**Court of Criminal Appeal**

**Hon. Judge Dr. Edwina Grima LL.D.**

**Extradition (EAW) Proceedings No.395/2024**

**The Police**

**(Inspector Roderick Spiteri)**

**Vs**

**Paul Philippe Al-Romaniei, 76 years, of Romanian Nationality, born in Paris on the 13th January 1948, holder of United Kingdon of Great Britain and Northern Ireland Passport Number 558783808, w/aliases: Paul-Philippe Hohenzollern, born on the 13th January 1948; Paul Lambrino, born on the 13th January 1948 and Paul-Philip of Romania, born on the 13th January 1948.**

Today the 12th of August 2024

The Court,

Having seen the arraignment of appellant Paul Philippe Al-Romaniei of Romanian nationality, holder of United Kingdom of Great Britain and Northern Ireland passport number 558783808, before the Court of Magistrates (Malta) as a Court of Committal, wanted by the judicial authorities in Romania, a scheduled country in terms of Regulation 5 of Subsidiary Legislation 276.05, for the purpose of the execution of a custodial sentence of three years and four months imprisonment.

The Court was requested to proceed against Paul Philippe Al Romaniei according to the provisions of the Extradition Act, Chapter 276 Laws of Malta and Subsidiary Legislation 276.05.

Having seen the judgement of the Court of Magistrates (Malta) As a Court of Preliminary Inquiry (for purposes of the Extradition Act referred to as a Court of Committal) of 24th of June 2024 wherein the Court:

> ***"Orders the return of Paul-Philippe AL-ROMANIEI to Romania, w/Aliases Paul-Philippe HOHENZOLLERN and Paul LAMBRINO on the basis of the European Arrest Warrant and Schengen Information System Alert issued against him on the 18th of December 2020, and commits him to custody while awaiting his return to Romania.***
>
> ***This Order of Committal is being made on condition that the present extradition of the person requested be subject to the law of speciality and thus only in connection with those offences mentioned in the European Arrest Warrant issued against him deemed to be extraditable offences by this Court.***
>
> ***In terms of Regulation 25 of the Order as well as Article 16 of the Extradition Act, Chapter 276 of the Laws of Malta, this Court is informing the person requested that: -***
>
> ***(a) He will not be returned to Romania until after the expiration of seven days from the date of this order of committal and that,***
>
> ***(b) he may appeal to the Court of Criminal Appeal, and***
>
> ***(c) if he thinks that any of the provisions of Article 10(1) and (2) of the Extradition Act, Chapter 276 of the Laws of Malta has been contravened or that any provision of the Constitution of Malta or of the European Convention Act is, has been or is likely to be contravened in relation to his person as to justify a reversal, annulment or modification of the court's order of committal, he has the right to apply for redress in accordance with the provisions of article 46 of the said Constitution or of the European Convention Act, as the case may be."***

Having seen the appeal application of Paul Philippe Al Romaniei, filed on the 25th of March 2024, whereby he requested this Court to:

1. Revoke and annul the judgment delivered 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 the 24th of June 2024;

2. Consequently annul 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) on the 24th of June 2024 which ordered the return of the appellant to Romania on the basis of the European Arrest Warrant and Schengen Information System Alert issued against him on the 18th of December 2020;

3. Order that the European Arrest Warrant issued against the appellant on the 18th of February 2020 by the Brasov Court of Appeal – Criminal Division and the Certificate dated the 28th of April 2020 issued by the Attorney General in terms of Regulation 6A of the Extradition (Designated Foreign countries) Order (S.L.276.05) be refused;

4. Order that the applicant be immediately discharged and released from Corradino Correctional Facility where he is currently being held in a state of preventive custody.

Having seen the acts of the proceedings.

Having seen the one and only ground of appeal as presented by appellant Paul Philippe Al-Romaniei.

Having heard appellant's request that this Court make an order for a preliminary ruling before the Court of Justice of the European Union in terms of article 267 of the Treaty on the Functioning of the European Union.

Having heard the Attorney General object to this request.

Having heard appellant's request to refer to the First Hall of the Civil Court in its constitutional jurisdiction the question whether the wording of regulation 27A of S.L.276.05 which leaves in abeyance the timeframe, or the lack thereof, for the conclusion of any constitutional proceedings in relation to a requested EAW and this in line with regulation 25 of the same S.L.276.05, whether this amounts to an actual breach or a potential breach of the fundamental human right enshrined in article 39 of the Constitution of Malta, article 6 of the European Convention on Human Rights and

article 47 of the Charter of Fundamental Human Rights of the European Union, that is the right to an effective remedy and to a fair trial within a reasonable time.

Having heard the Attorney General object to this request on the basis that this request is frivolous in terms of article 46(3) of the Constitution, since there is no guarantee that once the fundamental rights' defence is raised before the Court of Committal rather than the First Hall of the Civil Court in its constitutional jurisdiction, the time limit of 60 days mentioned in Regulation 27A will be adhered to simply because that defence has been raised before that Court. In relation to the reference made to article 6 of the Convention, reference is also made to the judgment delivered by the Constitutional Court on the 13th of June 2017 in the names *Angelo Frank Paul Spiteri vs Attorney General* in the sense that extradition proceedings cannot be considered as criminal proceedings as this term is understood in the context of article 6 of the Convention.

Having seen the judgment delivered by the Constitutional Court of the 9th of July 2024 in the names *Paul Philippe Al-Romaniei vs L-Avukat Generali et*., wherein this Court of criminal jurisdiction was directed to apply the law of the European Union and not domestic law, when there is a conflict between the two laws.

Having seen the note filed by appellant on the 11th of July 2024 wherein he withdrew the two requests filed by him one for a reference to the European Court of Justice and the other to the First Hall of the Civil Court and this in view of the judgment delivered by the Constitutional Court.

Having seen the request filed by the Attorney General to refer the case back to the First Court, being the Court of Committal, in order that that Court may give a decision regarding appellant's claim that his fundamental human rights have been violated or are likely to be violated upon his surrender to the requesting state, and this so that neither of the parties are deprived from a right of review with regards to this matter raised by appellant.

Having seen the objection entered into by appellant wherein he claims that it is unacceptable and a legal heresy that the state itself is alleging that it is a victim of its own laws. His predicament he states is being compounded by a request from the state

which is unreasonable, unfair, vexatious and frivolous. This is due to the fact that the request by the State can only mean the unreasonable prolonging of these proceedings against him. It is also unfair because the situation obtaining today is only the result of the appeal which the Attorney General filed after the first discharge, an appeal which the Attorney General had a right at law to file. In view, of the appeal filed by the requested person for a decision to be sent to Romania, which will in effect be a death sentence to him, now the State wants to shift the goal posts and wants to cause further prejudice to the requested person in the most unjust manner.

Having seen the decree of the Court of the 12th of July 2024, wherein, in view of the one and only grievance put forward by appellant which refers to an alleged breach of his fundamental human rights, and in view of the fact that the Court of Committal did not entertain this defence since it was of the opinion that national law which transposed the Council Legal Framework on the European Arrest Warrant excluded the possibility that the Court, during EAW proceedings, delve into matters dealing with a violation of human rights, citing in its judgment the provisions of regulation 3 of S.L.276.05, considered that by a judgment delivered by the Constitutional Court of the 9th of July 2024 in the names *Paul Philippe Al-Romaniei vs l-Avukat Generali et*, that Court expressly stated that EU law prevails over domestic legislation and thus the Courts of criminal jurisdiction were in duty bound to apply Union Law over national law even where these appear to be in conflict. Moreover, the Constitutional Court also expressly stated that once the proceedings are still pending before this Court, as a court of criminal appeal, it is the competent authority to decide on the matters regulating the EAW issued against the requested person, including his right to be granted bail pending the outcome of the proceedings. The Court, is now bound in terms of the Council Framework Decision to deliver its <u>final</u> decision regarding the surrender of the requested person to the Issuing State of the warrant within a maximum of 90 days, as extended upon a request by the Attorney General. Ultimately, both the Court as well as the Attorney General and all the parties to the proceedings are in duty bound to observe the law of the European Union of which Malta is a Member State, thus meaning that the requested person's grievance regarding an alleged breach of his fundamental human rights should have been dealt with by the

courts of criminal jurisdiction upon his first request that these be addressed. Consequently, the request by the Attorney General was denied and in view of the one and only grievance raised by appellant, the Court ordered that the matter relating to the alleged violation of requested person's fundamental human rights be addressed forthwith and thus ordered the parties to bring forward all evidence relating to this grievance.

Having seen the declaration by the parties that the evidence regarding this grievance consists of the evidence found in the acts, and also the evidence tendered before the First Hall of the Civil Court in its constitutional jurisdiction (Judge Aaron Bugeja) in the case *Paul Philipp Al-Romaniei vs l-Avukat ta'l-Istat u l-Avukat Generali,* exhibited in this case, by order of this Court.

Having seen the note filed by the Registrar of Courts where on the strength of an order by this Court, the evidence gathered in the constitutional proceedings, above cited, including all testimonies and documents presented by both parties, was exhibited.

Having seen all the evidence and documents found in the acts.

Having heard submissions both by the defence for requested person/appellant, as well as by the Attorney General.

Having seen the minutes of the sitting of the 12th of July 2024 wherein the appeal was put off for judgment for the 19th of July 2024.

Having seen the application filed by the Attorney General of the 17th of July 2024, wherein the Court was requested to suspend its final decision after information was received by the Issuing Judicial authority in Brasov, Romania that a preliminary ruling by the Court of Justice of the European Union submitted by the Court of Appeal Brasov in relation to the present EAW was to be delivered on the 29th of July 2024, and thus asked this Court to stay the appeal pending the decision by the CJEU[1].

[1] Vide Document AG1 at folio 430 of the records

Having seen the reply of requested person Paul Philippe Al-Romaniei filed on the 18th of July 2024 wherein he objected to the said request for the reasons outlined in the said reply.

Having seen the decree of the Court of the 19th of July 2024, wherein the request of the Attorney General was upheld and the appeal was put off for final submissions once again for the 29th of July 2024.

Having heard further submissions by the parties and this after the preliminary ruling by the CJEU was delivered.

Having seen all the acts of the case.

**Considers,**

That appellant's one and only grievance reads as follows:

> "21. Whereas the appellant humbly believes that it would be more equitable and just had 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) decide whether to accede or deny the said European Arrest Warrant after the competent courts examine whether there is a real risk to a breach of his fundamental human rights and this since such exceptional circumstances subsist.
>
> 22. Whereas it is exactly for this reason that the appellant feels aggrieved by the decision of the Court of Magistrates (Malta) as a Court of Criminal Inquiry for the purposes of the Extradition on the 24th of June 2024 since as a result of such a decision he has been deprived of his right to exercise his defence of fundamental rights as constantly upheld by several judgments of the European Court."

This grievance however must be necessarily assessed in the light of the proceedings as a whole thus far, proceedings which have been rather convoluted, and which have exceeded not only the 60-day time limit, but also the 90 days, as extended, and this upon a request by the Issuing State itself, from the arrest of the requested person for final decision to be delivered, as established in regulation 27A of S.L.276.05, thus leading the Attorney General to inform Eurojust of the delay.

**<u>What happenend in the proceedings thus far:</u>**

Appellant, Paul Philippe Al-Romaniei, is wanted by the Romanian Competent Authorities in terms of Article 5 of Subsidiary Legislation 276.05 in order to serve a custodial sentence of a term of three years and four months. The European Arrest Warrant (the "EAW") was issued on the 18th of December 2020 by the Braşov Court of Appeal – Criminal Division, after judgment was delivered against the requested person on the 17th of December 2020 by the High Court of Cassation in Romania, with the Schengen Information System Alert number ROIGP0140101476000001 issued on the 18th of December 2020. In terms of the Certificate dated the 28th of April 2024 issued by the Attorney General in terms of Regulation 6A of the Extradition (Designated Foreign Countries) Order (Subsidiary Legislation 276.05), the Executive Police proceeded to affect the arrest of appellant who was arraigned before the Court of Magistrates where the extradition proceedings commenced on the 29th of April 2024. After ascertaining his identity as being the same person wanted by the requesting Romanian judicial authorities, and after hearing that the requested person was objecting to his surrender, the Court embarked on the extradition proceedings.

The present EAW was thus issued following prison sentence execution warrant no. 42/17.12.2020, issued by the Court of Brasov and which relates to the conviction of the requested person for three offences:

> *"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.[2]"*

The Romanian Authorities also submitted to the Court of Committal, during the initial proceedings, the judgments upon which the present EAW is based. From these documents it results that by a judgment delivered by the Braşov Court of Appeal Section for Criminal Matters on the 27th of June 2019, 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.

[2] Extract of the judgment

Subsequently by a judgment delivered by The High Court of Cassation and Justice on the 17th of December 2020, the Court:

- 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[3].

The Court of Committal (as presided by Magistrate Leonard Caruana) on the 20th of May 2024, decided that from an examination of the EAW and supporting documentation, it resulted that the EAW satisfied the formalities required by Regulations 5(7) and 5(8) of the Order (SL276.05) and was also written in the format as required by Regulation 5A(2) of the Order (SL276.05). Furthermore, it was established that 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 28th of April 2024 in accordance with Reg. 6A and 7 of the Order, it resulted that the authority which issued the warrant has the function of issuing arrest warrants in Romania, being the requesting country in the proceedings. Therefore, based on the above, the Court found that the EAW was formally correct and satisfied all the requirements of the above-mentioned regulations. Referring then to the bars to extradition as listed in Regulation 13 of the Order (SL.276.05), the Court of Committal found that no such bars existed[4].

The requested person, however, raised a number of defences which are the following:

[3] The judgments are all found in the acts of the proceedings as remitted by the Romanian judicial authorities to the Court of Committal.

[4] Regulation 13(1) of the Order, lists as these bars the *ne bis in idem* principle; the person's age; or an amnesty in respect of these proceedings. Regulation 13(2) then mentions the following as baring extradition - (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

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

ii. That the requested person's name has been removed from the Interpol Database, 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 and this on the basis of political persecution.

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

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

The Court of Committal in its judgment of the 20th of May 2024, rejected the first three defences raised, however acceded to the last defence and found that if the European Arrest Warrant against Paul Philippe Al Românieі 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, article 3 of the European Convention on Human Rights, and on this basis the Court refused to execute the European Arrest Warrant, and consequently ordered the discharge of Paul Philippe Al Românieі.

The Attorney General, however, entered an appeal from the said decision on the 23rd of May 2024, in terms of article 19 of the Extradition Act, Chapter 276 of the Laws of Malta, rendered applicable to the European Arrest Warrant proceedings by means of Regulation 32 of SL276.05., asking that this Court, as otherwise presided, reverse the decision of the Court of Magistrates as a Court of Committal, and order that Paul Philippe Al-Romaniei be committed to custody to await his return to Romania in accordance with the law. The ground for appeal of the Attorney General centred around what, in her opinion, amounted to an incorrect application of the law by the Court of Committal, since the assessment carried out by that Court, and its subsequent decision, can only be carried out by the First Hall of the Civil Court in its constitutional

jurisdiction, having the competence to decide potential violations of human rights, such competence not being given to the Court of Committal by law, with the Order (SL276.05) precluding it from deciding on matters relating to potential and/or actual human rights breaches, such violations not indicated in Regulation 13 of the said Order as being one of the bars to extradition. In fact, the Attorney General reiterated that article 16 of the Extradition Act, rendered applicable to EAW proceedings by means of Regulation 25 of the Order (SL276.05), gives the right to the requested person to file proceedings for constitutional redress before the Constitutional Court, thus implying that such issues may not be entertained during the EAW proceedings by the Court of Magistrates as a Court of Committal and by this Court of Appeal in its criminal jurisdiction.

