicates that Margineni prison, which has better prison conditions than Galati prison, might be the choice of Romanian authorities;*
15. *Galati prison has three prison facilities all of them with improper prison conditions (lack of daylight and fresh air, mold) but only two of them have overcrowding;*

16. *There were domestic cases identified regarding improper prison conditions in Galati prison within the competence of the prison judge who stated in 2019 that only about 5% of the prison facilities had proper detention conditions;*
 17. *The reports regarding Galati prison conditions are confirming and highlighting improper prison conditions such as: overcrowding, lack of daylight and fresh air, mold and bug infestation;*
 18. *I have identified no discrimination cases of Roma or half-Roma prisoners in Galati prison;*
 19. *Margineni Prison has one prison facility with proper prison conditions and two other prison facilities with improper prison conditions (lack of daylight and fresh air, bad hygiene, mold in both of them and overcrowding just in one);*
 20. *There were domestic cases identified regarding improper prison conditions in Margineni prison within the competence of the prison judge who stated in 2019 that only about 5% of the prisons facilities had proper detention conditions;*
 21. *The reports regarding Margineni prison conditions are highlighting some improper prison conditions especially overcrowding but also issues of medical care and some interprisoner violence;*
 22. *I have identified no discrimination cases of Roma or half-Roma prisoners in Margineni prison;*
 23. *The conditions in the Romanian prison system as a general trend had significantly improved since November 2017, but there are cases where the improper detention conditions remain the same or, in some cases had worsened. The occupancy rate has been decreasing significantly but remains one of the main issues of the prison system;*
 24. *Mr. IANCU will not necessarily have to execute the entirety of his (EAW) sentence having the possibility of early release after executing a minimal proportion of the sentence; the EAW arrests in Northern Ireland and Ireland shall be taken into consideration as part of the sentence execution;*
 25. *I found no indication of discrimination about the EAW sentences."*
14. The reference to the compensatory appeal mechanism is a reference to an appeal system which the Romanian authorities had put in place whereby persons detained in poor conditions, non-compliant with ECHR rights, were entitled to additional remission. This scheme was ended on 23rd December, 2019.
 15. It was submitted on behalf of the respondent that he might be required to serve the remainder of his sentence in a closed or maximum security regime. Reference was made to the fact that the respondent had a number of previous convictions in jurisdictions other

than Romania and that according to the report from Mr Donut-Ioan, the Romanian authorities operate a system of aggregation of previous convictions/sentences and this aggregation could mean that the respondent would more likely fall into the category of a closed or maximum security regime. However, it was accepted that in order to take any foreign convictions or sentences to be taken into account, a formal judicial process for recognition of same would have to be carried out. It was debatable whether such a process would or could be processed within the relatively short remainder of the sentence to be served. Counsel on behalf of the respondent objected to the suggestion that a specific request be made setting out the respondent's previous convictions and seeking clarity as to which regime he would be subject to upon surrender.

The Applicable Law

16. The law in this area was recently reviewed by McDermott J. in *Minister for Justice and Equality v. Pal* [2020] IEHC 143. In that case the surrender of the respondent was sought by Romania for the purpose of prosecuting him in relation to a number of criminal offences. The respondent objected to his surrender on a number of grounds, including that his surrender was prohibited under s. 37 of the Act of 2003, in that it would be a breach of article 3 of the ECHR because there was a real or substantial risk that he would be subjected to inhuman or degrading treatment due to the poor conditions in which prisoners are confined in Romania. The respondent filed a number of affidavits and a report from Mr. Danut-Ioan in relation to prison conditions in Romania. McDermott J. reaffirmed that the applicable principles had been set out in the judgment of Denham J. in the Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45, [2010] 3 I.R. 783 at pp. 800 to 801 as follows: -

