



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL INQUIRY**

[IN THE ACTS OF THE EXTRADITION CALLED AS THE COURT OF COMMITTAL]

**Magistrate Dr. Leonard Caruana LL.D., M.A. (Fin. Serv)**

**The Police**

(Inspector Roderick Spiteri)

**Vs**

**Paul-Philippe Al-Romaniei**

Today, the 20th May 2024

The Court,

Having seen that Paul-Philippe Al-Romaniei of 76 years, of Romanian Nationality, born in Paris on the 13 August 1948, holder of United Kingdom of Great Britain and Northern Ireland Passport number 558783808 was arraigned under arrest as he is wanted by the Romanian Competent Authorities in terms of Article 5 of Subsidiary Legislation 276.05 in order to serve a sentence of imprisonment;

Having seen the European Arrest Warrant (the "EAW") of the 18<sup>th</sup> February 2020 issued by the Braşov Court of Appeal – Criminal Division;

Having seen the Certificate dated the 28 April 2024 issued by the Attorney General in terms of Regulation 6A of the Extradition (Designated Foreign Countries) Order (S.L. 276.05) hereinafter referred to as the "Order";

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Having seen that during the sitting of the 29<sup>th</sup> April 2024, the Court ascertained that the person arraigned is, in fact, the person wanted by the mentioned foreign authorities;

Having seen the evidence submitted;

Having heard the submission of the parties;

Considers;

That the European Arrest Warrant is regulated within the Member States of the European Union by means of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between the Member States (2002/584/JHA), as amended by Council Framework Decision 2009/299/JHA of the 26 February 2009, which Framework Decision forms the inspiration of our law in this regard.

That Article 1(1) and (2) of the Framework Decision stipulate that:

- 1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.*
- 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.*

That the general principle which forms the basis of the Framework Decision is explained in the Commission Notice – Handbook on how to issue and execute a European Arrest Warrant<sup>1</sup> which states: -

*“The Framework Decision on EAW reflects a philosophy of integration in a common judicial area. It is the first legal instrument involving cooperation between the Member States on criminal matters based on the principle of mutual recognition. The issuing Member State’s decision must be recognised without further formalities and solely on the basis of judicial criteria.*

*The surrender of nationals is a principle and a general rule, with few exceptions. These exceptions concern the enforcement of custodial sentences in one’s home country and apply equally to residents. In practice, about one fifth of all surrenders in the Union concern a country’s own nationals.”*

Our courts also had the opportunity to underline this principle. In fact, in the judgement **Carmelo Borg et vs Ministru Responsabbli mill-Ġustizzja u l-Intern et**<sup>2</sup> it was held that:

*“Fil-fehma kunsidrata ta’ din il-Qorti, l-Ordni dwar Pajjizi Barranin Appuntati dwar l-Estradizzjoni jagħmel restrizzjonijiet fuq il-verifika gudizzjarja li huma permissibbli, ma humiex irragjonevoli, ma jikkozzawx ma’ xi principji ta’ gustizzja naturali, u li jinkwadraw fl-iskop tal-ligi principali, cioe` dak li tigi regolata l-estraddizzjoni ta’ persuna minn Malta għal pajjiz barrani – f’dan il-kaz pajjizi ta’ l-Unjoni Ewropea fejn principju bazilari huwa dak tal-fiducja reciproka li dawn il-pajjizi għandhom fis-sistema tal-gustizzja ta’ xulxin.”*

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<sup>1</sup> **Commission Notice – Handbook on how to issue and execute a European Arrest Warrant** (C/2023/1270), dated 15 December 2023, p. 10/166.

<sup>2</sup> **Carmelo Borg et vs Ministru Responsabbli mill-Ġustizzja u l-Intern et**, Constitutional Court, 15th May 2006 (App. Ċiv Nru 1080/2005/1)

Furthermore, the Court of Justice of the European Union, in the **Radu** case<sup>3</sup> held that:

- “34. *Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States (see, to that effect, judgment of 28 June 2012 in Case C-192/12 PPU West, paragraph 53 and the case-law cited).*
35. *Under Article 1(2) of Framework Decision 2002/584, the Member States are in principle obliged to act upon a European arrest warrant.”*

Moreover, in the joined cases in the names **Aranyosi and Căldăraru**<sup>4</sup> the Court of Justice of the European Union held that:

- “79 *In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital (6) of that Framework Decision, the ‘cornerstone’ of judicial cooperation in criminal matters, is given effect in Article 1(2) of the Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).*
- 80 *It follows that the executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework*

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<sup>3</sup> Case C-396/11, **Ciprian Vasile Radu**, judgment of 29 January 2013,(para 34 -35).

<sup>4</sup> Joined Cases C-404/15 and C-659/15 PPU, **Aranyosi and Căldăraru**, Judgment of 5 April 2016 (para 79 -80).

*Decision. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that Framework Decision (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited)."*

Therefore, from the above it results that the general underlying principle is that the executing State is bound to execute a European Arrest Warrant on the basis of mutual trust and mutual recognition and may only refuse to do so on the specific grounds listed in Articles 3, 4 and 4a of the Framework Decision or in exceptional circumstances<sup>5</sup>, on reasons as specified by the Court of Justice of the European Union. Our Order and legislative framework regulating these proceedings follows the same general principles as outlined above.

