COURT OF CRIMINAL APPEAL

HON. MADAME JUSTICE NATASHA GALEA SCIBERRAS B.A., LL.D

EAW Proceedings No: 359/2024

The Police
(Inspector Roderick Spiteri)

vs

Paul-Philippe Al-Romaniei

Today, 10th June 2024

The Court,

Having seen the arraignment of respondent Paul-Philippe AL-ROMANIEI, aged 76 years, of Romanian Nationality, born in Paris on 13th January 1948, holder of United Kingdom of Great Britain and Northern Ireland Passport Number 558783808, (with Aliases: Paul-Philippe HOHENZOLLERN, born on 13th January 1948; Paul LAMBRINO, born on 13th January 1948 and Paul-Philip OF-ROMANIA, born on 13th January 1948), before the Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal), wanted by the competent judicial authorities in Romania, a scheduled country in terms of Article 5 of Subsidiary Legislation 276.05, for the purpose of execution of a custodial sentence of three years and four months imprisonment, after having

been found guilty in the issuing country of corruption, which constitutes scheduled conduct;

Having seen that the Court was requested to proceed against Paul-Philippe AL-ROMANIEI, with Aliases: Paul-Philippe HOHENZOLLERN, Paul LAMBRINO and Paul-Philip OF-ROMANIA, according to the provisions of the Extradition Act, Chapter 276 of the Laws of Malta and Subsidiary Legislation 276.05;

Having seen the decision of the Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal) of 20th May 2024, whereby the Court found that if the European Arrest Warrant against Paul Philippe Al Romaniei 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, refused to execute the present European Arrest Warrant and consequently ordered the discharge of Paul Philippe Al Romaniei;

Having seen the appeal application filed by the Attorney General on 23rd May 2024, requesting this Court to **reverse** the decision of the first Court and consequently, to order that Paul-Philippe Al-Romaniei be committed to custody to await his return to Romania in accordance with the law;

Having seen the records of the proceedings;

Having heard the parties' submissions during the hearing held on 27th May 2024.

Considers that:

In this case, respondent Paul-Philippe AL-ROMANIEI was arraigned before the Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal) on the basis of an alert issued in the Schengen Information System and a European Arrest Warrant issued by the Court of Appeal Brasov – Criminal Division, in Romania, on 18th December 2020, since he is wanted by the mentioned

authority in Romania to serve a custodial sentence of the High Court of Cassation and Justice of 17th December 2020, in connection with corruption charges. On this basis, the Attorney General issued a certificate in terms of Article 6A of Subsidiary Legislation 276.05.

As held above, in its decision of 20th May 2024, the Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal), ordered the discharge of the requested person.

In her appeal application, the Attorney General has raised two grievances in respect of the said decision.

In terms of the first grievance, the Attorney General argues that the decision of the first Court to discharge the requested person on the basis that, in terms of its own assessment, "*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*", is legally and procedurally incorrect. In this respect, the Attorney General points out that the first Court delved into the particularities of the detention conditions present in the Romanian prisons, where the requested person will be kept in case of surrender, and this, according to the first Court, in line with the principles emerging from the Aranyosi and Caldararu judgement of the Court of Justice of the European Union. However, argues the Attorney General, the said assessment as carried out by the first Court, and its eventual decision, may only be carried out by the First Hall of the Civil Court in its Constitutional Jurisdiction, and this in so far as such a specialised analysis may only be carried out by a Court competent to decide upon such alleged breaches. Thus, according to the Attorney General, in deciding upon the fundamental rights defence raised by respondent and in refusing to surrender said respondent on these grounds, the first Court went beyond the competence endowed upon it by law.

As regards the second grievance, the Attorney General submits, without prejudice to the first grievance, that the first Court reached its decision that there was a risk of a breach of Article 4 of the Charter of Fundamental Rights of the European Union and Article 3 of the European Convention on Human

Rights, on the basis of information which does not substantiate the claim that the requested person will personally suffer such a breach.

In his reply to the Attorney General's grievances, respondent claims that the Prosecution has not raised this argument before the first Court, although it had every opportunity to do so. According to respondent, therefore, it cannot raise such arguments in this instance. Respondent further adds that the first Court was correct in its decision, and this in view of the possible breaches of fundamental human rights to which he may be subjected in the event of his surrender.