After hearing submissions by the parties in the sitting of the 27th of May 2024, this Court of Criminal Appeal, as otherwise presided, delivered its decision on the 10th of June 2024 wherein the appeal of the Attorney General was upheld. Consequently, the judgment of the Court of Committal of the 20th of May 2024 was revoked and the records were transmitted once again before the Court of Magistrates as a Court of Committal to decide the case afresh. This Court of Criminal Appeal, as otherwise presided, decided that 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, it could not refuse to execute the European Arrest Warrant and to proceed to discharge the requested person. As courts of criminal jurisdiction, it was decided, neither the Court of Committal nor this Court have any competence to decide on human rights matters and this in terms of Subsidiary Legislation 276.05.

The acts were remitted once again before the Court of Magistrates as a Court of Committal (now presided by Magistrate Donatella Frendo Dimech) where proceedings started afresh on the 19th of June 2024. Before the said Court the defence agreed that the crimes for which extradition is being requested are extraditable offences. It also agreed that there were no bars to extradition as laid out in Regulation 13 of the Order. However the defence submitted that in view of Recital 12 of the preamble to the EAW Framework Decision of the 13th of June 2002, since the basis of any request for an EAW has to observe the principles recognised by article 6 of the Treaty on the European Union and reflected in the Charter of Fundamental Rights in the EU, in particular Chapter VI, since the requested person is being punished on the grounds of his political opinion and therefore his position may be prejudiced for his political views, the requested person should never be extradited to Romania, and this as has already been confirmed on the same request by the Court in France, Belgium, Cyprus, Greece and even Interpol in 2023. Furthermore, the defence was of the belief that article 10 of Chapter 276 of the Laws of Malta is applicable to this case since the requested person has been convicted of an offence of a purely political character, and, also, for this reason, the requested person should not be extradited to Romania. Finally, the defence referred to a 2016 judgment of the Court of Justice of the European Union in the *Aranyosi and Caldararu* case which established an added criterion which can justify non-execution of an EAW which judgment was confirmed in the *Lanigan* case and the 2019 judgment *Dumitru-Tudor Dorobantu*.

By a decision of the Court of Magistrates as a Court of Committal of the 24th of June 2024, the Court considered that:

> *"Whereas learned defence counsel submits that the requested person's return ought to be refused on the grounds that the European Arrest Warrant is a pretext for prosecuting and punishing the requested persons for his political opinions, and thus this Court ought to refuse, Article 10 of the Extradition Act, read together with Para 12 of the Preamble to the Council Framework Decision of 13 June 2002, (hereinafter referred to as "the EAW Framework Decision") this Court makes reference to Regulation 3(1) of the order which provides:*

> *3. (1)* ***Only the provisions of this Order****, save where otherwise expressly indicated, shall apply to requests received or made by Malta on or after the relevant date for the return of a fugitive criminal to or from a scheduled country, or to persons returned to Malta from a scheduled country in pursuance of a request made under this Order, and the provisions of the relevant Act shall have effect in relation to the return under this Order of persons to, or in relation to persons returned under this Order from, any scheduled country* ***subject to such conditions, exceptions, adaptations or modifications as are specified in this Order****."*

Consequently, the Court, having seen Regulations 13(4), 23(2) and 24 of the Order, ordered the return of Paul-Philippe Al-Romaniei to Romania, on the basis of the European Arrest Warrant and Schengen Information System Alert issued against him on the 18th of December 2020, and committed him to custody while awaiting his return to Romania. Furthermore:

> ***"In terms of Regulation 25 of the Order as well as Article 16 of the Extradition Act, Chapter 276 of the Laws of Malta, this Court is informing the person requested that:-***
>
> ***(a) He will not be returned to Romania until after the expiration of seven days from the date of this order of committal and that,***
>
> ***(b) he may appeal to the Court of Criminal Appeal, and***
>
> ***(c) if he thinks that any of the provisions of Article 10(1) and (2) of the Extradition Act, Chapter 276 of the Laws of Malta has been contravened or that any provision of the Constitution of Malta or of the European Convention Act is, has been or is likely to be contravened in relation to his person as to justify a reversal, annulment or modification of the court's order of committal, he has the right to apply for redress in accordance with the provisions of article 46 of the said Constitution or of the European Convention Act, as the case may be."***

On the 25th of June 2024, the requested person Paul-Philippe Al-Romaniei entered an appeal before this Court, as presided, from the decision of the Court of Committal ordering his surrender to the Romanian authorities, asking for the revocation and annullment of the decision of the 24th of June 2024 delivered by the Court of Magistrates as a Court of Committal. The requested person felt aggrieved by the fact that the decision ordering his surrender to the requesting state deprived him of his rights to exercise his defense on the issue regarding a violation of his fundamental

human rights, insisting that in terms of the European Council Framework Decision on the European Arrest warrant, the Courts of criminal jurisdiction have to assess whether the surrender of the requested person to the Issuing State may result in a violation of his fundamental human rights, and even asked this Court to refer the matter for a preliminary ruling before the Court of Justice of the European Union asking that court to resolve the issue whether domestic legislation excluding such a possibility during EAW proceedings was contrary to EU law.

Pending the outcome of these proceedings, appellant filed two actions asking for constitutional redress before the First Hall of the Civil Court in its constitutional juristiction, one bearing application number 304/2024 dealing with an alleged breach of article 3 of the Convention should the requested person be surrendered to the Romanian authorities, and this in view of the prison conditions present in the said country, which case is still pending, and the other having application number 267/24 alleging a breach of article 5, 6 and 13 of the Convention since he was held in detention after the decision ordering his surrender, which case was decided by the Constitutional Court by a judgment of the 9th of July 2024.

In the interim the Issuing Member State filed for a preliminary ruling before the CJEU regarding the execution of the EAW, asking the following questions:

> ***« 1) L'article 15, paragraphe 1, de la [décision-cadre 2002/584] peut-il être interprété en ce sens que la décision de justice définitive par laquelle une autorité judiciaire d'exécution refuse la remise de la personne réclamée est revêtue de l'autorité de la chose jugée à l'égard d'une autre autorité judiciaire d'exécution d'un autre État membre ou doit-il être interprété en ce sens qu'il ne s'oppose pas à la réitération de la demande de remise au titre du même mandat d'arrêt européen, lorsque les éléments ayant fait obstacle à l'exécution d'un précédent mandat d'arrêt européen ont été écartés ou que la décision de refus d'exécution de ce mandat d'arrêt européen n'était pas conforme au droit de l'Union, pour autant que l'exécution d'un nouveau mandat d'arrêt européen n'aboutirait pas à une violation de l'article 1er, paragraphe 3, de la [décision-cadre 2002/584] et que la réitération de la demande de remise revêt un caractère proportionné, conformément à l'interprétation de la [décision-cadre 2002/584] par [l'arrêt du 31 janvier 2023, Puig Gordi e.a. (C-158/21, EU:C:2023:57, point 141 et point 5 du dispositif)] ?***

2) *L'article 1er, paragraphe 3, de la [décision-cadre 2002/584], lu à la lumière de l'article 47, deuxième alinéa, de la [Charte], peut-il être interprété en ce sens que l'autorité judiciaire d'exécution ne peut pas refuser d'exécuter un mandat européen émis aux fins d'exécution d'une peine lorsque, dans le cadre de l'appréciation du point de savoir si les droits de l'homme ont été respectés dans la procédure d'exécution d'un mandat d'arrêt européen, en ce qui concerne le droit à un procès équitable, s'agissant de l'exigence d'un tribunal établi par la loi, prévu à l'article 47, deuxième alinéa, de la [Charte], des irrégularités relatives à la prestation de serment de membres de la formation de jugement de la juridiction ayant prononcé la condamnation ont été constatées, sans qu'elles aient trait à l'immixtion d'autres pouvoirs publics dans le processus de nomination des juges ?*

3) *L'article 1er, paragraphe 3, de la [décision-cadre 2002/584], lu à la lumière de l'article 47, deuxième alinéa, de la [Charte], peut-il être interprété en ce sens que, dans une situation où une personne faisant l'objet d'un mandat d'arrêt européen allègue que sa remise à l'État membre d'émission entraînerait la méconnaissance de son droit à un procès équitable, l'existence d'une décision de la [CCF] portant directement sur la situation de cette personne ne peut pas justifier, à elle seule, que l'autorité judiciaire d'exécution refuse d'exécuter ce mandat d'arrêt européen, mais qu'une telle décision peut, en revanche, être prise en compte par cette autorité judiciaire, parmi d'autres éléments, en vue d'apprécier l'existence de défaillances systémiques ou généralisées du fonctionnement du système juridictionnel de cet État membre ou de défaillances affectant la protection juridictionnelle d'un groupe objectivement identifiable de personnes auquel appartiendrait ladite personne ?*

4) *La [décision-cadre 2002/584] peut-elle être interprétée en ce sens qu'elle ne s'oppose pas à la réitération de la demande de remise de la personne réclamée, au titre du même mandat d'arrêt européen dont l'exécution a initialement été refusée par une juridiction d'exécution d'un État membre, devant une autre juridiction d'exécution d'un autre État membre, lorsque l'autorité judiciaire d'émission constate elle–même que la décision antérieure de refus d'exécution du mandat d'arrêt européen n'était pas conforme au droit de l'Union au regard de la pratique juridictionnelle déjà existante de la Cour ou uniquement à la suite de la saisine de la Cour d'une question préjudicielle d'interprétation du droit de l'Union applicable dans ladite affaire ?*

5) *Le principe de reconnaissance mutuelle prévu à l'article 1er, paragraphe 2, de la [décision-cadre 2002/584] ainsi que les principes de confiance mutuelle et de coopération loyale prévus à l'article 4, paragraphe 3, premier alinéa, TUE, lus à la lumière de la nécessité de garantir une protection juridictionnelle effective des droits des personnes impliquées dans la procédure, le tout au regard des articles 15 et 19 de la [décision-cadre 2002/584], permettent-ils aux autorités judiciaires de l'État membre d'émission (la juridiction d'émission étant représentée par un représentant*

***direct ou, sur invitation de celle-ci, par d'autres organes judiciaires, tels qu'un magistrat de liaison, le membre national pour [l'Agence européenne pour le renforcement de la coopération judiciaire (Eurojust)] ou le procureur de l'État membre d'émission) de participer directement, en formulant des demandes, en présentant des offres de preuve et en prenant part aux débats judiciaires, aux procédures judiciaires d'exécution du mandat d'arrêt européen menées par l'autorité judiciaire d'exécution ainsi que de former un recours contre la décision de refus de remise, dans la mesure où un tel recours est prévu par le droit de l'État membre d'exécution et, si tel est le cas, conformément aux conditions fixées à cet effet, sur le fondement et dans le respect du principe d'équivalence ?***

6) ***L'article 17, paragraphe 1, TUE, relatif aux attributions de la Commission [européenne], lu à la lumière de la [décision-cadre 2002/584], peut-il être interprété en ce sens que les attributions de la Commission visant à promouvoir l'intérêt général de l'Union en prenant les initiatives appropriées à cette fin et à garantir la surveillance de l'application du droit de l'Union peuvent être exercées en matière de mandat d'arrêt européen, sur saisine de l'autorité judiciaire d'émission du mandat d'arrêt européen, si cette dernière considère que le refus de l'autorité judiciaire d'exécution d'exécuter le mandat d'arrêt européen porte gravement atteinte aux principes de confiance mutuelle et de coopération loyale, afin que la Commission prenne les mesures qu'elle estime nécessaires conformément à ces attributions et en toute indépendance ?*** [5]»

[5] The ruling is available only in the French and Romanian text which unofficially translated into English reads as follows:

« 1) Can Article 15(1) of [Framework Decision 2002/584] be interpreted as meaning that a final judicial decision by which an executing judicial authority refuses to surrender the requested person has the force of res judicata vis-à-vis another executing judicial authority of another Member State, or must it be interpreted as not precluding the repetition of the request for surrender under that same law? European arrest warrant, where the elements which precluded the execution of a previous European arrest warrant have been disregarded or the decision refusing to execute that European arrest warrant was not in accordance with EU law, in so far as the execution of a new European arrest warrant would not result in an infringement of Article 1(3) of [Framework Decision 2002/584] and that the repetition of the request for remission is proportionate, in accordance with the interpretation of [Framework Decision 2002/584] by [the judgment of 31 January 2023, Puig Gordi and Others (C-158/21, EU:C:2023:57, paragraph 141 and paragraph 5 of the operative part)]?

2) Can Article 1(3) of [Framework Decision 2002/584], read in the light of the second paragraph of Article 47 of the [Charter], be interpreted as meaning that the executing judicial authority may not refuse to execute a European warrant issued for the purpose of executing a sentence where, in the context of the assessment of whether human rights have been respected in the procedure for the execution of a European arrest warrant, as regards the right to a fair trial, as regards the requirement of a tribunal established by law, provided for in the second paragraph of Article 47 of the [Charter], irregularities relating to the swearing-in of members of the formation of the court which pronounced the conviction were found, without relating to the interference of other public authorities in the process of appointing judges?'

3) Can Article 1(3) of [Framework Decision 2002/584], read in the light of the second paragraph of Article 47 of the [Charter], be interpreted as meaning that, in a situation where a person who is the subject of a European arrest warrant alleges that his surrender to the issuing Member State would entail a breach of his right to a fair trial, the existence of a decision of the [CCF] relating directly to the situation of that person cannot justify, in

Upon a request by the CJEU to the Court of Appeal Brasov asking for a clarification as to the nature of the proceedings in which it submitted the request for a preliminary ruling, the subject-matter of those proceedings and the content of the decisions which it might be called upon to take at the end of those proceedings, the Court in Brasov referred to the proceedings pending before the Maltese Courts and to the judgment which had refused the surrender of requested person to Romania on grounds of inhuman and degrading treatment or punishment, provided for in Article 4 of the Charter. The Court of Appeal Brasov complained that the Maltese Executing authority in reaching its decision had relied firstly on information accessible, *inter alia*, on the website of the Romanian prison administration and, secondly, took into consideration the fact that the referring court's approval of the assurances of the competent

---

itself, the executing judicial authority refusing to execute that European arrest warrant, but that such a decision may, on the other hand, be taken into account by that judicial authority, among other factors, in order to assess whether there are systemic or generalised deficiencies in the functioning of the judicial system of that Member State or deficiencies affecting the judicial protection of an objectively identifiable group of persons to which that person belongs?

