



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BIVOLARU AND MOLDOVAN v. FRANCE

(Applications nos. 40324/16 and 12623/17)

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Applicant surrendered to Romanian authorities on European arrest warrant where real risk of poor detention conditions • Applicant, recognised as refugee by Swedish authorities, surrendered to Romanian authorities on European arrest warrant where no real risk of persecution or poor detention conditions

STRASBOURG

25 March 2021

FINAL

25/06/2021

This judgment has become final pursuant to Article 44 § 2 of the Convention. It is subject to editorial revision.

In the case of Bivolaru and Moldovan v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Jovan Ilievski,
Lado Chanturia,
Arnfinn Bårdsen,
Mattias Guyomar, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 40324/16 and 12623/17) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Gregorian Bivolaru and Mr Codrut Moldovan (“the applicants”), on 12 August 2016 and 9 February 2017 respectively;

the decision to give notice on 19 December 2018 to the French Government of the complaints concerning Articles 2 and 3 and to declare the remainder of the complaints inadmissible;

the parties’ observations,

Having deliberated in private on 16 February 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present applications concern the surrender of the applicants to the Romanian authorities on European arrest warrants (EAWs) to serve prison sentences. The applicants complained that the execution of the EAWs contravened Article 3 of the Convention.

THE FACTS

2. The first applicant, Gregorian Bivolaru, was born in 1952. He was represented before the Court by Mr P. Spinosi, a member of the bar of the *Conseil d’Etat* and the Court of Cassation. The second applicant, Codrut Moldovan, was born in 1971. He was represented by Mr C. Marcelot, a lawyer practising in Clermont-Ferrand.

3. The Government were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of Europe and Foreign Affairs.

I. APPLICATION NO. 12623/17

4. On 26 June 2015 Mr Moldovan was sentenced by Mureş County Court in Romania to seven years and six months' imprisonment for acts of human trafficking committed in 2010 in Romania and France, namely forcing six Romanian nationals, including a minor, into mendicancy on his behalf. The applicant attended his trial. He later returned to France.

5. On 29 April 2016 the Romanian judicial authorities issued a European arrest warrant (EAW) in respect of the applicant for the enforcement of his sentence.

6. Three days earlier, on 26 April 2016, the applicant had, according to the information supplied by the Government, been charged with counts of "theft from a dwelling-place entered by deception, breaking in or climbing" and "concealment of property obtained through theft from a dwelling-place or storage area entered by deception, breaking in or climbing", and had been remanded in custody. By a judgment of 10 May 2016 the Investigation Division of the Riom Court of Appeal ordered his release under judicial supervision with a requirement to report once a week to the Clermont-Ferrand police station.

7. On 7 June 2016 the applicant was arrested at the police station. The Principal Public Prosecutor of the Riom Court of Appeal served him with notice of the EAW that day. The applicant stated that he did not consent to be surrendered to the Romanian judicial authorities.

8. On 10 June 2016 he was brought before the Investigation Division of the Riom Court of Appeal for a determination regarding his surrender to the Romanian authorities. He acknowledged that he was in fact the person sought under the EAW but reiterated his objection to being surrendered to those authorities. Relying on the judgment of the Court of Justice of the European Union (CJEU) of 5 April 2016 in *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, and see paragraph 50 below), he contended that the Investigation Division could not grant the surrender without first requesting and obtaining supplementary information about the conditions in which he would be held in Romania. He adduced in that regard the CJEU judgment, the press release and an academic article concerning that case, and references to four judgments of this Court finding against Romania for inhumane conditions of detention (see *Voicu v. Romania*, no. 22015/10, 10 June 2014; *Bujorean v. Romania*, no. 13054/12, 10 June 2014; *Mihai Laurențiu Marin v. Romania*, no. 79857/12, 10 June 2014; and *Constantin Aurelian Burlacu v. Romania*, no. 51318/12, 10 June 2014).

9. By a judgment of 16 June 2016 the Investigation Division concluded, on the basis of the Court's judgments about detention conditions in Romania and a 2014 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), that there was "objective, reliable, specific and duly up-to-date evidence of deficiencies

regarding detention conditions in Romania". The Romanian authorities were invited to provide it by 30 June 2016 with such particulars as related to the actual conditions in which the applicant would be held, for the purpose of assessing whether there was a real risk of inhuman and degrading treatment.

10. On 28 June 2016 the international law and judicial cooperation branch of the Romanian Ministry of Justice provided the French authorities with the following information. For the observance of a twenty-one-day quarantine, the applicant was first to be held in Rahova Prison, Bucharest, which had twenty-four cells with "at least 2-3 sq. m" of individual space. After that time, "considering the length of the sentence, he [would] most likely, at the outset, have to serve it in a closed environment". Because of his place of residence, he would, "most likely, at the outset", serve his sentence in Gherla Prison. The cells there had one window measuring 200 cm by 145 cm which afforded natural light and adequate ventilation. Each cell contained at least a table and two chairs, a television mount, spaces in which to store personal effects, and a mattress and linen for the bed. It was further specified that prisoners had round-the-clock access to a sanitary facility equipped with two washbasins and two toilet cubicles; cold water was available at all times and hot water twice a week; the cells were sanitised on a regular schedule and whenever otherwise necessary; prisoners were provided with the necessary hygienic and sanitary items monthly; prisoners in the closed regime who did not work had access to a variety of activities, with a daily minimum of four hours allotted for work duty, education and vocational training, outdoor time, psychosocial assistance or exercise; an infirmary provided prisoners with medical assistance and treatment as necessary. The Romanian authorities concluded with the following statement:

"Accordingly, the National Prison Service guarantees that the individual will serve his sentence in Gherla Prison or in an ancillary prison where he will be afforded 2-3 sq. m of personal space, inclusive of the bed and necessary item of furniture. ...

The National Prison Service avails itself of this opportunity to extend its assurances that it will deal attentively with all matters reported by individuals serving sentences in subordinate prisons."

11. The applicant subsequently lodged written submissions in the Investigation Division arguing that he would be at risk of inhuman and degrading treatment if surrendered. He stressed that the guarantees given by the Romanian authorities were not sufficient to meet the requirements arising from the Court's judgments against Romania, among them *Axinte v. Romania* (no. 24044/12, 22 April 2014; see paragraph 111 below), and claimed that the detention conditions and situation of "serious overcrowding" in Gherla Prison would give rise to a breach of Article 3 of the Convention. He also sought a deferral of his surrender under Article 695-39 of the Code of Criminal Procedure (see paragraph 59 below) on the ground that he was facing charges in France for the same conduct in respect of which he had been convicted in Romania.

