

**THE HIGH COURT**

[2022] IEHC 293  
[2020 No. 216 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**IOAN ANTON**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 9th day of May, 2022**

1. In this application, the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 9th June, 2020 ("the EAW"). The EAW was issued by Judge Anastasia Gargale of the Tribunal of Bucharest – Criminal Law Division 1, as the issuing judicial authority. The EAW seeks the surrender of the respondent for prosecution in respect of 5 serious offences alleged to be related to a criminal organisation.
2. The EAW was endorsed by the High Court on 22nd September, 2020 and the respondent was arrested and brought before the High Court on 28th September, 2020.
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 this respect.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), have been met. As set out at part C of the EAW, the offences in respect of which surrender is sought and the respective maximum penalties are as follows:-
  - (i) creation of an organised crime group – 3 to 10 years' imprisonment;
  - (ii) blackmail – 2 to 7 years' imprisonment;
  - (iii) incitement to aggravated murder – 15 to 25 years' or life imprisonment ;
  - (iv) incitement to attempted aggravated murder – 15 to 25 years' or life imprisonment;  
and
  - (v) incitement to aggravated robbery – 3 to 10 years' imprisonment.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
6. The circumstances in which the alleged offences were committed, including the respondent's degree of participation in same, are set out at part E of the EAW. Also at part E of the EAW, the issuing authority has certified that offences (i), (iii) and (iv) as listed above each carry a maximum penalty of at least 3 years' detention and has ticked the relevant boxes for "participation in a criminal organisation" and "murder, grievous

bodily injury". This indicates that Article 2(2) 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"), applies to the offences so that by virtue of s. 38(1)(b) of the Act of 2003, it is not necessary for the applicant to establish correspondence between those offences and any offence under the law of this State. I am satisfied that there is no reason to believe that the said certification is in error, and so there is no need for the applicant to establish correspondence. No issue was taken in respect of this certification and in any event, I am satisfied that, if necessary, correspondence could be established. As regards the other two offences set out at (ii) and (v), I am satisfied that correspondence exists between those offences and the following offences respectively, under the law of this State: demanding money with menaces contrary to s. 17(1) of the Criminal Justice (Public Order) Act, 1994 and robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and/or incitement to commit those crimes in respect of which he may be tried and punished as a principal offender. I am also satisfied that the acts alleged to constitute the offences alleged against the respondent correspond with the offences in this State of conspiracy to commit a serious offence contrary to s. 71 of the Criminal Justice Act, 2006 ("the Act of 2006"). Further, s. 7(1) of the Criminal Law Act, 1997 provides:-

*"7.— (1) Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender."*

It is alleged that the respondent organised and incited others to commit the murder in question. In such circumstances, he aided, abetted, counselled or procured the others to commit murder and in accordance with s. 7(1) of the Criminal Law Act, 1997, he is liable to be tried for and convicted of murder. No issue was taken on behalf of the respondent as regards correspondence.

7. As some of the offences referred to in the EAW carry a potential penalty of life imprisonment, it is necessary for the issuing judicial authority to complete part H of the EAW, and this is not completed in the EAW. By additional information dated 2nd October, 2020, the necessary details in that regard have been furnished. No issue was taken on behalf of the respondent as regards these details.
8. The respondent objected to surrender on the following grounds:-
  - (a) surrender is precluded by s. 44 of the Act of 2003; and
  - (b) surrender is precluded by s. 37 of the Act of 2003.

**Section 44 of the Act of 2003**

9. Section 44 of the Act of 2003 directly incorporates Article 4.7.(b) of the Framework Decision and provides as follows:-

*"44.—A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is*

*alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State."*

10. In essence, what is alleged against the respondent is that he took a leading part in an organised crime group in order to commit murder and other offences, which were in fact committed. The offences are alleged to have been committed in Ireland, outside the territory of the issuing state, and thus the first part of the test set out in s. 44 of the Act of 2003 is satisfied. In relation to the second part of the test, the Court must consider whether *"the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State"*.
11. In *Minister for Justice and Equality v. Pal* [2020] IEHC 143, one of the respondent's alleged co-actors in the alleged offences was the subject of an application for surrender pursuant to a European arrest warrant issued by Romania. McDermott J. was satisfied that the alleged offence of creating an organised criminal group alleged against the co-actor corresponded with an offence under Irish law contrary to s. 71 of the Act of 2006.
12. By virtue of s. 71(1) of the Act of 2006, it is an offence under Irish law for a person to conspire, whether in the State or elsewhere, to do an act in the State that constitutes a serious offence in the State, or to do an act outside the State that constitutes a serious offence under the law of that place and which, if done in the State, would constitute a serious offence in the State. Section 71(2) of the Act of 2006 provides:-