4) Can [Framework Decision 2002/584] be interpreted as not precluding the repetition of the request for surrender of the requested person, under the same European arrest warrant whose execution was initially refused by an executing court of a Member State, before another executing court of another Member State, where the issuing judicial authority itself finds that the previous decision refusing to execute the European arrest warrant was not not compatible with EU law in the light of the Court's already existing judicial practice or solely following the referral to the Court of Justice of a question on the interpretation of the EU law applicable in that case?

5) The principle of mutual recognition laid down in Article 1(2) of [Framework Decision 2002/584] and the principles of mutual trust and sincere cooperation laid down in the first subparagraph of Article 4(3) TEU, read in the light of the need to ensure effective judicial protection of the rights of the persons involved in the proceedings, in the light of Articles 15 and 19 of [Framework Decision 2002/584], allow the judicial authorities of the issuing Member State (the issuing court being represented by a direct representative or, at the invitation of that court, by other judicial bodies, such as a liaison magistrate, the national member for the [European Agency for the Strengthening of Judicial Cooperation (Eurojust)] or the prosecutor of the issuing Member State) to participate directly, making requests, offering evidence and taking part in judicial proceedings, in judicial proceedings for the execution of the European arrest warrant conducted by the executing judicial authority and to appeal against the decision refusing surrender, in so far as such an appeal is provided for by the law of the executing Member State, and, if that is the case, in accordance with the conditions laid down for that purpose, on the basis of and in compliance with the principle of equivalence?

6) Can Article 17(1) TEU, relating to the powers of the [European] Commission, read in the light of [Framework Decision 2002/584], be interpreted as meaning that the Commission's powers to promote the general interest of the European Union by taking appropriate initiatives to that end and to ensure that the application of EU law is monitored may be exercised in relation to the European arrest warrant upon referral to the judicial authority issuing the European arrest warrant, if that authority considers that the executing judicial authority's refusal to execute the European arrest warrant seriously undermines the principles of mutual trust and sincere cooperation, in order for the Commission to take such measures as it considers necessary in accordance with those powers and in complete independence?' »

Romanian authorities that the requested person would not be subjected to inhuman or degrading treatment as a result of his conditions of detention, was indicated, in the English-language translation of the communication from the referring court to the Maltese executing judicial authority, by the word 'approved' and not by the word 'endorsed', the latter term being the term used in paragraph 68 of the English-language version of the judgment of 15th of October 2019, in the case of *Dorobantu*.

Following this clarification, and on the basis of the decision of the Maltese Executing authority of the 20th of May 2024, the Court of Appeal Brasov referred a seventh question to the CJEU being the following:

> ***« L'article 1er, paragraphe 3, de la [décision-cadre 2002/584], lu en combinaison avec l'article 4 de la [Charte], relatif à l'interdiction des traitements inhumains ou dégradants, doit-il être interprété en ce sens que, lors de l'examen des conditions de détention dans l'État membre d'émission, d'une part, l'autorité judiciaire d'exécution ne peut pas refuser d'exécuter le mandat d'arrêt européen sur la base d'informations qui n'ont pas été portées à la connaissance de l'autorité judiciaire d'émission et pour lesquelles cette dernière n'a pas eu l'occasion de fournir des informations complémentaires, au sens de l'article 15, paragraphes 2 et 3, de la [décision-cadre 2002/584], et, d'autre part, l'autorité judiciaire d'exécution ne peut appliquer un standard plus élevé que celui prévu par la Charte et sans préciser avec exactitude les règles auxquelles elle se réfère, notamment en ce qui concerne les exigences en matière de détention telles que l'établissement d'un "plan précis d'exécution de la peine", de "critères précis pour établir un régime d'exécution déterminé" et de garanties en matière de non-discrimination en raison d'une "situation particulièrement unique et délicate" ? »***[6]

[6] The ruling is available only in the French and Romanian text which unofficially translated into English reads as follows:

'Is Article 1(3) of [Framework Decision 2002/584], read in conjunction with Article 4 of the [Charter], relating to the prohibition of inhuman or degrading treatment, to be interpreted as meaning that, when examining the conditions of detention in the issuing Member State, first, the executing judicial authority may not refuse to execute the European arrest warrant on the basis of information which has not been brought to the attention of the authority and in respect of which the latter has not had the opportunity to provide additional information, within the meaning of Article 15(2) and (3) of [Framework Decision 2002/584], and, secondly, the executing judicial authority may not apply a higher standard than that laid down in the Charter and without specifying precisely the rules to which it refers, in particular with regard to detention requirements such as the establishment of a "precise plan for the execution of the sentence", "precise criteria for establishing a particular enforcement regime" and guarantees of non-discrimination on account of a "particularly unique and delicate situation"? »

Upon a request made to this Court *via* the Office of the Attorney General, the Issuing Member state asked this Court to await the ruling by the CJEU on the matter prior to delivering its judgment, with this court upholding the request since the said ruling concerned directly the defences raised by appellant regarding the manner and extent in which the Executing Judicial authority is to deal with the alleged violation of human rights denounced by appellant. Consequently, in view of the exceptional circumstances mentioned in article 17(7) of the Framework Decision 584/2002/JHA which placed this Court in a position, (and this upon a request by the Issuing judicial authority itself), wherein it could not observe the time limits laid out in article 17(3) and (4) of the FD, this Court upheld the request and on the 29th of July 2024 the CJEU delivered its preliminary ruling on the questions brought before it by the Court of Appeal Brasov with regards to the execution of the EAW issued against Paul Philippe of Romania, which decision will be examined by this Court further on in its judgment when examining appellant's grounds for appeal.

Now, although as already pointed out, and as decided by the Court of Committal in its judgment of the 24th of June 2024, national legislation precludes the Maltese executing authority from assessing a violation of human rights since these fall within the competence of the Constitutional Court, however in its judgment of the 9th of July 2024, the said Court stated *inter alia*:

> **33. Minn din is-sentenza hu ċar li l-qrati ta' kompetenza kriminali li jiddeċiedu każijiet dwar l-eżekuzzjoni ta' mandat ta' arrest Ewropew, għandhom dmir jiddeċiedu jekk mill-provi jirriżultax li hemm riskju reali li t-treġġigħ lura tal-persuna jwassal għal trattament inuman u degradanti tal-persuna li tintalab mill-awtorità ġudizzjarja emittenti. ….**
>
> **34 Għalhekk hi żbaljata t-teżi li l-qrati ta' kompetenza kriminali m'għandhomx kompetenza li jikkunsidraw ilmenti relatati mad-drittijiet fundamentali tal-persuna f'proċeduri relatati mal-eżekuzzjoni ta' mandat ta' arrest Ewropew. Pożizzjoni li tissarraf f'nuqqas ta' implimentazzjoni tad-dritt Ewropew li jinkludu l-Karta tad-Drittijiet tal-Bniedem tal-Unjoni Ewropea, u taf ikollha konsegwenzi fuq il-proċeduri.**

**35. Għaldaqstant, fil-każ ta' mandat ta' arrest Ewropew, l-Ordni dwar Pajjiżi Barranin Appuntati dwar l-Estradizzjoni (Leġislazzjoni Sussidjarja 276.05) u l-Att dwar l-Estradizzjoni (Kap. 276) huma soġġetti għad-dritt Ewropew[7].**

Based on this judgment, it is evident that the grievance brought forward by appellant is well-founded, and that thus, **the initial proceedings** undertaken against appellant before the Court of Committal which resulted in the judgment of the **20th of May 2024**, were in conformity with EU law, although domestic legislation directs our courts to act otherwise. Consequently, acting upon the direction given by the Constitutional Court and applying European Law as contemplated in the Council Framework Decision of the 13th of June 2002, this Court will assess, on the basis of all the evidence brought before it by the parties, whether appellant's claim that he is suffering from political persecution, and above all that should he be surrendered to Romania, he will suffer a breach of article 3 of the European Convention of Human Rights, and article 4 of the Charter of Fundamental Rights of the European Union, is substantiated or otherwise, and this also in the light of the preliminary ruling delivered by the CJEU of the 29th of July 2024.

**A. An alleged breach of article 4 of the Charter of Fundamental Rights of the European Union and article 3 of the European Convention on Human Rights.**

Appellant alleges that there is a well-known documented scenario existing in Romanian prisons of a structural, inherent, ingrained and pervasive problem of inhuman and degrading treatment outlined in various judgments delivered by the

[7] 33. From this judgment it is clear that the courts of criminal jurisdiction hearing cases in proceedings regarding the execution of a European arrest warrant, have a duty to determine whether from the evidence it results that there is a real risk that the return of the person leads to inhuman and degrading treatment of the person who is requested by the issuing judicial authority. ….

34 Therefore, the argument that the courts of criminal competence do not have the competence to consider complaints related to the fundamental rights of the person in procedures related to the execution of a European arrest warrant is wrong. A position that translates into a lack of implementation of European law that includes the Charter of Human Rights of the European Union and can have consequences on the procedures.

35. Accordingly, in the case of a European arrest warrant, the Designated Foreign Countries Order on Extradition (Subsidiary Legislation 276.05) and the Extradition Act (Cap. 276) are subject to European law.

Court of Human Rights in Strasbourg, finding a violation of article 3 of the Convention against Romania due to inadequate detention conditions consisting in serious overcrowding and precarious material living conditions.

Now, the refusal by a Member State to execute a European Arrest Warrant runs counter to the principles of mutual recognition and trust between Member States lying at the heart of the Council Framework Decision 2002/584/JHA establishing "*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, founded on the high level of confidence which should exist between the Member States*.[8]" On the other hand, "*the principle of mutual recognition on which the European arrest warrant system is based is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter*.[9]" 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 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.

However, the rights guaranteed in Recital 12 and 13 of the Preamble to the Framework Decision have consistently been held to constitute a further bar to the execution of the EAW and to the principles of mutual recognition and trust between Member states, as already pointed out.

> **(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this**

[8] Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, Judgment of 5 April 2016.

[9] IBID

**Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.**

**This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.**

**(13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.**

The *Aranyosi and Caldararu* judgment[10] in fact emphasises the guarantees which EU law indiscriminately and persistently grants where there is a risk of a violation of the fundamental rights of the requested person as laid out in the Charter. The judgment goes on to outline the guidelines which a court is to follow in assessing the defence of a violation of article 4 of the Charter raised by a requested person in EAW proceedings:

**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.**

**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**

[10] Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*, Judgment of 5 April 2016

**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.**

**90. In that regard, it follows from the case-law of the ECtHR that Article 3 ECHR imposes, on the authorities of the State on whose territory an individual is detained, a positive obligation to ensure that any prisoner is detained in conditions which guarantee respect for human dignity, that the way in which detention is enforced does not cause the individual concerned distress or hardship of an intensity exceeding the unavoidable level of suffering that is inherent in detention and that, having regard to the practical requirements of imprisonment, the health and well-being of the prisoner are adequately protected (see judgment of the ECtHR in *Torreggiani and Others v. Italy*, Nos 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, and 37818/10, of 8 January 2013, § 65).**

**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.**

It follows that evidence on two levels must be produced before the court in order to assess this bar to extradition, consisting of a general assessment regarding the prison conditions in the Issuing State of the Warrant and a personal assessment relating to

the specific circumstances of the requested person and the conditions of the prison where he is actually going to be detained upon surrender:

1. 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
2. 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.

*Ergo,* although the prison conditions in some Member States may fall below minimum standards and thus endanger the right of the requested person not to be subjected to ill-treatment as guaranteed under the ECHR and CFREU, such systemic failures do not necessarily amount to a violation, but specific evidence on the individual risk can evoke the obligation to refuse to execute the warrant. Of significance are the Court's directions in this case:

> **The executing judicial authority should seek additional information from the issuing authority and until they are satisfied that there is no such risk to the individual the national judicial authority should postpone executing the warrant. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end in the light of Article 6 Charter. In accordance, Member States are in principle obliged to act on an EAW due to the principle of mutual trust and mutual recognition. However, in exceptional circumstances these principles can be limited.[11]"**

These rules and guidelines were re-affirmed in judgments following the **Caldararu** case such as the cases of **Dumitru-Tudor Dorobantu**[12] and **Generalstaatsanwaltschaft**[13] which assert that in order to ensure the observance of

[11]https://charter.humanrights.at/caselaw/detail/13

[12] Case C-128/18, *Dorobantu*, Judgment of 15 October 2019.

[13] C-220/18 PPU, *Generalstaatsanwaltschaft*, Judgment of 25 July 2018.

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 subjected to inhuman or degrading treatment in that Member State, within the meaning of Article 4 of the Charter.

Other judicial pronouncements regarding the non-execution of a European Arrest Warrant similarly indicate that in such cases of alleged breach, it is necessary for the requested person to demonstrate that there are strong grounds for believing that, if returned, he will face **a real risk** of being subjected to torture or to inhuman or degrading treatment or punishment. (see UK *judgment Regina v Special Adjudicator ex parte Ullah (2004) AC*). **"This does not mean proof `on the balance of probabilities` but there needs to be a risk that is substantial and not merely fanciful."**

In **Saadi v Italy** (Application 37201/06), the European Court of Human Rights in its judgment dated the 28th of February 2008 (paragraph 124), stated that in order to determine whether there is a real risk of ill-treatment, it is necessary to examine the foreseeable consequences of sending the person to the receiving country, **bearing in mind the general situation and his personal circumstances.** Also:

> ***"In Miklis v Lithuania (2006) EWHC (Admin) Lord Justice Latham stated, in dismissing Mr Miklis` appeal, "The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the particular individual could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse"***
>
> ***The core of this challenge comes down to whether the prison conditions that await the requested persons in Lithuania are such that an Article 3 challenge can succeed. In Richards v Ghana (2013) All ER (D) 254 (May), in dismissing Mr Richards` appeal against the decision to send the case to the Secretary of State, the Divisional Court stated that albeit the requirements of Article 3 were absolute, in the sense that they were not to be weighed against other interests***

***such as public interest in facilitating extradition, there was nevertheless an element of relativity involved in the application of those requirements. In deciding whether treatment or punishment was inhuman or degrading, it was appropriate to take account of local circumstances and conditions, such as climate and living conditions.***

***…. it is to be noted that the Divisional Court stated that although there were aspects of the conditions in the anticipated prison that would have been considered unacceptable in a prison in the UK, those conditions did not attain, or come close to attaining, the level of severity which would have been necessary to constitute a violation of Article 3."***

In another decision of the Strasbourg court in *KRS v The United Kingdom*, the Court succinctly summarised the law as follows:

***"Expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3."***

After all, as stated in the case *Khan v Government of the United States of America*, Mr Justice Griffiths Williams observed that ***"there is a fundamental presumption that a requesting state is acting in good faith and the burden of showing an abuse of process rests upon the person asserting such an abuse with the standard of proof on the balance of probabilities".***

It is clear from the above-premised that no court will turn a blind eye to a person's outcry of a serious risk of breach of his rights and freedoms and will provide all the safeguards necessary to prevent any abuse from inhuman and degrading treatment which a requested person could be subjected to upon surrender. However, as oft stated by this Court, such a risk has to be a concrete and real risk vis-à-vis the person appearing before the court and not a possible fear of subjection to such treatment.