12. By a judgment of 5 July 2016 the Investigation Division concluded that there was no obstacle to the applicant's surrender:

"... As to the actual conditions in which [the applicant] will be held, the document drawn up by the Romanian authorities states that, after a quarantine of twenty-one days in a cell with at least 2-3 sq. m of individual space, he will probably be transferred to Gherla Prison, where he will be afforded at least 2-3 sq. m of individual space in a cell with a window and where he will enjoy round-the-clock access to a sanitary facility with two washbasins and two toilet cubicles, access to cold water at all times and the opportunity to wash with hot water twice a week, and access to medical assistance.

The detention conditions described by the document will ensure that [the applicant] is not held in conditions posing a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, provided that, if not held in Gherla Prison, he is held in a prison which affords the same or better individual conditions of detention. ...

As to whether the surrender needs to be deferred pursuant to Article 695-39 of the Code of Criminal Procedure, deferral is a mere power vested in the Investigation Division. Given the nature of the charges pending against [the applicant] in France, the nature of the charges on which he was convicted in Romania, the severity of the sentence passed and the fact that, in the French proceedings, he has merely been placed under judicial supervision, it does not appear appropriate to bring the provisions of that Article to bear.

For these reasons,

the Investigation Division ...

...

orders the surrender of [the applicant] ...

declares that the conditions in which he is to be held must, at a minimum, conform to the description set out in the document provided by the Romanian authorities ..."

13. On 6 July 2016 the applicant applied to the Court of Cassation to set the judgment aside by review on points of law. In his first ground of review he argued that the Investigation Division had not drawn the proper inferences from the document provided by the Romanian authorities, which had revealed the deficiencies in the Romanian prison system. He specified that the Investigation Division had misrepresented the document by stating that he would be afforded "at least 2-3 sq. m" of individual space whereas what it had said was "2-3 sq. m" of space (see paragraphs 10 and 12 above), and by omitting that the space in question was inclusive of the bed and the other item of furniture. In his second ground of review he submitted that the Investigation Division had failed to reason its judgment as to the nature of the charges pending against him in France.

14. By a judgment of 10 August 2016 the Court of Cassation dismissed his application:

"Whereas in ordering the [applicant's] surrender to the Romanian judicial authorities the judgment stated that in Gherla Prison [the applicant] would be afforded 2-3 sq. m of individual space in a one-window cell, access to a lavatory with two washbasins and two toilet cubicles, access to cold water at all times and the opportunity to wash with

hot water twice a week, and medical assistance, and that the detention conditions described by the document would ensure that he was not held in conditions posing a risk of inhuman or degrading treatment, provided that, if not held in Gherla Prison, he was held in a prison affording the same or better individual detention conditions;

Whereas in so stating the Investigation Division justified its decision and did not violate the treaty provisions relied upon;

...

Whereas in ordering [the applicant's] surrender to the Romanian judicial authorities the judgment held that in view of the seriousness of the charges on which [he] had been convicted in Romania, as opposed to the distinct charges pending against him in France, in relation to which he had been placed under judicial supervision, it did not appear appropriate to defer his surrender.

Whereas in so holding, and as the court is not under a duty to account for the exercise of its power under Article 695-39 of the Code of Criminal Procedure to defer surrender of a person under a European arrest warrant, the Investigation Division justified its decision; ...”

15. On 26 August 2016 the applicant was surrendered to the Romanian authorities pursuant to the EAW.

II. APPLICATION NO. 40324/16

A. The circumstances of the case

1. Background to the case

16. In 1990 Mr Bivolaru became the leader of a spiritual yoga movement known in Romania as MISA (*Mișcarea de Integrare Spirituală în Absolut* – Movement for Spiritual Integration into the Absolute). The founding and operation of MISA and the Romanian authorities’ investigations into some of its members are described in the cases of *Amarandei and Others v. Romania* (no. 1443/10, §§ 7-14, 26 April 2016), *Mouvement pour l’intégration spirituelle dans l’absolu v. Romania* ((dec.), no. 18916/10, §§ 4-9, 2 September 2014) and *Bivolaru v. Romania* (no. 28796/04, § 8, 28 February 2017).

17. In 2004 a criminal case was brought against the applicant in Romania, and he was held on remand for a time before being released (for which see *Bivolaru v. Romania* (no. 2), no. 66580/12, §§ 8-18, 2 October 2018). By an application of 13 August 2004 the prosecutor referred the applicant for trial *in absentia* in the Bucharest County Court on charges of sexual activity with a minor, sexual perversion and corruption of a minor, human trafficking and illegal border crossing.

18. On a date unspecified and in circumstances unknown, the applicant entered Sweden, where, on 24 March 2005, he lodged an application for political asylum. In April 2005 Romania’s interior ministry made two requests to the Swedish authorities for the applicant’s extradition.

On 21 October 2005 the Swedish Supreme Court rejected the requests on the ground that the applicant was in danger of persecution for his religious views and for the beliefs which formed an intrinsic part of his activities with MISA. On 2 January 2006 the Swedish authorities issued the applicant with a permanent residence document made out under a new identity and endorsed with refugee status.

19. On 10 February 2007 the applicant received official documents enabling him to travel on the basis of his refugee status.

20. By a judgment of 14 June 2013 the Romanian High Court of Cassation and Justice convicted the applicant *in absentia* of sexual activity with a minor and sentenced him to six years' imprisonment; on the remainder of the counts it either acquitted him or ordered the discontinuance of the proceedings on the ground that the charges were time-barred.

21. On 17 June 2013 the Sibiu County Court issued an EAW in respect of the applicant for the enforcement of his sentence.

2. *The proceedings in France*

22. On 26 February 2016 the applicant was arrested in Paris while using a false identity and in possession of forged Bulgarian papers.

23. The applicant was brought before the Investigation Division of the Paris Court of Appeal for a determination regarding his surrender to the Romanian authorities. In support of his objection to execution of the EAW he argued that Sweden's grant of refugee status and the political and religious grounds underpinning his conviction in Romania constituted an absolute bar to his surrender. He pointed to his background as a yoga teacher in Romania, the banning of that practice under the former communist regime, his arrests, his wrongful commitment to a psychiatric facility in 1989 and the actions taken against MISA from the 1990s until 2004, when he had fled to Sweden. He claimed that as an opponent of the government he would be subjected to inhuman and degrading treatment if the EAW were executed, given that "torture and inhuman treatment remain[ed] routine in Romania". He drew attention to a report released on 24 September 2015 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) that "express[ed] concern at the volume of ill-treatment allegations from detained persons" and "refer[red] to full-blown beatings of prisoners".

24. By a judgment of 27 April 2016 the Investigation Division directed further information from the Swedish authorities to clarify the applicant's refugee status:

"Whereas, in so far as the court will have to direct its attention to the question whether it is open to the judicial authorities of one EU member State to refuse to surrender a national of another EU member State on the ground that, before the latter State joined the EU, a third country that was also a member of the EU granted that person the status

of political refugee, it will be relevant for the court, in making its determination, to know authoritatively what [the applicant's] current status is in Sweden.”