- "(i) *A court should consider all the material before it, and if necessary material obtained of its own motion;*
- (ii) *A court should examine whether there is a real risk, in a rigorous examination;*
- (iii) *The burden rests upon an applicant, such as the appellant in this case, to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR;*
- (iv) *It is open to a requesting State to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from an applicant as to conditions in the prisons of a requesting State with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the applicant returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR. On the other hand, the requesting State may present evidence which would, or would not, dispel the view of the court;*
- (v) *The court should examine the foreseeable consequences of sending a person to the requesting State;*

- (vi) *The court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to governmental sources, such as the U.S. State Department;*
- (vii) *The mere possibility of ill treatment is not sufficient to establish an applicant's case;*
- (viii) *The relevant time to consider the conditions in the requesting state is at the time of the hearing in the High Court. Although, of course, on an appeal to this Court an application could be made, under the rules of court, seeking to admit additional evidence, if necessary."*

17. McDermott J. referred to the decision of the Supreme Court in *Attorney-General v. Davis* [2018] IESC 27, in which McKechnie J. considered whether "substantial grounds" or "reasonable grounds" must be established such as would give rise to a real risk. McKechnie J. preferred the latter although he accepted that in substance there may be no difference between the two. At para. 87 of his judgment, McKechnie J. pointed out that the threshold which the respondent had to meet was not a low threshold and he emphasised:-

"There is a default presumption that the other country will act in good faith and that it will respect a proposed extraditee's fundamental rights.... The basis for this presumption is the underlying principle of mutual trust, reciprocity and confidence which goes to the heart of the bilateral/multilateral extradition arrangements that have been entered into by the State on the international plane. Experience has shown that the presumption can indeed be rebutted, but such a conclusion will not be reached lightly. Thus while the courts will conduct a rigorous inquiry into any proposed objections to extradition, intervening were necessary to safeguard the subject respondent's fundamental rights, the onus is on that person to establish by evidence that there is a real risk of a violation of such rights if surrendered and extradited."

McKechnie J. further stated at para. 88:-

"As one can never be definite regarding future events, the aim of the exercise is to measure risk. This requires a fact specific inquiry conducted in part against known facts and in part against future events. The matters for consideration will inevitably be particular to the person concerned and may range over an extensive area; likewise, in relation to the prison conditions, perhaps even in respect of the legal and judicial regimes of his intended destination. The exercise so conducted should and must be as thorough as the facts and circumstances demand."

18. McDermott J. referred to *Aranyosi and Caldaru, Judgment of the European Court of Human Rights, Grand Chamber, 5th April 2016*. In that decision, the Court emphasised that a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to a

refusal to execute a European arrest warrant, but rather that in such circumstances the executing judicial authority must make a further assessment, specific and precise, of whether there are substantial grounds to believe the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing member state. Thus, an executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing member state, he will run a real risk of being subject in that member state to inhuman or degrading treatment, within the meaning of article 4 of the ECHR. To that end, that authority must, pursuant to article 15(2) of the Council Framework Decision of 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, as amended ("the Framework Decision"), request of the judicial authority of the issuing member state that there be provided, as a matter of urgency, all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that member state. This, in effect, means that the executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.

19. Mc Dermott J. also considered *ML v. Generalstaatsanwaltschaft Bremen Case C-220/18* (25th July, 2018 First Chamber) at para. 60 of his judgment. In that case, the CJEU emphasised that the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and mutual trust. A refusal to execute a warrant is intended to be an exception. The grounds of refusal listed in article 5 of the Framework Decision are to be interpreted strictly. McDermott J. noted that on the basis of that case, the executing court is obliged to request all necessary supplementary information on the conditions in which it is envisaged the person concerned will be detained. If upon receipt of that information the executing court determines that there is a real risk that he will be subject to inhuman or degrading treatment, then the execution of the warrant must be postponed but it cannot be abandoned. He noted that it is generally not possible to identify all prisons in which a person may be held on their surrender and consequently executing judicial authorities were solely required to assess conditions of detention in the prisons which, according to the information available to them, it is actually intended that the person concerned will be detained, including on a temporary or transitional basis, obviously subject to the Court's clear obligation to be satisfied that there is no real or substantial risk that the person will be subjected to inhuman or degrading treatment and the absolute nature of that protection. He noted that in *ML*, the CJEU stated that an assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhuman or degrading treatment is something which the executing state cannot disregard. The executing judicial authority in view of the mutual trust which must exist between the

judicial authorities of the member states and on which European arrest warrant system is based must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 4 of the Charter. If the guarantee that such an assurance represents is not given by the judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.