Therefore, this Court, in its examination of these proceedings is precluded from focussing on matters which do not fall strictly within the grounds listed in Articles 3, 4 and 4a of the Framework Decision or matters which are found in the caselaw of the Court of Justice of the European Union.

Considered

By way of background, it results that the requested person is wanted by the Romanian Authorities for the execution of a sentence of imprisonment for a period of 3 years and 4 months issued by the Braşov Court of Appeal – Criminal Division given on the 17 December 2020. It also results that the Court of Braşov issued a prison sentence execution warrant no. 42/17.12.2020, which forms the basis for the present EAW.

According to the EAW, the warrant relates to the conviction of the requested person for three offences:

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<sup>5</sup> To this end, vide C-216/18 PPU judgments of 25 July 2018, **Minister for Justice and Equality** para 43 and the case-law cited, and also C-220/18 PPU Judgement of 25 July 2018, **Generalstaatsanwaltschaft**, para 56

- “a) Starting with August-September 2006 and continuously, the defendant PAUL PHILIPPE OF ROMANIA promised the defendant TRUICA REMUS and his associates from the criminal group the defendants TAL SILBERSTEIN, BENYAMIN STEINMETZ ROSU ROBERT MIHAITA, MARCOVICI ANDREI MARIUS, MATEESCU LUCIAN, ANDRONIC DAN CATALUN an important share between 50% and 80% of the value of the goods claimed in Romania and subsequently transferred them the goods as he obtained them by fictional sale-purchase contracts with RECIPLIA SRL (limited liability company) in exchange for their intervention before public servants involved in the retrocession procedures using direct (former and current adviser to the prime minister) and indirect influence, their relations in politics, justice at the highest level and media (friendship/business relations with the members of the Government, Parliament, officials of public authorities, influential people in media, relations with the High Court of Cassation and Justice, contracting the service of a top law practice) to determine that to act against their job duties and in his favour aiming to unfairly obtain the claimed goods and putting them in their position;*
- b) the defendant PAUL PHILIPPE OF ROMANIA acted with intention to obtain undue benefits for himself for the defendant PAVALOIU NELA and the members of the criminal group with whom he concluded the right transfer contract on November 1, 2006 knowing that he was not entitled to restitution (there was no title, he did not prove the dispossession of Carol II and moreover, he was aware of decision no. 1/1941 of the High Court of Cassation and Justice) directly (by his presence at the headquarters of Snagov City Hall putting pressure) or indirectly, by proxies (Rosu Robert, Truica Remus and Pavaloiu Nela) he took measures (requests, reports, notifications) and determined public servants with attributions in retrocession and vesting of possession within the public authorities to violate their job duties and legal retrocession provisions and approve and then put him in possession of the forest land of 46.78ha in the area Fundul Sacului Snagov causing a prejudice of Eur 9,523,769 to the Romanian state;*

c) *In 2008 after notice no 554 from 13.02.2002 having as object Baneasa Royal Farm sent to be settled to the Research and Development Institute for Plant Protection in Bucharest and agreement with the defendant REMUS TRUICA, together with the defendant ROSU ROBERT, the defendant PAUL PHILIPPE OF ROMANIA attended the discussions from the meeting of the Board of directors from the institute and put pressure on its members (by invoking his descendance and also claiming damages if his request was rejected) helped the said liescu Horia, the director of the institute to determine the members of the Board of directors to approve his request violating the provisions of Government Decision no 1881/2005 and art. 8, art. 10 and art 21 of Law no. 10/2001 and subsequently by decision no. 30 of 26.09.2008, to order the restitution and kind of Baneasa Royal Farm, violating the same provisions, in the absence of the documents on the capacity of heir, the incidence of Law 10/2001 and identification of the land according to the law causing a prejudice to the unfair benefit obtained for himself TRUICA REMUS and the other members of the criminal group to the Romanian state.”*

The Romanian Authorities also submitted the judgements upon which the present EAW is based. From these documents is results that by a judgement delivered by the Braşov Court of Appeal Section for Criminal Matters on the 27 June 2019,<sup>6</sup> the requested person was:

- condemned to a period of 3 years imprisonment, which was suspended under probation for a period of 5 years and
- given the accessory punishment of the interdiction from specified rights, which is to be suspended during the period of probation.

By a judgment delivered by The High Court of Cassation and Justice on the 17 December 2020,<sup>7</sup> the Court:

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<sup>6</sup> Case No 345/64/2016, Criminal sentence no 39.

<sup>7</sup> Case No 345/64/2016, Decision No 382/A.

- revoked the suspension under probation of the punishment of 3 years in prison;
- sentenced him to 1 year and 10 months imprisonment for committing the offence of buying influence;
- confirmed the accessory punishment of the interdiction from specified rights;
- sentenced him to a merged punishment (merging all various punishments given) of 3 years and 4 months in prison.