The Investigation Division enquired of the Swedish authorities:

(a) whether, in their view, the fact that the decision to grant refugee status had been taken before Romania joined the EU on 1 January 2007 meant that the circumstances in connection with which he had been granted it had ceased to exist, so that he could no longer continue to refuse to avail himself of the protection of the country of his nationality, in conformity with the terms of Article 1 C (5) of the Geneva Convention of 28 July 1951 relating to the status of refugees (see paragraph 56 below);

(b) whether by acquiring a false passport and a false Bulgarian identity card in Sweden he had forfeited his refugee status; and

(c) whether the applicant was wanted by any other EU States.

The Investigation Division felt that an update from the Swedish authorities regarding the applicant's status was called for, first, by the fact that they had been sent the EAW on 19 June 2013 but after not finding him at his address had sent it back to Romania on the possibility that he might be identified in another member State, and second, by the following statement he had made to the prosecuting authorities in Paris:

“After my hurried departure from Sweden, where, clearly, my continued protection as an asylum-seeker is in doubt, I procured false documents to come to France. I intend to request the transfer of my asylum claim from Sweden to France.”

25. On 8 May 2016, the advocate-general at the Paris Court of Appeal sent the Swedish judicial authorities a request for further information, worded in accordance with the judgment of 27 April 2016.

26. On 12 May 2016 the international crimes unit of the Stockholm prosecutor's office forwarded to the Court of Appeal the following reply from the Swedish Migration Agency (original English):

“1. Gregorian Bivolaru, born on the 13th March 1952, applied for asylum in Sweden on the 24th March 2005.

During the asylum process a Romanian court [requested] the Swedish government to extradite Gregorian Bivolaru to Romania for prosecution ...

On the 15th August 2005 the Swedish Migration Agency denied Gregorian Bivolaru asylum. This decision was appealed to the Aliens Appeal Board.

The question of extradition was tried by the Swedish Supreme Court on the 21st October 2005. The Supreme Court found in its statement that there were obstacles to enforc[ing] the extradition. The Supreme Court also stated that the investigation gave substantial grounds for the conclusion that Gregorian Bivolaru due to his religious belie[f]s would face a ... risk [of] persecution of a serious form if he was extradited to Romania.

The Swedish Government decided thereafter not to enforce the extradition.

The Aliens Appeal Board granted Gregorian Bivolaru asylum on the 23^[rd] December 2005 and on the 2nd January 2006 the Swedish Migration Agency granted [him a]

residence permit and refugee status according to Article 1 of the 1951 Geneva Convention.

2. The Swedish Supreme Court did in its decision [have] regard [to] the fact that Romania soon would be an EU member State.

The Swedish Migration Board has not initiated a withdrawal of refugee status.

3. The offence of using [a] false ID card and passport is generally not serious enough to withdraw refugee status in Sweden.

4. The Swedish Migration Agency is not aware that any other country has asked for [the] extradition of Gregorian Bivolaru.”

27. In closing written argument to the Investigation Division the applicant again maintained that his refugee status was a bar to execution of the EAW. Relying on Article 3 of the Convention, he referred to the aforesaid judgment in *Amarandei and Others* in so far as it related to the police operation conducted against certain MISA members in 2004 (see paragraph 16 above and paragraph 129 below) to support his claims that the conviction for which the EAW had been issued had rested on political and religious grounds and that he was in danger of persecution at the hands of the Romanian authorities. He submitted that the Romanian authorities had fostered a climate of hatred against him and all MISA members and adduced a certificate from a member stating that he had been physically assaulted in April 2016, together with media reports and photographs, also from 2016, showing “public expressions of hate” allegedly directed at him (graffiti found on MISA members’ homes, publication by Romanian media of photographs taken by the French police after his arrest, and so on). He stressed that his surrender would contravene Article 695-22-5° of the Code of Criminal Procedure, under which discrimination against the person sought was a ground for mandatory non-execution of an EAW (see paragraph 59 below).

28. By a judgment of 8 June 2016 the Investigation Division of the Paris Court of Appeal ordered the surrender of the applicant to the Romanian judicial authorities. After a rehearsal of the facts and the history of the criminal proceedings in Romania and a review of the applicant’s status in Sweden, the court offered the following observations:

“Whereas the [CJEU] has, by a number of rulings, including ... the *Melloni* judgment of 26 February 2013 and the *Aranyosi-Căldăraru* judgment of 5 April 2016, been at pains to specify the scope and force of the principles of mutual recognition that undergird the EAW Framework Decision and to delineate the interrelationship between those principles and the requirement of respect for fundamental rights;

...

Whereas it follows from the foregoing that the Kingdom of Sweden’s decision to grant [the applicant] political refugee status at a time when Romania was not yet a member of the European Union did not mean that the Investigation Division was required to refuse to surrender the applicant to the Romanian judicial authorities under the terms of the Refugee Convention, as such a refusal would contravene the bar imposed on the judicial authority of the executing member [State] against refusing to execute a

European arrest warrant on a ground not among the exhaustive set of grounds for mandatory non-execution enumerated at Article 3 of the [EAW] Framework Decision [of 2002] or for optional non-execution enumerated at Articles 4 and 4a of that decision, as also listed at Articles 695-22, 695-23 and 695-24 of the Code of Criminal Procedure; whereas refusal on that sole ground would ultimately also cast doubt on the uniformity, throughout the European legal area, of the standard of fundamental rights protection laid down in the Framework Decision, undermine the principles of mutual trust and recognition which the decision seeks to uphold and hence compromise its efficacy; ...”

29. Proceeding on the view that its task was to determine whether there were grounds for mandatory or optional refusal to surrender the applicant to the Romanian authorities, the Court of Appeal looked, first, at whether it was established that the judicial authorities had issued the EAW for the purpose of punishing him for his opinions and beliefs or that there was a real risk of prejudice to his position on those grounds, and, second, at whether there were substantial grounds to believe that the applicant faced a real risk of inhuman or degrading treatment owing to detention conditions in Romania. In so doing the Court of Appeal followed the approach adopted in the *Aranyosi and Căldăraru* judgment, cited above.

30. On the first point the Court of Appeal took the view that the surrender had been sought for the purposes of enforcing a sentence handed down for a non-political offence, and that the applicant’s claims to have been convicted for his political views were mere allegations. On consideration of the reasons given for the judgment in *Amarandei and Others* (cited above, §§ 239-248), concerning alleged discrimination against MISA members in respect of their right to manifest their beliefs (see paragraph 129 below), the court concluded: “it has not [...] been proved that [the applicant] was convicted for his political views; nor has it been established that his position may be prejudiced on those grounds in Romania.” On the second point the Court of Appeal felt, given the overly broad character of the applicant’s allegations, that it was not for the court to seek further information:

“Whereas the judgment in *Aranyosi and Căldăraru*, which represents ... EU law, has strictly delineated the parameters of the specific assessment to be made by the executing member State of the level of fundamental rights protection afforded in the issuing member State; whereas, accordingly, for an exception to the general scheme of automatic surrender on an EAW to lie for inadequate fundamental rights protection in the issuing member State, the court must in the first place be satisfied that there is ‘objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing member State 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.’