Considers further that:

The general rule under Chapter 276 of the Laws of Malta and its counterpart Subsidiary Legislation 276.05, having given effect to the Council Framework Decision, of 13th June 2002, on European Arrest Warrants and surrender procedures between Member States (2002/584/JHA), as amended by Council Framework Decision 2009/299/JHA of 26th February 2009, is that once a request for surrender has been made by the Requesting State, the presumption is in favour of surrender by the Executing State and this on the basis of the principle of mutual trust and mutual recognition between Members States, on which judicial cooperation in criminal matters is based. As held by this Court, as differently presided, in the case **Il-Pulizija vs Ledjon Brakaj** decided on 17th October 2022:

> *Proceduri bhal din li ghandha quddiemha din il-Qorti, huma proceduri partikolari hafna ghaliex jirrigwardjaw il-Mandat t'Arrest Ewropew. Il-Mandat t'Arrest Ewropew ha post l-estradizzjoni bejn l-Istati Membri u dan ghaliex il-hsieb warajh kien li jinholoq mekkanizmu mhux ibbazat fuq process politiku izda fuq process gudizzjarju msejjes fuq il-fiducja reciproka bejn l-Istati Membri u rrikonoxximent reciproku ta' decizjonijiet gudizjarji. Dan il-mandat huwa l-ewwel mizura konkreta fil-qasam tal-ligi kriminali li timplimenta l-principju ta' rikonoxximent reciproku li l-Kunsill Ewropew irrifera ghalih bhala 'cornerstone of judicial cooperation.' Il-Principju wara l-Mandat t'Arrest Ewropew huwa li persuni li jezercitaw id-drittijiet taghhom ghall-moviment hieles*

bejn l-Istati Membri, huma mistennija li jirrispettaw il-ligijiet tat-territorju li jinsabu fih.

Furthermore, as stated in the case in the names **Il-Pulizija vs John Spiteri** decided by this Court, as differently presided, on 20th September 2022:

*23. L-Istati Membri tal-Unjoni Ewropea li adottaw is-sistema tal-mandat ta' arrest Ewropew ġew b'din il-Liġi marbuta **b'dover ġenerali** li jeżegwixxu mandat t'arrest Ewropew u mhux li jiċħduh, jew ixekklu jew ixejnu l-eżekuzzjoni tiegħu. Fil-fatt, skont in-NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES Commission Notice — Handbook on how to issue and execute a European arrest warrant:*

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.

.../...

The executing judicial authority has a general duty to execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision on EAW (Article 1).

.../...

The general duty to execute EAWs (enshrined in Article 1(2) of the Framework Decision on EAW) is limited by the grounds for mandatory and optional non-execution of the EAW, that is to say, the grounds for refusal (Articles 3, 4 and 4a of the Framework Decision on EAW). It is important to note that in accordance with the Framework Decision on EAW, these grounds are the only ones which the executing judicial authority may invoke as the basis for non-execution. As regards the grounds for optional non-execution, the executing judicial authority

can only invoke those which are transposed into its national law. The Court of Justice has clarified that the list of grounds is exhaustive (notably in its judgments in Case C-123/08 Wolzenburg, paragraph 57, and Joined Cases C-404/15 and C-659/15 PPU Aranyosi and Căldăraru, paragraph 80) (1).

24. B'hekk il-punt tat-tluq tal-Qorti Maltija, bħal kull Qorti Rimandanti oħra fl-Unjoni Ewropea li tħaddan il-proċedura tal-mandat tal-arrest Ewropew, hija li l-Qorti għandha d-dmir li teżegwixxi l-mandat tal-arrest Ewropew maħruġ mill-Awtoritajiet Ġudizzjarji ta' Stat ieħor tal-Unjoni Ewropea u mhux bil-kontra.

25. Ma teżegwix dak il-mandat biss f'każ li jkun hemm xi raġuni għal rifjut imsemmi fid-Deċiżjoni Kwadru li huma speċifiċi u limitati jew jekk ikun hemm xi raġunijiet meqjusa mill-Qorti tal-Ġustizzja tal-Unjoni Ewropea bħala ta' serjeta tali li jippermettu n-nuqqas ta' eżegwibbilta tal-mandat – u li huma każijiet izjed rari minn hekk.

