

**THE HIGH COURT**

[2021] IEHC 590  
[2020 No. 321 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**NECULAI HOAMEA**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 15th day of September, 2021**

**Introduction**

1. By this application, the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 17th March, 2020 ("the EAW"). The EAW was issued by Judge Cristian Birjovanu of the Roman Court as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of seven years' imprisonment imposed upon the respondent on 8th February, 2019 and made final on appeal on 13th September, 2019, all of which remains to be served.
3. The EAW was endorsed by the High Court on 9th November, 2020 and the respondent was arrested and brought before the High Court on 26th March, 2021 on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
7. The sentence of seven years' imprisonment is an aggregate sentence incorporating a number of sets of proceedings and relating to ten offences in total.
8. The respondent pursues a number of objections to surrender as follows:-
  - (i) surrender is precluded by reason of s. 38 of the Act of 2003; and
  - (ii) surrender is precluded by reason of s. 37 of the Act of 2003.
9. While much time was initially taken up with issues concerning the various underlying proceedings incorporated within the final judgment, counsel for the respondent ultimately indicated that no objection was being pursued on behalf of the respondent as regards s. 45 of the Act of 2003. I am satisfied that the requirements of that section, insofar as it is

relevant to any of the proceedings to which the EAW relates, have been met in this matter.

**Section 38 of the Act of 2003**

10. Section 38(1) of the Act of 2003 provides, *inter alia*, that a person shall not be surrendered to an issuing state unless the offence to which the EAW relates corresponds to an offence under the law of the State. This is sometimes referred to as the rule of double criminality. In the present case, the EAW relates to ten offences in respect of which the aggregate sentence of seven years' imprisonment has been imposed. In line with the reasoning of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Ferenca* [2008] 4 I.R. 480, the parties agree that as this is an aggregate sentence which cannot be broken down into constituent elements, and thus unless correspondence can be established between each of the offences to which the EAW relates and an offence under the law of the State, then surrender must be refused.

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

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

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

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

12. The respondent accepts that correspondence can be made out between nine of the ten offences to which the EAW relates but submits that no correspondence can be established as regards the offence committed on 1st June, 2013, described as assault of [SVV]. It appears that the respondent was acquitted of the said offence at first instance but convicted of same upon appeal.

13. By additional information dated 20th November, 2020, an extract from the court proceedings at first instance is enclosed, described as "case number 5692/291/2013 of Roman Court in which it was given the judgment in criminal case number 266/07.70.2014

*it was noted the following situation de facto:*" The facts found by the court of first instance are set out thereafter. It indicates that on 1st June, 2013, a forest ranger [SVV] noticed a quantity of green wood cut stored near the respondent's home where he resided with his parents and other members of his family. Forest ranger [SVV] contacted another forest ranger [PG] and arranged to go to the respondent's home and arranged for a police officer and a number of security guards to also attend. An altercation occurred close to the respondent's home between [SVV] and another member of the respondent's family. Thereafter, a further verbal conflict occurred between [SVV] and another member of the respondent's family and the police asked [SVV] to leave. After [SVV] left, the respondent appeared at the locus with an axe and threatened forest ranger [PG]. Eventually, he was calmed down and even helped load the wood in order to be transported to another location. The court found the various accounts given by the parties present to be *"imprecise, evasive and relatively vague"* and found the statement of [PG] to be the closest to reality. The court concluded as follows:-

*"Regarding the defendant Hoamea Neculai, he threatened with the axe only [PG], since on his arrival, [SVV] already left..."*

14. Arising out of the above facts, at first instance the respondent was convicted of assault as regards [PG] but acquitted of assault as regards [SVV]. On appeal, his acquittal was reversed and he was convicted of assault as regards both [PG] and [SVV].
15. Counsel on behalf of the respondent submits that as regards the acts said to constitute the offence of assault of [SVV], such acts would not constitute an offence under the law of the State. In particular, he stresses that [SVV] had already left the scene prior to the respondent's arrival thereat and therefore the respondent's actions could not possibly constitute an offence of assault or any other offence as regards [SVV].
16. As regards the offence of assault upon [PG], counsel for the respondent submits that to constitute an offence of assault contrary to s. 2(1)(b) of the Non-Fatal Offences Against the Person Act, 1997, the perpetrator must cause *"another to believe on reasonable grounds that he or she is likely immediately to be subjected to any such force or impact"*. Counsel for the respondent points out that in the particulars of the offences provided in the notice of additional evidence dated 20th November, 2020, it is stated that [PG] *"did not sense a state of fear"*. However, following the receipt of additional information, the objection based on a lack of correspondence was only pursued as regards the offence concerning [SVV].
17. By additional information dated 28th June, 2021, an extract from the court of appeal decision is furnished. The court of appeal emphasised that the court at first instance had detailed:-