Now, in this case, the Court has been presented with information by the Issuing state, indicating the place where appellant will be held in custody to serve his prison sentence once being surrendered to Romania. The prison authorities of Romania have not only sent the Courts their assurances that appellant will be well-treated upon his return to Romania to serve his prison sentence but have also appeared in person to testify before the First Hall of the Civil Court, which testimonies now form part of

these proceedings, indicating where appellant will be detained and showing to the Court the standards present in the prisons in Romania.

To begin with, upon a request by the Court of Committal, the Attorney General received information from the judicial authorities in Romania regarding the requested person's nature and circumstances of detention upon surrender. The Court notes that this information was supplied by the prison authorities in the issuing state, with document RO3 and RO4 found at folio 557 *et.seq.* and 590 *et.seq*. of the acts signed by Dan Halchin, General Director of Prisons in Romania. The said Halchin then testified in person before the First Hall of the Civil Court as will be pointed out further on. The document indicates that upon surrender at the Bucharest Henri Coanda airport, the requested person, Paul Philippe Al-Romaniei, will be accommodated in the Bucharest-Rahova Penitentiary, in order to carry out a period of adaptation to the conditions of the prison environment, which is defined as the quarantine and observation period in a penitentiary unit, and which all male detainees transferred to Romania by air and taken from Henry Coanda Airport are subjected to. It is therein indicated that "**he** (the requested person) **will initially be accommodated in a room that will provide him with a minimum space of 4 square meters without including the space for the bathroom for a period of 21 days, necessary equally for the medical supervision required to enter a community, as well as to go through specific educational and psychosocial assistance programme"**. However, it will be left to the penitentiary administration to organize the spaces where the requested person will be accommodated and to decide on the number of detainees in the detention rooms so that, according to the prison authorities they display an occupancy rate of less than 100% compared to a minimum individual space of 4sqm, without including the space for the bathroom. As well as to ensure detention conditions at the level of European standards." The report further states:

> "At the end of the 21 days, Paul Philip of Romania will be allocated based on the criteria provided for in the legislation, in the regime for the execution of the custodial sentence, by a commission set up at the level of detention unit[14].

[14] Emphasis by the Court

In addition to establishing the execution regime, which will be carried out according to the above, if it is considered necessary, under the legal provisions in force, (art.34 letter h and art.36 of Government decision HG no. 157/2016) the commission will take into account the status of the person in need of protection, which will involve individual accommodation or accommodation together with compatible detainees on duration criteria, profession or position held prior to arrest.

At the same time the status of person in need of protection implies participation in all activities in the penitentiary (including work – if the person chooses to), with the necessary degree of protection, both in terms of human dignity and own safety.

Given the amount of punishment imposed on the convicted person, he will **most likely** serve the custodial sentence initially **in closed regime**. At the same time, given the general conditions considered by the National Administration of Penitentiaries when distributing and balancing the number of detainees, **Paul Philip of Romania will continue to serve his sentence at the Bucharest-Rahova Penitentiary, in decent conditions, which ensure respect for human dignity.**

**The rule of classification in closed regime is not absolute, the national legislation offering the possibility of classification in the regime of execution of the sentence immediately lower in degree of severity, which offers greater freedom of movement, based on an analysis carried out individually by the specialized commission.**

**Thus, taking into account the advanced age of the Romanian citizen there is a concrete possibility that, analysing his particular situation, the specialized commission at the level of the Bucharest-Rahova Penitentiary will decide the distribution in the semi-open regime.** It should be noted, however that this attribute remains exclusively within the competence of that commission[15].”

This report continues to give details of the conditions of imprisonment in all scenarios where the requested person could be detained, meaning both if the custodial sentence were to be executed under a closed regime, as well as under a semi-open and open regime.

Finally, the report outlines that in 2023 in order to comply with the provisions of the minimum Mandatory rules on the conditions of Accommodation of Persons Deprived of Liberty, 351 new accommodation places were made operational in Rahova, with 2 investment objectives carried out at the level of Bucharest-Jilava penitentiary between

[15] Emphasis by the Court

2023 and 2024 in order to increase the capacity of detention spaces and optimize accommodation conditions.

It concludes:

> "**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).**
>
> ….
>
> **The National Administration of Penitentiaries guarantees that the Romanian citizen Paul Philip of Romania will benefit throughout the execution of his sentence from a minimum individual space of 4 sqm, without including the space for the toilet, being ensured decent conditions, respecting human dignity."**

As a reply to further questions put to the Romanian authorities by the Court of Committal, the Attorney General received supplementary documentation exhibited on the 14th of May 2024 and marked as Document RO4. Amongst the clarifications requested, the Court of Committal asked the judicial authorities of the Issuing state, being the Court of Appeal Brasov – Criminal Enforcement Bureau, to provide additional information regarding the prison conditions which will be enjoyed by the requested person and whether these apply to all the penitentiaries where he will be detained, what mechanisms are in place to ensure that the requested person would not be discriminated whilst in custody and will not be subject to arbitrary punishment or ill-treatment by the prison officials and/or authorities, and above-all it asked the Romanian authorities whether it was in a position to provide a written guarantee that all conditions listed in the communication marked as document RO3, issued by the Romanian prison authorities will be given to the Paul Philippe Al-Romaniei and that his fundamental rights will be strictly adhered to at all times if he is surrendered to the Romanian authorities.

A reply was sent by the Court in Brasov, with a letter annexed by the Prison authorities, rather than by the judicial authorities themselves, repeating much of the same narrative found in document RO3, with the Romanian judicial authority

approving what the prison authorities stated that the said narrative was to take place once the requested person was returned to Romania to serve his custodial sentence.

> **The Court of appeal of Brasov, through the judge delegated with the execution of criminal judgments, as the issuing judicial authority of the European arrest warrant concerning the requested person Paul Philippe Al Romaniei, approves[16] the assurance given by the National Administration of Penitentiaries of Romania ..**

The Court notes that in the previous communication it was emphasised that after the initial stage of custody at Rahova, the decision regarding the place where the requested person will continue to be detained is left in the hands of a Commission set up by Romanian law. It reiterated, in this second report, that if it is decided that the requested person will serve his custodial sentence in a closed regime, then he will be detained at Rahova and housed in E7 section with a capacity of 83 places in 17 holding rooms of an area of 20.3 square meters. When the execution regime is changed to a semi-open regime then requested person will be transferred to the Bucharest Jaliva penitentiary and housed in E4 section with a capacity of 17 places, and should the requested person be then transferred to an open regime he will then remain at Jaliva in L1.2 section with a capacity of 12 places. These guarantees, however, remain couched in general terms and do not provide for a specific plan relating to Prince Paul considering his status and age. In fact, the right of appellant to be provided with the status of a person in need of protection will only be determined after the 21-day quarantine and observation period is over, and further down it is suggested that the request for this special status protection must be brought forward by appellant himself. The report states:

> **"In addition to the determination of the execution regime, after the end of the quarantine and observation period, if deemed necessary under the legal provisions in force (Article 34 (h) and Article 36 of the Government ordinance No. 157/2016) the Commission will take into account the status of a person in need of protection which will involve individual housing or together with compatible prisoners on grounds referring to education, profession or position held prior to arrest.**

[16] Translated from the word "aproba" in Romanian

**…**

> **According to the Romania criminal enforcement legislation should Paul Philip of Romania opt for the status of person in need of protection, the administration of the place of detention will adopt additional measures ….”**

Further to these reports this Court was presented with evidence in the form of the testimonies of Antoanela Cristina Teorac - Director General Jilava Prison, Ioana Mihaela Morar - Deputy General of the Romanian Prison system, Geta-Eugenia Cucu - Director Hospital Penitentiary Jilava, and Dan Halchin himself, Chief of the Romanian Penitentiary Administration, which witnesses were brought to testify by the Attorney General before the First Hall of the Civil Court in the constitutional proceedings instituted by appellant, which testimonies now form part of these proceedings upon an order by this Court. They assert in their testimony that upon his surrender to Romania, appellant will be detained in Rahova Prison in Bucharest for a period of 21 days until an initial assessment is carried out, after which he will be transferred to Jaliva prison under a semi-open regime system[17]. **This testimony contrast with the information and assurances which were sent to the Court of Committal by the Issuing judicial authority, as indicated by Dan Halchin himself, above referenced**. The Court understands that according to the law in Romania the type of penitentiary where a prisoner is detained depends on the length of his custodial sentence, Romania operating a system of high security prisons, closed regime prisons, semi-open, and open regimes, however with prisoners extradited to Romania *de rigueur* detained at Rahova for a period of 21 days upon arrival in the country, Rahova being a high security prison.

The witness Dan Halchin, the Head of the Prisons in Romania testifies:

> **So, for—in order to be considered for open regime, one has to be sentenced for a sentence of one year or less. In order to be considered for semi-open regime one has to be sentenced to a sentence between one and three years. It goes the same for closed regime - three to thirteen years. And what — for sentences harder than thirteen years or life imprisonment the assessment starts with the maximum security. … And in certain circumstances, the panel**

[17] Testimony Dan Halchin- 10/07/2024: “So the – he will serve the twenty-one days in Rahova Prison and after that he will be sent – he will be placed in semi-open regime which will involve the transfer from this establishment which is Rahova Prison to another establishment which is also in Bucharest named Jilava Prison.”

**that is analysing this regime initially can downgrade or upgrade the regime according to very specific conditions. …. Well, basically the regime means that prisoners have as much as freedom as one can get being in a prison institution. And the core is — of this statement lies with the fact that the doors of the cells are open in semi-open all day with the open regime even during the night. And the prisoners are free to move in that specific landing or section or to a specific route if they are working or engaging in schooling or whatever activities might be.**

He continues to describe in his testimony the procedures adopted when a prisoner is returned to Romania following an EAW:

**Well, in case a person is extradited to our country, the first step is taking him or her from the border. Over 99% of the cases are managed with the international airport from Bucharest. So, there is where the person in question is landed first and after that if the prisoner is male, he is going to an establishment. It is called Rahova Prison where he will be serving twenty-one days as an induction period. This twenty-one days [sic] is the opportunity for the administration to make the necessary assessment from a psychological perspective, medical perspective, and the plan for the re-integration activities. …. After that – so in this twenty-one days [sic], this panel that assess [sic] and applies the initial regime is meeting—the panel is chaired by the Prison Director and then the assessment starts with the sentence itself. So, for instance if the person has three years, or less than three years or slightly more than three years, according to the age and to his behaviour <u>he might be placed</u>[18] straight through closed-regime or if the age or the type of the offence is not something with violence or something, he can be put in the next permissive regime which would be semi-open in this example.**

**Dr. Nicole Fenech Cutajar: Ok. Now, could you name the prison or prisons in which the applicant would be held?**

**Dan Halchin: So, the—he will serve the twenty-one days in Rahova Prison and after that he will be sent—he will be placed in semi-open regime which will involve the transfer from this establishment which is Rahova Prison to another establishment which is also in Bucharest named Jilava Prison.**

**Dr. Nicole Fenech Cutajar: Ok. Now, the applicant has been held in Malta under preventive arrest for just over two months. Is this factor relevant when considering his period of detention?**

[18] Emphasis by the Court

**Dan Halchin: Yes, of course, it is relevant because it brings him very close to the threshold of three years left to serve.**

**Dr. Nicole Fenech Cutajar: And what would that mean?**

**Dan Halchin: That would mean, that would mean most definitely that he will be placed in semi-open regime.**

The witness finally concludes in his testimony:

> **Well, I'm here to speak in the name of the Romanian Prison Service - Correction Service. Most definitely we have proper detention conditions in Romania in order to place the person in question in a humane and the highest dignity level that one can get in any prison system. Not sure if it is appropriate to elaborate maybe further during the hearings. You can easily find by speaking to my other colleagues, what would be the programmes that he will be involved, how a typical life in prison will look like for the defendant. So, in my opinion I very very confidently believe in what I am saying- a breach of Article 3 of the European Convention of Human Rights is out of the question.**

It is evident from the documents exhibited in the acts and the testimonies given by the Prison authorities in Romania that all information was given to the Court regarding the requested person's detention upon surrender. From the information which was provided to the Court of Committal back in May 2024, that Court was not satisfied that these assurances were sufficient to eradicate all doubts which existed whether the prison conditions in Romania respected the right against inhuman and degrading treatment and this vis-à-vis the requested person. That Court decided this issue in the following manner:

> **This Court also examined the Report to the Romanian Government of the European Committee for the Prevention of Torture, the Key Findings of the SPACE I and other sources 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. <u>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</u>. 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 an 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. Regretfully, this Court could not find any readily available information on the mentioned projects although it found readily available information on the bilateral partnership between Norway and select penitentiaries in Bucharest 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." 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. 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.**

**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 serve the custodial sentence initially in closed regime", 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, analysing his particular situation, the specialized commission at the level of the Bucharest-Rahova Penitentiary will decide the distribution in the semi-open regime" 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." 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)."38**

**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).39**

**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 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.**

**Athough 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, 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 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.**

Now the Court is referring extensively to this decision delivered by the Court of Committal of the 20th of May 2024, which decision was subsequently revoked by this Court as otherwise presided, since the Romanian Authorities deemed it fit to enter a question to the CJEU based on that Court's considerations and reasons for refusing the execution of the warrant, thus demanding that the CJEU review the decision of the executing authority of another Member State, and although the CJEU found that it was within the rights of the Issuing Member state to refer the matter for its consideration, although the case was not pending before it, however this Court cannot help but observe that the CJEU was ultimately asked to scrutinize a judgment delivered by the executing authority of another Member state and which was

objectionable to the Issuing Member state. This being premised, this Court, as the executing Judicial authority within a member state of the European Union, and with respect to the principles of mutual trust and assistance between Member states, will however apply the direction given by the CJEU in its decision of the 29th of July 2024.