Fin-nuqqas ta' dawn, il-presunzjoni hija favur l-eżegwibbilta tal-mandat tal-arrest Ewropew u d-dover tal-Qorti Maltija hija li teżegwih; b'dan li l-persuna rikjesta jkollha d-drittijiet kollha tagħha li tiddefendi lilha nnifisha quddiem il-Qrati tal-pajjiż li jkun qed jitlob iċ-ċediment tagħha fejn allura l-prinċipji ta' garanzija tal-proċedura kriminali kollha mħadna minn dak il-pajjiż tal-Unjoni Ewropea jkunu applikabbli favur tagħha in bażi għall-prinċipju tal-ekwivalenza: sies ieħor li tistieħ fuqu s-sistema tal-mandat tal-arrest Ewropew.

The exceptions to this rule are found in the established bars specifically provided for in the Framework Decision, as translated in The Order, namely, Subsidiary Legislation 276.05. However, jurisprudence of the Court of Justice of the European Union has developed a new criterion, which has become known as the defence of fundamental rights, which empowers the Court of Committal of the Executing State to refuse surrender, and this therefore, against the principle of mutual trust and mutual recognition between Member States. This latter criterion is based on the right of the requested person to safeguard against inhuman and degrading treatment in the Requesting State; a safeguard which has also been extended to include conditions of detention in the Requesting State. The landmark judgement in this case is that of **Aranyosi**

and Caldararu, decided by the Court of Justice of the European Union on 5th April 2016 (Joined Cases C-404/15 and C-659/15 PPU), wherein it was established that the Court has recognised that limitations of the principles of mutual recognition and mutual trust between Member States can be made 'in exceptional circumstances', and that the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in, amongst others, the Charter. In this case, the Court held that the prohibition of inhuman or degrading treatment or punishment as laid down in Article 4 of the Charter, is absolute, since it is closely linked to respect for human dignity under Article 1 of the said Charter. The Court further stated that the fact that the right guaranteed by Article 4 of the Charter is absolute, is confirmed by Article 3 of the European Convention on Human Rights, corresponding to Article 4 of the Charter, and by Article 15(2) of the said Convention, which states that no derogation is possible from the mentioned Article 3. Accordingly, the Court of Justice of the European Union went on to state that:

> *88* *It follows that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, having regard to the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the Charter (see, to that effect, judgment in Melloni, C-399/11, EU:C:2013:107, paragraphs 59 and 63, and Opinion 2/13, EU:C:2014:2454, paragraph 192), that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment.*
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> *89* *To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports*

and other documents produced by bodies of the Council of Europe or under the aegis of the UN.

....

91 Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant.

92 Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State.

93 The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered to the authorities of that Member State.

94 Consequently, in order to ensure respect for Article 4 of the Charter in the individual circumstances of the person who is the subject of the 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 bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4.[1]

[1] *Vide* also the case of **Dumitur-Tudor Dorobantu**, decided by the Court of Justice of the European Union on 15th October 2019, which referred to the European Court of Human Rights judgement in the case *Muršić v. Croatia* of 20th October 2016; the case of **Generalstaatsanwaltschaft** decided by the Court of Justice of the European Union on 25th July 2018 and the case of **Stefano Melloni** decided by the Court of Justice of the European Union on 26th February 2013. *Vide* also judgements of the European Court of Human Rights, in particular on the issue of overcrowding in prison cells, as for instance, **Vasilescu vs Belgium** of 25th November 2014; **Samaras and Others vs Greece** of 28th February 2012; **Tzamilis and Others vs Greece** of 4th December 2012; **Iacov Stanciu vs Romania** of 24th July 2012; **Mandic and Jovic vs Slovenia** of 20th October 2011; and **Peers vs Greece** of 19th April 2001;

The defence of fundamental rights raised by the requested person before the first Court is thus one which must necessarily be considered. The issue raised by the Attorney General in this case, however, is whether in the Maltese juridical system, this issue may be raised before and decided by the Court of Magistrates (Malta) as a Court of Committal.