Whereas it cannot escape observation that [the applicant] and his counsel have not adduced in evidence any information rising to the standard laid down by the CJEU; whereas, that being so, and contrary to what was sought by [the applicant] in this respect in his written submissions, it is not within the court’s power to undertake a precise and specific inquiry into whether there are substantial grounds for believing that, owing to detention conditions in Romania, a member State of the European Union, he will face a real risk of inhuman or degrading treatment;”

31. The applicant made an application to the Court of Cassation to set that judgment aside by review on points of law. In his first ground of review, he submitted that his surrender to the Romanian judicial authorities would run counter to the *non-refoulement* principle enshrined in Articles 1 and 33 of the Geneva Convention of 28 July 1951 relating to the status of refugees (see paragraphs 56 and 57 below). He argued that the Framework Decision, and in particular Article 1 § 3 thereof (see paragraph 44 below), had to be interpreted in the light of Article 78 of the Treaty on the Functioning of the European Union (TFEU), paragraph (d) of the Sole Article of Protocol No 24 on asylum for nationals of Member States of the European Union and Article 18 of the Charter of Fundamental Rights of the European Union (see paragraphs 41, 46 and 47 below) – provisions which ensured compliance with the requirements of the Geneva Convention. He maintained that his refugee status was an exceptional circumstance operating in bar of surrender, a proposition for which he relied on previous rulings of the Criminal Division of the Court of Cassation (see paragraph 61 below). He invited the Court of Cassation to seek a preliminary ruling from the CJEU on the interpretation to be given to the Framework Decision in a case where EU norms sat uneasily with the relevant international treaties cited above.

32. In his second ground of review the applicant claimed violations of Articles 2, 3, 6, 8 and 9 of the Convention. He contended that the Investigation Division had looked only at whether the request for surrender was politically motivated, leaving the issue of fair trial safeguards undecided. He also complained that it had not sought to determine, as required by the *Aranyosi and Căldăraru* judgment cited above, whether detention conditions in Romania placed him at real risk of inhuman or degrading treatment.

33. In further submissions the applicant renewed his request to the Court of Cassation to seek a preliminary ruling from the CJEU regarding the scope for reliance on the principle of *non-refoulement* as a ground for non-execution of an EAW. He argued that the issue before the court was novel and serious. He pointed out that his situation was distinguishable from the circumstances at issue in the CJEU judgment of 21 October 2010 in *I.B.* (C-306/09, EU:C:2010:626; see paragraph 55 below), a case where the existence of an asylum claim or of an application for refugee status or subsidiary protection had been held not to be one of the grounds for non-execution of an EAW and where it had been emphasised that the member States of the European Union were safe countries in respect of each other for all asylum-related purposes.

34. The advocate-general tasked with advising the Court of Cassation recommended in his submissions that the request to seek a preliminary ruling from the CJEU should be denied for the following reasons:

“... the provisions allegedly violated present no genuine difficulties of interpretation, and ... the Criminal Division of this court, on which it is incumbent to ensure that criminal cases are decided within a reasonable time, is in a position to see for itself that there is no incompatibility between those European norms and international treaties and

the domestic law which, in this instance, merely transcribes them into the municipal legal order.”

35. The Court of Cassation dismissed the application by a judgment of 12 July 2016 reasoned in the following terms:

“[As to the first ground]

Whereas in rejecting the argument that the status of refugee granted [to the applicant] by Sweden was a bar to execution of the European arrest warrant, the judgment gave the reasons now set out in the ground of review;

Whereas in so reasoning the Investigation Division justified its decision;

Whereas a grant of refugee status, within the meaning of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967, by an EU member State to a national of a State which then became an EU member between the date of the grant and the date on which the European arrest warrant sought to be executed was issued, is not, in itself, an obstacle to execution of the European arrest warrant;

In consequence whereof the ground of review cannot be allowed, nor need a request be made to the Court of Justice of the European Union for a preliminary ruling;

...

[As to the third ground]

“... the Investigation Division did not violate any of the provisions referenced in the ground of review: first, it satisfied itself that the rights of the defence had been respected during the defendant’s trial in Romania; second, it concluded from the inadequacy of the evidence on record that no showing had been made of the existence, as far as detention conditions in the issuing member State were concerned, of systemic or generalised deficiencies, affecting certain groups of people or places of detention, such as to give rise to an exception to the general scheme of automatic surrender on a European arrest warrant for lack of adequate fundamental rights protection in that State, and so there was no need for it to make inquiries which its findings rendered nugatory ...”

36. On 13 July 2016 the applicant made a request under Rule 39 of the Rules of Court for a stay of execution of the order directing his surrender to the Romanian authorities. On 15 July 2016 the Court refused his request.

37. On 22 July 2016 the applicant was, pursuant to the EAW, removed to Romania, where he was jailed in a prison whose location he has not specified.

B. The Court’s judgment of 2 October 2018 in *Bivolaru v. Romania* (no. 2) (application no. 66580/12)

38. The judgment of 2 October 2018 stated that the applicant had been released on licence on 13 September 2017.

39. In that judgment the Court held that the applicant’s complaint concerning his conviction *in absentia* was manifestly ill-founded and therefore inadmissible. The Court also concluded that there had been no violation of Article 6 § 1 of the Convention in respect of the steps taken by the High Court of Cassation and Justice to secure his appearance in person,

but that there had been such a violation in respect of the excessive length of the proceedings.

LEGAL FRAMEWORK AND PRACTICE

I. EUROPEAN UNION LAW

A. The Charter of Fundamental Rights of the European Union

40. Article 4 of the Charter of Fundamental Rights, which is entitled “Prohibition of torture and inhuman or degrading treatment or punishment”, reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

41. Article 18 of the Charter provides:

“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with [the Treaties].”

B. Framework Decision 2002/584/JAI

42. The relevant provisions of Framework Decision 2002/584/JAI¹ as amended by Council Framework Decision 2009/299/JAI of 26 February 2009 were summarised in the judgment in *Pirozzi v. Belgium* (no. 21055/11, §§ 24-29, 17 April 2018).

43. So far as relevant, the recitals of the Framework Decision state:

“(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 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

¹ Framework decisions were a type of instrument created by the Treaty of Amsterdam in 1997 for the purposes of what was then the “third pillar” of the European Union. They were superseded by directives in the Treaty of Lisbon. Former Article 34 § 2(b) TEU provided: “... the Council may ... adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect ...”

sexual orientation, or that that person's position may be prejudiced for any of these reasons. ...

(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."

44. Article 1 of the Framework Decision provides:

"Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision 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."