20. McDermott J. considered *Dumutriu-Tudor Dorobantu* (Case C-128/18) (Grand Chamber, 15th October) in which the CJEU made it clear that the assessment which the executing judicial authority was required to make cannot be concerned with the general conditions of detention in all prisons in the issuing member state in which the individual concerned might be detained, but rather is solely required to assess conditions of detention in the prisons which, according to the information available to it, it is actually intended that the person concerned will be detained, including on a temporary or transitional basis. To that end, the executing judicial authority must request of the issuing judicial authority all necessary supplementary information on the conditions in which it is actually intended that the individual concerned will be detained. More importantly, the Court held that when an assurance has been given or at least endorsed by the issuing judicial authority to the effect that the person concerned will not suffer inhuman or degrading treatment on the account of the actual precise conditions of his detention, irrespective of the prison in which he is detained in the issuing member state, the executing judicial authority must rely on that assurance at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 4 of the Charter. Therefore, it is only in exceptional circumstances, and on the basis of precise information, that the judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member state.
21. McDermott J. referred to the decision of the European Court of Human Rights in *Rezmives and others v. Romania* (Applications numbers 6147/12, 39516/13, 48231/13 and 68191/13 – Judgment 25th June 2017) concerning conditions of detention in Romanian prisons and detention facilities attached to police stations. He noted the history of issues concerning prison conditions in Romania and the lengthy history of the Court's engagement with the Romanian prison system recorded in that decision. He noted that the Court had made a number of recommendations as to the measures to be taken to reduce overcrowding and improve the material conditions of detention in Romanian centres of detention and post-conviction imprisonment. The European Court of Human Rights noted the Romanian government's submissions concerning steps taken to remedy prison conditions including legislative steps.
22. McDermott J. noted the contents of a report from the European Committee for the Prevention of Torture ("the CPT") submitted in the course of the proceedings before him and the efforts set out therein to reform the Romanian prison system since 2014. He also noted the contents of the report from Mr. Donat-Ioan. He noted that in *Mursic v. Croatia*

[2015] ECHR 420, a strong presumption of a violation of article 3 arose when the personal space available to a detainee fell below 3 sq. m of floor space in multi-occupancy accommodation but this was capable of being rebutted if one of the following factors were cumulatively met:-

- (1) The reductions in the required minimum personal space of 3 sq. m are short, occasional and minor;
- (2) Such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
- (3) The applicant is confined to what is, when viewed generally, an appropriate detention facility, and there are no aggravating aspects of the conditions of his or her detention.

He further noted that in *Mursic*, the 3 sq. m space excludes sanitary area space and that, even where a detainee had 4 sq. m or more of personal space in multi-occupancy accommodation in prison, other aspects of the physical conditions of detention remain relevant.