Considered;

That Regulation 5(6) of the Order lists the elements necessary for a valid arrest warrant after conviction; that is: (i) the contents as listed in Regulation 5(7) and (ii) that it contains the information required in Regulation 5(8) of the Order.

That from an examination of the present EAW and supporting documentation, it results that the present EAW satisfies the formalities required by Reg 5(7) and 5(8) of the Order and has also been written in the format as required by Reg 5A(2) of the Order. Furthermore, the Issuing State is a Scheduled Country in terms of Annex 2 of the Order. From the certificate issued by the Attorney General on the 28 April 2024 in accordance with Reg. 6A and 7 of the Order, it results that the authority which issued the present warrant has the function of issuing arrest warrants in Romania, being the requesting country in these proceedings.

Therefore, on the basis of the above, the Court finds that the present EAW is formally correct and satisfies all the requirements of the above mentioned regulations.

Considered;

Having established the above formalities, the Court will now examine whether there are any Bars to extradition as listed in Regulation 13 of the Order.

During these proceedings, the requested person did not raise any of the grounds listed in Regulation 13(1) of the Order, that is, the *ne bis in idem*; the person's age; or an



amnesty in respect of these proceedings. Indeed from the documentation submitted the Court finds that there are no Bars to extradition in terms of Reg. 13(1) of the Order and therefore decides that there are no prohibitions to extradition by reason of these grounds.

Regulation 13(2) of the Order further stipulates four more grounds, namely (i) prescription by lapse of time; (ii) the rule of speciality; (iii) the requested person's earlier extradition to Malta from another scheduled country or (iv) the requested person's earlier extradition to Malta from a country other than a scheduled country upon which the Court may refuse to execute the requested person's return. That from the acts of the proceedings, it does not result that any of these reasons exist in this case and, therefore, the Court does not find any reason in terms of Regulation 13(2) upon which to refuse the execution of the present warrant.

Considered;

The requested person, however, raised before this Court a number of defences which will be discussed hereunder.

1. That the requested person has already faced identical proceedings in France and the Paris Court of Appeal, by a decision dated the 29 November 2023, refused to hand over the requested person to the Romanian Authorities.

By a judgement delivered by the Paris Court of Appeal on the 29 November 2023, the French Court, after an extensive examination of numerous factors, decided not to execute the European Arrest Warrant issued on the 18 December 2020 against Paul Philippe Al României.<sup>8</sup> It also results that this decision was appealed by the French Authorities, however by a decree dated the 20 December 2023, the Court of Cassation, Criminal Division declared the appeal null and void since the appellant did not file, either personally or through his lawyer, a brief setting out his

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<sup>8</sup> See fol. 28 of the acts of the proceedings.

grounds for appeal within the legal time limit of five days from receipt of the file at the *Cour de cassation*.<sup>9</sup>

Therefore, there already has been a decision by a Court of a Member State on a European Arrest Warrant issued by the Romanian Authorities in regard to the requested person. On this point, the Court makes reference to Court of Justice of the European Union case in the names **Puig Gordi and Others**<sup>10</sup> wherein it was stated:

*“140 In that regard, it should be noted at the outset that no provision of Framework Decision 2002/584 excludes the issuing of several successive European arrest warrants against a person, including where the execution of a first European arrest warrant concerning that person has been refused.*

*141 Furthermore, such an issuing of a European arrest warrant may prove necessary, in particular after the factors which prevented the execution of a previous European arrest warrant have been ruled out or, where the decision refusing to execute that European arrest warrant was not consistent with EU law, in order to conduct the procedure for the surrender of a requested person to its conclusion and thus to promote, as the Advocate General stated in point 137 of his Opinion, the attainment of the objective of combating impunity pursued by that framework decision.”*

In its judgement of the 29 November 2023, the Paris Court of Appeal found that there is a real risk of a violation of Article 47 paragraph 2 of the Charter of Fundamental

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<sup>9</sup> See fol. 83 of the acts of the proceedings.

<sup>10</sup> Case C-158/21, Puig Gordi and Others, Judgment of 31 January 2023, para 140 – 141. See also Case C-71/21, Sofiyska gradska prokuratura and Others (Mandats d'arrêt successifs), Judgment of 14 September 2023.

Rights of the European Union owing to the fact that one from the three judges who presided the Braşov Court of Appeal was not duly sworn in office.

From the additional information received by this Court from the Braşov Court of Appeal on the 3 May 2024<sup>11</sup>, this Court was informed that on the 30 April 2024, the Braşov Court of Appeal, basing itself on Article 267 of the Treaty of the Functioning of the European Union, referred to the Court of Justice of the European Union for a preliminary ruling on certain questions regarding the conformity with EU law of certain central considerations made by Court of Appeal of Paris, France. Furthermore, the Braşov Court of Appeal also submitted to this Court a summary of the contents of the request for a preliminary ruling.<sup>12</sup> Basing on this information,<sup>13</sup> this Court by a decree dated the 10 May 2024 requested the Braşov Court of Appeal additional information on the status of the CJEU reference. From the replies received on the 14 May 2024<sup>14</sup> and the 17 May 2024<sup>15</sup> it results that the reference for a preliminary ruling bears number C-318/24 (PPU) and has been scheduled for a hearing on the 24 June 2024, Naturally, there is no indication as to when the reference will be decided as yet.