*"71. – (2) Subsection (1) applies to a conspiracy committed outside the State if-*

  - (a) the offence, the subject of the conspiracy, was committed, or was intended to be committed, in the State or against a citizen of Ireland ... or*
  - (d) the conspiracy is committed by an Irish citizen or a person ordinarily resident in the State."*
13. In *Pal*, McDermott J. held at paras. 30-32:-

*"30. I am satisfied that the facts as outlined and the offence alleged of creating an organised criminal group provide a basis by reason of the offence created under s.71(2) to surrender the respondent in the circumstances of this case. It is correct that a criminal conspiracy contrary to s.71(2) entered into outside the State by an Irish citizen or a person ordinarily resident in the State to commit murder in Ireland is a criminal offence. In the course of these proceedings it was accepted by the respondent in his application for bail that he had been resident in the State for a period in excess of ten years. He is also a citizen of Romania. There is no doubt that he could have been prosecuted in this jurisdiction for the alleged offence. He could also be prosecuted in this jurisdiction for a similar offence if it had been*

*committed outside Ireland. I am satisfied that an alleged conspiracy to murder formed by a person(s) who is an Irish citizen or ordinarily resident in the State is an offence over which Ireland may claim an extra-territorial jurisdiction. It does not matter whether the act, the subject of the conspiracy, is completed or not. I am not satisfied that the allegation here is that a group was randomly formed for that purpose, which is not within the contemplation of the section. Therefore, I am satisfied that the offence corresponds in the circumstances of this case to an offence under s.71(2). It is an offence in respect of which the Romanian authorities are entitled to seek and be granted his surrender on the basis of their exercise of extra-territorial jurisdiction over the offence and offender in circumstances which are the same as those exercisable by Ireland over its citizens. Thus the acts constituting the offence for which surrender is sought are acts committed outside the issuing state but are such as constitute an offence under Irish law, the law of the state where the offence was allegedly committed. The respondent's surrender for this offence is not prohibited by s.44 of the 2006 Act as amended.*

*31. It is clear that the most serious offence as set out in the warrant alleges that the respondent with others created an organised crime group led by A.I. to commit a murder in Ireland. The 'conspiracy' offence alleges that the criminal group was created for that purpose. The later information contextualises that allegation and provides in essence the background material which in this jurisdiction would also constitute evidence of intention and motive that might properly be led if the charge of murder were to be prosecuted here. The substance of the allegation in the warrant enhanced by the further information received, insofar as it alleges agreement and engagement with others in the murder and other offences would also be embraced by an allegation of common design on the part of the actual perpetrators of the offences and those named but who are not alleged to have been present when the victim was allegedly murdered and the others attacked. The fact that they may also be involved in other criminal activity together which is linked to the alleged aggravated murder and the events of that night is further evidence supportive of the existence of a common design to murder forged between those who committed it. However, the agreement between the various persons named in the charge and information, though related in the charge to the creation of a criminal group formed to execute a murder does not, in my view establish that it is an allegation of the random formation of a group in the sense contemplated by the section.*

*32. The formation of a criminal group randomly for the commission of the offence of murder would not qualify as an offence under s.71(2). It is however, claimed that the respondent, the other perpetrators and others involved in the conspiracy were already part of a criminal group engaged in nefarious activities and that the motive for the killing, attempted killing and aggravated robbery was the protection of that group's criminal business. Therefore, the allegation that the respondent and others, as members of the criminal group created to carry out the crime of murder as set out in the warrant, already formed part of a criminal group is to an extent*

*correct. It is clear that the activity mostly described in the later information also falls within the statutory definition of the offence. However, the essence and reality of the allegation set out in the warrant is that they agreed to create a murder or assassination group and commit murder for the benefit of the criminal organisation as it existed. The alleged reason that the organisation was created appears to be narrowly drafted and focussed on a limited objective or purpose namely, the specific crime of murder, which was partly highlighted in bold type and underlined in the warrant but I do not consider that to be determinative. The application for surrender is rooted in a factual reality and background of organised criminal endeavour which allegedly informed the intention and purpose of the criminal conspiracy to create a group to commit aggravated murder at 7 Academy Apartments, Navan."*

