

**THE HIGH COURT
EXTRADITION**

[2021] IEHC 374

Record No. 2020/222EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACTS 2003 AND 2012

BETWEEN:

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

-AND-

VLAD IONUT RADUTA

RESPONDENT

JUDGMENT of Mr. Justice Tony Hunt delivered on 5 May 2021

1. The applicant seeks an order for the surrender of the respondent to Romania pursuant to a European Arrest Warrant dated 30 July 2020 (“the EAW”), issued by Delegated Judge Nicoleta-Cristina Pavlovici of the Roman Court, Neamt County. The surrender of the respondent is sought to enforce the service of a sentence of three years and three months’ imprisonment, relating to six offences. Between the warrant and additional information sought by Paul Burns J., it appears that the EAW relates to six offences, divided into two groups. The final sentence was arrived at after a complex process of aggregation, disaggregation and reaggregation. The offences are set out in considerable detail, and correspond with offences of burglary, criminal damage, assault causing harm, public order and various road traffic offences. The respondent was not present for his trial but section 3.4 of the EAW indicates that he will be served with this decision without delay after surrender and will be informed of his right to retrial or appeal *de novo*, at which he is entitled to be present. This will allow the case, including new evidence, to be re-examined, which may result in cancellation of the original decision. There is clearly no issue as to minimum gravity or identity, and the warrant was duly endorsed for execution by the High Court. The respondent was arrested and brought before the Court on 22 January 2021. I am therefore satisfied that no issue arises in respect of s.45 of the Act of 2003 (“the Act”).
2. I am satisfied that the person before the Court is the person in respect of whom the EAW is issued. This was not put in issue by the respondent. I am also satisfied that none of the matters referred to in ss.21A, 22, 23 and 24 of the Act arise and that the surrender of the respondent is not prohibited for the reasons set forth therein. The EAW is therefore in the correct form and contains all the requisite information to enable surrender of the respondent to the issuing judicial authority.
3. In effect, counsel on behalf of the respondent indicated that she maintained a single objection to surrender as follows:

“The Respondent objects to his surrender on the grounds that it is prohibited by section 37 of the European Arrest Warrant Act 2003 because it would be incompatible with the Applicant’s obligations under the European Convention on Human Rights (the ECHR) and/or the Constitution as it would violate the

Respondent's right not to be subject to inhuman or degrading treatment or punishment under article 3 of the ECHR, due to prison conditions in Romania."

4. The affidavit evidence of the respondent indicates that he has never been in prison in Romania before, but expresses fears about his fate if returned to serve a sentence there. Counsel for the respondent referred to particular concerns that had arisen in relation to the issue of personal space in the Romanian prison regime. Counsel also relied upon the contents of a report of 8 February 2021 from Danut-Ioan Bugnariu, a criminal defence lawyer of the Bucharest Bar. This report sets out that the Romanian prison regimes are described as maximum security, closed, semi-open and open. Having regard to the length of the sentence specified in the EAW, Mr Bugnariu opines that the closed regime will be applicable to the respondent if surrendered, and that Romanian prison law stipulates that, in principle, the convicted detainee should be placed in the prison closest to his Romanian domicile. In the case of the respondent, the closest prison to Neamt County (his domicile) is the Bacau county prison, unless the Romanian authorities guarantee that the sentence will be served in another prison. His report sets out concerns about several facilities within Bacau prison (specifically Prison facilities nos. 3 & 5) in the context of overcrowding and personal space, argued by counsel as establishing a specific risk of overcrowding within the closed regime at Bacau prison. Counsel also referred to aspects of the European Commission for the Prevention of Torture ("CPT") Report of 2019 and to a Council of Europe report setting the standards for living space in the prison context. I was satisfied that the respondent had raised sufficient concern as to prison conditions to warrant a request for further information as to the conditions in which the respondent was likely to serve his sentence if surrendered.
5. The s.16 hearing was adjourned from 11 February 2021 to 26 March 2021, pending the transmission of the request for further information. The request was sent to Judge Robert Valerian-Apetri of the Roman Court, Neamt County, on 16 February 2021, requesting details of the likely location at which the sentence would be served if the respondent was surrendered, the regime under which he would be detained, and confirmation that overcrowding or individual space would not be current issues at any potential place of detention. Mr Bugnariu's report was also enclosed for comment by the relevant Romanian authorities. By reply dated 22 February 2021, the Director of the Department for Prison Safety and Security Levels (Prison Chief Superintendent Felix Alexandru Fabry) indicated to the issuing judicial authority that if surrendered, the respondent will be initially placed in the custody of the Bucharest Rahova Prison, in order to undertake a quarantine period for 21 days in a room providing him with a minimum space of 3 sq. m. Thereafter, taking into consideration the length of the custodial sentence, he will be most likely to serve his sentence within a closed security level facility, most probably within the Iasi Prison. The letter sets out features of this prison and of the closed regime. After one-fifth of the total sentence, there will be a review, with the possibility of change to a semi-open security level facility, most probably the Miercuria-Ciuc Prison. The letter also provides details of this prison, and the main features of the semi-open prison regime. It then refers to the possibility of change to an open security level facility, most probably at the Iasi Prison, with details of this location and regime.