In this respect, this Court refers to the judgement delivered by this Court, as differently presided, in the names **Il-Pulizija vs John Spiteri**, above cited, which stated as follows on this matter:

> *138. Fis-sistema Malti, il-kwistjoni marbuta mal-istħarriġ tar-rekwiżiti u l-elementi meħtiega għall-eżekuzzjoni tal-mandat t'arrest Ewropew hija fdata f'idejn il-Qorti tal-Maġistrati bħala Qorti Rimandanti. Dik il-Qorti għandha ġurisdizzjoni ordinarja ta' natura penali u hija mogħtija s-setgħa tistħarreġ jekk, fil-kwadru tal-Liġi ordinarja - il-Kodiċi Kriminali - li taħtu teżerċita s-setgħat tagħha, u fil-kwadru tal-Liġi speċjali li fiha topera f'dan il-kamp – u allura l-Att dwar l-Estradizzjoni u l-Ordni - ikunx hemm l-estremi meħtieġa, skont dawk il-Liġijiet, jekk it-talba tal-Awtorita Ġudizzjarja barranija għaċ-ċediment ta' persuna rikjesta tiġix milqugħa.*
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> *139. **Iżda fl-istess waqt, dik il-Qorti mhix mogħtija wkoll is-setgħa li tiddetermina hi stess kwistjonijiet speċifiċi li jkunu fihom infushom jew fl-effetti tagħhom jitrattaw allegazzjonijiet ta' ksur tal-jeddijiet tal-bniedem u li jitnisslu mill-proċess tal-eżekuzzjoni tal-mandat tal-arrest Ewropew**. U fil-fatt dan kien il-punt prinċipali li l-Qorti tal-Maġistrati ddeċidiet fid-digriet tagħha tal-24 t'Awissu 2022 li bih ċaħdet it-talba tar-rikorrent.*
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> *140. Talba għal stħarriġ tal-kundizzjonijiet tad-detenzjoni f'ħabs barrani minħabba biża ta' trattament jew pieni inumani jew degradanti tinvolvi stħarriġ speċjalistiku dwar allegat u potenzjali ksur tal-jeddijiet tal-bniedem. Fis-sistema legali Malti, **l-Avukat Ġenerali għandha raġun targumenta li anke jekk ikunu marbuta mal-proċeduri tal-eżekuzzjoni tal-mandat t'arrest Ewropew, la dik il-Qorti u l-anqas din ma jistgħu jistħarġu kwistjonijiet jew allegazzjonijiet ta' ksur ta' drittijiet tal-bniedem li jitnisslu minn dawk il-proċeduri jew mill-effetti jew il-konsegwenzi tagħhom; u dan mhux b'kapriċċ jew għax iridu jaħslu jdejhom, jew għax ma***

jagħtux każ il-jeddijiet tal-bniedem, iżda għax fis-sistema Malti l-kwistjonijiet li jolqtu allegazzjonijiet ta' ksur ta' jeddijiet fundamentali huma deċiżi minn Qrati speċjali*. Din il-konklużjoni mhix bażata biss fuq l-artikolu 46 tal-Kostituzzjoni Maltija, iżda wkoll fuq l-artikolu 16 tal-Att dwar l-Estradizzjoni (reż applikabbli għall-dawn il-proċeduri bis-saħħa tar-regolament 25 tal-Ordni). Dan l-artikolu jgħid li meta tieħu deċiżjoni favur it-treġġiegħ lura ta' persuna rikjesta fuq mandat t'arrest Ewropew il-Qorti Rimandanti hija obbligata li tinfurma lill-persuna rikjesta bid-dritt li hija għandha li, jekk ikun jidhrilha li xi wieħed mid-disposizzjonijiet tal-artikolu 10(1)(2) tal-Att dwar l-Estradizzjoni ġie miksur jew jekk xi disposizzjoni tal-Kostituzzjoni ta' Malta jew tal-Att dwar il-Konvenzjoni Ewropea hija, tkun ġiet, jew x'aktarx tkun sejra tiġi miksura dwar il-persuna tiegħu hekk li tkun ġustifikata r-revoka, l-annullament jew il-modifika tal-ordni tal-kustodja tal-qorti, hija għandha jedd titlob rimedju skont l-artikolu 46 tal-Kostituzzjoni ta' Malta jew skont l-Att dwar il-Konvenzjoni Ewropea skont il-każ. L-irwol ta' din il-Qorti imbagħad hija li tirrevedi dik id-deċiżjoni li tkun ittieħdet mill-Qorti tal-Maġistrati kif spjegat iżjed il-fuq.*