14. As regards the alleged offences of attempted aggravated murder and aggravated robbery, McDermott J. held at para. 33:-

*"33. However, I am not satisfied that ss.71(2) or 72 are offences that could under Irish law be regarded in the circumstances of this case as corresponding to the offences of attempted aggravated murder or aggravated robbery or as providing a basis upon which to conclude that Ireland operates an extra-territorial jurisdiction in respect of those offences or some conspiracy to commit them."*

15. McDermott J. went on to hold that as regards the alleged offence of aggravated murder, there was a corresponding offence of murder in this jurisdiction and that pursuant to s. 9 of the Offences Against the Person Act, 1861, as adapted by the Offences Against the Person Act, 1861 (Section 9) Adaptation Order, 1973 (S.I. No. 356 of 1973), an Irish citizen is liable to be prosecuted in Ireland for any murder or manslaughter committed extraterritorially in another jurisdiction. As the Romanian authorities were seeking the surrender of the respondent in respect of a murder in Ireland on the basis of his Romanian citizenship, then the necessary reciprocity between the exercise of such extraterritorial jurisdiction as required by the decision in *Minister for Justice, Equality and Law Reform v. Bailey* [2012] 4 I.R. 1 had been met.

16. In *Pal*, McDermott J. ordered surrender in respect of the alleged offence of creating an organised criminal group in order to commit murder and the alleged offence of aggravated murder. His decision was appealed. On appeal, *Minister for Justice and Equality v Pal* [2021] IECA 165, the Court of Appeal upheld the decision of McDermott J. In the Court of Appeal, Donnelly J. held at para 119 of her judgment:-

*"119. In this case if the facts are reversed and the equivalent circumstances are examined, Ireland would have jurisdiction to prosecute an Irish citizen for the offence of murder in Romania. A relevant factor is the citizenship of the requested person and it is appropriate to reverse the citizenship of the requested person with that of an Irish person. Moreover, Romania exercises extraterritorial jurisdiction on the same basis as Ireland."*

She went on to hold in para. 120:-

*"120. .... Thus, in the context of this appeal, the High Court properly took into account the nationality of the appellant as the jurisdictional circumstance relied on by Romania to assert its entitlement to prosecute the appellant and seek his surrender for that purpose. Romania exercises extraterritorial jurisdiction in relation to murder committed or allegedly committed by its own citizens; Ireland exercises extraterritorial jurisdiction in respect of murders committed or allegedly committed by its own citizens. Where, as here, surrender is sought for the purposes of a prosecution that relies on the nationality of the perpetrator, that fact should be reversed. That is what the High Court Judge did and he was correct to do so."*

17. The matter was further appealed to the Supreme Court and in *Minister for Justice and Equality v. Pal* [2022] IESC 12, O'Donnell C.J. rejected the interpretation of s. 44 contended for by the appellant or that it was reasonably possible to interpret Article 4.7.(b) of the Framework Decision in any way which could lead to a refusal to surrender the appellant. The Supreme Court refused the appeal. It is not necessary to set out herein the detailed reasoning of the Supreme Court in that regard.
18. In line with the reasoning of the Courts in *Pal* and, in particular, the judgment of the Supreme Court, I dismiss the respondent's objections based on s. 44 of the Act of 2003 as regards the offences of creation of an organised crime group and incitement to aggravated murder. Also, in line with the reasoning in *Pal*, I refuse surrender in respect of the other alleged offences.

### **Section 37 of the Act of 2003**

19. It is submitted on behalf of the respondent that surrender is precluded by s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR") due to prison conditions in Romania. It is submitted that the conditions in which the respondent is likely to be detained if surrendered amount to inhuman and degrading treatment in breach of Article 3 ECHR. The respondent relied upon a report from Mr. Bugnariu Dănuț-Ioan dated 9th December, 2020. According to the report from Mr. Dănuț-Ioan, pending trial the respondent would most probably be held in custody in Rahova Prison, Bucharest. General conditions at Rahova Prison could be considered rather satisfactory but there was concern in relation to overcrowding and hygiene. Romanian National Prison Statistics for 24th November, 2020 showed 1,302 detainees for 1,093 slots of 4 square metres. On 9th December, 2020 the number of detainees had risen to 1,282. Mr. Dănuț-Ioan acknowledged that there were domestic cases where detainees from Rahova Prison had applied to court and obtained the minimum space of 4 square metres. Mr. Dănuț-Ioan opined that, if convicted for any or all of the offences in the EAW, the respondent would most probably be required to serve his sentence in a maximum security or closed regime at Iași Prison where the conditions are considered very poor with problems such as overcrowding, poor hygiene and inter-prisoner violence having been highlighted in 2018. On 24th November, 2020 in Iași Prison, there were 656 detainees for 426 slots of 4 square metres. By 9th December, 2020 the number of detainees had increased to 687. However, again Mr. Dănuț-Ioan did

acknowledge that there had been cases where detainees from Iași Prison had applied to court and obtained the minimum space per detainee but not all sentences had been properly implemented.

