

THE HIGH COURT

[2021] IEHC 582
[2020 No. 159 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

FLORIN-MARIUS PLEȘCA

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 30th day of July, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 16th January, 2020 ("the EAW"). The EAW was issued by Judge Coșovanu Mihai of the Rădăuți Court as the issuing judicial authority. The EAW seeks the surrender of the respondent in order to enforce a sentence of two years and ten months' imprisonment imposed on 16th December, 2019, all of which remains to be served.
2. The EAW was endorsed by the High Court on 27th July, 2020 and the respondent was arrested and brought before the High Court on 11th February, 2021.
3. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
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 for consideration in this application and surrender of the respondent is not prohibited for any of the reasons set forth in any of those sections.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met in that the sentence in respect of which surrender is sought is in excess of four months' imprisonment.
6. At part E of the EAW, it is indicated that it relates to 11 offences in all. A description of the circumstances in which four of the offences were committed is set out thereat. These relate to four road traffic offences of which the respondent was convicted in 2019 and might be broadly described as follows:-
 - (i) on 15th August, 2016, refusing to undergo a blood test;
 - (ii) on 3rd October, 2016, entrusting a vehicle to another to drive knowing that other person was not licenced to drive it;
 - (iii) on 30th December, 2016, driving while disqualified; and
 - (iv) on 30th December, 2016, drink-driving/driving with alcohol in his system.

In addition to those offences, the respondent was convicted in 2018 in respect of seven other offences, being five assault offences on police officers, driving without a licence and refusing to provide a blood sample for the purposes of ascertaining his blood alcohol level.

7. The sentence in respect of which surrender is sought is an aggregate sentence arrived at by combining the sentences in respect of the various matters into one overall single sentence.
8. The respondent pursued the following objections to surrender:-
 - (a) surrender is precluded by s. 38 of the Act of 2003 as correspondence cannot be established; and
 - (b) surrender is precluded by s. 37 of the Act of 2003 due to prison conditions in Romania.
9. By way of letter dated 8th March, 2021, the issuing judicial authority replied to a request for additional information, indicating that the sentence imposed was a merged sentence and set out in detail how the sentence had come about. At hearing, counsel for the applicant conceded that despite the detail provided, it was not possible to unmerge the sentence into separate constituent elements for each offence. Thus, in line with the reasoning of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Ferenca* [2008] 4 I.R. 480, unless correspondence can be established in relation to all of the offences, surrender must be refused.

Correspondence

10. Section 38 of the Act of 2003 provides as follows:-

"38.-(1) Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—

- (a) the offence corresponds to an offence under the law of the State, and—*
 - (i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or*
 - (ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,*
- (b) the offence is an offence to which paragraph 2 of Article 2 of the Framework Decision applies, and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years, or*
- (c) in the case of a Trade and Cooperation Agreement arrest warrant, the offence is an offence to which paragraph 5 of Article LAW.SURR.79 of the Trade and*

Cooperation Agreement applies and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years.]

- (2) *The surrender of a person to an issuing state under this Act shall not be refused on the ground that, in relation to a revenue offence—*
- (a) *no tax or duty of the kind to which the offence relates is imposed in the State, or*
- (b) *the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.*
- (3) *In this section 'revenue offence' means, in relation to an issuing state, an offence in connection with taxes, duties, customs or exchange control."*

In effect, s. 38(1)(a) of the Act of 2003 precludes surrender in respect of an offence unless the acts stated to constitute that offence would also constitute an offence in this State and carry a maximum penalty in the issuing state of at least 12 months' imprisonment or a sentence of at least 4 months' imprisonment has been imposed by the issuing state in respect of the offence.

11. Section 5 of the Act of 2003 provides as follows:-

"5. – For the purposes of this Act, an offence specified in a relevant arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the relevant arrest warrant is issued, constitute an offence under the law of the State."