With regards to the question put before it referring to the manner in which the Maltese Executing authority had delivered its decision of the 20th of May 2024 the CJEU stated *inter alia*, after referring to the general principles outlined in the ***Dorobantu*** and ***Generalstaatsanwaltschaft*** decisions above quoted**:**

> **106 To that end, that authority must, pursuant to Article 15(2) of Framework Decision 2002/584, request the judicial authority of the issuing Member State to provide, as a matter of urgency, any additional information necessary as regards the conditions under which it is intended to detain the person concerned in that Member State. That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring conditions of detention related, for example, to visits to prisons, which make it possible to assess the current state of conditions of detention in those establishments (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 63 and the case-law cited).**
>
> **107 The issuing judicial authority is required to provide that information to the executing judicial authority (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 64 and the case-law cited).**
>
> **108 It is only if, in the light of the information provided pursuant to Article 15(2) of Framework Decision 2002/584, as well as any other information available to the executing judicial authority, that authority finds that there is, with regard to the person who is the subject of the European arrest warrant, a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, that the execution of this arrest warrant should be postponed, but not abandoned. On the other hand, in the event that the information received by the executing judicial authority of the issuing judicial authority leads to the ruling out of the existence of a real risk that the person concerned will be subjected to inhuman or degrading treatment in the issuing Member State, the executing judicial authority must adopt, within the time-limits laid down in Framework Decision 2002/584, its decision on the execution of the European arrest warrant (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraphs 65 and 66 and the case-law cited).**

**109 In that regard, as noted in paragraph 93 of the present judgment, Article 15(2) of the Framework Decision expressly authorises the executing judicial authority, where it considers that the information communicated by the issuing Member State is insufficient to enable it to decide on surrender, to request the provision of the necessary additional information as a matter of urgency. In addition, in accordance with Article 15(3) of that framework decision, the issuing judicial authority may, at any time, transmit any relevant additional information to the executing judicial authority.**

**110 Furthermore, it is recalled in paragraph 94 of the present judgment that, in accordance with the principle of sincere cooperation, the Member States respect each other and assist each other in the performance of the tasks arising from the Treaties (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 109 and the case-law cited).**

**111 In accordance with those provisions, the executing judicial authority and the issuing judicial authority may, respectively, request information or provide assurances concerning the specific and precise conditions in which the person concerned will be detained in the issuing Member State (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 110).**

**112 It follows from the considerations set out in paragraphs 107 to 112 of the present judgment that the executing judicial authority cannot conclude that there are substantial grounds for believing that, following his surrender to the issuing Member State, the person who is the subject of a European arrest warrant will run a real risk of being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter, without first having made a request for information to the issuing judicial authority pursuant to Article 15(2) of Framework Decision 2002/584.**

**113 In the present case, the referring court states that it provided information on the conditions in which PPR would be held in the event of surrender to the Romanian authorities, but that the Maltese executing judicial authority refused to surrender him on the basis of information which it was able to consult on the internet.**

**114 It should be borne in mind, in that regard, that the assurance provided by the competent authorities of the issuing Member State that the person concerned will not be subjected to inhuman or degrading treatment as a result of his specific and precise conditions of detention, irrespective of the prison in which he or she is detained in the issuing Member State, is a factor which the executing judicial authority cannot ignore. The breach of such an assurance, in so far as it is capable of binding its author, could be relied on against the latter before the courts of the issuing Member State (judgment of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 111).**

**115 The Court has thus held that, where such an assurance has been given or, at the very least, approved by the issuing judicial authority, if necessary, after having requested the assistance of the central authority or one of the central authorities of the issuing Member State, the executing judicial authority, having regard to 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 it, at least in the absence of any specific evidence to suggest that the conditions of detention in a particular detention centre are contrary to Article 4 of the Charter (judgments of 25 July 2018, Generalstaatsanwaltschaft (Conditions of detention in Hungary), C-220/18 PPU, EU:C:2018:589, paragraph 112, and of 15 October 2019, Dorobantu, C-128/18, EU:C:2019:857, paragraph 68).**

**116 It follows from the foregoing considerations that the executing judicial authority cannot disregard the information provided by the issuing judicial authority solely on the basis of information which the issuing judicial authority itself has obtained from publicly available sources, without asking the latter, pursuant to Article 15(2) of Framework Decision 2002/584, for additional information and explanations.**

**117 In addition, since the referring court states that the Maltese executing judicial authority took into consideration, in refusing to execute the European arrest warrant at issue in the main proceedings, the fact that the referring court's approval of an assurance such as that envisaged in paragraph 115 of the present judgment was indicated by a term different from that used in the English-language version of the relevant case-law, It should be noted that such approval does not require the use of a specific term or formula. It is sufficient that it is sufficiently clear from the communication sent by the issuing judicial authority to the executing judicial authority that the former approved that assurance, whatever the precise terms used.**

**118 Finally, it must be pointed out that the mere failure to establish a 'precise plan for the execution of the sentence' or 'precise criteria for establishing a particular enforcement regime', referred to by the referring court in the wording of its seventh question, does not fall within the concept of 'inhuman or degrading treatment' within the meaning of Article 4 of the Charter.**

**119 Even if the establishment of such a plan or such criteria is required in the executing Member State, it must be borne in mind that, referring to the principle of mutual trust, the fundamental importance of which in EU law is apparent from the case-law cited in paragraph 36 of the present judgment, the Court has repeatedly held that the Member States may be required to presume that the other Member States have observed fundamental rights, with the result that it is not possible, inter alia, for them to require another Member State to provide a higher level of national protection of fundamental rights than that provided by EU law (judgment of 15 October 2019, Dorobantu, C-128/18, EU:C:2019:857, paragraph 47 and the case-law cited).**

**120 Accordingly, the executing judicial authority cannot refuse to surrender the requested person on the sole ground that the issuing judicial authority has not communicated to it a 'precise plan for the execution of the sentence' or 'precise criteria for establishing a specific enforcement regime'.**

**121 As regards the referring court's reference to a 'particularly unique and delicate situation' of the requested person, which requires 'guarantees of non-discrimination', it should be noted that compliance with Article 4 of the Charter in the case of a person who is the subject of a European arrest warrant requires, in accordance with the case-law cited in paragraph 106 of the present judgment, a specific and precise assessment of the circumstances of the case.**

**122 Consequently, the answer to the seventh question is that Article 1(3) and Article 15(2) and (3) of Framework Decision 2002/584, read in the light of Article 4 of the Charter and the principle of mutual trust, must be interpreted as meaning that, when examining the conditions of detention in the issuing Member State, the executing judicial authority may not refuse to execute a European arrest warrant on the basis of information concerning the conditions of detention in the prisons of the issuing Member State which it has itself collected and in respect of which it has not requested additional information from the issuing judicial authority. The executing judicial authority may not apply a higher standard of detention conditions than that guaranteed in Article 4[19].**

Now it is completely unfounded that the Maltese executing authority, being the Court of Committal, in its decision of the 20th of May 2024, arrived at its decision, above cited extensively, without asking for additional information from the Issuing judicial authority, since from a glance at the acts of the case it will be evident that the Executing judicial authority in Malta made two requests for clarifications and guarantees, and this not only with regard to the general prison conditions in Romania but also for specific guarantees with regard to the requested person himself and his special status as the Member of the Casa Regală of Romania and the existing claims on the descendance and succession to the late King Carol II, together with his personal physical health and age, with the last request **also asking for clarifications in view of general information which the Court obtained from its own research**. Thus, the assertion that the Court relied in its judgment on reports obtained from the internet without requesting clarifications from the Issuing judicial authority is groundless,

[19] This is an unofficial translation of the preliminary ruling of the CJEU since to date the original is found only in the French and Romanian languages.

with that Court still considering that such clarifications could not eradicate its fear of a violation of article 4 of the Charter.

When brought to testify, then, before the First Hall of the Civil Court in its constitutional jurisdiction in a case instituted by appellant himself, once again, although referring in general as to the place and conditions of detention which will be applicable once the requested person is surrendered, however, no specific details were forthcoming with regard to the manner in which he will be treated in these special circumstances which are unique to appellant, his status, physical health and age. So, the Court wonders how many requests may the executing judicial authority make in terms of article 15(2) and (3) of the FD, keeping in mind the 60-day time-limit imposed in article 17(3) and (4) of the said FD. Moreover, the Court is also of the opinion that the information which it is able to consult on the internet is readily available to all and sundry, so much so that the Issuing judicial authority must be surely aware of this material found online and should be able to respond to the requests made in terms of article 15(2) of the FD within the context of all the international reports and judgements on the matter which are now common knowledge, found in the public domain. So much so, that the Attorney General presented to the Court the response of the Romanian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its *ad hoc* visit to Romania from 10 to 21 May 2021[20].

Having thus premised, the Court's major and primary concern lies in the fact that assurances given by the Romanian judicial authority not only present a conflicting picture as to the penitentiary where appellant will serve his entire custodial sentence upon surrender, but also are lacking **specific details** as to the detention conditions applicable **specifically** to the requested person and his special status, and this when considered in the light of various European and international concerns regarding prison conditions in Romania, particularly facing problems of overcrowding and inmate violence. Whereas the information provided before the Court of Committal

[20] Document RO6

indicate that appellant will be initially held at the Rahova penitiary serving the first part of his custodial sentence under a closed regime at Rahova itself, with the possibility of then being transferred to Jaliva under semi-open and eventually open regime, the Prison Director Dan Halchin when brought to testify seems to have given the impression that the decision had already been made that appellant will be sent to Jaliva penitentiary after the initial 21-day detention at Rahova. Moreover, the Romanian designated judicial authority has failed to provide assurances and guarantees that during Paul Philippe Al Romaniei, especially at Rahova, he will be safeguarded against ill treatment and inhuman prison conditions. Appellant, being a man of 77 years of age and suffering from some serious medical conditions, together with the background regarding his status as a person claiming royal hereditary rights to King Carol II, as will be outlined further on in this judgment, may result in considerable prejudice and may lead to a deterioration in his health, if not more serious consequences, taking into account the notoriety of this penitentiary. The guarantees which were to be given by the designated judicial authorities had to relate **specifically to the particularly unique and delicate position** of Paul Philippe Al României, as already pointed out who is Member of the Casa Regală of Romania, who moreover is a person of 77 years of age and suffering from several health issues, thus placing him in a more vulnerable position vis-à-vis other prisoners. Such considerations it seems were not considered and no guarantee was forthcoming in this regard. For example, the fact that Mr. Paul Philippe will have to sleep in a bunk bed and live in a space of 4 square meters could not be conducive to his age and health-related issues, especially in a scenario where over-crowding is until today a serious concern, and where it is evident that appellant will be accommodated in a multi-occupancy cell, without any indication as to who his other cell-mates will be. In fact, the CJEU states in its ruling that "**it should be noted that compliance with Article 4 of the Charter in the case of a person who is the subject of a European arrest warrant requires, in accordance with the case-law cited in paragraph 106 of the present judgment, a specific and precise assessment of the circumstances of the case.**"

The Court is also perplexed with the manner in which these assurances were given by the prison authorities which seem to run counter to Romanian legislation which lays

out specifically the procedures to be followed by the prison authorities in deciding the place where a prisoner is to be detained. First of all, although it is clear that the decision as to where the prisoner will serve his custodial sentence after the initial 21-day induction period, is to be decided by a Commission specifically set up for this purpose which will take into consideration the particular circumstances of each individual prisoner, and which also indicates that initially appellant will be detained in the closed regime, however, from the testimony of Dan Halchin it transpires that the decision to transfer appellant to Jaliva after the 21-day induction period in Rahova has already been taken, contrary to Romanian law. Secondly, since Jaliva follows a semi-open regime, it is also doubtful whether appellant will be entitled to serve his custodial sentence in this penitentiary in terms of Romanian legislation, Articles 34, 36, 37 and 38 of the Law 254/2013, stating that prisoners with a conviction longer than 13 years, or life imprisonment, or the ones who represent a threat to the prison are imprisoned in a maximum security regime, the closed regime applying to people sentenced to imprisonment for a period between 3-13 years, with convicts sentenced to a jail term longer than 1 year but less than 3 years being imprisoned in the semi-open regime, and the open regime imprisonment applying only to convicts who have a sentence of less than a year. It is therefore doubtful whether appellant will be entitled to serve his prison sentence in a semi-open regime, as stated in the evidence tendered by the prison officials, since his custodial sentence exceeds three years imprisonment, the final decision as to whether appellant will be entitled to serve in this penitentiary will be ultimately decided by the Commission, with no information provided with regards to the composition of the same. Thus, the guarantees given are still open to determination by a Commission such as that any decisions regarding the manner in which appellant will serve his custodial sentence upon surrender is subject to several considerations.

In fact, it is evident from the testimony of Dan Halchin, Chief of the Romanian Penitentiary Administration, given before the Maltese courts that it is doubtful whether appellant will benefit from this regime since his prison sentence exceeds that of three years imprisonment, and his right to be detained in this semi-open regime system may not be automatic.

Thus, although the CJEU in its ruling has pointed out that **"the mere failure to establish a 'precise plan for the execution of the sentence' or 'precise criteria for establishing a particular enforcement regime', referred to by the referring court in the wording of its seventh question, does not fall within the concept of 'inhuman or degrading treatment' within the meaning of Article 4 of the Charter,"** however contrasting and conflicting replies to the requests put by the executing authority put into doubt the assurances which were repeatedly given by the Court in Brasov.

The Court is highlighting these issues, in view of the persistent reports regarding especially Rahova penitentiary as a high-security facility on the outskirts of Bucharest which houses some of the most dangerous criminals, including murderers, rapists and human traffickers, and described as one of the worst prisons wherein daily life in this penitentiary is very often described as severe. Appellant exhibited during these proceedings several reports with a most recent one dated the 10th of July 2024 wherein a prisoner handed down a custodial sentence of one year and ten months imprisonment was murdered by other inmates with whom he was housed, being prisoners serving time for murder. The said prisoner was housed in a high security prison - the Gherla Maximum Security Penitentiary. The Court in this case, thus, must necessarily examine the assurances which the Prison Authorities in Romania are providing in the light of reports both at European level as well as on the global scale dealing with prison conditions in Romania wherein there are problems not only of over-crowding but also of inmate infighting and violence, as evidenced in the recent case referred to. As already pointed out, the Court has no doubt that the issuing member state is aware of these reports since the authorities in Romania regularly participate in the drawing up of the same.

In a report carried out by the Council of Europe Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment of 2021, and a report by Amnesty International on The State of the World's Human Rights 2022/2023 dealing with the living conditions in Romanian prisons and the treatment of prisoners therein, there emerges a picture of year after year concerns being raised in this regard resulting in string of judgments both from the CJEU as well as the ECtHR indicating

a systemic violation of the human rights of prisoners and poor and inhuman prison living conditions in Romania.