141. ***Altrimenti kieku dawn il-Qrati ta' ġurisdizzjoni kriminali setgħu huma stess jiddeterminaw kwistjonijiet fattwali li fuqhom ikun bażati allegazzjonijiet ta' ksur ta' jeddijiet tal-bniedem : li allura jinkludi kemm il-kondizzjonijiet ta' detenzjoni kif ukoll aspetti oħra li jistgħu iwaslu għal xi forma ta' ksur tal-jeddijiet tal-bniedem – l-obbligu impost fuqhom bl-artikolu 16 tal-Att dwar l-Estradizzjoni (reż applikabbli għall-dawn il-proċeduri bis-saħħa tar-regolament 25 tal-Ordni imsemmi iżjed il-fuq) kien ikun inutli, peress li kieku kellhom dik is-setgħa dak l-iskrutinju kienu jagħmluh huma stess u ma kienx ikun hemm il-ħtieġa li jinfurmaw lill-persuna rikjesta bid-dritt tagħha li tottjeni rimedji ulterjuri quddiem qrati ta' ġurisdizzjoni kostituzzjonali.***

142. Il-Qorti tal-Ġustizzja tal-Unjoni Ewropea ma tidħolx dwar kif l-ordinament ġuridiku intern tal-istati Membri jiddetermina dawn il-kwistjonijiet ta' drittijiet fundamentali. L-importanti huwa li l-istati Membri jkollhom strutturi Ġudizjarji tajbin li jkunu jistgħu jwettqu l-proċessi u jagħmlu l-iskrutinju meħtieġ mill-Liġi Ewropea. Fil-każ

ta' Malta, l-Awtoritajiet Ġudizzjarji li jeżegwixxu l-proċedura tal-mandat tal-arrest Ewropew huma ordinarjament il-Qrati ta' ġurisdizzjoni kriminali – il-Qorti tal-Maġistrati bi dritt t'appell u reviżjoni ta' dik id-deċiżjoni lil-Qorti tal-Appell Kriminali. Iżda meta f'dawn il-proċeduri jqum punt li jolqot il-jeddijiet tal-bniedem, imbagħad dik il-kwistjoni tkun trid tiġi mibgħuta lil qrati ta' ġurisdizzjoni kostituzzjonali biex jiddeċiduha huma. Dan ukoll peress li l-artikolu 16 tal-Att dwar l-Estradizzjoni ma jgħidx li jekk il-persuna rikjesta jkun jidhrilha li xi disposizzjoni tal-Kostituzzjoni ta' Malta jew l-Att dwar il-Konvenzjoni Ewropea hija, tkun ġiet jew x'aktarx tkun se tiġi miksura dwar il-persuna tagħha hekk li tkun ġustifikata r-revoka, l-annullament jew il-modifika tal-ordni ta' kustodja tal-qorti, kemm il-Qorti Rimandanti u kemm il-Qorti tal-Appell Kriminali jkollhom il-jedd li jiddeċiedu huma stess dak l-ilment. Iżda mill-banda l-oħra jgħid li l-Qorti għandha tgħarraf lil-persuna rikjesta li jekk ikun jidhrilha li:

(a)ir-reat li bih hija akkużata huwa reat ta' natura politika; jew li

(b)t-talba għat-treġġigħ lura tagħha (għalkemm tkun tidher li qed issir minħabba reat ta'estradizzjoni) hija fil-fatt magħmula biex l-istess persuna tiġi pproċessata jew penalizzata minħabba r-razza, il-post ta' oriġini, in-nazzjonalità, il-fehmiet politiċi, il-kulur jew it-twemmin tagħha; jew

(c)li xi disposizzjoni tal-Kostituzzjoni ta' Malta jew l-Att dwar il-Konvenzjoni Ewropea hija, tkun ġiet jew x'aktarx tkun se tiġi miksura dwar il-persuna tagħha hekk li tkun ġustifikata r-revoka, l-annullament jew il-modifika tal-ordni ta' kustodja tal-qorti,

hija għandha jedd li titlob rimedju skont id-disposizzjonijiet tal-artikolu 46 tal-imsemmija Kostituzzjoni jew tal-Att dwar il-Konvenzjoni Ewropea, skont il-każ.