45. The Framework Decision sets out the circumstances in which a warrant may be issued (Article 2) and the circumstances in which States may or must refuse to execute it (Articles 3, 4 and 4a).

C. Relevant provisions of the Treaty on the Functioning of the European Union and Protocol No 24 on asylum for nationals of Member States of the European Union

46. Article 78 TFEU provides in relevant part:

"The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties. ..."

47. The Sole Article of Protocol No. 24 on asylum for nationals of Member States of the European Union provides:

"Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

(a) if the Member State of which the applicant is a national proceeds after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;

(b) if the procedure referred to in Article F.1(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof;

(c) if the Council, acting on the basis of Article F.1(1) of the Treaty on European Union, has determined, in respect of the Member State [of] which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles mentioned in Article F(1);

(d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State.”

D. Directive 2011/95/EU

48. The relevant provisions of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 “on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)”, as cited by the Government in their observations (see paragraph 92 below), are as follows:

Article 11 Cessation

“1. A third-country national or a stateless person shall cease to be a refugee if he or she:

...

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; ...

...

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee’s fear of persecution can no longer be regarded as well-founded.

3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.”

Article 12 Exclusion

“...

2. A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

...

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;”

E. Decisions of the CJEU

49. In its judgment of 26 February 2013 in *Melloni v. Ministerio Fiscal* (C-399/11, EU:C:2013:107) the CJEU ruled that member States were bound by the authority of EU law to act on an EAW, and that the only conditions that could be placed on the execution of an EAW were those set out in the Framework Decision:

“Under Article 1(2) of Framework Decision 2002/584, the Member States are in principle obliged to act upon a European arrest warrant. According to the provisions of that framework decision, the Member States may refuse to execute such a warrant only in the cases of mandatory non-execution provided for in Article 3 thereof and in the cases of optional non-execution listed in Articles 4 and 4a. Furthermore, the executing judicial authority may make the execution of a European arrest warrant subject solely to the conditions set out in Article 5 of that framework decision ...”

50. In its judgment in *Aranyosi and Căldăraru*, cited above, the CJEU decided that an exception to the principle of automatic surrender to the judicial authorities of the member State that had issued the EAW arose where the executing member State had evidence that the conditions in which the person sought under the EAW would be held in the issuing member State posed a risk of inhuman or degrading treatment. The CJEU placed strict limits on the exception, which was to operate alongside the grounds set out by the Framework Decision for mandatory and optional non-execution of an EAW, and spelled out the method to be followed by the executing member State:

“On those grounds, the Court (Grand Chamber) hereby rules:

Article 1(3), Article 5 and Article 6(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that, where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State 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, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the

request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. 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.”

51. In its judgment of 25 July 2018 in the case of *ML*, reported as *Generalstaatsanwaltschaft (Conditions of detention in Hungary)* (C-220/18 PPU, EU:C:2018:589), the CJEU ruled that, where the executing judicial authority had evidence of systemic or generalised deficiencies in the detention conditions of the prisons of the issuing member State, the executing judicial authority was not entitled to rule out a real risk of inhuman or degrading treatment to the person sought under the EAW merely because the person had a legal remedy in the issuing member State by which to challenge his or her conditions of detention. It also ruled that the executing judicial authority was required to confine its assessment to the conditions of detention in the prisons where, according to the information available to it, the person was likely to be detained, and that it must assess, to that end, solely the actual and precise conditions of the person’s detention that were relevant to determining whether he or she would be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights. The CJEU added that it was open to the executing judicial authority to take into account information provided by authorities of the issuing member State such as, in particular, an assurance that the individual concerned would not be subjected to inhuman or degrading treatment.

52. In its judgment of 15 October 2019 in *Dorobantu* (C-128/18, EU:C:2019:857), the CJEU specified the nature and extent of the scrutiny to be afforded by the executing judicial authority to the conditions in which the person sought under the EAW would be held in the issuing member State. It ruled that account had to be taken of all the relevant physical aspects such as the personal space available to each detainee in a cell, sanitary conditions and the extent of the detainee’s freedom of movement within the prison. It also ruled that such scrutiny must not be limited to obvious inadequacies and that, for the purposes of its assessment, the executing judicial authority must request from the issuing judicial authority such information as appeared to it to be necessary. The CJEU further ruled that a finding by the executing judicial authority of substantial grounds to believe that the person would face a risk of inhuman or degrading treatment owing to the detention conditions in the prison where it was actually intended that he or she should be held was not to be weighed, for the purposes of deciding on his or her surrender to the issuing member State, against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.

As to the assessment of detention conditions in terms of the personal space available to prisoners, the CJEU pointed out:

“72. In so doing, the Court of Justice has ruled that, in view of the importance attaching to the space factor in the overall assessment of conditions of detention, a strong presumption of a violation of Article 3 of the ECHR arises when the personal space available to a detainee is below 3 m² in multi-occupancy accommodation (judgment of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 92 and the case-law cited).

...

77. With regard to the detailed rules on calculating – for the purposes of assessing whether there is a real risk of the person concerned being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter – the minimum space that must be available to a detainee in a multi-occupancy cell containing furniture and sanitary infrastructure, it is necessary also, in the absence, currently, of minimum standards in that respect under EU law, to take account of the criteria laid down by the European Court of Human Rights in the light of Article 3 of the ECHR. That court considers that although, in calculating the available surface area in such a cell, the area occupied by sanitary facilities should not be taken into account, the calculation should include space occupied by furniture, albeit that the detainees must still have the possibility of moving around normally within the cell (see, to that effect, ECtHR, 20 October 2016, *Muršić v. Croatia*, CE:ECHR:2016:1020JUD000733413, §§ 75 and 114 and the case-law cited).”

53. In its judgment of 17 December 2020 in the case of *L and P*, reported as *Openbaar Ministerie (Independence of the issuing judicial authority)*, (C-354/20 PPU and C-412/20 PPU, EU:C:2020:1033), the CJEU ruled that where the executing judicial authority had evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the member State that had issued the EAW, the existence of substantial grounds to believe that the person sought under the EAW would, if surrendered to that State, face a real risk of breach of his or her fundamental right to a fair trial guaranteed by Article 47(2) of the Charter of Fundamental Rights of the European Union could not be presumed without carrying out a specific and precise verification having regard, *inter alia*, to his or her personal situation, the nature of the offence in question and the factual circumstances surrounding the issue of the warrant, such as statements by public authorities that were liable to interfere with the handling of an individual case.

54. As set out by Advocate General Manuel Campos Sánchez-Bordona in his opinion of 12 November 2020 (EU:C:2020:925) in the case of *L and P*, cited above:

“The Court has accepted that, in addition to the cases expressly referred to in the Framework Decision (Articles 3 to 5), execution of an EAW may also be refused ‘in exceptional circumstances’ which, on account of their seriousness, necessitate the limitation of the principles of mutual recognition and mutual trust between Member States on which judicial cooperation in criminal matters is founded.”