20. In an affidavit dated 15th December, 2020, the appellant's solicitor, Ms. Ciara Hallinan, refers to the said report of Mr. Dănuț-Ioan and exhibits a report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") dated 19th March, 2019 and based upon a visit to Romania in 2018 concerning conditions in Romanian prisons. She also referred to the decision of the European Court of Human Rights ("the ECtHR") in *Rezmiveș & Others v. Romania* (Applications No. 61467/12, 22088/04) in which the court held that there had been a breach of Article 3 ECHR as regards conditions of detention, including conditions in Iași Prison.
21. By letter dated 8th January, 2021, the Court furnished the issuing judicial authority with a copy of the report of Mr. Dănuț-Ioan and sought additional information from the issuing judicial authority concerning the conditions of detention which the respondent was likely to face if surrendered. In particular, it was asked to identify the institutions where he would be held pre-trial and post-trial and to indicate whether a minimum individual living space of 3 square metres would be afforded to him in such institutions and also to indicate the general conditions in such institutions.
22. This request was replied to by the issuing state furnishing a letter dated 22nd January, 2021 from Mr. Fabry, Chief Commissioner of Prisons, Director of the Department of Detention, Safety and Penitentiary Regime to Mrs. Onaca, Director of the Department of International Law and Judicial Cooperation, Ministry of Justice, in which the Romanian authorities addressed the requested issues. The letter sets out the 4 categories of regime in which sentenced persons are detained in Romania: maximum security regime, closed regime, semi-open regime and open regime. It indicates that it is not possible to say, at this stage, which institution or regime the respondent is likely to be held in, if sentenced. Details of detention cells are provided, as well as details in respect of meals, healthcare and medical treatment. The letter states that the National Prison Administration warrants that the detainee would benefit from a minimum personal space including bed and related furniture of 3 square metres for custodial sentences, except for custodial sentences to be served in the semi-open regime where only 2 square metres were warranted. The letter further warranted that in pre-trial custody, the detainee would benefit from a minimum personal space of 3 square metres in the cell.
23. Further additional information was received in the form of a letter from the Romanian Ministry of Internal Affairs, General Inspectorate of the Romanian Police to the Tribunal of Bucharest dated 25th January, 2021. This specifically referred to the respondent and indicated that the respondent would initially be held in the arrest and provisional detention facility within Ialomița County Police Inspectorate until the legality and validity of the preventive measure is verified. During his stay in the facility, he would have at least 4.6 square metres of personal space including related furniture. He would undergo a

medical check-up and receive any necessary medical care and psychological assistance and would be provided with hygiene materials. Details are given of the general conditions including bedding, sanitary facilities, hygiene and sanitation, food and access to open air facilities. The letter states that, if the respondent has to be transferred to other provisional detention facilities, he would be granted the same detention conditions.