23. McDermott J. also reviewed the Irish authorities in this area. In *Minister for Justice and Equality v. Tache* [2019] IEHC 68, Donnelly J. had considered the deficiencies in the Romanian prison conditions under article 3 in the context of the CPT Report of 2018 and a detailed response to a request for information made by the Court. The Court noted that significant steps had been taken to address the concerns of the ECHR in the *Rezmives* case. The prison at Rahova had been designated as the reception prison to which the respondent would be surrendered and the prison at Timisoara as the semi-open prison where he might be later imprisoned. There was an overall assurance given that he would be provided with 3 sq. m of floor space in each. Guarantees about other issues such as out-of-cell time, heating, ventilation, hygiene and sanitation were also given. Donnelly J. held there was no cogent evidence to believe he was at a real risk of being subjected to inhuman and degrading conditions.
24. Mc Dermott J. referred to *Minister for Justice and Equality v. Iacobuta* [2019] IEHC 250, in which the High Court noted that the Romanian authorities guaranteed that the respondent would have a minimum cell space of 3 sq. m throughout his sentence. The Court was satisfied that this guarantee applied to whatever prison might receive the respondent. The Court was satisfied that there was no cogent evidence that the respondent would be at real risk of being subjected to inhuman or degrading treatment if surrendered and committed to Iasi prison.
25. Turning to the case before him, McDermott J., upon receipt of a CPT Report dated 2019 in relation to the committee's visit in 2018 and a report of Mr. Danut-Ioan which was somewhat more up-to-date, decided that there was specific, updated and reliable information of a real risk on account of deficiencies in the Romanian prison system that persons surrendered might be subject to conditions violating article 3 of the ECHR and on

foot of same made a request under s. 20 of the Act of 2003 seeking updated information from the issuing judicial authority. A reply was received in respect of that request relating to pre-trial detention to the effect that the respondent would have an area of personal space of at least 4.6 sq. m and that he would have an individual bed, mattress and bedding and storage and dining furniture together with proper ventilation, natural lighting and appropriate heating and air conditioning as well as access to running water and sanitary facilities including privacy in respect of washing, etc.. In a further reply dealing with possible prison regimes applicable to the respondent if he were convicted, information was furnished in relation to maximum security, closed, semi-open and open custody. It was stated that the minimal personal space provided without including the space for a bathroom would be 3 sq. m under a maximum security regime and the same area if served under any of the other regimes. Information was also provided in relation to ventilation, lighting, sanitary facilities, etc..

26. On the basis of the information before him, McDermott J. was satisfied that if convicted and sentenced for the more serious offences set out in the warrant, the respondent would be committed to a maximum security regime at Iasi prison. As the information furnished did not specifically refer to Iasi prison, McDermott J. sought a specific assurance that the respondent, if surrendered and convicted, would not be imprisoned in Iasi prison or that if he were it would only be under conditions there were compliant with article 3, including details as to the minimum living space and whether he would be detained in a single or shared cell. He also requested specific assurances in respect of certain matters which would honour the respondent's article 3 rights if he was detained in Iasi prison. A response to this request was received which included a report from the Director of Prison Safety and Enforcement Regime of the National Administration of Penitentiaries of the Ministry of Justice. The report and response did not mention Iasi but referred to Tulcea prison and stated that the detainee should start serving the penalty in Tulcea prison and went on to describe various features of detention in Tulcea prison. Though framed in terms that appeared to be of general application, McDermott J. was satisfied that the description provided related to how each type of regime operated in Tulcea prison. He noted that it was stated that the detainee would be granted a minimum individual space, including the bed and furniture belonging to it, without however including the lavatory, depending on the enforcement regime of 3 sq. m and that the penitentiary system ensured the proper exercise of rights as provided for in the applicable legislation. The space issue was the subject of an assurance that the area in which the respondent would be confined, even if transferred, would comply with minimum article 3 standards. Though the source of the assurance was a branch of the executive, it was transmitted by the issuing judicial authority in response to a request for information and therefore had to be taken into account in any assessment of the relevant risk.
27. McDermott J. remained concerned that the reply had not specifically answered the query as to whether or not the respondent would be detained in Iasi prison and that if he were that the conditions of confinement would not violate his article 3 rights. He therefore submitted a further request for information in respect of those specific issues. The reply to that request did not address the specific issues but rather appeared to indicate that the

respondent would be detained post-conviction at Margineni prison. McDermott J. therefore sought further information in relation to the conditions of confinement in Margineni prison. A reply confirmed that if convicted, the respondent would be detained in Margineni prison if he was assigned to a maximum security or closed prison regime. It provided details in relation to the conditions of such regimes.