12. The additional information dated 8th March, 2021 provides further particulars of the offences set out at part E of the EAW, confirming that the respondent's driving on the date in question was on a public road and that his blood alcohol concentration was 0.8g/litre. Following on from the additional information, counsel for the respondent maintains that there is a lack of correspondence as regards the offence at (ii) above, i.e. entrusting a vehicle to another to drive knowing that other person was not licenced to drive it.
13. As regards offence (ii), counsel on behalf of the applicant proposes two corresponding offences under the law of the State, viz. conspiracy contrary to common law to commit the offence of driving without a licence and/or an offence contrary to s. 35A of the Road Traffic Act, 1961, as amended ("the Act of 1961").
14. Section 35A of the Act of 1961, as inserted by s. 5 of the Road Traffic (Amendment) Act, 2018, provides:-

"35A. (1) An owner of a mechanically propelled vehicle shall be guilty of an offence where a person, not being that owner, drives the vehicle in a public place at a time that the person —

(a) is not the holder of a driving licence or learner permit for the category of vehicle concerned, or

(b) is the holder of a learner permit for a vehicle of a category specified in clause (iv) of Regulation 17(6)(b) of the Road Traffic (Licensing of Drivers) Regulations 2006 (S.I. No. 537 of 2006) and is not driving the vehicle in accordance with that clause.

(2) It shall be a defence to proceedings for an offence under this section for the owner of a mechanically propelled vehicle to show —

(a) that the vehicle was used or taken possession of without his or her consent,

(b) in the case of proceedings for an offence under paragraph (a) of subsection (1), that prior to the driving of the vehicle in a public place he or she took all reasonable steps to satisfy himself or herself that the person held a driving licence or learner permit, as the case may be, or

(c) in the case of proceedings for an offence under paragraph (b) of subsection (1), that he or she took all reasonable steps to satisfy himself or herself that the person would be driving in accordance with clause (iv) of Regulation 17(6)(b) of the Road Traffic (Licensing of Drivers) Regulations 2006.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a class D fine."

15. By additional information dated 1st April, 2021, the issuing judicial authority confirmed that the respondent was the owner of the vehicle, that he knew the other person had no driving licence and that she drove the vehicle on the public road.
16. The respondent swore an affidavit dated 6th May, 2021, in which he disputes in the strongest terms that he was ever the owner of the vehicle. He avers that he rented the vehicle for two weeks by way of an informal oral agreement. He exhibits a report from his Romanian lawyer indicating that there is nothing in the penal file to indicate he was the owner of the vehicle. In a further affidavit dated 18th June, 2021, the respondent sets out efforts to trace the ownership details concerning the vehicle in the United Kingdom where it was registered without success, other than showing he was not registered as the owner.
17. The Court sought additional information from the issuing judicial authority as to whether ownership of the vehicle was an ingredient of the Romanian offence and what evidence was given in respect of ownership. The issuing judicial authority was invited to comment on the respondent's affidavit dated 18th June, 2021. By reply dated 30th June, 2021, it is indicated that ownership of the vehicle is not an ingredient of the Romanian offence. It is

accepted that the respondent was not the owner, but it is stated he was the rightful and actual holder of the vehicle due to his borrowing of the vehicle. It is further indicated that during the investigation, there was no intention to identify the legal owner and it was not necessary to establish that the respondent was the owner.