24. The respondent relied upon an affidavit sworn by Ms. Giliola Axinte, a Romanian lawyer, dated 15th February, 2021 in which she avers that, on 17th January, 2021, she went to Slobozia Penitentiary in Romania and met with a Mr. Lazar, a detainee, and took a statement from him. In his statement, Mr. Lazar states that he was extradited from "*Great Britain*" on 17th December, 2018 on foot of a European arrest warrant and that at the time of extradition, the Romanian State had offered undertakings in respect of the conditions the sentence would be served in. In particular, it was undertaken that he would serve the sentence in Rahova Prison initially and that he would then be transferred to Giurgiu Prison, he would then be transferred to Jilava Prison into a semi-open regime and then to Gaiesti Prison in an open regime. He states that he is currently serving the sentence in Slobozia Prison contrary to the guarantees offered and that he was not afforded most of the conditions and undertakings made in respect of his detention, namely water quality was undrinkable and had a bad smell, there were insects in the detention room and a lack of natural light and the absence of a prison doctor for over 8 months.
25. The solicitor for the respondent, Ms. Ciara Hallinan, swore a further affidavit dated 22nd March, 2021 in which she exhibits a translation of the information provided by the Romanian authorities to the United Kingdom authorities prior to the surrender of Mr. Lazar. The said letter guarantees that the detainee will be provided with an area of a minimum of 3 square metres of personal space. The letter does not warrant where Mr. Lazar will be detained but states that it is most likely to be initially in a closed regime in Giurgiu Prison and similarly refers to the other prisons as institutions where he is most likely to be transferred. The letter sets out the general conditions of the detention including the permanent provision of drinking water.
26. I am not satisfied to place significant evidential weight upon the statement of Mr. Lazar and in fairness, counsel for the respondent did not place significant weight or emphasis upon same. No guarantee was given to Mr. Lazar as regards where he was to be detained. He makes no complaint regarding overcrowding and the prison he is detained in is not one of the institutions identified as being a likely place of detention as regards the respondent herein.
27. After hearing further submissions from the parties, the Court sought further information from the Romanian authorities. In particular, the Court sought an indication as to which prison the respondent is likely to be held in as a matter of probability. The Court pointed out that in a related request for the surrender of Mr. Pal in respect of the same offences, the Romanian authorities had been able to provide an assurance that Mr. Pal would not be detained in Iași Prison if convicted and, if assigned to a maximum security or closed



prison regime, he would be detained in Mărgineni Prison. The Romanian authorities were requested to provide similar assurance in respect of this respondent or alternatively, to confirm that he would have a personal minimum space of 3 square metres to address the conditions in Iași Prison, in particular, the issues raised by Mr. Dănuț-Ioan. The Romanian authorities were also given the opportunity to provide any additional information they wished to rely upon to confirm that the respondent would be held in conditions compliant with the jurisprudence of the ECtHR. The report of Mr. Dănuț-Ioan was enclosed again (I note that in subsequent submissions before the Court there was a difference of opinion as to whether Mr. Pal had been given an express assurance that he would not be detained at Iași Prison or whether same had been inferred by McDermott J. in *Pal*).

28. By letter dated 12th February, 2021, the issuing judicial authority replied indicating that, as the ECtHR had found that Romania violated Article 3 ECHR as regards prison conditions at the General Police Directorate of Bucharest, the respondent would be held in custody in the detention centre within Ialomița County Police Inspectorate for a quarantine period of approximately 21 days and then immediately transferred to prison facilities attached to the National Administration of Prisons for a quarantine period. The letter points out that as the respondent had not been convicted, it was not possible to state which prison regime he would be assigned to or which prison facility he would be detained in. While on remand, he would have an accommodation area of at least 4.6 square metres, including the related furniture, and the letter provided details of the conditions he would be held in on remand. If the respondent had to be detained elsewhere, he would be provided with similar conditions. As regards post-conviction conditions, the letter confirmed what had been set out in the internal Romanian correspondence previously furnished.
29. By further letter dated 15th March, 2021, the issuing judicial authority replied enclosing a letter it had received from the Department of Detention, Safety and Penitentiary Regime dated 11th March, 2021. The letter indicates that if the respondent is to be detained under the maximum safety or closed prison regime, he would commence serving his sentence at Mărgineni Prison. The letter sets out the salient features of the maximum and closed prison regimes. After serving one-fifth of the sentence, the detainee's situation is reviewed. If the respondent is assigned to a semi-open regime, he will most likely be transferred to Tulcea Prison. The main features of the semi-open prison regime are set out. If assigned to an open regime, the respondent would most likely be transferred to Poarta Albă Prison in Constanța, and the main features of the open regime there are set out. The letter specifically concludes that:-

*"... following a reconsideration of the current number of slots within the Romanian prison system, the concerned person will be granted a personal space of 3 sqm, which does not include the sanitary facility, regardless of the prison regime the detainee would be assigned to (maximum security, closed, semi-open or open)."*

30. As can be seen from the above, the Court has received additional information from both the issuing judicial authority and from other Romanian authorities concerning where the respondent is likely to be detained if surrendered, and the conditions he will be detained

in. As regards assurances provided by the competent authorities of the issuing Member State in ML (Case C-220/18 PPU), the Court of Justice of the European Union (“the CJEU”) held as follows at paras. 111-112:-