The 2021 report of the Council of Europe states thus on the allegation of ill-treatment, and this after an on-site review carried out in May 2021 in Romania:

> **"61. The delegation again met many committed managers and staff dedicated to their work and who were striving to improve the situation in their prisons. Many of the persons interviewed by the CPT's delegation stated that they were treated correctly by prison officers and that relations were based upon mutual respect. This was notably the case at Galați Prison where the climate of fear prevalent at the time of the 2018 visit had dissipated. In the course of the 2021 visit, the CPT's delegation found that detained persons were no longer afraid to talk and that relations with staff appeared calmer and more respectful.**
>
> **That said, the CPT's delegation once again received a significant number of allegations of ill treatment of detained persons by prison staff, including by members of the masked intervention groups (EOS), at Giurgiu Prison in particular but also at Craiova Prison. Allegations were also received, to a lesser extent, at Mărgineni Prison and even at Galați Prison. The ill-treatment was said to have been inflicted as a punishment for arguing with custodial staff or infringing the rules.**
>
> **The CPT has noted the clear response of the Romanian Prison Administration (NAP) to its delegation's preliminary observations in which it clearly states that there is no tolerance for any acts of ill-treatment by prison staff and that all allegations will be communicated to the prosecutor's office and thoroughly investigated. Such an approach must be inculcated throughout the prison service.[21]"**

With regards to the issue of overcrowding the report found the following:

> **"55. At the time of the 2021 visit, the challenges facing the Romanian prison system remained extensive: reducing the number of persons in prison, improving the living conditions in which prisoners were held, offering a range of purposeful activities for prisoners to assist them in preparing for reintegration into the community, increasing prison staff numbers and ensuring that health care services in prisons met the needs of prisoners. As described in the report on the 2018 visit, the adoption of new criminal legislation in 2014 and the European Court of Human Rights pilot judgment in the case of Rezmiveş and Others of 25 April 2017 provided an impetus to the current reform programme. In November 2020, the Romanian Government submitted to the Committee of Ministers of the Council of**

[21] https://rm.coe.int/0900001680a62e4b

**Europe an updated Action Plan for the period 2020-2025. The 2020-2025 Action Plan envisages the modernisation of 946 places and the creation of 7,849 new accommodation places, including the construction of two new prisons. Emphasis is also placed on enhancing educational and reintegration programmes, and on better management of the current prison population.**

**56. As pointed out in the report on the 2018 visit, the reform measures resulted in a significant reduction of the prison population from 32,428 persons in June 2014 to 21,342 persons in March 2018 (i.e. the rate of imprisonment dropped from around 160 to 117 per 100,000 inhabitants). This positive trend continued until 31 January 2020 when the prison population stood at 20,570 (i.e. an imprisonment rate of 107). Nevertheless, overcrowding remains a feature of the Romanian prison system and during the Covid-19 pandemic the situation has further degenerated. At the time of the May 2021 visit, the prison population had increased to 22,608 (i.e. an imprisonment rate of 118) for an official capacity of 17,779 places.**

**57. The CPT recalls that overcrowding is an issue of direct relevance to its mandate. All the services and activities within a prison are adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Overcrowding entails several features: cramped and unhygienic accommodation; a lack of privacy including when performing basic tasks such as using a sanitary facility; reduced opportunities in terms of employment, education and other out-of-cell activities; increased pressure on health care and social/reintegration services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive."**

**.....**

**"58. The CPT recommends that the Romanian authorities pursue their reform agenda in order to ensure that all persons in prison are held in decent conditions and with those living in multiple-occupancy cells afforded a minimum of 4m² of living space each (excluding the sanitary annexe). The CPT would like to be provided with an update on the implementation of the prison estate reforms. Further, it would like to receive a detailed breakdown of the number of persons held in each prison establishment according to regime on a trimesterly basis.**

**Further, in addition to increasing the capacity of the prison estate, the CPT recommends that the Romania authorities make increased efforts to tackle the phenomenon of overcrowding in the prisons through promoting greater use of alternatives to imprisonment."**

As indicated in the CPT report, the persistent problems faced by prisons in Romania led to the pilot judgment in the names *Rezmives and Others v. Romania* of the 25th of April 2017 delivered by the ECtHR (Fourth Section), with one of the applicants being

detained for a period of two months in the **Bucharest-Rahova prison** complaining about the conditions of detention in this penitentiary, referring in particular to overcrowding, lack of ventilation in cells, mould on the walls, poor-quality food and the presence of bedbugs. In fact, seeing that the Court seems to have been inundated with identical complaints by various applicants regarding a violation of article 3 of the Convention relating to ill treatment and inhuman conditions in the prisons in Romania, article 46 procedure was adopted, since it was the Court's opinion that the structural problem identified in 2012 remained ever-present, leading to a corresponding influx of applications, justifying the implementation of the pilot-judgment procedure.

The Court is relying on the judgments of the ECtHR in view of what is provided in article 52(3) of the Charter which states that:

> **In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.**

Thus, the protection afforded by article 4 of the Charter is on the same lines as that afforded by the ECHR. The ECtHR found, with regards to article 3 violations in Romanian prisons that:

> **106. The Court notes that the first findings of a violation of Article 3 of the Convention on account of inadequate detention conditions in certain prisons in Romania date back to 2007 and 2008 (see Bragadireanu v. Romania, no. 22088/04, 6 December 2007, and Petrea v. Romania, no. 4792/03, 29 April 2008) and that, since the adoption of the judgments in question, there have been increasing numbers of such findings. Between 2007 and 2012 there were ninety-three judgments finding a violation. Most of these cases, like the present ones, concerned overcrowding and various other recurrent aspects linked to material conditions of detention (lack of hygiene, insufficient ventilation and lighting, sanitary facilities not in working order, insufficient or inadequate food, restricted access to showers, presence of rats, cockroaches and lice, and so on).**
>
> **107. Having regard to the significant inflow of cases concerning the same subject, the Court found it necessary in 2012 to issue guidance to the Romanian authorities under Article 46 of the Convention. The existence and extent of the structural problem identified by the Court in Iacov Stanciu**

**(cited above) justified the indication of general measures to improve the material conditions in Romanian prisons, in combination with an adequate and effective system of domestic preventive and compensatory remedies, in order to achieve full compliance with Articles 3 and 46 of the Convention (see Iacov Stanciu, cited above, §§ 195-99).**

**108. At the same time, the Committee of Ministers has twice assessed the general measures adopted by the Romanian authorities in response to the Court's findings, and its conclusions only served to confirm the worrying state of affairs in the vast majority of Romanian police detention facilities and prisons, which continued to be beset by severe overcrowding and precarious material conditions. The Committee of Ministers found that additional measures were needed in order to set up an adequate and effective system of remedies (see paragraph 47 above). The reality of the situation is also confirmed by the latest CPT reports, emphasising the significance of the problem of overcrowding in Romanian custodial facilities. The same reports note that police detention facilities are inappropriate for prolonged periods of detention as they are generally overcrowded, have no direct access to a toilet and are poorly ventilated and unhygienic. The CPT has also found that overcrowding is a persistent problem in Romanian prisons, at some of which it has noted a lack of hygiene, insufficient lighting and ventilation, sanitary facilities not in working order, inadequate food and insufficient sociocultural activities (see paragraphs 52-54 above). All these findings are also borne out by the recommendations of the People's Advocate, who, after visiting certain prisons, called on the prison authorities to put an end to overcrowding, poor hygiene conditions, the lack of a canteen, the presence of rats, mice and bedbugs and the lack of partitions for toilets, and also urged them to provide drinking water and sufficient furniture and to allow access to working showers (see paragraphs 39-40 above).**

**109. More than four years after identifying the structural problem, the Court is now examining the present cases, having already found a violation of Article 3 of the Convention in 150 judgments on account of overcrowding and inadequate material conditions in several Romanian prisons and police detention facilities. The number of findings of Convention violations on this account is constantly increasing. The Court notes that as of August 2016, 200 similar applications were pending before it and that these could give rise to further judgments finding violations of the Convention. The continuing existence of major structural deficiencies causing repeated violations of the Convention is not only an aggravating factor as regards the State's responsibility under the Convention for a past or present situation but is also a threat for the future effectiveness of the supervisory system put in place by the Convention (see, mutatis mutandis, Broniowski, cited above, § 193).**

**110. The Court notes that the applicants' situation cannot be detached from the general problem originating in a structural dysfunction specific to the Romanian prison system, which has affected large numbers of people and is likely to continue to do so in future. Despite the legislative, administrative and budgetary measures taken at domestic level, the structural nature of the**

**problem identified in 2012 still persists and the situation observed thus constitutes a practice that is incompatible with the Convention (see, mutatis mutandis, Torreggiani and Others, cited above, § 88).**

**111. Having regard to that state of affairs, the Court considers that the present cases are suitable for the pilot-judgment procedure (see, mutatis mutandis, Varga and Others, cited above, § 100; Neshkov and Others v. Bulgaria, nos. 36925/10 et al., § 271, 27 January 2015; Torreggiani and Others, cited above, § 90; and Ananyev and Others, cited above, § 190).**

The Court suggested the following remedies:

**(i) Measures to reduce overcrowding and improve the material conditions of detention**

**115. As is indicated by the official data published by the ANP, the occupancy rate for all Romanian prisons ranges from 149.11% to 154.36% (see paragraph 37 above). In this connection, it should be noted that the majority of the more recent judgments have concerned applicants who had a living space of less than 3 sq. m, or even, in some cases, less than 2 sq. m. while serving their sentences. The Court reiterates that where a State is unable to guarantee that each prisoner is detained in conditions compatible with Article 3 of the Convention, the Court encourages it to take action with a view to reducing the prison population, for example by making greater use of non-custodial punitive measures (see Norbert Sikorski, cited above, § 158) and minimising recourse to pre-trial detention (see, among other authorities, Varga and Others, cited above, § 104; Ananyev and Others, cited above, § 197; and Orchowski v. Poland, no. 17885/04, § 150, 22 October 2009).**

**116. Admittedly, it is not for the Court to indicate how States are to organise their criminal-law and penal systems, since these processes raise complex legal and practical issues going beyond the Court's judicial function (see Torreggiani and Others, cited above, § 95). Nevertheless, the Court would refer to the recommendations issued by the CPT, the assessments made by the Committee of Ministers and the recommendations set out in the White Paper on Prison Overcrowding, which identify a number of possible solutions to tackle overcrowding and inadequate material conditions of detention (see, respectively, paragraphs 49 and 54, 42 and 46, and 57 above)**

**…**

**118. With regard to post-conviction detention, the Court notes with interest the reform initiated by the Government, which focuses in particular on the reduction of the maximum sentences for certain offences, the imposition of fines as an alternative to imprisonment, discharge and suspension of sentences, and the positive effects of the probation system (see paragraph 92 above). Although this reform has not had a significant effect on overcrowding levels, which remain fairly high (see paragraph 37 above), such measures, coupled with a more diverse range of alternatives to**

**imprisonment (see paragraphs 46 and 57 above), could have a positive impact in reducing the prison population. Other possible options, such as relaxing the conditions for waiving the imposition of a sentence, suspending sentences (see paragraph 32 above), and above all expanding the possibility of access to parole (see paragraphs 31 and 42 above) and ensuring the effective operation of the probation service (see paragraph 97 above), could be sources of inspiration for the respondent Government with a view to resolving the problem of the growing prison population and inadequate material conditions of detention.**

**119. The Court further notes that the Government's new strategy also envisages investment to create additional detention capacity (see paragraphs 94 and 97 above). Although this initiative highlights the authorities' desire to find a solution to the problem of prison overcrowding, the Court would draw attention to Recommendation of the Committee of Ministers, according to which such a measure is generally unlikely to offer a lasting solution to this problem (see paragraph 42 above). Furthermore, bearing in mind the precarious physical conditions and poor state of hygiene in Romanian prisons, funds should also continue to be set aside for renovation work at existing detention facilities.**

**120. The Court leaves it to the respondent State, subject to supervision by the Committee of Ministers, to take the practical steps it deems appropriate to achieve the aims pursued by the above indications in a manner compatible with the conclusions set out in this judgment.**

The Court notes, that **although progress has been registered** with regard to prison conditions present in Romania, nonetheless, it appears that the recommendations made in this pilot judgment are still not fully adopted, as outlined in the CPT report of 2021, so much so that up until **the 23rd of August 2023** in their third periodic report on Romania, the Committee against Torture of the United Nations, (CAT/C/ROU/CO/3), assisted by a Romanian delegation headed by none other than Dan Halchin, who testified before the Courts in Malta and provided the assurances which were then passed on to the Maltese authorities from the Issuing judicial authority, reached the following conclusions on the prison conditions in the Issuing Member state:

**"Conditions of detention in prisons and police detention and arrest centres**

11. While noting recent steps taken by the State party to modernize the infrastructure of and reduce overcrowding in prisons and police detention and arrest centres, and the State party's acknowledgement of the challenges it faces in relation to staffing, particularly with regard to qualified medical personnel, the Committee remains concerned by reports of persistently poor

material conditions and the use of police detention and arrest centres that have been consistently described by international monitoring and human rights bodies as unfit for prolonged detention for periods of detention of up to 180 days. The Committee is furthermore concerned about:

(a) Overcrowding, understaffing and the lack of sufficient living space provided to detainees, which in some locations can be as little as 2m2;

(b) The lack of sufficient access to hot water, the maintenance of uncomfortable temperatures in cells and dormitories, the lack of natural light, insect infestations and worn bedding in cells;

(c) Police detention and arrest centres that reportedly afford detainees extremely limited outdoor time and time outside their cells, in some cases as little as one hour per day, and are devoid of recreational or vocational activities;

(d) The lack of adequate medical screening in police detention and arrest centres, including for blood-borne and contagious diseases for detainees considered to form part of high-risk groups, and the lack of systematic screening for sexual violence or other gender-based violence for women alleged offenders;

(e) The use of strip searches which fail to maintain the dignity of detainees;

(f) Widespread shortages of staff qualified to provide medical and psychological assistance to detainees and, particularly, insufficient psychiatric, social and psychological care for detainees suffering from mental illnesses (arts. 2, 11 and 16).

12. **The State party should:**

(a) **Continue its efforts to improve conditions of detention in all places of deprivation of liberty, aligning them with relevant international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and alleviate overcrowding in penitentiary institutions and other detention facilities;**

(b) **Consider all available alternatives to the use of police detention and arrest centres for prolonged detention, including the use of alternatives to detention, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(c) **Ensure that strip searches of persons deprived of their liberty are conducted in private by appropriately trained staff members of the same sex and in a manner that respects the person's dignity;**

(d) **Ensure adequate staffing of prisons and police detention and arrest centres, including through the recruitment of staff who are trained and specialized in the treatment and care of detainees requiring medical, psychiatric and psychological assistance.**

**Allegations of torture and ill-treatment**

13. The Committee is concerned by reports of the torture and ill-treatment of persons deprived of their liberty, occurring both at the moment of their arrest and during their transportation and interrogation. Allegations include the use of punches, kicks and blows with batons to the head, body and feet, including in some cases on victims who are handcuffed. The Committee also takes note of information provided by the State party regarding the limitations it has placed on the use of special intervention units in certain locations; however it regrets that such units continue to be used in spite of persistent allegations of excessive use of force in prisons and numerous recommendations from international and regional human rights bodies, including from the Committee itself,[22] urging their disbandment. The Committee notes with concern that in cases of alleged torture and ill-treatment, the medical services have reportedly failed to record, or have inadequately recorded, injuries sustained by detainees and that in some cases the alleged victims were denied the possibility of consulting directly with medical staff on a confidential basis, without the presence of guards, notably when they were considered to present an elevated risk following detention risk assessments. The Committee also expresses its concern over allegations of the excessive use of restraints, including the strapping of detainees to beds unsupervised and for extended periods, excessively tight handcuffing and the handcuffing of detainees to items of furniture (arts. 2, 11–14 and 16).

14. **The State party should:**

(a) **Carry out prompt, impartial, thorough and effective investigations into all allegations of torture and ill-treatment, including the excessive use of force by law enforcement officials, and ensure that those suspected of having committed such acts are immediately suspended from their duties throughout the period of investigation, while ensuring that the principle of presumption of innocence is observed;**

[22] CAT/C/ROU/CO/2, para. 13 (e).