18. While I am somewhat sceptical about some aspects of the respondent's explanation as to how he came to be in possession of the vehicle, there is insufficient evidence to establish that he was the owner of same.
19. As to whether, as a matter of Irish law, the respondent would be regarded as the owner of the vehicle for the purposes of an offence contrary to s. 35A of the Road Traffic Act 1961, as amended ("the Act of 1961"), one must look to s. 3 of that Act which defines "owner" as "*when used in relation to a mechanically propelled vehicle ... which is the subject of a hire-purchase agreement or letting agreement, means the person in possession of the vehicle under the agreement*". A hire purchase agreement and a letting agreement are specifically distinguished from a "*hire-drive agreement*" which is defined in s. 3 of the Act of 1961 as meaning "*in relation to a mechanically propelled vehicle, an agreement under which the vehicle is hired from its registered owner, other than- (a) a hire-purchase or letting agreement*". In the instant case, it has not been established that the respondent hired the vehicle from its registered owner. However, on the basis of the evidence before me, such as it is, it appears he was not the owner of the vehicle and the arrangement upon which he had possession of same was more akin to a hire-drive agreement than a hire purchase or letting agreement. In such circumstances, he would not be regarded as the owner for the purposes of an offence contrary to s. 35A of the Act of 1961. It follows that, as ownership is an essential ingredient of the offence under Irish law, the acts constituting the offence in the EAW would not constitute an offence under the law of the State if carried out in this jurisdiction.
20. On the basis of the information before the Court, I am not satisfied that correspondence can be established between offence (ii) in the EAW, i.e. entrusting a vehicle to another to drive knowing that other person was not licenced to drive it, and the offence in this State contrary to s. 35A of the Act of 1961.
21. Counsel for the applicant submits in the alternative that correspondence could be established between offence (ii) in the EAW and the offence under Irish common law of conspiracy and, more particularly, conspiracy to commit an offence contrary to s. 38 of the Act of 1961, to wit: driving a mechanically propelled vehicle without a licence. She was unable to refer the Court to any instance where such a conviction had occurred or even where such a charge had been laid.
22. The common law offence of conspiracy is generally defined as per Lord Denman's definition in *R. v. Jones* [1832] 110 ER 485, 487 as an agreement to do an unlawful act or a lawful act by unlawful means. In Charleton, McDermott and Bolger, *Criminal Law*, 1st ed. (Dublin, 1999), an attempt is made to isolate certain categories of unlawful conduct which the courts have, traditionally, regarded as sufficient to find a criminal conspiracy and these "*would appear*" to include "*an agreement involving the commission of a*

summary offence" [paragraph 4.99]. The authority cited for this proposition is *R v. Blamires Transport Services Ltd.* [1964] 1 Q.B. 278. In that case, a company and one of its directors were prosecuted for conspiring with others to commit offences under the Road Haulage Act of keeping false records and driving without taking the statutory rest periods. Delivering judgment on behalf of the Court of Criminal Appeal, Edmund Davies J. rejected the defence submission that there was no general offence at common law of conspiracy to commit a summary offence but rather the common law confined such prosecutions to summary offences relating to labour law and revenue law. It was highlighted that conspiracy to commit a summary offence was an indictable matter, was not subject to the same time limits for commencing prosecution as the summary offence and neither was it limited to the same penalty as the summary offence. After reviewing the authorities in the matter, Edmund Davies J. held:-

"These establish, in our judgment, a well-settled practice over a long period of accepting as valid conspiracy charges of the kind here impugned. We see no reason in principle why such charges should not lie, and it seems merely an historical accident that many of the reported cases arise, as R. S. Wright J. said, from violations of statutes relating to labour. No decision to the contrary has been cited to us, and in our judgment, accordingly, the first ground of appeal relied upon fails."

23. The legal position was regularised in the United Kingdom ("the UK") by the Criminal Law Act, 1977, which created a statutory offence of conspiracy which is defined as:-

"... if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either-

- (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or*
- (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,*

he is guilty of conspiracy to commit the offence or offences in question."

24. Section 4(1) of the UK Criminal Law Act, 1977 provides that proceedings for conspiracy to commit summary offences may not be instituted except by or with the consent of the Director of Public Prosecutions. Where the time limit for prosecuting a summary offence has expired, s. 4(4) of the UK Criminal Law Act, 1977 provides that prosecution for conspiracy to commit that offence is also barred where the substantive offence has been committed. Generally, the maximum sentence for conspiracy to commit a statutory offence is the same as the maximum provided for the completed offence.