*"... the circumstances in which the actions were committed and it found as valid the fact that the defendants had an aggressive, insulting and threatening attitude regarding the injured parties, public servants who on the date of the actions were carrying out a job which involved the exercise of state authority and were during*

*the duties of their job however, it appreciated wrongly the inexistence of the state of fear created to the victims of the offence of assault, because of the acts of mental violence exercised by the defendants noting as sole argument to support the solution of acquittal of the defendants for the offence of assault, the statements given by the injured parties (statements over which later, they reassessed, including before the appeal court) who mentioned that the action of the defendants of threatening them did not provoke them any fear."*

18. The court of appeal also stated:-

*"Despite the depositions of the injured parties who invoked the fear which was instilled by the extremely violent conduct of the three defendants, people who were known with criminal records, with a repeated antisocial and extremely aggressive conduct who were making their living only by exploiting stolen wood material, conduct that made them perform control actions only together (the injured party [PG] requested the help of the other injured party [SVV] to manage to check the wood, but also the policemen within the Police Station of the Commune Boghicea, which proves the fear of the people involved in the event, that they would not be able to counteract a possible material attack of the defendants on them) the court of first instance appreciated that the defendants' actions were not likely to create any fear towards victims.*

*It is not to be neglected the fact that the same fear led the assaulted victims to appeal to resignation from the positions they had.*

*Through his/ her actions and blameable conduct, each defendant prejudiced the social relations referring to the state authority, whose development is insured by defending the reputation and the safety of the public servants who exercise this authority.*

*The evidence administered (see the statement of the witnesses [DI] – page 10 of the criminal investigation file, [CIR] - page 12 of the criminal investigation file, [MSV] - page 17 of the criminal investigation file, etc) confirmed that the three defendants uttered threats and insults, had a defiant and aggressive attitude, in the situation in which they had an ascendancy given by the disproportion of forces but also by the weapons they had on them, namely axe (the defendant Hoamea N.), wood (defendant [HC]) and a bat (defendant [HA].) [HA], an elderly who should have had a balanced conduct according to her capacity of mother of the three defendants, was the one who instigated her sons to commit the offence of assault with the purpose of intimidating the control authorities to check the provenience of wood, she maintained the conflict herself, too, she made threats with death, arson and violation of their wives, actions which were to be organized in a group by mobilizing own family, threats which were meant to create a strong fear to the injured parties, according to their own statements.*

*Furthermore, it is hard to accept that a person who makes a complaint against three other people for committing the offence of threat, - beyond the circumstance that relative to the capacity in which the assaulted victim was at the time of the threat situated from legal point of view into the objective side of the complex offence of assault -, for the simple fact that stresses subsequently the condition in which he/ she was at the moment of the offence, it should be interpreted in the meaning that his/ her attitude is equal to an indirect retraction of the criminal complaint initially formulated.*

*The offence provided by art. 239 of Penal code is part of the title 'Offences against authority' and the passive subject of the offence is the state, namely the authority of the state of which the public servants who were on their duty have to enjoy when exercising their job duties. The person of the public servant represents an adjacent passive subject, not being relevant if he/ she felt threatened or not inside.*

*On the other hand, from the documents of the file it is clearly noticed the reputation of the violent conduct of [H] family and from the fact that, although at the place of the incident many people were present, none of them, because of the fear the defendants instill, accepted to testify for the case, however, on the other hand, from the criminal records of the defendants [HC] and Hoamea N. which are on page 30 of the case, people who before arraignment, were sentenced by final decisions for having committed offences of violence, aggravated theft and aggravated theft of trees, the defendant [HC] was even sentenced for having committed the offence of rape, thus, accomplishing the actions of threat uttered by the three defendants was not at all difficult to anticipate and much less likely to create the assaulted victims, the fear that something bad of the kind uttered in the threats, would happen to them." (Emphasis added)*

19. It would appear that the appeal court regarded the necessary 'fear' to be an objective fear rather than a subjective fear instilled in the victim. While it is not entirely clear, it would also appear to be the case that the appeal court regarded the fact that the respondent and other members of his family had made objectively credible threats of violence against the injured parties, who were officers of the state, and it was not necessary that such officers be actually present at the time.
20. Counsel on behalf of the applicant submits that pursuant to s. 5 of the Act of 2003, correspondence does not require that an offence directly mirroring the offence provision in the issuing state must exist in Irish law but rather that the acts or omissions that constitute the offending behaviour in the issuing state would amount to an offence in this jurisdiction. She submits that the behaviour of the respondent at the time of the offence consisted of aggressive, insulting and threatening behaviour on the part of the respondent in circumstances which would correspond to an offence contrary to s. 6 of the Criminal Justice (Public Order) Act, 1994, as amended ("the Act of 1994"). In the alternative, she submits that the behaviour of the respondent amounted to an offence contrary to s. 19(3) of the Act of 1994 which criminalises obstruction of a peace officer acting in the course of

his/her duty. In fairness, it should be said that this particular submission was not pursued with vigour and I am not satisfied that correspondence can be made out with the offence under s. 19(3) of the Act of 1994.