55. Furthermore, in the grounds of its judgment in *I.B.* (cited above at paragraph 33), to which the Government referred in their observations before

this Court (see paragraph 88 below), the CJEU stated at § 43 that the existence of an asylum claim was not a ground for non-execution of an EAW and specified at § 44 that, as regards the specific case of an asylum claim lodged with the competent authorities of one member State by a national of another member State:

“... the sole article of Protocol No 29 on asylum for nationals of member states of the European Union annexed to the EC Treaty (now Protocol No 24 annexed to the TFEU) provides *inter alia* that, given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States are to be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters.”

II. INTERNATIONAL INSTRUMENTS

Geneva Convention of 28 July 1951 relating to the status of refugees (“Geneva Convention”)

56. The relevant provisions of the Geneva Convention are as follows:

Article 1 – Definition of the term “refugee”

“A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

...

C. This Convention shall cease to apply to any person falling under the terms of section A if:

...

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

...”

57. Article 33 § 1 of the Geneva Convention provides:

“1. No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

III. DOMESTIC LAW AND PRACTICE

A. Provisions of the French Code of Criminal Procedure relating to European arrest warrants

58. The Framework Decision was transposed into French law by the Criminal Justice (Adaptation to Changes in Crime) Act (Law no. 2004-204 of 9 March 2004).

59. The Code of Criminal Procedure provides in relevant part:

Article 695-11

“The European arrest warrant is a judicial decision issued by a member State of the European Union, referred to as the issuing member State, with a view to the arrest and surrender by another member State, referred to as the executing member State, of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.”

Article 695-12

“A European arrest warrant may be issued in respect of an offence if, under the law of the issuing member State –

1° the offence is punishable by a custodial sentence of a term of one year or longer or, where a sentence has been handed down, the sentence is a term of imprisonment of four months or longer; or

2° the offence is punishable by a detention order of a term of one year or longer or, where a detention order has been made, the term to be served is four months or longer.”

Article 695-13

“A European arrest warrant shall contain the following particulars:

- the identity and nationality of the requested person;
- the specific designation and full contact details of the issuing judicial authority;
- evidence of an enforceable judgment, arrest warrant or any other judicial decision having the same effect under the law of the issuing member State and coming within the scope of Articles 695-12 and 695-23;
- the nature and legal classification of the offence, particularly in respect of Article 695-23;
- the date, place and circumstances of commission of the offence, and the requested person’s degree of participation in the offence;
- the penalty imposed, if there is a final judgment, or those prescribed for the offence by the law of the issuing Member State, and, so far as possible, such other consequences as attach to the offence.”

Article 695-22

“Execution of a European arrest warrant shall be refused in the following cases:

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1° where the offence for which it was issued was capable of being charged and tried in the French courts and prosecution is barred by amnesty;

2° where a final judgment has been passed upon the requested person by the judicial authorities of France or of another member State which is not the issuing State, or by those of a third State, in respect of the same offence as that which is the subject of the European arrest warrant, provided, if sentence has been passed, that the sentence has been served or is being served or can no longer be enforced under the law of the sentencing State;

3° where the requested person was under the age of thirteen years at the time of the offence which is the subject of the European arrest warrant;

4° where the offence for which it was issued was capable of being charged and tried in the French courts and prosecution or punishment is barred by lapse of time;

5° where it is established that the arrest warrant was 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 identity, or that that person's position may be prejudiced for any of these reasons."

Article 695-23 (as at the material time)

"Execution of a European arrest warrant shall also be refused where the offence which is the subject of the arrest warrant does not constitute an offence under French law.

By way of exception to the first paragraph of this Article, a European arrest warrant shall be executed without verification of the double criminality of the offence where the conduct in question is punishable under the law of the issuing member State by a custodial sentence taking the form of a term of imprisonment of three years or longer, or by a detention order of like term, and where the conduct falls into one of the following offence classes:

...

– trafficking in human beings;

...

Where the provisions of the second to thirty-fourth paragraphs of this Article apply, the legal classification of the offence and the determination of the applicable penalty are matters solely for the judicial authority of the issuing member State."

...

Article 695-24

"Execution of a European arrest warrant may be refused:

1° where, in respect of the offence which is the subject of the arrest warrant, the requested person is being prosecuted in the French courts or the French courts have decided not to prosecute or have decided to halt proceedings;

2° where the person sought for the purposes of serving a custodial sentence or detention order is a national of France or has been lawfully resident in France for a continuous period of at least five years and the decision imposing the sentence or detention order is enforceable in France pursuant to Article 728-31;

3° where the offence for which it was issued was committed, in whole or in part, in France;

4° where the offence was committed outside the issuing Member State and French law would not allow prosecution of the offence if committed outside France.”

Article 695-33

“If the Investigation Division of the court finds the information communicated by the issuing Member State in the European arrest warrant to be insufficient to allow it to decide on surrender, it shall make a request to the judicial authority of that State to receive the necessary supplementary information within a maximum of ten days.”

Article 695-39

“Where the requested person is being prosecuted in France or has already been convicted and ordered to serve a sentence in France for an offence other than that referred to in the European arrest warrant, the Investigation Division of the court may, after deciding upon the execution of the arrest warrant, postpone the person’s surrender. In such a case the Principal Public Prosecutor shall immediately bring the postponement to the notice of the issuing judicial authority.

...”

B. Decisions of the Court of Cassation

60. In a judgment of 28 February 2012 (see case no. 12-80.744, *Bulletin criminel* 2012 no. 56), the Criminal Division of the Court of Cassation held that, in addition to the optional and mandatory grounds for refusing execution under the Framework Decision and the Code of Criminal Procedure, execution of an EAW could be postponed where it was necessary to do so for the protection of fundamental rights:

“Whereas, subject to the obligation under Article 1 § 3 of the Framework Decision of 13 June 2002 to respect the fundamental rights of the requested person and the fundamental legal principles enshrined in Article 6 of the Treaty on European Union, execution of a European arrest warrant may not be refused on grounds other than those set out in the Framework Decision and its implementing legislation ...”