In line with the principles established in the **Puig Gordi and Others** case cited above and following the request for a preliminary ruling, it would appear that the Braşov Court of Appeal has repropounded the present EAW against the requested person as it believes that the refusal to execute of the Paris Court of Appeal was based on reasons which are not consistent with EU law.

Owing to the fact that the validity of that judgement is being questioned by the Romanian Authorities before the Court of Justice of the European Union, this Court will not enter or base any its findings on that decision or its reasons. Moreover, if this Court had to wait for a determination by the Court of Justice of the European Union on the referral, it would necessary imply that the time-period for the determination of a

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<sup>11</sup> Vide Dok "ME3"

<sup>12</sup> Vide Dok "ME4"

<sup>13</sup> Request made in terms of Regulation 13A of the Order and Article 15(2) of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA).

<sup>14</sup> Vide Dok "RO4"

<sup>15</sup> Vide Dok "RO6"

European Arrest Warrant imposed by Article 17 of the Framework Regulation would not be met.

In light of the additional information received by this Court and on the basis that this EAW must be examined on its own merits, this Court does not see any purpose in waiting for the final determination by the CJEU of the referral made by the Braşov Court of Appeal.

2. That the requested person's name has been removed from the Interpol Database:

The requested person submitted a Decision of the Commission of Interpol<sup>16</sup> wherein it was found that the retention of the requested person's data by Interpol is not compliant with Articles 2 and 3 of Interpol's Constitution.

The Court finds that this mentioned Decision is an internal decision to be considered and consumed by Interpol and that this Court cannot rely on it as a legitimate reason upon which to refuse to execute this EAW in terms of Articles 3, 4 and 4a of the Framework Directive.

3. That the Requested Person was not present during the delivery of the judgement:

From the EAW document, it results that the requested person was present for the proceedings. In fact, at section d of the EAW document there is the following:-

***“d) Indicate if the person appeared in person at the trial resulting in the decision:***

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<sup>16</sup> Decision of the Commission for the Control of Interpol's files, 123<sup>rd</sup> Session, 30 January to 03 February 2023 (Ref. CCF/123/R1358.21). a fol. 74 of the acts of the proceedings.

1.  Yes the person appeared in person at the trial resulting in the decision.<sup>17</sup>

Moreover, from the additional documentation submitted by the Braşov Court of Appeal of the 7 May 2024, as regards the proceedings before the High Court of Cassation and Justice, this Court was informed as follows:

*“III. With regard to **the presence of the requested person all Al României Paul Philippe during the trial before the issuing court**, we note that he was present in person at four trial dates, namely at the dates of 12 March 2020, 14 October 2020, 5 November 2020 and 10 November 2020. At the trial date of 17 December 2020, when the sentencing judgement was handed down, the requested person was not present (under Romanian domestic law it is not mandatory for the person to be present at the delivery of the judgement).”*

From the additional information received by this Court on the 17 May 2024, the Braşov Court of Appeal further clarified that:

*“It can be concluded that the person concerned was formally informed of the date of delivery on 17 December 2020 by the fact that he was present in person at the previous dates (in particular at the date of 10 November 2020, the immediately following date was fixed) and was thus able to be personally informed of the immediately following date and, consequently, to be informed of all subsequent dates, including the date on which the High Court gave its decision on appeal.”*

In regard to the proceedings before the Braşov Court of Appeal, being the Court of First instance<sup>17</sup> this Court received the following information on the 17 May 2024:

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<sup>17</sup> It is to be noted that the Braşov Court of Appeal Section for Criminal Matters was a court of first instance in this case as the requested person was charged, amongst other articles of law, with breaching Articles 396, 397 *et seq* of the Criminal Code of Romania, which charges are dealt with the Court of Appeal as a Court of First Instance.

*“The requested person was personally present, as defendant, before the first court (Court of Appeal Brasov – issuing court of the European Arrest Warrant) at several court dates, on the following dates (day.month.year): 13.01.2017, 27.01.2017, 10.02.2017, 24.02.2017, 10.03.2017, 24.03.2017, 7.04.2017, 19.05.2017, 09.06.2017, 23.06.2017, 08.09.2017, 22.09.2017, 6.10.2017, 20.10.2017, 6.11.2017, 17.11.2017, 8.12.2017, 19.01.2018, 2.02.2018, 16.03.2018, 30.03.2018, 13.04.2018, 27.04.2018, 11.05.2018, 25.05.2018, 08.06.2018, 22.06.2018, 07.09.2018, 21.09.2018) and at the trial date when the hearing on the merits took place (27.05.2019). At this trial date at the hearing on 27.05.2019 the requested defendant addressed the court in person. “*

Moreover, the Romanian authorities also informed this Court, in the same communication, that *“according to the Romanian Code of Criminal Procedure, it is not mandatory for the defendant to be present in person either at the trial or at the judgement.”*

The requested person, on the other hand, states that this trial was held in his absence and in fact, he testified under oath that on the 18 December 2020 he was in Portugal before a Portuguese Judge.