25. The effect of the UK Criminal Law Act, 1977 is to remove many of the anomalies, some clearly unfair and illogical, created by holding the existence of a general common law offence of conspiracy to commit a summary offence.
26. In this jurisdiction, s. 71 of the Criminal Justice Act, 2006, as amended ("the Act of 2006"), creates an offence of conspiracy to commit "*a serious offence*" which is defined as an offence for which a punishment of four or more years' imprisonment may be imposed. However, the said legislative provision did not purport to abolish the common law offence of conspiracy and is silent as to conspiracy to commit a summary offence.
27. The consultation paper on inchoate offences produced by the Law Reform Commission in 2008 (reference LRCCP 48-2008) cites *Blamires Transport Services Ltd.* as authority for the proposition that summary offences, as well as more serious offences, satisfy the unlawfulness requirement at common law.
28. It would appear therefore that in *Blamires Transport Services Ltd.*, the Court of Appeal of England and Wales accepted that the criminal offence of conspiracy could consist of a conspiracy to commit a summary offence. While this case has been cited by the Law Reform Commission and by Charleton, McDermott and Bolger in Charleton, McDermott and Bolger, *Criminal Law*, 1st ed. (Dublin, 1999), as support for a similar position at Irish law, there does not appear to be any reported instance of such an offence being prosecuted in this jurisdiction. Section 71 of the Act of 2006 introduced a specific statutory offence of conspiracy to commit 'a serious offence' and defined a serious offence in such a way as to exclude summary offences. This provision removes the common law anomaly, as regards serious offences, that a person guilty of conspiracy to commit an offence could be sentenced to a longer period of imprisonment than someone guilty of the substantive offence. If the common law offence of conspiracy to commit a summary offence does exist in this jurisdiction, then that anomaly remains as regards such an offence. It is not clear why the Act of 2006, insofar as it sought to give statutory effect to the law of conspiracy to commit an offence, is silent as regards conspiracy to commit offences other than 'serious offences'. In any event, if such an offence exists in this jurisdiction, then the anomalies associated with same are now brought into sharper focus, e.g. one could be open to an unlimited sentence for conspiracy to commit a summary offence but not in relation to conspiracy to commit a 'serious offence' unless the substantive 'serious offence' carries an unlimited penalty.
29. It may be open to debate whether the common law offence of conspiracy to commit a purely statutory summary offence, if it ever existed in Ireland, survived the adoption of the Constitution, given the anomalies inherent in such an offence. It may be that it has only survived in a limited form, perhaps where an agreement to carry out such an offence can be reasonably seen as more serious than the offence itself. I do not purport to determine herein whether a general offence of conspiracy to commit a summary offence exists under the law of the State, but rather I am concerned with the issue as to whether the acts of the respondent said to constitute the offence in Romania would, if carried out in this State, amount to an offence under the law of this State.

30. In *Minister for Justice v. Dolny* [2009] IESC 48, Denham J., as she then was, stated at para. 38:-

"38. In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence committed in this jurisdiction."

31. In applying the test set out in s. 5 of the Act of 2003, as explained in *Dolny*, I believe a court is to consider the question of correspondence, in relation to common law offences, in terms of the common law as it operates on the date on which the European arrest warrant issued. I am not satisfied that on 19th June, 2020, the common law in this State included the offence of conspiracy to commit an offence contrary to s. 38 of the Act of 1961. I am not satisfied that a charge of conspiracy to commit such an offence has been or would ever be prosecuted in this State. It is tempting to seek to find correspondence where the conduct of the respondent was unlawful in the issuing state, particularly where a failure to find correspondence with the offence in question has the effect of precluding surrender in respect of other offences. However, caution must be exercised to avoid unduly casting the net of criminal liability too wide by an over-reliance on the common law offence of conspiracy.