61. In a judgment of 9 June 2015 (criminal division case no. 15-82.750) the Court of Cassation, discussing the surrender of a third-country national with refugee status by the French State to the German authorities, held:

“... Having regard to Article 695-33 of the Code of Criminal Procedure, read with Article 593 of the same code;

Whereas the first of those two Articles provides that where the information in the arrest warrant is insufficient to enable the Investigation Division of the court to rule on the surrender of the requested person with due regard to his or her fundamental rights, the court must seek such information from the authorities of the issuing State;

Whereas the second of those two Articles provides that any judgment of the Investigation Division of the court must state the reasons justifying the decision reached and must address the central contentions set forth in each party’s written case, and whereas insufficient or contradictory reasons are tantamount to an absence of reasons;

Whereas, in authorising the surrender of Mr X, who argued that, because he had political refugee status in France on grounds of the risks faced in his country of origin,

his surrender should be subject to an undertaking by the German authorities not to surrender him to the Turkish authorities once the proceedings against him in Germany were complete, the judgment reasoned that it was open to the court to give judgment without directing further steps to be taken since his fundamental rights were protected by virtue of the fact that his surrender was sought by Germany, a State Party to the Geneva Convention, Article 33 of which prohibited expulsion of refugees to countries where their life and liberty would be under threat;

But whereas in so concluding, without satisfying itself that, in keeping with Article 33 § 1 of the Geneva Convention of 28 July 1951 and Article 3 of the European Convention on Human Rights, the Germany authorities would not surrender the requested person to the Turkish authorities, the Investigation Division failed to justify its decision; ...”

62. In a 26 March 2019 judgment (Criminal Division case no. 19-81.731) the Court of Cassation set aside an Investigation Division judgment on the ground that, in executing an EAW, the court had not had regard to the allegations put forward as to a risk of violation of Article 3 of the Convention owing to detention conditions in the Slovenian prison estate:

“... Having regard to Articles 3 and 13 of the European Convention on Human Rights, read in conjunction with Articles 4, 47 and 52 of the Charter of Fundamental Rights of the European Union and Articles 593 and 695-33 of the Code of Criminal Procedure;

Whereas it follows from the penultimate of the above provisions that any judgment of the Investigation Division must state the reasons justifying the decision reached and must address the central contentions set forth in each party’s written case, and whereas insufficient or contradictory reasons are tantamount to an absence of reasons;

Whereas, moreover, the remainder of those provisions read in conjunction entail that, where the information contained in the arrest warrant is insufficient to enable the Investigation Division to rule on the surrender of the requested person with due regard to his or her fundamental rights, the court must seek such information from the authorities of the issuing State;

Whereas, in rejecting the submissions advanced by the requested person to the effect that his fundamental rights were at risk of violation owing *inter alia* to the conditions of detention prevailing in the Slovenian prison estate, the judgment reasoned that he was not sought for the purpose of serving a sentence and that it was not established that he would be exposed to inhuman and degrading treatment in the Slovenian prison estate;

But whereas in so concluding, without analysing the evidence adduced by the requested person from judgments of the European Court of Human Rights and documents produced by the bodies of the Council of Europe – suggesting that prisoners in the issuing member State faced a real risk of inhuman or degrading treatment owing to the conditions of detention generally prevailing there and that the machinery for monitoring those conditions was deficient – so as to assess whether that information, in addition to being objective and reliable, was specific and properly updated, and, if so, whether the court was put under a duty to seek further information from the authorities of the issuing State, the Investigation Division failed to justify its decision;

In consequence whereof this aspect of the judgment below may be set aside; ...”

THE LAW

I. JOINDER OF THE APPLICATIONS

63. Having regard to their similar subject matter, the Court finds it appropriate to examine the two applications jointly in a single judgment.

II. ALLEGED VIOLATIONS OF THE CONVENTION

64. The applicants alleged that their surrender to the Romanian authorities on the European arrest warrants in question had breached Article 2 (in Mr Bivolaru's case only) and Article 3 of the Convention, which provide:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. ..."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

65. In Mr Bivolaru's case (application no. 40324/16), the Government argued that the complaint under Article 2 of the Convention was inadmissible. They submitted that the applicant had not exhausted his domestic remedies because he had not backed up his allegations in this regard before the Investigation Division or in the grounds of review pleaded in support of his application to the Court of Cassation.

66. The applicant argued that he had raised the complaint under Article 2 of the Convention in substance by complaining to the domestic courts of a violation of the *non-refoulement* principle, which was concerned to protect the life of the refugee.

67. The Court notes that, although Article 2 of the Convention was invoked in the applicant's second ground of review (see paragraph 32 above), he offered no argument as to how the EAW in issue would put his life at risk. The first ground of review (see paragraph 31 above) was equally silent as to the risks to his life in the event of surrender to the Romanian authorities. That being so, the Court considers that the complaint before it under Article 2 of the Convention was not raised by the applicant in the Court of Cassation. Accordingly, it must be dismissed for failure to exhaust domestic remedies.

68. Turning to the Article 3 complaints in the applications of Mr Bivolaru and Mr Moldovan, as the Court finds them not to be manifestly ill-founded,

nor inadmissible on any other ground under Article 35 of the Convention, they are declared admissible.

B. Merits

1. The parties' submissions

(a) Observations of the parties in Mr Moldovan's case

(i) The applicant's observations

69. The applicant submitted that the presumption of equivalent protection (see paragraphs 96 et seq. below) did not apply in these circumstances for the following reasons. First, the EAW Framework Decision had not placed the French courts under an obligation to surrender him automatically to the Romanian authorities. It was binding on States as to the results to be achieved but gave them a margin of manoeuvre as to the form and methods to be used. For instance, it did not prevent their introducing a procedure in domestic law for lodging a challenge that would suspend a decision of the executing State's judicial authorities in circumstances not contemplated by its provisions (see *Jeremy F v. Premier ministre*, C-168/13 PPU, 30 May 2013). Moreover, as interpreted by the CJEU, which had called into question the principle of automatic surrender, the Framework Decision afforded the executing court a margin of appreciation where the fundamental rights of the person concerned were at risk of violation in the event of his or her surrender. Such, in the applicant's view, was the purport of the *Aranyosi and Căldăraru* judgment cited above.

70. Second, the case was said to be similar to that of *Michaud v. France* (no. 12323/11, ECHR 2012) in that the French court in these circumstances should have sought a preliminary ruling from the CJEU on how to interpret what it had meant, in the *Aranyosi and Căldăraru* judgment, by "a systemic or generalised deficiency concerning certain places of detention" and by a "substantial" ground to believe in a risk of inhuman and degrading treatment in the event of surrender. In the absence of a request for a preliminary ruling the applicant contended that the national courts had not brought to bear the full potential of the European Union's supervisory machinery.

71. Provided that the presumption of equivalent protection did not apply, the applicant sought to contend that, by deciding to surrender him to the Romanian authorities whereas the information supplied by those authorities had confirmed his risk of inhuman or degrading treatment in Gherla prison, the French court had breached Article 3 of the Convention. As he had nonetheless told the court, detention conditions in that overcrowded prison – which had included a lack of sufficient individual space and disregard for the most basic standards of hygiene – had been contrary to that Article and had warranted discontinuance of the surrender proceedings.

72. In the alternative, should the Court regard the presumption of equivalent protection as applicable in these circumstances, the applicant advanced the view that the execution of the EAW had been affected by a manifest deficiency in the protection of Convention rights, given the limited scrutiny which the judicial authorities had afforded to the information provided by the issuing State and the lack of a meaningful appraisal of the specific grounds for apprehending a risk of violation of Article 3.