6. In the event of transfer to other prison units, the letter specifies that, in such a situation, the assurances regarding the detention conditions that the National Administration of Prisons has committed itself to shall not be affected. There is an assurance that measures would be taken in order to fully comply with the pledges provided in the letter, including an assurance that a minimum individual space of 3 sq. m., including the bed and related pieces of furniture, without including the area reserved for the sanitary facilities, is to be provided throughout the execution of the entire custodial sentence. Mr Fabry commented on Mr Bugnariu's report by a further letter of 1 March 2021, referring to the construction of new detention facilities guaranteeing minimum space of 4 sq. m. It is intended that these developments will continue during the currency of a further action plan from 2020 to 2025.
7. At the resumed hearing, counsel for the Minister relied on the decision of this Court (Paul Burns J.) in *The Minister for Justice and Equality -v- Pitulan Angel [2020] IEHC 618*, which summarises the principles applicable to the issue of prison conditions. Counsel submitted that the assurances received from the Romanian authorities, when taken in conjunction with the mutual trust which applies as between parties to the EAW arrangement, meant that there were no exceptional circumstances or precise information which would permit me to refuse surrender of the respondent on the basis of this objection, and that the necessary real risk of maltreatment had not been demonstrated by cogent evidence. Counsel also referred to the fact that Donnelly J. has, in the past, been satisfied that conditions in Iasi prison did not represent a substantial or real risk or ill-treatment contrary to the provisions of Article 3 ECHR.
8. Counsel for the respondent referred to the decision of the ECtHR in *Petrea -v- Romania, 1 April 2008*, which refers to evidence that the prisoner in that case was held in large capacity dormitories in Iasi prison with individual space as low as 1.1 sq. m. Iasi prison was also referred to by the same Court in *Todireasa -v- Romania, 21 July 2015*, where the prisoner was housed for over a year in circumstances where his personal space was less than 3 sq. m. So far as the Miercuria-Ciuc prison is concerned, counsel referred to the judgment of the same Court in *Rezmives and others -v- Romania, 25 July 2017*, where the evidence referred to 1 sq. m. of living space per prisoner. Counsel pointed out that the assurance offered to the Court is based on an action plan dating from 2018, whereas the decision of the ECtHR in *Turlea -v- Romania, 16 May 2019*, postdating that plan, suggested that the prisoners concerned in that case also received less than 3 sq. m. living space at that prison. She submitted that the facts of these cases cast doubt on the reliability of the assurances offered in this case as to the prison conditions that would apply if surrender is ordered. It was suggested that a more precise assurance concerning the respondent would be required before surrender should be ordered.
9. In reply, counsel for the Minister pointed to the dates of the facts of those cases, and that the prisoners concerned did not have the benefit of the solemn assurances given in the context of surrender pursuant to a European arrest warrant. She submitted that the assurances were sufficiently specific in terms of particular institutions which were likely to be applicable to the applicant to be acceptable for the purpose of surrender.

10. Having reviewed and evaluated all the information before me, I am not satisfied that the respondent has established substantial grounds for believing that, if he is surrendered, he is at a real risk of being subjected to inhuman or degrading treatment contrary to Article 3 of the ECHR or Article 4 of the Charter of Fundamental Rights of the European Union, by virtue of the likely conditions of his detention.
11. I am satisfied with the assurances contained in the letters from the Romanian National Administration of Prisons as to the conditions that will be applicable on surrender, and that these attract the mutual trust that arises under the EAW arrangements, by virtue of being transmitted to the Court through the issuing judicial authority. I am satisfied that they are sufficiently specific in nature, both as to the respondent, and as to the likely places and conditions of detention, so as to enable me to rely on them for the purposes of addressing his objection to surrender on this ground. Moreover, the assurances are given in the context of the specific requirements of the judgments of the ECtHR relating to prison conditions.
12. So far as the submissions on behalf of the respondent are concerned, I am satisfied that the difficulties evident in the various judgments opened by counsel are being addressed by the relevant Romanian authorities on an ongoing basis, and that the events described in those cases have been overtaken by the events and developments described in the information provided to this Court in 2021. The CPT Report refers to inspections in February 2018. The Council of Europe Report refers to conditions of detention prior to September 2015. The dates of the various ECtHR judgments set out above frame the temporal context of those cases, and they did not involve assurances given in the specific context of the EAW framework. I am satisfied that any potential effect of these cases and reports is superseded by the specific assurances received in the EAW context of this case.
13. Finally, it must be borne in mind that s.4A of the Act provides a presumption that Member States will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. Having considered the evidence, information and submissions in this case, I am satisfied that the presumption contained in s.4A of the Act has not been rebutted, and that the assurances endorsed by the issuing judicial authority are sufficient to dispel any real risk that the respondent will on surrender be held in conditions violating his rights under Article 3 ECHR.
14. Accordingly, by reference to the terms of s.37 of the Act, it must be determined whether the surrender of the respondent would be incompatible with the obligations of the State under the ECHR, the protocols thereto, or the Constitution. I am satisfied that surrender of the respondent would not be incompatible with such obligations. As the respondent's objection to surrender based on s.37 of the Act is dismissed, and I am otherwise satisfied that his surrender is not precluded by Part 3 or any other provision of that Act, there will be an order pursuant to s.16(1) of the Act for the surrender of the respondent to Romania.

Approved Judgment

No Redaction Required