32. The offence provided for at s. 35A of the Act of 1961 is a purely summary offence involving the owner of the vehicle and carries a penalty limited to a fine. The Oireachtas appears to have intended that only the owners of vehicles, as defined in that Act, should be criminally liable for permitting a person without a licence to drive the vehicle. It would have been an easy matter to enact that any person, or any person having possession of a vehicle, would be so liable but the Oireachtas chose not to do so. I believe it is of some significance that the Oireachtas has specifically legislated to determine the particular circumstances where criminal liability should arise in circumstances such as this case. I am not convinced that it is now open to the Court to effectively extend the parameters of such liability by reference to the common law offence of conspiracy. Nor am I not satisfied that, by resort to the common law, a person, not being the owner of the vehicle, who permits another to drive that vehicle without a valid licence, is at risk (albeit an unlikely risk) of being prosecuted on indictment for conspiracy to commit an offence under s. 38 of the Act of 1961 with an unlimited penalty in terms of imprisonment and a fine, in circumstances where the owner of a vehicle doing precisely the same thing would only be exposed to summary prosecution and a limited fine.

33. I accept that simply because an offence has not been prosecuted, or has not been prosecuted for many years, does not automatically mean that it will not in the future be prosecuted or that it does not exist. The statute book is replete with statutory offences that may never have been prosecuted. In general, a statutory provision remains in force until repealed or struck down. The development and operation of the common law is not so clear cut. As stated earlier, I believe caution must be exercised in seeking to fill in what might otherwise be a gap in correspondence by resort to the common law offence of conspiracy. This is particularly so given the anomalies attaching to such an offence and the fact that, if it was ever prosecuted in this jurisdiction, it appears to have fallen into abeyance. The applicant is unable to indicate any instance in this jurisdiction of a charge of conspiracy to commit any summary offence ever having been prosecuted, let alone conspiracy to commit an offence under s. 38 of the Act of 1961.
34. It is for the applicant to satisfy the Court as to correspondence. I must be satisfied that correspondence has been established between offence (ii) in the EAW and an offence under the law of the State, and in particular an offence of conspiracy to commit an offence contrary to s. 38 of the Act of 1961. As stated earlier, it may be that some limited examples of conspiracy to commit a summary offence may exist under the law of the State. I am not satisfied that conspiracy to commit an offence contrary to s. 38 of the Act of 1961 is such an offence. I am certainly not convinced that such an offence would be prosecuted in this jurisdiction on the facts of this case.
35. As I am not satisfied that correspondence has been established between one of the offences to which the EAW relates and an offence under the law of this State, it follows that, in accordance with the reasoning of the Supreme Court in *Ferenca*, that I must refuse surrender.
36. I should point out that in his affidavit dated 23rd February, 2021, the respondent avers that he did not know the person in question did not have a licence. However, the details of the offence set out at part E of the EAW state that he did know that she did not possess a driving licence. The respondent has been convicted on the facts as set out in the EAW. This Court cannot look behind the conviction in terms of those facts.

Prison Conditions

37. Counsel on behalf of the respondent submits that surrender is precluded by s. 37 of the Act of 2003, as the conditions in Romanian prisons were such that detention therein would be a breach of the respondent's right under article 3 of the European Convention on Human Rights ("the ECHR") not to be subjected to inhuman or degrading treatment. In particular, she emphasised overcrowding and a lack of personal space in the detention facilities. The respondent swore an affidavit dated 23rd February, 2021, in which he avers, *inter alia*, that in 2016-2017 he had spent time on remand in custody in Botoşani Prison where the cell was overcrowded and cramped, sanitary conditions were very bad and he was only allowed out of the cell for 30 minutes per day. He avers inter-prisoner violence was common.