21. By additional information dated 5th August, 2021, it is confirmed that it is not possible to give the exact location of the offence and whether same was a public place as it was on the edge of [HV]'s garden. This could create a difficulty in terms of the proposed corresponding offence under s. 6 of the Act of 1994 as that offence can only be committed in a public place. The additional information confirms that the court of first instance acquitted the respondent of the offence against [SVV] and that the appeal court definitively sentenced him for that offence, noting that he had threatened the aggrieved party [SVV] under the same circumstances. The additional information goes on to state:-

"3. *De facto, the convict Hoamea Neculai threatened the aggrieved party [SVV], on that date a forester doing his duty, of committing acts of violence, in the sense that he would kill him, put fire on him and cut his head.*" (Emphasis added)

22. On foot of this additional information, counsel for the applicant submits that on the basis of these facts, the actions of the respondent would amount to a corresponding offence in this jurisdiction, viz. an offence contrary to s. 5(1) of the Non-Fatal Offences Against the Person Act, 1997, as amended, which provides:

*"5.- (1) A person who, without lawful excuse, makes to another a threat, by any means intending the other to believe it will be carried out, to kill or cause serious harm to that other or a third person shall be guilty of an offence."*

23. Having considered all of the documentation before the Court and the submissions made by counsel for the parties, I am satisfied that the issuing judicial authority has indicated that the appeal court found as a matter of fact that the respondent made threats to kill or seriously injure [SVV] and that there was reason to believe such threats would be carried out. I am not satisfied that this Court can go behind the findings of fact made by the appeal court in Romania. On the basis of those facts, it is possible to infer that the threats were made by the respondent intending that those to whom such threats were made would believe the threats would be carried out. In such circumstances, I am satisfied that correspondence can be established between the offence concerning [SVV] to which the EAW relates and the offence under the law of the State of making a threat to kill or injure another contrary to s. 5(1) of the Non-Fatal Offences Against the Person Act, 1997, as amended.

24. As regards the other offences to which the EAW relates, I am satisfied that the necessary correspondence can be made out. This was not contested.

**Section 37 of the Act of 2003**

25. Section 37 of the Act of 2003 provides, *inter alia*, that a person shall not be surrendered under the Act if his or her surrender would be incompatible with the State's obligations

under the European Convention on Human Rights, the protocols thereto or would constitute a contravention of any provision of the Constitution.

26. On behalf of the respondent it is submitted that due to prison conditions in Romania, surrender of the respondent would expose him to a real risk of a breach of his right not to be subjected to inhuman and degrading treatment as protected under Article 8 ECHR.
27. In an affidavit dated 31st March, 2021, the solicitor for the respondent, Mr. Mark O'Sullivan, averred that the current EAW is the second time the applicant had been the subject of European arrest warrant proceedings issued by Romania. He avers that the respondent was arrested on or about 8th July, 2019 on foot of a European arrest warrant from Romania and remanded in custody until those proceedings were struck out on 10th October, 2019. Those proceedings related to some of the offences to which the current EAW relates. He avers that the respondent was advised at the time of the striking out of those proceedings that the issuing state could bring a further application for his surrender.
28. In an affidavit dated 27th May, 2021, Mr. O'Sullivan, avers that the respondent served a one-year prison sentence in Bacau Prison, Romania, in or around 2014 during which he had to share a cell with five other inmates in very cramped conditions. It was averred that the cell was three metres square for six males. He also avers that the respondent instructs him that the conditions in the prison were unsanitary and unhygienic with bed linen infested with lice and bed bugs and cells infested with rats. Mr. O'Sullivan also avers that the respondent instructs him that the police in Neamt County (an area adjacent to where the respondent resides in Romania) are corrupt and accept bribes. It is averred that the respondent's brother Costica made a complaint to the anti-corruption authorities in respect of same. He avers that this complaint resulted in an investigation covered by TV stations in Romania and that as a result of same the police have developed a hatred towards him and his family resulting in unjustified prosecutions against him and his family. He avers that the respondent is in fear of his safety and that of his family if he is returned to Romania.
29. In a further affidavit dated 27th May, 2021 Mr. O'Sullivan exhibits a number of reports concerning prison conditions in Romania, including a report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, dated February 2018, and a US State Department Report on Human Rights in Romania, dated 2020.
30. Having considered the materials relied upon by the respondent and having heard submissions in respect thereof, the Court sought additional information concerning the conditions in which the respondent would be held if surrendered on foot of the EAW.
31. By additional information dated 22nd June, 2021 the issuing judicial authority furnished a letter from the Romanian national administration of penitentiaries. This indicates that, if surrendered, the respondent will initially be detained in Rahova Penitentiary in Bucharest for a quarantine period of 21 days. After that period, the respondent will be transferred to