*"111. The assurance provided by the competent authorities of the issuing Member State that the person concerned, irrespective of the prison he is detained in in the issuing Member State, will not suffer inhuman or degrading treatment on account of the actual and precise conditions of his detention is a factor which the executing judicial authority cannot disregard. As the Advocate General has noted in point 64 of his Opinion, a failure to give effect to such an assurance, in so far as it may bind the entity that has given it, may be relied on as against that entity before the courts of the issuing Member State.*

*112. When that assurance has been given, or at least endorsed, by the issuing judicial authority, if need be after requesting the assistance of the central authority, or one of the central authorities, of the issuing Member State, as referred to in Article 7 of the Framework Decision, the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the Member States and 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 4 of the Charter."*

31. In *Dorobantu* (Case C-128/18), the CJEU further considered this issue and held at paras. 68-69:-

*"68. When the assurance that the person concerned will not suffer inhuman or degrading treatment on account of the actual and precise conditions of his detention, irrespective of the prison in which he is detained in the issuing Member State, has been given, or at least endorsed, by the issuing judicial authority, if need be after the assistance of the central authority, or one of the central authorities, of the issuing Member State, as referred to in Article 7 of Framework Decision 2002/584, has been requested, 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 (see, to that effect, judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C 220/18 PPU, EU:C:2018:589, paragraph 112).*

*69. It is, therefore, only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding an assurance such as that referred to in the preceding paragraph, there is a real risk of the person concerned being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter, because of the conditions of that person's detention in the issuing Member State."*

32. As regards information which has been provided by the Romanian authorities other than the issuing judicial authority, I have evaluated same in the context of all the information before the Court as per para. 114 of the CJEU judgment in ML:-

*"114. As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority."*

33. Whilst the information furnished does not come directly from the issuing judicial authority, I am nevertheless satisfied to attach significant weight to same coming as it does from an emanation of the Romanian State with responsibility for the relevant areas of the criminal justice system in that state. Such information has been provided in response to queries raised by this Court with the issuing judicial authority. I am satisfied that there is no basis for doubting the knowledge, competence or bona fides of the persons providing the said information.

34. Following the Judgment of the Supreme Court in Pal, the respondent made a further submission to the Court to the effect that the Court should not accept the assurances contained in the additional information provided by the issuing state and should insist upon an express undertaking from the issuing state that at no time after his surrender will the respondent be detained in Iași prison in connection with the offences the subject matter of the EAW. I reject this submission.

35. Having considered and evaluated all of the information before the Court I am satisfied that, as regards pre-trial detention, the respondent, if detained, will be held in the detention centre within Ialomița County Police Inspectorate, pending verification of the legal basis for holding him, and he shall then be immediately transferred to prison facilities attached to the National Administration of Prisons for a quarantine period where he will be afforded approximately 4.6 square metres of personal space. On remand, he will have a personal space of at least 3 square metres. If convicted, he is likely to serve a term of imprisonment which will initially place him within the maximum security regime or closed regime and that it is likely he will be detained in such a regime in Mărgineni Prison where he will be guaranteed a minimum 3 square metres of personal space. After serving one-fifth of his sentence, he may go to Tulcea Prison in a semi-open regime and, thereafter, to Poarta Albă Prison in an open regime. As regards these latter two institutions, the respondent's possible detention there is further removed in time and conditions at such time in those prisons are really a matter for speculation.

In any event, I am satisfied on the basis of the assurances provided that, regardless of which institution the respondent is detained in, he will be provided with a minimum of 3 square metres of personal space. As regards the prison conditions at the various institutions other than personal space, I am satisfied that same will be of a generally satisfactory nature and that same do not pose a real risk of a breach of Article 3 ECHR or Article 4 of the Charter of the Fundamental Rights of the European Union.

36. Taking all matters into consideration, I am not satisfied that there are substantial grounds for believing that there is a real risk that, if surrendered, the respondent will be subjected to inhuman or degrading treatment in breach of Article 3 ECHR or Article 4 of the Charter of Fundamental Rights of the European Union.
37. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. I am satisfied that the presumption contained in s. 4A of the Act of 2003 has not been rebutted.
38. Bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would contravene a provision of the Constitution. I am satisfied that surrender would not be incompatible with the State's obligations in that regard and nor would it contravene any provision of the Constitution.
39. I dismiss the respondent's objection to surrender based upon likely conditions of detention if surrendered.

**Conclusion**

40. I am satisfied that the surrender of the respondent is not precluded by Part 3 of the Act of 2003 or any part of that Act.
41. Having dismissed the respondent's objections, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Romania in respect of the offences of creation of an organised crime group and incitement to aggravated murder.