143. Kif intqal, l-argument sollevat mid-Difiża dwar il-kundizzjonijiet tad-detenzjoni hija kwistjoni prinċipalment marbuta mal-jedd li persuna ma tiġix suġġetta għal trattament jew piena inumana jew degradanti, li fih innifsu huwa argument li jolqot direttament wieħed mill-jeddijiet fundamentali tal-bniedem, tant li fil-letteratura Ewropea sar riferit bħala l-"fundamental rights defence". Kif intwera anke b'deċiżjonijiet tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea, din tista' tkun raġuni serja u li in bażi tagħha

persuna ma tiġix mibgħuta fl-Istat rikjedenti. U fis-sistema Malti jekk persuna rikjesta jkollha dik il-preokkupazzjoni, il-Liġi Maltija tipprovdilha forum speċjalizzat biex tistħarreġ dak l-ilment, li jista' jkun jew jista' ma jkunx ġustifikat. Iżda grazzi għal dawk il-proċeduri, il-persuna rikjesta tkun tista' tassigura ruħha minn stħarriġ dettaljat u speċjalistiku mhux biss ta' ksur attwali jew passat tal-jeddijiet tal-bniedem iżda saħansitra anke wieħed potenzjali tal-jeddijiet fundamentali tagħha. U jkun biss wara li jkun sar dak l-iskrutinju li, jekk il-qrati ta' ġurisdizzjoni kostituzzjonali jiddeterminaw li ma jkunx hemm tali ksur – attwali jew potenzjali – li mbagħad il-persuna rikjesta tkun tista' tiġi mreġġa' lura lejn il-pajjiż rikjedent. [emphasis of this Court]

This Court agrees perfectly with the principles pronounced in this judgement. Thus, in the present case, the Attorney General's grievance is justified. Notwithstanding the fact that the first Court proceeded to obtain supplementary information from the Court of Appeal Brasov – Criminal Enforcement Bureau, in connection with the specific conditions in which the requested person will be detained in the Romanian prison/s, in terms of Article 13A of the Order, it had no competence to actually decide on whether there is a real risk that the requested person 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 thereby, on such grounds, to refuse to execute the European Arrest Warrant and to discharge the requested person. As courts of criminal jurisdiction, neither the Court of Committal nor this Court have any competence to decide on human rights matters. This line of reasoning was also adopted in the recent judgement delivered by this Court, as differently presided, in the names **Il-Pulizija vs Mohan Bharwani**, of 16th April 2024.

As to respondent's argument that this matter was never raised by the Prosecution before the first Court, whilst from the transcribed final oral submissions before the first Court, it results that the Prosecution, on the contrary, urged the said Court to delve into these matters, this notwithstanding this Court cannot proceed contrary to law. The law and jurisprudence on this matter are clear and the failure of the Prosecution to raise the issue before the first Court, does not imply that this Court should not decide in terms of law.

Thus, the Court accedes to the first grievance raised by the Attorney General. Consequently, it is not necessary that it delves into the second grievance raised by the Attorney General in the appeal application.

However, the Court will only accede in part to the Attorney General's request in the said application. Were this Court to order the surrender of Paul-Philippe Al-Romaniei to the judicial authorities of Romania, he will not have had the opportunity to contest the first Court's decision on the remaining grounds, which he raised before the said Court, and which were dismissed. Thus, in order that respondent may have a right of review of the decision given by the first Court, this Court will transmit the records of the proceedings to the Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal), to decide the case afresh, placing the requested person in the position he was in immediately prior to the said decision.

DECIDE

Thus, this Court decides this appeal by acceding partly to the appeal of the Attorney General and whilst it revokes and annuls the decision given by the Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal) on 20th May 2024 against Paul-Philippe Al-Romaniei, it transmits the records of the proceedings to the said Court of Magistrates (Malta) as a Court of Criminal Inquiry (for the purposes of the Extradition Act, referred to as the Court of Committal) to decide the case afresh, placing the requested person in the position he was in, immediately prior to the said decision.

Natasha Galea Sciberras
Judge