The matter of Trial in absentia is regulated by Article 4a of the Framework Directive which states that an executing state may also refuse to execute the European arrest warrant if the requested person did not appear in person at the trial resulting in the decision, unless the EAW stipulates one of the four conditions set out in the same article.

Article 4a of the Framework Directive goes beyond the superficial examination of whether the requested person was present at the trial and focuses more on whether the requested person was aware of the trial. In fact, in the case of **Stefano Melloni**<sup>18</sup> the Court of Justice of the European Union held that:

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<sup>18</sup> Case C-399/11, **Stefano Melloni vs Ministerio Fiscal**, Judgment of 26 February 2013 (para. 42)

“42 *In particular, Article 4a(1)(a) and (b) of Framework Decision 2002/584 provides in essence, that, once the person convicted in absentia was aware, in due time, of the scheduled trial and was informed that a decision could be handed down if he did not appear for the trial or, being aware of the scheduled trial, gave a mandate to a legal counsellor to defend him at the trial, the executing judicial authority is required to surrender that person....”*

In the present EAW, the requested person was subject to two proceedings: those at first instance and those at second instance. It results that the requested person was convicted by the court of first instance and his punishment was reduced by the court of second instance. It is clear that during the proceedings before the first court, the requested person attended numerous sittings yet was not present during the sitting when the judgement was delivered. With regard to the proceedings before the second court, the Braşov Court of Appeal informed this Court that the requested person was present for four sittings.

In the case **Generalstaatsanwaltschaft Hamburg**<sup>19</sup> the Court of Justice of the European Union held that where the issuing Member State has provided for a criminal procedure involving several levels of jurisdiction which may thus give rise to successive judicial decisions, at least one of which has been handed down in absentia, the concept of ‘trial resulting in the decision’, within the meaning of Article 4a(1) of Framework Decision 2002/584, must be interpreted as relating only to the instance at the end of which the decision is handed down which finally rules on the guilt of the person concerned and imposes a penalty on him, such as a custodial sentence.

This means, therefore, that this Court must focus on the requested person’s presence at the trial before the High Court of Cassation and Justice, being the court that handed down the final decision. From the judgement provided by the Romanian Authorities, it transpires that the debates for this case took place during the open sessions on 10,

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<sup>19</sup> Case C-416/20 PPU, Generalstaatsanwaltschaft Hamburg, Judgment of 17 December 2020 (para. 48).

11 and 13 November 2020 and that the High Court postponed the sentencing for 27 November 2020, 3 December 2020 and then for 17 December 2020.

From the dates provided by the Romanian Authorities in its additional information it results that from these dates, the requested person was only present for the 10 November 2020 sitting, thus implying that he was not present for the sittings held on the 11 and 13 November 2020. Moreover, from the same judgement it results that originally, the judgement was scheduled for delivery for the 27 November 2020 and was subsequently postponed to the 3 December 2020 and again to the 17 December 2020. The Romanian Authorities argue that since he was present for other sittings, it follows that he was aware of the dates for which he did not attend. Moreover, the Romanian Authorities also state that under Article 353(2) of the Romanian Code of Criminal Procedure once a person has been lawfully served with the summons for a trial date, that person will not be summoned for subsequent dates, even if they are absent from one of these dates, except where their presence is mandatory. Article 353(4) of the Romanian Code of Criminal Procedure stipulates that the absence of a party does not stall proceedings whilst Article 405(2) of the Romanian Code of Criminal Procedure holds that parties shall not be summoned to the judgement. The Romanian Authorities, also submit that:<sup>20</sup>

*“In the present case, we reiterate that the defendant was even present, personally or represented by lawyers, at all trial dates and was not tried in absentia. The term of 17 December 2020, of which the respondent was aware, as stated above, was only for the deliver of the final verdict.”*

In this testimony, the requested person confirmed that on the 18 December 2020 he was before the Portuguese judge. He did not provide any information on his whereabouts on the dates of the sittings or the day of delivery of judgement. The Court, therefore, does not have evidence, at least *prima facie*, that would put the requested person in a specific place.

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<sup>20</sup> Vide communication received on the 17 May 2024, a pg. 3.



Therefore, basing on the declarations made by the Braşov Court of Appeal in its additional information (which must be seen on the principle of mutual trust between Member States) and basing on para. 42 of the **Stefano Melloni case** cited above, this Court is satisfied that the requested person was well aware of the trial and although not physically present for the sitting wherein judgement was delivered, his legal representative was present. Therefore, the Court finds that there is no application of Article 4a of the Framework Directive in this case.

4. That the prison conditions in Romania, if the warrant is executed, will violate the requested person's human rights:

With regard to this defence, it is settled case-law of the Court of Justice of the European Union that a European Arrest Warrant should, in principle, be only refused on the grounds listed in Articles 3, 4 and 4a of the Framework Directive or in 'exceptional circumstances'<sup>21</sup> which, owing to their gravity, require that limitations be placed on the principles of mutual recognition and mutual trust between Member States, on which judicial cooperation in criminal matters is based. In the case **Aranyosi and Căldăraru** the Court of Justice of the European Union held that the right guaranteed by Article 4 of the Charter of Fundamental Rights of the European Union is unalterable and must be upheld in an absolute manner. In this judgment, the CJEU developed a two-step examination process by which the Court may determine whether a defence is grave enough to justify the refusal to execute a European Arrest Warrant on the basis of a breach of fundamental human rights:

1. in the first step, the executing judicial authority must assess whether there is a real risk that fundamental rights will be breached, in the light of the general situation in the issuing Member State;

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<sup>21</sup> Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, Judgment of 5 April 2016.