28. McDermott J. was satisfied that the details furnished provided sufficient information that the respondent's confinement would not give rise to any real or substantial risk of inhuman or degrading treatment. In reaching that conclusion, he considered the general assurances previously given as to the area of cell accommodation as well as the other facilities in relation to sanitary and toilet issues, furnishings, ventilation, lighting, exercise and nutrition. McDermott J. expressed some frustration at the manner in which the Romanian authorities had addressed the issues raised by the Court and that they had to be pressed for the assurances and information which they ultimately produced in a piecemeal fashion. Be that as it was, he was satisfied on the basis of the information then provided to him that the respondent's surrender did not give rise to a real or substantial risk that he would be subjected to inhuman or degrading treatment if convicted on the charges set out the warrant. He stated at para. 111:-

"It is to be hoped that in future applications for surrender by the Romanian authorities it will not be necessary to engage in the type of protracted search for information which should be very easily accessible."

Analysis and Decision

29. From the review of the relevant authorities carried out by McDermott J. in *Minister for Justice and Equality v. Pal*, the following non-exhaustive list of principles emerges:-

- (1) The cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and mutual trust (*ML*);
- (2) A refusal to execute a warrant is intended to be an exception (*ML*);
- (3) One of the exceptions arises when there is a real or substantial risk of inhuman or degrading treatment contrary to article 3 of the ECHR or article 4 of the Charter (*ML*);
- (4) The prohibition of surrender where there is a real or substantial risk of inhuman or degrading treatment is mandatory. The objectives of the Framework Decision cannot defeat an established risk of ill-treatment (*Davis*);
- (5) The burden rests upon a respondent to adduce evidence capable of proving that there are substantial/reasonable grounds for believing that if he (or she) were returned to the requesting country, he (or she) will be exposed to a real risk of being subjected to treatment contrary to article 3 of the ECHR (*Rettinger*) (*Davis*);

- (6) The threshold which a respondent must meet in order to prevent extradition is not a low one. There is a default presumption that the requesting country will act in good faith and will respect the proposed extraditee's fundamental rights. Whilst the presumption can be rebutted, such a conclusion will not be reached lightly (*Davis*);
- (7) In examining whether there is a real risk, the Court should conduct a rigorous examination. The Court should consider all the material before it, and, if necessary, material obtained of its own motion. The Court may attach importance to reports of independent international human rights organisations or reports from government sources (*Rettinger*);
- (8) The relevant time to consider the conditions in the requesting state is at the time of the hearing (*Rettinger*);
- (9) When the personal space available to a detainee falls below 3 sq. m of floor surface (excluding space for sanitary facilities) in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of article 3 arises. The burden of proof is then on the issuing state to rebut the presumption by demonstrating that there are factors capable of adequately compensating for the scarce allocation of personal space and this presumption will normally be capable of being rebutted only if one of the following factors are cumulatively met:-
 - (a) The reductions in the required minimum personal space of 3 sq. m are short, occasional and minor;
 - (b) Such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
 - (c) The detainee is confined to what is, when viewed generally, an appropriate detention facility, and there are no aggravating aspects of the conditions of his or her detention (*Mursic*);
- (10) A finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to a refusal to execute a European arrest warrant. Whenever the existence of such a risk is identified, it is then necessary for the executing judicial authority to make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. The executing judicial authority should request of the issuing member state all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained (*Aranyosi and Caldaru*);
- (11) An assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhuman or degrading treatment is something which the executing state cannot disregard and the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the Member States on which the European arrest

warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 3 of the ECHR or article 4 of the Charter (*ML*);

(12) It is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member state (*Dumutriu-Tudor Dorobantu*).