a penitentiary for the execution of his custodial sentence, taking into consideration proximity to his home address but also the number of persons detained in any particular institution. It is indicated that the respondent will most probably execute his sentence initially in a closed regime in Bacau Penitentiary. It is stated that the rooms in Bacau Penitentiary ensure that every inmate has an individual bed, mattress and bedding and are equipped with the necessary furniture for personal objects and serving meals. It is indicated that rooms have proper natural ventilation and lighting; a proper temperature is maintained; inmates have permanent access to running water and sanitary objects; disinfection and disinfestation take place regularly; adequate food is provided and inmates are allowed an outdoor walk. In the closed regime, inmates have access to work, educational, cultural, therapeutic and sports activities, psychological counselling and social assistance, school and professional training, medical care, walks, time for rest and other activities. Inmates who do not take part in work or other activities have a right to at least three hours walk per day. After execution of one-fifth of the punishment, the inmate is reassessed and may be moved to a semi-open regime which, in the case of the respondent, would mean transfer to Miercurea Cruc Penitentiary. Again details of the conditions of that prison and the semi-open regime are provided. It is stated that if the respondent is transferred to execute his sentence in an open regime, he would most probably be transferred to Iaci Penitentiary and again details of the conditions of that institution and the open regime are provided. The reply concludes as follows:-

*"Taking into consideration the perspective of implementing the measures included in 'Action Plan for 2020 – 2025 elaborated for the execution of the pilot decision Rezmives and others against Romania and of the decisions taken in the group of cases Bragadireanu v. Romania and the number of detainees currently in custody of the National Administration of Penitentiaries guarantees to ensure a minimum individual space of 3 sm throughout the execution of the punishment, including the bed and proper furniture, without including the space for restroom".*

32. The information set out above comes from the National Administration of Penitentiaries in Romania and not directly from the issuing judicial authority. Nevertheless, it has been furnished to this Court by the issuing judicial authority. I am satisfied that significant weight and confidence can be placed in the information provided, coming as it does from an emanation of the Romanian state which has specific responsibility for the administration of prisons. Furthermore, the reply specifically refers to the fact that Romania has been the subject matter of proceedings before the European Court of Human Rights in respect of its prison conditions and as a result thereof has adopted a plan of remedial action. Based on the information before me, I find no reason to doubt the knowledge, competence or *bona fides* of the person who has provided the information.
33. Taking into account all of the information before the Court, I am not satisfied that there are substantial reasons for believing that, if surrendered, the respondent would be subjected to a real risk of a breach of his right not to be subjected to inhuman or degrading treatment. Section 4A of the Act of 2003 provides that it should be presumed

that an issuing state will comply with the requirements of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"). The Framework Decision incorporates respect for fundamental human rights. I am satisfied that the presumption provided for in s. 4A of the Act of 2003 has not been rebutted in the present case. Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine whether surrender of the respondent is incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR"), the protocols thereto or would constitute a contravention of a provision of the Constitution. I am satisfied that the surrender of the respondent would not be incompatible with the State's obligations in that regard and nor would it amount to a contravention of any provision of the Constitution.

34. I reject the respondent's objection to dismissal based upon prison conditions in Romania.
35. As regards the respondent's objection to surrender based upon police corruption in Romania and in particular in the neighbouring county of Neamt, I am not satisfied that sufficient objective and credible evidence has been put before this Court such as would rebut the presumption provided for at s. 4A of the Act of 2003 as referred to above. An affidavit sworn by Carmen-Elma Ionascu dated 22nd July, 2021 was put before the Court in which she exhibits a document, being a statement sworn by her denying making a complaint against the respondent as regards various offences including an assault carried out upon her. She indicates that the police officer came to her house and threatened her and asked her to sign a document, the contents of which she does not know. She states that she did not appear before any court. At hearing, it was indicated to the Court that Ms. Ionascu was formerly in a relationship with the respondent and despite their separation, she now is on good terms with the respondent.
36. This affidavit/statement of Ms. Ionascu was produced to the Court at a late stage in the proceedings. Following an indication from the legal representatives of the respondent that they might no longer be in a position to continue to act on behalf of the respondent, the said affidavit/statement was withdrawn and they then continued to appear on behalf of the respondent. The objection based on police corruption was not pursued further.
37. I am not satisfied that any substantial basis has been made out for refusal of surrender on grounds of police corruption in the issuing state.

**Conclusion**

38. I am satisfied that the surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act.
39. Having dismissed the respondent's objections to surrender it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Romania.