38. The solicitor for the respondent, Mr. Brendan Maloney, swore an affidavit dated 22nd March, 2021, in which he exhibits a report from a Romanian lawyer, Mr. Bugnariu Dănuț-Ioan, dated 19th March, 2021. In his report, Mr. Dănuț-Ioan opines that, if surrendered, the respondent will most likely serve his sentence in Botoșani Prison in a semi-open regime. As regards Botoșani Prison, he states that there are concerns in respect of overcrowding, inter-prisoner violence and generally poor conditions and that these conditions are aggravated by Covid-19. He quotes government reports indicating that in March 2021, the occupancy rate for Botoșani Prison was 115% with significant inter-prisoner aggression. The occupancy rate was calculated on the basis of 4 square metres per detainee. He states that while current conditions represent an improvement on previous years, they are still unsatisfactory and overcrowding has been emphasised by the Romanian Ombudsman.
39. By way of additional information dated 7th April, 2021, the issuing judicial authority encloses a letter from the Romanian National Administration of Penitentiaries dated 5th April, 2021. This letter indicates that, if surrendered, the respondent will initially spend 21 days in quarantine in Bucharest-Rahova Penitentiary where he will have a minimum of 3 square metres of individual space. As regards any sentence, bearing in mind the relevant criteria to be applied, the respondent is likely to initially be detained in a closed regime and possibly in Bacău Penitentiary. The conditions there are set out in the letter. After serving one-fifth of the penalty, the status of the respondent will be re-assessed and, depending upon behaviour, he may move to a semi-open regime, most likely in Botoșani Penitentiary. The conditions for this regime and institution are set out in the letter. If the respondent is assigned to serve the penalty in an open regime then he is likely to be transferred to Iași Penitentiary and again the relevant conditions in respect of same are set out. The letter concludes with the following assurance:-

"In view of the implementation of the measures contained in the Action Plan for the period 2020 – 2025, developed for the enforcement of the pilot decision Rezmives and others vs. Romania as well as of the decisions delivered in the group of cases Bragadireanu vs. Romania, as well as the number of inmates currently in the custody of the National Administration of Penitentiaries, as a result of the criminal policies adopted by the Romanian state, the National Administration of Penitentiaries guarantees a minimum individual space of 3 square metres during the entire period of execution of the sentence, including the bed and the related furniture, without including the space intended for the bathroom."

40. On reviewing and evaluating all of the information before the Court, I am not satisfied that there are substantial grounds for believing that, if surrendered, there is a real risk that the respondent will be subjected to inhuman or degrading treatment contrary to article 3 ECHR or article 4 of the Charter of Fundamental Rights of the European Union. I regard the assurances contained in the letter from the Romanian National Administration of Penitentiaries as having been endorsed by the issuing judicial authority as the letter was provided to this Court by the issuing judicial authority. Moreover, even regarding the said assurances as coming from an entity other than the issuing judicial authority, on

reviewing and evaluating same in the context of all of the information before the Court, I am satisfied that same can be given significant weight as the assurances are specifically related to the respondent, to the regimes he is likely to be detained under and the institutions he is likely to be detained in. The assurances are specifically given in the context of the judgments and requirements of the European Court of Human Rights.

41. It should be noted that s. 4A of the Act of 2003 provides for a presumption that Member States will comply with the requirements of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. On considering all of the evidence before the Court, I am satisfied that the presumption in s. 4A of the Act has not been rebutted.
42. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine whether the likely conditions in which the respondent will be detained, if surrendered, are such as would render an order for surrender incompatible with the State's obligations under Article 3 ECHR. I am satisfied that an order for surrender would not be rendered incompatible with those obligations due to prison conditions in the issuing state.
43. I dismiss the respondent's objection to surrender based on s. 37 of the Act of 2003 and Romanian prison conditions.

Section 45 of the Act of 2003

44. I am satisfied that the requirements of s. 45 of the Act of 2003 have been complied with. Counsel for the respondent accepted at hearing that this was so.

Conclusion

45. Having found a lack of correspondence between one of the offences to which the EAW relates and an offence under the law of the State, and in line with the reasoning of the Supreme Court in *Ferenca*, it follows that this Court will refuse the application for an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Romania.