2. in the second step, that judicial authority must assess, specifically and precisely, whether there is a real risk that a fundamental right of the requested person will be breached, having regard to the circumstances of the case.

The Court of Justice of the European Union held that both steps from the above examination need to be satisfied so as to merit a refusal to execute an EAW.<sup>22</sup> In the case of **Dumitru-Tudor Dorobantu**<sup>23</sup> the Court of Justice of the European Union further solidified the principles established in the *Aranyosi and Căldăraru* and the *Generalstaatsanwaltschaft*<sup>24</sup> cases and held that in order to ensure the observance of Article 4 of the Charter in the procedure of a European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is then bound to determine, specifically and precisely, whether, in the particular circumstances of the case, there are substantial grounds for believing that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject to inhuman or degrading treatment in that Member State, within the meaning of Article 4 of the Charter.

This Court requested the Braşov Court of Appeal for additional information on the prison conditions specific to Paul Philippe Al României. By two replies penned by the Romanian Prison Police Authorities<sup>25</sup> and received by this Court on the 9 May 2024 and the 14 May 2024 respectively, this Court was informed that Paul Philippe Al României will initially be accommodated in the Bucharest-Rahova Penitentiary, in a room having a minimum space of 4 sq meters, (excluding the bathroom) and this for a period of 21 days. This period will allow the authorities to carry out the necessary supervision and assessments of the inmate. The penitentiary administration will organise the spaces where he will be accommodated and will decide on the number of detainees in the detention rooms so that they display an occupancy rate of less than 100% as well as to ensure detention conditions at EU standards. He may opt to

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<sup>22</sup> Case C- 158/21, *Puig Gordi and Others*, Judgment of the 31 January 2023.

<sup>23</sup> Case C-128/18, *Dorobantu*, Judgment of 15 October 2019.

<sup>24</sup> C-220/18 PPU, *Generalstaatsanwaltschaft*, Judgment of 25 July 2018.

<sup>25</sup> Vide fol 557 *et seq* and fol 594 *et seq*.

participate in activities thus creating the possibility of spending longer periods outside the detention room.

This Court was further informed that at the end of the 21 days, basing on the criteria provided for in Romanian legislation, a commission set up at the level of the detention unit will allocate him to the penitentiary where he will continue serving his sentence. Basing on the duration of his sentence Paul Philippe Al României will most likely serve his custodial sentence initially in a closed regime and, most likely, continue to serve his sentence at the Bucharest-Rahova penitentiary in decent conditions which ensure respect for human dignity. The Romanian Authorities held that this decision is not absolute and there is the possibility of a reclassification in a regime of a lower degree of severity, offering greater freedom of movement based on an individual analysis carried out by the specialised commission.

Later in the same replies, the Romanian Authorities said that taking into account his advanced age, there is concrete possibility that the specialised commission will decide that he enters the semi-open regime.

Their replies continue by stating that after serving one fifth of the sentence, the commission will analyse various factors and determine whether he can benefit from the semi-open or open regime where he will be transferred to the Bucharest-Jilava Penitentiary. In this penitentiary, the restrictions are considerably less. At this penitentiary the administration will organise the spaces and decide on the number of persons in the detention rooms so that they display an occupancy rate of less than 100% compared to a minimum individual space of 4 sqm, excluding the bathroom. Moreover, the Court may order the conditional release from prison after the actual execution of half the sentence (approximately 20 months).

This Court also examined the Report to the Romanian Government of the European Committee for the Prevention of Torture,<sup>26</sup> the Key Findings of the SPACE I<sup>27</sup> and other sources<sup>28</sup> which sources confirm that Romanian prisons are riddled with the problem of overcrowding. In fact, in January 2022 the Romanian Prisons were amongst the most densely populated in Europe.<sup>29</sup> On the basis of this information, this Court specifically asked the Braşov Court of Appeal to provide information on the generic and specific conditions of the penitentiaries where Paul Philippe Al României will be held if this Court executes the EAW. The Romanian Prison Police authorities replied that as regards space, 3 investment objectives were carried out in the Bucharest-Rahova Penitentiary in 2023 so as to increase the accommodation places by 351. Furthermore, in 2023 and 2024, 2 investment objectives were carried out by the Bucharest-Jilava Penitentiary with a total increase of 210 and 113 new accommodation places respectively. The Romanian Prison Police Authorities declared that at each stage, Paul Philippe Al României will be guaranteed a minimum space of 4 sqm.