(b) **Prosecute persons suspected of having committed torture or ill-treatment under articles 281 or 282 of the Criminal Code and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that the victims are afforded appropriate redress and rehabilitation in a timely manner;**

(c) **Implement the recommendations of international and regional human rights bodies specialized in the prohibition and prevention of torture by putting an end to the use of special intervention units in penitentiary facilities;**

(d) **Consider increasing surveillance and monitoring mechanisms for police and prison guards, including the expanded use of body cameras and the extension of closed-circuit television cameras to all places where detainees may be present, notably in police stations and interrogation rooms, except where doing so might give rise to violations of detainees' right to privacy or the confidentiality of their conversations with their counsel or doctor;**

(e) **Ensure that detainees are provided with access to private and confidential medical assistance, that all injuries sustained by detainees are meticulously recorded in relevant specially designated registers and that all relevant staff, including medical and psychological personnel, as well as prosecutors and judges, are specifically trained to identify, document and investigate cases of torture and ill-treatment, in accordance with the revised version of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(f) **Ensure that restraints are only applied as a measure of last resort, for the shortest possible period and subject to strict supervision, oversight and documentation. Restraints should never be used in a manner which degrades or humiliates detainees[23].**

…..

**Investigation and prosecution of acts of torture and cruel, inhuman or degrading treatment**

27. The Committee takes note of the shortcomings highlighted by the State party with regard to the investigation and prosecution of acts of torture and cruel, inhuman or degrading treatment, including difficulties and inadequacies in the collection of sufficient evidence to prosecute crimes of torture and ill-treatment, but emphasizes that such impediments fall solely within the purview of the State party to remove. The Committee is particularly concerned by irregularities

[23] https://www.ecoi.net/en/file/local/2096425/G2315458.pdf

in the collection of medical evidence of torture and ill-treatment, noting the information received that medical reports of injuries sustained by persons deprived of their liberty often contain scant or imprecise information, due in part to a lack of training of medical examiners, that forensic and other medical documents relating to allegations of torture and ill-treatment are often produced with excessive delay or not at all, and that forensic medical examination of detainees is subject to a fee. The Committee is also concerned by information provided by the State party that closed-circuit television and other forms of video surveillance are not sufficiently comprehensive, and information received that indicates that detainees are hesitant to report torture and ill-treatment for fear of reprisals (arts. 2, 11–14 and 16).

**28. The State party should take all possible measures to ensure the collection of sufficient documentary evidence in cases of allegations of torture and ill-treatment, including by ensuring that all relevant staff, including medical and psychological personnel, are specifically trained to identify, document and investigate cases of torture and ill-treatment, in accordance with the revised version of the Istanbul Protocol; that access to forensic medical examination in cases of allegations of torture and ill treatment is provided systematically and free of charge; and that persons deprived of their liberty who make allegations of torture and ill-treatment are not subjected to acts of reprisal. The State party should also consider installing video surveillance equipment in all interrogation centres and places of deprivation of liberty where detainees may be present, except where doing so might give rise to violations of detainees' right to privacy or the confidentiality of their conversations with their counsel or doctor.**

Notwithstanding that the Romanian Prison Police authorities, headed by Dan Halchin, in their replies to the questions raised by the Court of Committal in May 2024, as confirmed in their testimonies before the Maltese courts, asserted 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, and that furthermore, in 2023 and 2024, 2 investment objectives were carried out by the Bucharest-Jilava Penitentiary with a total increase of 210 and a further 113 new accommodation places in the pipe-line, however pursuant to the CPT report of 2021 and the CAT report of 2023 cited above, the Court was not provided with 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. With regard to the problem of overcrowding, whilst not putting in doubt the Romanian Prison Police Authorities' declaration that Paul Philippe Al Românei 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.[24] Although physically Paul Philippe Al Românei would be afforded the minimum space required, there is no mention as to whether this same space would not be shared with other detainees – at least until the mentioned projects are complete,[25] and with whom appellant will be housed in his cell considering that Rahova penitentiary is a high security prison where some of Romania's most dangerous criminals are accommodated, and considering the status of the requested person. The Court feels that although specific requests were made demanding information in this regard, the replies and assurances given did not tackle this issue but dealt with in a general way, this Court now being bound by time constraints to deliver its decision, having already given ample opportunity to the Romanian authorities to reply to these shortcomings.

The Court refers to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) wherein the United Nations adopted the following rules regulating prison conditions where with regards to accommodation, and to which Romania to date is not fully compliant:

**Rule 12**

1. **Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.**
2. **Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.**

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

[25] 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.

**Rule 13**

> **All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.**

Rule 15, further states that "the sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner", and regarding the situation of the beds, Rule 21 provides that "every prisoner shall, in accordance with local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness"
Finally Rule 43 reiterates the prohibition of torture, inhuman or degrading treatment or punishment, and suggests the prohibition of the indefinite or prolonged solitary confinement, constantly lit or dark cell, physical punishment or collective punishment. Also, it mentions that no instruments of restraint shall be applied[26].

In the Council of Europe, recently released Annual Penal Statistics on Prison Populations (SPACE 1) for 2023[27], it was established that Romania has a prison density of 120 inmates per 100 places available, thus signifying that the problems of overcrowding are still very present and real. Furthermore, the US Embassy report in Romania for 2023 on Human rights practices[28], found that:

> **There were no significant changes in the human rights situation in Romania during the year.**
>
> **Significant human rights issues included credible reports of: cruel, inhuman, or degrading treatment or punishment by the government or on behalf of the government; and serious government corruption.**

[26] https://documents.un.org/doc/undoc/gen/n15/443/41/pdf/n

[27] https://www.coe.int/en/web/prison/space

[28] https://ro.usembassy.gov/2023-country-reports-on-human-rights-practices-romania

**The government took credible steps to identify and punish officials who may have committed human rights abuses, but in some cases government actions were insufficient and impunity was a problem.**

**Prison and Detention Center Conditions**
**Prison conditions were harsh and overcrowded. Abuse of prisoners by authorities and other prisoners occurred.**

**Abusive Physical Conditions: Gross overcrowding was common.**
**Inmates complained food quality was poor and sometimes insufficient in quantity. Prisoners had very limited access to hot water. Sanitary facilities were often in a poor state of repair, and detained persons were not provided with appropriate quantities of detergent and hygiene products. Independent observers noted cells were often dilapidated and lacked equipment (storage space, table, and chairs). Mattresses and bedding were often worn out and infested with bed bugs and cockroaches. Prisoners had insufficient in-cell heating in winter. In some prisons, ventilation was inadequate. Prisons reportedly provided insufficient medical care and, according to several reports released by the ombudsperson throughout the year, inmates did not receive medical checks and treatment in a timely manner.**

**Prison authorities in some facilities kept prisoners confined to their cells for long periods without opportunity for movement or exercise.**

**Prisoners regularly assaulted and abused fellow inmates with impunity.**

**According to nongovernmental organizations (NGOs), lesbian, gay, bisexual, transexual, queer, or intersex (LGBTQI+) persons, individuals with mental health issues, and persons with HIV or AIDS faced disproportionate abuse in prisons by their fellow inmates.**

**Administration: Authorities did not always conduct investigations of credible allegations of mistreatment and inhuman conditions.**

**Independent Monitoring: The government permitted monitoring visits by independent nongovernmental human rights observers, and such visits occurred during the year.**

From an overview of all the reports compiled by international, European and independent institutions together with several judgments delivered by the ECtHR and the CJEU, thus, it is evident that the systemic and general inferior and inhuman conditions in Romanian prisons are still present with over-crowding still being a

reality and allegations of ill-treatment even amongst the prisoners themselves still persistent, although the state is addressing this issue. These contrast with the assurances given by the Romanian prison authorities which assurances were endorsed by the delegated judicial authority in the Issuing State. This combined with the fact that till today cases regarding inhuman and degrading treatment in prisons in Romania before the European courts are still numerous, so much so that the ECtHR has deemed fit to adopt the article 46 pilot procedure. In fact, other Member states as recently as December 2023 in the *Benjamin Steinmetz* case, the Greek executing judicial authority refused to surrender the requested person on the basis of a potential article 3 breach when similar information regarding the conditions of detention as those given in the present case were provided to the court in Greece. Moreover, the judicial authorities and the prison authorities in the Issuing state, although presenting a picture where it could be understood that all the recommendations made both by the CPT, the CAT and the ECtHR have been implemented or are being implemented, although this Court cannot put into doubt the efforts being made by the Romanian authorities in this regard, however, the reports compiled both at European as well as international level speak otherwise, and indicate that the problems are still present although being addressed, so much so that the assurance given cannot dispel the fear of the real risks which appellant could face to his person and health whilst being held in custody in a Romanian prison.

From the appellant's personal perspective then:

1. The information regarding prison conditions in Rahova penitentiary, a maximum security prison, where appellant will be housed during his custodial sentence are in contrast to the numerous allegations of poor prison conditions, overcrowding and violence amongst prisoners and prison officials in high security facilities.

2. The information provided indicates that appellant will be detained in a multi-occupancy cell, without any information as to the precise number of prisoners who will be housed with him in this cell, initially under a closed regime with appellant thus being afforded only a few hours outside his cell.

Although several photographs were presented these indicate the use of bunk beds and the sharing of cells with other detainees.

3. No guarantee was forthcoming with regards to appellant's freedom of movement outside in the open air and adequate out-of-cell activities, except for a period of time, initially of two hours, and later on of "up to eight hours spent daily outside the detention room"[29], recreational rights in view of his old age and physical infirmities being restricted, and this especially with regard to the Rahova period of detention, where appellant will most likely be detained in a multi-occupancy cell, in a high security facility, as already pointed out.

4. Most important, no guarantee was forthcoming with regard to the possibility of special protection to be provided in view of appellant's status as the Prince of Romania, the indications being conflicting, and the decision left entirely in the hands of a Commission which will assess appellant's situation and status only after 21 days.

5. No guarantee was forthcoming with regard to the prisoners with whom appellant will be housed whilst at Rahova, taking into account that this is a high security prison, with the information provided indicating that it will be the penitentiary administration which will organise the spaces where appellant will be accommodated and will decide on the number of detainees in the detention rooms, and who these detainees will be.

6. Conflicting information was given as to the penitentiary where appellant would be detained during the rest of his custodial sentence upon the expiration of the 21-day induction period at Rahova, and whether this will be a closed (detained at Rahova) or semi-open/open regime, considering that appellant's custodial sentence exceeds three years imprisonment. And although prison officials have stated that he will be housed in the Jaliva

[29] Folio 564 of acts – does not specify whether this will be in the corridors, in another closed room or in the open air.

penitentiary, however this contradicts with the initial information provided that Romanian law leaves this decision in the hands of a Commission set up for this purpose, and that the initial period will be under a closed regime at Rahova itself.

7. The Romanian Prison Authorities held that the decision regarding which regime appellant will be detained under 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 only at a later stage.

8. No information was provided as to the composition of the Commission and its members thereof.

9. Although it seems there could be a possibility that appellant will be transferred to the Bucharest-Jilava Penitentiary where the restrictions are considerably less, however even in this penitentiary it will be up to the administration to organize 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.

This Court understands that the conditions of detention applicable to appellant Paul Philippe of Romania are not definite and depend on the results of the assessment carried out by the Commission after 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 9th of May 2024 reply to the Court of Committal, it is stated that "*Given the amount of punishment imposed on the convicted person, he will most likely serve the custodial sentence initially in closed regime*"[30] being the Rahova penititary, yet in another section of the same reply it is stated that "*Thus, taking into account the advanced age of the Romanian*

[30] Vide fol. 561 of the acts of the proceedings.

*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*"[31] 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*,"[32] 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).*"[33] Then from the evidence presented in Court by the Attorney General, despite the assurances given in the testimony of the prison officials, foremost amongst whom Dan Halchin, that it appears to be a *fait accompli* that appellant will be housed in Jilava following the 21-day induction period, however, this contradicts what was stated in the replies sent to the Court of Committal in May 2024 that it would be the Commission who would decide on this issue, and that initially, as already pointed out appellant will remain at Rahova.

In conclusion, when all these issues are taken into consideration, with the Court keeping in mind the age, health issues and the special status of the requested person being a member of the Romanian royal family, recognised as a legitimate heir to the throne only in 2012 after years of dispute, which status seems to be still subject to controversy, and which seems to be at the heart of the conviction handed down against appellant by the High Court in Romania, and when viewed in the light of European and international concerns regarding prison conditions in Romania, with a special highlight on the Bucharest-Rahova prison which has been the subject of various human rights violation cases, and which will accommodate appellant upon

[31] Vide fol. 562 of the acts of the proceedings.

[32] Vide fol. 563 of the acts of the proceedings.

[33] Vide fol 566 of the acts of the proceedings.

his surrender to Romania, based on the evidence brought before the Court, the real and personal risk cannot be excluded that upon his surrender to Romania, Paul Philippe Al-Romaniei would be subjected to inhuman or degrading treatment due to the prison conditions present in the Issuing Member State.

**B. Alleged violations of article 6 of the European Convention on Human Rights, and article 47 of the Charter as a result of alleged political persecution, with the Court delivering final judgment in Romania allegedly not composed according to law.**

Considers that the FD on the European arrest warrant and the surrender procedures between member States, "**shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union**." According to article 6, paragraph 1, of the Treaty on European Union,

> "**The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of December 7, 2007, as adapted in Strasbourg on December 12, 2007, which shall have the same legal value as treaties."**

Pursuant to Article 47(2) of the Charter of Fundamental Rights of the European Union,

> **"Everyone is entitled to a fair hearing within a reasonable time by independent and impartial tribunal, established in advance by law. Everyone has the right to be advised, defended and represented."**

This premised, it is evident that a violation of the requested person's right to a fair hearing is considered to be a bar to extradition in the event that the executing judicial authority considers that this risk is real and present.

Appellant puts forward this grievance alleging that this violation occurred during the criminal proceedings leading to his conviction before the High Court of Cassation and Justice in Romania, which is at the basis of the EAW issued against him by the Romanian authorities. He basis this grievance on two main pieces of evidence - the judgment delivered by the Court of Appeal in Paris, France of the 29th of November

2023 pursuant to EAW proceedings undertaken in that Member State for his surrender to Romania, and also on a Decision of the Commission for the control of INTERPOL's files sitting as the Requests chamber on the 30th January 2023[34], 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.

By way of background the Court is presented with a request for surrender of Prince Philip of Romania, the grandson of King Carol II, former king of Romania. Appellant's father, Mircea Carol, was the eldest son of King Carol, although his birth rights were disputed since the King's, (then Crown Prince) marriage to appellant's grandmother was annulled because it contravened the royal house's statute, and thus the legitimacy of appellant's father was doubtful. From his second marriage to Princess Helen of Greece and Denmark, appellant's grandfather had another son Michael I who considered himself to be the rightful heir to the throne of Romania. This matter resulted in years of dispute with appellant being granted full succession rights in Romania only in 2012, with the ruling however being disputed as having unclear implications regarding both throne and property succession. The criminal case instituted against appellant in Romania stems from this dispute regarding the ownership of property pertaining to the royal family which properties were confiscated by the communists after the second world war, and which rights of restitution of the said properties appellant was trying to negotiate with private investors, resulting in criminal proceedings undertaken against him by the State claiming that appellant did not have the right to his grandfather's properties.