30. Bearing in mind the above principles, I turn to the information placed before the Court in the present case.
31. It should be noted that it was accepted in correspondence by the Romanian authorities that credit would be given to the respondent for time spent in custody in Northern Ireland on foot of the warrant. At hearing it was accepted that further credit would be given to the Respondent for time spent in custody in this jurisdiction on foot of the warrant. Taking this into account, at the time of delivering this judgment, the respondent would have approximately six months of the sentence remaining to serve, subject to any further reduction for any remission he may be entitled to.
32. At hearing, it was accepted that upon his surrender, the respondent would be required to undergo a period of quarantine of 21 days in the Rahova penitentiary and no issue arose in respect of conditions in that facility. It was further accepted that if the respondent filed an appeal, he would most likely be detained pending determination of same in Arad prison and no issue arose in respect thereof.
33. According to the additional information furnished by the issuing authority, the respondent would most likely be required to serve the remainder of his sentence in Focsani penitentiary, initially subject to a semi-open regime and possibly moving to an open regime. The respondent sought to cast doubt as to whether this would indeed be the case on the basis of previous information furnished to a court in Northern Ireland, indicating that he would be detained at Braila prison and/or that by virtue of a possible aggregation of his sentences, he might be subjected to a closed or maximum security regime. However, the report of Mr. Donat-Ioan is somewhat speculative in this regard, and in fairness to Mr. Donat-Ioan he appears to have reservations as to whether such an aggregation would take place given the formal court process which has to be gone through to prove foreign convictions and the relatively short remainder of sentence which the respondent has to serve.
34. I find that the report of Mr. Donat-Ioan is not such as to bring this case within the exceptional circumstances where, on the basis of precise information, this Court could find that there is a real risk of the respondent being subjected to inhuman or degrading treatment because of the conditions of his proposed detention in the issuing member state.

35. On the basis of the information furnished by the Romanian authority, the respondent, while subject to a semi-open regime, will have an individual minimum space, including the bed and related furniture of 2 sq. m or 3 sq. m in the case of an open regime. The limited individual space of 2 sq. m gives rise to a strong presumption of a violation of article 3 of the ECHR and the Court must look at the other features of detention in order to assess whether the presumption has been rebutted. According to the information furnished by the Romanian authority, while subject to the semi-open regime the respondent would be detained in a multi-occupancy room with one or two windows of over 1.5 m which allow natural light and room ventilation; rooms are equipped with tableware, a TV stand and shelving; the respondent would be provided with an individual bed and bedding; cleaning and disinfection is carried out regularly; there is a regulated heating system; sanitation rooms allow each detainee to carry out their physiological needs in privacy; the doors of the rooms are open throughout the day; detainees have daily access to outdoor spaces for exercise; detainees are allowed up to 10 telephone calls per day with a maximum cumulative duration of 60 minutes and detainees can work or carry out educational, cultural, therapeutic, psychological, counselling and social assistance, moral or religious activities or school/vocational training outside the penitentiary under supervision. Detainees may receive up to five visits per month with a maximum duration of two hours; detainees may purchase food, including fruit and vegetables, soft drinks and cigarettes at commercial points within the prison and detainees serving semi-open sentences have the option to spend their free time outside the detention room throughout the day and are only introduced to the rooms for lunch and half an hour before the evening call is made. Detainees have a right to medical care and medication free of charge. In the open regime, there is an individual minimum space of 3 sq. m and the regime is more liberal than the semi-open regime.
36. I am satisfied that despite the fact that while detained under the semi-open regime, the individual space guaranteed to the respondent falls below 3 sq. m, the presumption of a violation of article 3 is clearly rebutted on the basis of the information provided by the Romanian authority, in particular as to freedom of movement outside the cell and activities outside the cell. I note that the respondent has approximately six months detention to serve (without taking remission into account) when credit is given to him for time spent in detention in Northern Ireland and in this jurisdiction (as has been guaranteed by the Romanian authority). I also note that for an initial period he is likely to be detained for quarantine purposes (and also pending any appeal he may lodge) in facilities in respect of which there are no current issues.
37. I dismiss the respondent's objection that his surrender is prohibited by virtue of s. 37 of the Act of 2003.
38. I am satisfied that the surrender of the respondent is not prohibited by virtue of part 3 of the Act of 2003.
39. It follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Romania.