Whilst not doubting the information provided by the Romanian Prison Police Authorities, this Court is obliged, in line with the Aranyosi and Căldăraru principles, to endeavour to obtain updated, reliable and objective information on how the problem of overcrowding is being tackled, with particular interest on the mentioned major projects highlighted by the Romanian Prison Police Authorities in their replies. Regrettably, this Court could not find any readily available information on the mentioned projects<sup>30</sup> although it found readily available information on the bilateral partnership

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<sup>26</sup> **Report to the Romanian Government on the ad hoc visit to Romania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2021**, The European Committee for the Prevention of Torture, Council of Europe, (CPT/Inf (2022) 06), Strasbourg, 14 April 2022. pg 5

<sup>27</sup> **Prisons and Prisoners in Europe 2022: Key Findings of the SPACE I survey**, Council of Europe, pg 17;

<sup>28</sup> World Prison Brief webportal, available at: <https://www.prisonstudies.org/country/romania> [accessed on 19 May 2024]; Prison-Insider, available at: <https://www.prison-insider.com/en/countryprofile/roumanie-2023?s=latest-events> [accessed on 19 May 2024];

<sup>29</sup> **Prisons and Prisoners in Europe 2022: Key Findings of the SPACE I survey**, Council of Europe, Figure 9, pg. 15.

<sup>30</sup> The court examined the prime source, being the official website of the Administrația Națională a Penitenciarelor

From the Activity report of the Bucharest-Rahova Penitentiary for the year 2023 and the List of Investments for the years 2022 and 2023 of the Bucharest-Jilava Penitentiary, available at <https://anp.gov.ro/> [accessed on 19 May 2024].

between Norway and select penitentiaries in Bucharest<sup>31</sup> aimed at improving the institutional ethos of the Romanian participating facilities. The Court also referred to the document entitled “Information on the Progress Made in the Implementation of the Calendar of Measures 2018 - 2024 for the Resolution of Prison Overcrowding and of Detention Conditions, in the Execution of the Pilot Decision Rezmives and Others Against Romania, delivered by the ECHR on 25 April 2017.”<sup>32</sup> Unfortunately, not even this document referred to the projects being carried out and mentioned by the Romanian prison authorities in their replies.

With regard to the problem of overcrowding, whilst not putting in doubt the Romanian Prison Police Authorities’ declaration that Paul Philippe Al României will be afforded a minimum of 4sqm space, it is not clear to this court whether this space will be shared with other inmates, especially since prisoners are not afforded single rooms and typically sleep on bunkbeds.<sup>33</sup> Although physically Paul Philippe Al României would be afforded the minimum space required, there is no confirmation that this same space would not be shared with other detainees – at least until the mentioned projects are complete.<sup>34</sup>

Moreover, from the replies provided by the Romanian Prison Police Authorities, it is not entirely clear what the precise plan for Paul Philippe Al României’s execution of the sentence is going to be. This Court understands that plans may need to be fine-tuned according to the results of the assessment carried out by the commission during the first 21 days of detention at the Bucharest-Rahova penitentiary. However, from the replies submitted to this Court, it would appear that there is no certainty on this execution. For instance, at early stages of their 9 May 2024 reply, it is stated that “*Given the amount of punishment imposed on the convicted person, he will most likely*

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<sup>31</sup> Bilateral partnership between Norway and the South Region/Kriminalomsorgen SOR and Phoenix Hague, Penitentiary Rahova Bucharest

<sup>32</sup> Communication from the authorities (23/04/2019) on the general measures: update to the action plan of 25/01/2018 in the cases of BRAGADIREANU and REZMIVES AND OTHERS v. Romania (Applications No. 22088/04, 61467/12), Council of Europe, Secretariat of the Committee of Ministers, meeting no 1348 (June 2019), 23 April 2019,

<sup>33</sup> Information obtained from <https://www.prison-insider.com/en/countryprofile/roumanie-2023?s=conditions-materielles#conditions-materielles> [accessed on 19/05/2024].

<sup>34</sup> The Romanian Prison Police Authorities did not provide any status on these works and did not provide any date of completion of the extension works.

*serve the custodial sentence initially in closed regime*<sup>35</sup> yet in another section of the same reply it is stated that *“Thus, taking into account the advanced age of the Romanian citizen, there is a concrete possibility that, analyzing his particular situation, the specialized commission at the level of the Bucharest-Rahova Penitentiary will decide the distribution in the semi-open regime”*<sup>36</sup> and further still it is said that *“after serving one fifth of the sentence, the commission will analyse the conduct of the convicted person and the efforts for social reintegration, in order to change the regime of execution of the custodial sentence.”*<sup>37</sup> and consequently be transferred to the Bucharest-Jilava Penitentiary. Furthermore, the Romanian Authorities also state that *“Taking into account the age and legal situation of the Romanian citizen, we inform you that the Court may order the conditional release from prison after the actual execution of half of the sentence (approximately 20 months).”*<sup>38</sup>