Appellant alleges that the court was not legally composed with the panel of judges, in legal jargon called 'the black panel', allegedly not acting in an independent and impartial manner as is expected from members of the judiciary, with two of its members not being administered the oath of office. Furthermore, he considers that the evidence brought forward in these proceedings as illegal, based on unauthorised wire-

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

tapings and technical surveillance warrants, so much so that Romania reversed its conviction of his lawyer Robert Rosu based on a reasoning which should apply equally to him.

Moreover, he alleges that his conviction before the High Court of Cassation of the 17th of December 2020, on the strength of which the EAW was issued on the very same day that judgment was delivered, was a result of Micheal I's family intervention, arguing that the case was purely of a political nature where the court relied on an unsigned 1941 nullified Nazi-era decision for the government's expropriation of royal properties in order to counter his rights to the two properties he had recovered, the Snagov Forest and the Royal Baneasa Farm, and this in spite of the decisions given on the 6th of February 1955 by the Portughese court in Lisbon, and recognised on the 14th of February 2012 by the Romanian High Court of Cassation and Justice which, in his opinion, confirmed the validity of his inheritance claims to these properties. Finally, he relies on the fact that his co-defendants Beny Steinmetz and Nela Ignatenko also defeated Romania's attempt to extradite them from Greece and Belgium respectively.

In the proceedings before the Commission for the control of INTERPOL's files sitting as the Requests Chamber on the 30th of January 2023[35], after a request was lodged by appellant, for access to the information concerning him registered in the INTERPOL files and its subsequent deletion, it was concluded that in view of applicant's dispute with former King Michael I, and the latter's heirs, on the legitimacy of his claim to royal inheritance, and in view of the fact that appellant's lawyer Robert Rosu representing him in his disputes was charged with the commission of a series of crimes, and this solely for his ordinary performance of his professional duties, combined with the fact that appellant was subject to technical surveillance and national security warrants that permitted his wire-tapping by the Romanian Intelligence service, the underlying proceedings were deemed to be contrary to fair trial standards and the right to privacy, with doubts whether appellant was given access and the opportunity to challenge these warrants and the evidence produced on

[35] Document F at folio 746 of the records.

the basis of the same. The Commission raised concerns regarding the existence of political elements in the general context, and the adherence of the proceedings to the principles of human rights. The Commission thus found that the retention of the data is not compliant with Articles 2 and 3 of Interpol's constitution and thus deleted it from INTERPOL files and instructed all its NCBs to no longer cooperate with local authorities seeking appellant's arrest.

Now the preliminary ruling before the CJEU requested by the Court of Appeal of Brasov in Romania, which request was entered into after the decision given in France which *inter alia* considered that there are systemic or general failings in Romania with regard to the swearing in of judges, and in particular where it doubted that two of the three judges who handed down the prison sentence were actually sworn in, thus violating the requested person's right to a fair hearing, according to law, indicates the following in this regard:

> **87 In any event, uncertainty as to whether the judges of a Member State have, before taking office, taken the oath provided for by national law cannot be regarded as constituting a systemic or generalised deficiency as regards the independence of the judiciary in that Member State, whether domestic law provides for effective legal remedies that make it possible to invoke a possible failure to take an oath by the judges who have pronounced a particular judgment and thus to obtain the annulment of that judgment. It will be for the referring court to determine whether such legal remedies exist in Romanian law.**
>
> **88 In the light of all the foregoing considerations, the answer to the second question is that Article 1(3) of Framework Decision 2002/584 must be interpreted as meaning that the judicial authority executing a European arrest warrant issued for the execution of a sentence may not refuse to execute that arrest warrant on the ground that the swearing-in report of a judge who imposed that sentence cannot be found or on the fact that another judge of the same formation would have only taken the oath at the time of his appointment as prosecutor[36].**

This implies that although by a judgement delivered by the Paris Court of Appeal on the 29th of November 2023, the French Court, after an extensive examination of numerous factors, decided not to execute the European Arrest Warrant issued on the

[36] Unofficial translation of CJEU ruling

18th of December 2020 against Paul Philippe Al Românieі, this decision does not bind this Court being a court in another member state to follow suit, although it can take into consideration this judgment when deciding whether to execute the EAW. On this point, the Court refers to the Court of Justice of the European Union case in the names **Puig Gordi and Others**[37] 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 view of this ruling appellant does not insist on his grievance regarding the composition of the High Court hearing his case. However, he insists that the case brought against him before the Court of Appeal in Brasov is a result of political persecution, so much so that the Commission for the control of INTERPOL's files in fact found this to be the case, as already premised above. The CJEU on this matter ruled that:

> **56 By its third question, the referring court asks, in essence, whether Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter, must be interpreted as meaning that, in a situation where a person who is the subject of a European arrest warrant alleges that his surrender to the issuing Member State would entail a breach of his right to a fair trial, the existence of a decision of the CCF relating to the situation of that person may, in itself, justify the executing judicial authority refusing to execute that arrest warrant or, failing that, may be taken into account by that judicial authority for the purpose of deciding whether it is**

[37] 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.

**appropriate to refuse to execute that arrest warrant for the reason alleged by that person.**

**57 According to the explanations of the referring court, the Requests Chamber of the CCF decided to remove from the Interpol database the international wanted notice against P.P.R. on the ground that the data concerning him did not comply with the Interpol rules on the processing of personal data. That decision of the CCF was taken into account by the Paris Court of Appeal in its judgment of 29 November 2023 by which it refused to execute the European arrest warrant issued by the Romanian authorities against P.P.R.**

**58 In the judgment of 31 January 2023, Puig Gordi and Others (C-158/21, EU:C:2023:57), the Court was asked a similar question concerning the taking into account, by the executing authority, of a report of the Working Group on Arbitrary Detention, a body which is under the supervision of the United Nations Human Rights Council. The principles set out by the Court in paragraphs 121 to 126 of that judgment can be transposed, mutatis mutandis, to the taking into account, by the executing authority, of a decision of the CCF relating to the situation of a person who is the subject of a European arrest warrant.**

**59 Since the two-stage examination referred to in paragraph 38 of the present judgment must be based both on objective, reliable, precise and duly updated information relating to the functioning of the judicial system of the issuing Member State and on a concrete and precise analysis of the individual situation of the requested person, a decision of the CCF ordering the cancellation of the international wanted persons in respect of the person who is the subject of an arrest warrant on account of an infringement of the Interpol rules on the processing of personal data cannot suffice to justify the refusal to execute that arrest warrant (see, to that effect, judgment of 31 January 2023, Puig Gordi and Others, C158/21, EU:C:2023:57, paragraph 123).**

**60 In so far as the executing authority has been able to establish the existence of such systemic or generalised deficiencies (see, to that effect, judgment of 31 January 2023, Puig Gordi and Others, C-158/21, EU:C:2023:57, paragraph 135), that authority must, in the context of the second stage, assess, specifically and precisely, whether there are substantial grounds for believing that the requested person will run, once surrendered to the issuing Member State, a real risk of infringement of its fundamental right to a fair trial (see, to that effect, judgments of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 92, and of 17 December 2020, Openbaar Ministerie (Independence of the issuing judicial authority), C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033, paragraph 61). A decision of the CCF is likely to be one of the elements that may be taken into account under this second stage, without the executing judicial authority being bound by it.**

**61 Consequently, the answer to the third question is that Article 1(3) of Framework Decision 2002/584, read in conjunction with the second paragraph of Article 47 of the Charter, must be interpreted as meaning that, in a situation where a person who is the subject of a European arrest warrant alleges that his surrender to the issuing Member State would entail a breach of his right to a fair trial, the existence of a decision of the CCF concerning the situation of that person cannot justify, in itself, the executing judicial authority refusing to execute that arrest warrant. On the other hand, such a decision may be taken into account by that judicial authority in order to decide whether it is appropriate to refuse to execute that arrest warrant[38].**

Appellant alleges that:

1. The decision of the High Court of Cassation and Justice of the 17th of December 2020, following an intervention by a lawyer representing Michael I's family who campaigned for his conviction, relied on an unsigned nullified 1941 Nazi-era decision for the government's expropriation of royal properties and this when the 1955 judgment by the Portuguese court confirmed the right of appellant's father to 37.5% of Carol II's estate, which judgment was recognized in 2012 by the Romanian High Court of Cassation and Justice.

2. Serious violations of due process and fair trial which are the subject of a pending case before the ECtHR (application number 50064/21) when the evidence brought before the court in the criminal proceedings was obtained with the involvement of the Romanian Intelligence Services and the wiretapping of appellant together with the use of classified evidence derived from telephone interceptions to which he was not given access.

3. Judgment against Robert Rosu, sentenced to 5 years imprisonment by the Court of Appeal Brasov reversing his acquittal on the same day that judgment was delivered against appellant wherein it was confirmed that his sentencing was solely a result of legitimate activities performed by him as legal counsel to appellant before the Romanian courts.

[38] Unofficial translation of CJEU ruling

Now the 2023 decision by the Request Chamber of the Commission for the control of Interpol Files, after referring various request to the NCB of Romania, concluded that appellant's allegation put before it was well founded. Firstly, it took note of the background information regarding the hereditary rights and the claim to the royal inheritance by Prince Paul. Secondly it took into consideration the fact that appellant's lawyer Robert Rosu was convicted for non-criminal conduct which according to the UN special Rapporteur on the Independence of Judges and Lawyers that the sentencing "*appears to constitute an intimidation and a sanction for the legitimate activities he performed in favour of the Applicant*." Thirdly, it deliberated that appellant was subject to technical surveillance and national security warrants that permitted wiretapping by the Romanian Intelligence service and considered that the method used for evidence gathering in the proceedings were deemed contrary to fair trial standards and the right to privacy. The Commission felt that the present circumstances relating to appellant raised serious concerns regarding the existence of political elements in the general context and the adherence of the proceedings to the principles of human rights.

The ruling of the CJEU referring to the Puig Gordi decision lays out a two-tier test when deciding whether appellant is the subject of political persecution and whether his rights to a fair trial have been violated. Firstly, the Court must assess whether there are systemic and generalised shortcomings in the Romanian Judicial system and secondly, whether there a concrete and precise consequences to the person concerned. The Court must take into consideration the nature of the offence, the status of the person concerned, the general context of the case and obligations under international law.

> **38. In that regard, it follows from the Court's case-law that, where the executing judicial authority called upon to rule on the surrender of a person who is the subject of a European arrest warrant has evidence tending to show that there is a real risk of infringement of the fundamental right to a fair trial guaranteed in the second paragraph of Article 47 of the Charter, as a result of systemic or generalised deficiencies in the functioning of the judicial system of the issuing Member State, that authority must determine, specifically and precisely, whether, having regard to that person's personal circumstances, the nature of the offence for which he or she is being prosecuted and the**

**factual context in which the European arrest warrant was issued, there are substantial grounds for believing that that person would run such a risk if surrendered to that Member State (judgment of 31 January 2023, Puig Gordi and Others, C-158/21, EU:C:2023:57, paragraph 97).**

Considers that with regard to the first test to be carried out by the Court regarding systemic or generalised deficiencies in the functioning of the judicial system of the issuing Member State, although the Court has taken cognisance of the reports carried out by the European Commission to the European Council and Parliament regarding the CVM mechanism to be adopted by Romania so as to be in line with the rule of law and the independence of the judiciary, since these are review proceedings, no evidence is found in the acts of requests to the issuing judicial authority regarding any shortcomings in the judicial system present in Romania, thus on the basis of the guidelines given by the CJEU since this Court as the executing Judicial authority did not address this issue with the Issuing judicial authority, thus it cannot reach any independent and objective conclusion regarding any possible systemic failures with regard to judicial independence, even in view of the ruling handed down the CJEU that the lack of proof regarding the administration of the oath to the judges presiding the case before the High Court of Cassation cannot by itself signify the requested person's violation of his right to a fair trial warranting a rejection to his surrender to the Requesting state.

Regarding the second test, appellant alleges that he was not granted a fair hearing before the High Court of Cassation which overturned the judgement of the Court of Appeal Brasov for the following reasons:

1. In his opinion the conclusion reached by the said Court that he is not the legitimate heir of King Carol II and that the reclamation of two properties at the basis of the case through his lawyer is illegal, is completely unfounded since there are various judgments being *res judicata* which attest to the contrary, which judgments the court of first instance in Romania relied upon and which led to his acquittal.

2. The High Court relied heavily on the confiscation decision purportedly delivered by the High Court of Cassation during the Nazi era in 1941, such expropriation orders were later nullified after WWII, for finding a conviction. He alleges that this document bears no signature, stamp or other elements by which its existence or its issuance can be ascertained in a real and legal manner by the High Court. Furthermore, the actual existence of this Decision cannot be confirmed and there are serious indications that it is a non-authentic document.

3. The High Court also relied on evidence obtained from technical surveillance by the Romanian secret service which was illegal, and which is being contested.

With regard to these various allegations, the only evidence found in the acts which purports to substantiate these claims is the decision by the Commission for the control of INTERPOL's files of the 30th of January 2023 which, according to the direction given in the CJEU ruling, cannot justify, in itself, the refusal by the executing judicial authority to execute the arrest warrant, although such a decision may be taken into account by that judicial authority in order to decide whether it is appropriate to refuse to execute the said arrest warrant. Thus, although such a decision is indicative of a situation of political persecution against the requested person existing in the Requesting state, however failing other substantiated evidence to this effect, the Court feels that, at this stage this remains an allegation, which although concrete and warrants concern in the execution of the warrant, however, lacks further proof.

Moreover, the Court was presented with a copy of appellant's application before the ECtHR, bearing number 50064/21, regarding a violation of his right to a fair trial stemming from his criminal conviction of the 17th of December 2020 and based on the very same objections which appellant is now presenting before this Court, which application is still awaiting a decision. Therefore, since the Court has already decided to refuse the execution of the warrant on the grounds of a serious risk of a violation of appellant's fundamental human rights as enshrined in article 4 of the Charter and article 3 of the Convention, and lacking sufficient information and evidence to investigate further the allegation laid out by appellant as indicated by the Commission for the control of INTERPOL's files in connection with the political undertones of the

criminal proceedings undertaken against him in Romania, the merits of which allegation are still subject to a decision by the ECtHR, it would, at this point, be both premature as well as futile to enter into the merits also of this alleged violation.

**Consequently, in view of the above-made considerations, the Court upholds the appeal filed by appellant, revokes 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 the 24th of June 2024. Finds that if the European Arrest Warrant against Paul Philippe Al Românie i is executed, there is a real risk that he will be subjected to 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, and on this basis is refusing to execute the present European Arrest Warrant. For these reasons the Court orders the discharge of Paul Philippe Al Românie i, holder of United Kingdom of Great Britain and Northern Ireland Passport Number 558783808.**

**Orders that a copy of this judgment is sent by the Registrar of the Criminal Courts to the First Hall of the Civil Court, in its constitutional jurisdiction (Judge Aaron Bugeja) and to be filed in the acts of the proceedings in the names *Paul Philippe Al-Romaniei vs l-Avukat ta'l-Istat u l-Avukat Generali, Application number 304/2024.***

**Edwina Grima**

**Judge**