From the above, it is not clear whether after the 21 day induction period, Paul Philippe Al României will be kept in a closed-regime or in a semi-open regime due to his age or, indeed, at which stage will he be transferred to the semi-open regime at Bucharest-Jilava Penitentiary as there are three possibilities. From the information obtained by this Court, it would appear that given the length of the custodial sentence, it is more likely that Paul Philippe Al României will serve his sentence in a closed-regime as this applies to persons sentenced to imprisonment between 3 and 13 years and are placed in collective cells (as per Articles 64 to 72, Prison Regulations, 10 March 2016) whilst the semi-open regime applies to persons sentenced to imprisonment between one and three years. They can move freely in prison during cell opening hours. (Articles 73 to 79, Prison Regulations, 10 March 2016).<sup>39</sup>

Furthermore, it is not clear on what criteria will the prison commission decide whether to place Paul Philippe Al României in a closed-regime or a semi-open regime and when to do so. Although such a decision would be typically left in the ultimate hands of the Requesting State's authorities, owing to the advanced age of the requested

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<sup>35</sup> Vide fol. 561 of the acts of the proceedings.

<sup>36</sup> Vide fol. 562 of the acts of the proceedings.

<sup>37</sup> Vide fol. 563 of the acts of the proceedings.

<sup>38</sup> Vide fol 566 of the acts of the proceedings.

<sup>39</sup> Prison Insider, available at <https://www.prison-insider.com/en/countryprofile/roumanie-2023?s=vue-d-ensemble#organisation> [accessed on 19 May 2024].

person, this Court must seek to ensure that his fundamental human rights will be safeguarded objectively rather than subjectively according to criteria that have not been made known to this Court.

In this specific case, the consideration for well established *a priori* objective criteria is increasingly important owing to the particularly unique and delicate position of Paul Philippe Al României, Member of the Casa Regală a României and the existing claims on the descendance and succession to the late King Carol II. Furthermore, the Romanian Prison Police Authorities did not provide any details on the mechanisms in place to ensure that Paul Philippe Al României will not be discriminated whilst in custody and will not be subject to arbitrary punishment or treatment owing to his particular and unique position in respect to Romania's monarchical history.

Moreover, from the replies received by the Romanian Prison Police Authorities it would appear that if Paul Philippe Al României wants to spend less time in the detention room, he can opt for work activities and the time out of the detention room will be proportionate to the time allocated to these activities. It would appear, therefore, that if Paul Philippe Al României engages in activities, he will benefit from less time in confinement (which could amount to 8 hours a day). The Court notes, however, that the requested person is today 76 years old and the activities he may carry out at that advanced age are very limited. Although the replies submitted by the Romanian Prison Police Authorities mention various activities that will be available to Paul Philippe Al României, none of these age-appropriate activities (such as access to the library) seem to allow the same proportionate time out the detention room (which could add up to 8 hours a day) and therefore this dichotomy would discriminate against Paul Philippe Al României basing on his age and health conditions.

Finally, the Court also notes that the replies and assurances given therein were made by the Romanian Prison Police Authorities and not the Braşov Court of Appeal. In fact, in its communication of the 14 May 2024, the Court of Appeal of Braşov approves the assurance given by the National Administration of Penitentiaries of Romania.<sup>40</sup>

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<sup>40</sup> Vide fol. 591 of the acts of the proceedings.

Although the assurances have been made by the Romanian Prison Police Authorities the fact remains that this authority is not the designated judicial authority in terms of Framework Decision 2002/584. Following the observations the Court of Justice of the European Union made in the **Dorobantu** case,<sup>41</sup> the requested court must rely on the assurances given by the requesting state in those cases where the assurance that the person concerned will not suffer inhuman or degrading treatment is has been given, or at least endorsed, by the issuing judicial authority. In the present case, the Court of Appeal of Braşov approved rather than endorsed<sup>42</sup> the assurances given and therefore this Court cannot proceed as required by the Dorobantu case abovementioned.

Therefore, on the basis of the above observations and considerations, this Court cannot ascertain that the execution of the present EAW will not result in the risk of a breach, or breaches, of Article 4 of the Charter of Fundamental Rights of the European Union and Article 3 of the European Convention on Human Rights in regard to Paul Philippe Al României.

### **Decide:**

Therefore, on the basis of the above, the Court finds that if the European Arrest Warrant against Paul Philippe Al României is executed, there is a real risk that he will be subjected to a breach, or breaches, of Article 4 of the Charter of Fundamental Rights of the European Union and Article 3 of the European Convention on Human Rights and on this basis is refusing to execute the present European Arrest Warrant

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<sup>41</sup> Case C-128/18, *Dumitru-Tudor Dorobantu*, Judgment of 15 October 2019, para 68 and 69.

<sup>42</sup> The term approve does not necessarily imply that the approving authority is making such claims as being theirs. The term approve has weaker connotations than the word “endorse”. In fact “Approve” is defined as “to have a positive opinion of someone or something” (source: <https://dictionary.cambridge.org/dictionary/english/approve>) [accessed on 19 May 2024] whilst “Endorse” is defined as “to make a public statement of your approval or support for something or someone” (source: <https://dictionary.cambridge.org/dictionary/english/endorse>) [accessed on 19 May 2024].



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and consequently is ordering the **discharge** of Paul Philippe Al României.

**Ft.Dr Leonard Caruana**  
**Magistrate**

**Sharonne Borg**  
**Deputy Registrar**