(ii) The Government's observations

73. Contrary to the applicant, the Government took the view that the presumption of equivalent protection was applicable in these circumstances. They submitted, first, that the terms of the Framework Decision, like the provisions of EU law applicable in the judgment in *Avotiņš v. Latvia* ([GC], no. 17502/07, 23 May 2016) and unlike those of the Dublin regulation at issue in the case of *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, ECHR 2011 – regarding the “sovereignty clause”), could not be interpreted as affording a margin of appreciation to the court tasked with an EAW execution decision. The Framework Decision provided a clear enumeration of the grounds for non-execution of an EAW, which were unrelated to the possibility of supplementing the terms of the Framework Decision to make provision for legal challenges to an execution decision (see paragraph 69 above). Furthermore, any exception to execution had as a matter of course to be confined within strict parameters so as not to impede the mechanism of mutual recognition put in place to build the European area of freedom, security and justice, or the mutual trust which that mechanism required. The engagement of a fundamental freedom was insufficient to found a refusal to execute an EAW. In the Government's view, the *Aranyosi and Căldăraru* obligation to suspend or refuse execution of an EAW reflected the CJEU's concern to interpret the Framework Decision against the standard of protection applicable to the fundamental rights guaranteed by EU law, and in particular against Article 4 of the Charter, the counterpart to Article 3 of the Convention, a fact that could only lend support to the presumption of equivalent protection under EU law.

74. Nor did the judicial authorities have a margin of manoeuvre as to the use that could be made of the grounds for optional non-execution of an EAW. In addition to the constraints which the CJEU had itself placed on their use (see *AY*, 25 July 2018, C-268/17), the grounds for non-execution enumerated at paragraphs 1 and 3 of Article 695-24 of the Code of Criminal Procedure (see paragraph 59 above) were inapplicable in this instance. The applicant had been charged with a different offence in France from that concerned by the EAW (see paragraphs 12 and 14 above), and France had had no intention of prosecuting the applicant on the same basis on the ground that the offence had also been committed in France.

75. Second, the Government submitted that the supervisory mechanism provided for by EU law had not required a reference for a preliminary ruling to be made in the present circumstances. They argued that no genuine and serious issue had arisen with regard to the protection of fundamental rights by the Framework Decision, and that the CJEU had already stated precisely how the provisions of the Framework Decision were to be interpreted in a manner that was compatible with fundamental rights (see paragraphs 49 and 50 above). The Government pointed out in this regard that the CJEU did not regard courts of last instance as being under an obligation to make a reference for a preliminary ruling where the provision of EU law in question had already been interpreted or its correct interpretation was so obvious as to leave no scope for reasonable doubt (see *Commission v. France*, C-416/17, 4 October 2018, § 110 and the cases there cited, especially *Cilfit and Others*, C-283/81, 6 October 1982, § 21). Furthermore they noted that the applicant had not raised any specific issue, relating to the interpretation of the Framework Decision or its to fundamental rights compatibility, conducive to the view that a reference for a preliminary ruling was called for. In any event it had been open to him to invite the domestic courts to make such a reference, but he had not done so. On balance, and by way of contrast with *Michaud*, cited above, the Government advanced the view that the sole fact that full use had not been made of the review mechanism provided for by EU law did not operate to rebut the presumption of equivalent protection.

76. Lastly, the Government submitted that the domestic courts had been at pains to ensure that the execution of the EAW would not give rise to any manifest deficiency in the protection of Convention rights. In their contention it followed from the previous judgments of the CJEU and of this Court that, although the principle of mutual recognition could not stand in the way of scrutiny of fundamental rights compliance, such scrutiny was to be directed solely to the unequivocal appearance of a rights violation so flagrant that the court of the executing State ought to refuse surrender to the issuing State. In this instance it was apparent from the decisions of the domestic courts that they had not only checked whether there were any mandatory or optional grounds for non-execution of the EAW but had also taken care to consider the applicant's complaints relating to an alleged Article 3 breach in the event of surrender to Romania, after making a request for further information regarding the conditions in which he would be held. The Government concluded from the above that the execution of the EAW had not been affected by a manifest deficiency capable of rebutting the presumption of equivalent protection, which applied both to the EAW scheme established by the Framework Decision and refined by the CJEU, and to the operation of that scheme in the applicant's particular case.

77. In the alternative, should the Court regard the presumption of equivalent protection as inapplicable in the circumstances, the Government submitted that the execution of the EAW had not given rise to a breach of

Article 3 of the Convention. In the light of the Court's preceding judgments on expulsion and extradition (see paragraphs 107-109 below) they advanced the view that, given the assurances and information provided by the Romanian authorities to the French authorities, the latter had not violated Article 3 of the Convention by executing the EAW.

(b) Observations of the parties in Mr Bivolaru's case

(i) The applicant's observations

78. The applicant took the view that the presumption of equivalent protection was not applicable to the circumstances of his surrender to the Romanian authorities.

79. First, he put forward the general proposition that the EAW scheme had given rise to significant jurisprudential developments showing that the assumption of mutual trust between member States had been called into doubt by the fundamental rights violations committed by some of those States. He contended that the growing number of ensuing exceptions had broadened the judicial authorities' margin of manoeuvre in dealing with an EAW. In the applicant's view, the judgment given by this Court in *Romeo Castaño v. Belgium* (no. 8351/17, 9 July 2019) had confirmed the deciding role of national courts in executing an EAW. Furthermore, with regard to his case, he made the point that the national courts had been required to assess the risk he faced within the parameters of the *Aranyosi and Căldăraru* judgment and to negotiate the tension between the international protection afforded by the Geneva Convention and the requirements imposed by EU law, a dual exercise which entailed the existence of a margin of appreciation in deciding whether to execute the EAW.

80. Second, the applicant argued that the difficulties posed by his case should have prompted the Court of Cassation to seek a preliminary ruling from the CJEU. He pointed out that he had expressly invited it to do so and argued that his application for review on points of law had raised a serious, novel and complex issue which, contrary to the Government's submission (see paragraph 88 below), had not been resolved by the CJEU. In the absence of a reference to the CJEU the applicant contended that the Court of Cassation had given judgment in circumstances where the full potential of the relevant international machinery for the supervision of fundamental rights compliance – in principle equivalent to that of the Convention – had not been brought to bear (see *Michaud*, cited above, § 115).

81. Third, since the presumption of equivalent protection did not apply, the applicant urged the Court to undertake a review which, given the absolute nature of the right protected by Article 3 of the Convention, was not confined to asking whether “the protection of the rights guaranteed by the Convention [had been] manifestly deficient” (see *Avotiņš*, cited above, § 113).

82. In that regard, contrary to the Government, the applicant argued, first, that he had not been liable to forfeit the refugee status granted by Sweden and that his status as a person protected by the Geneva Convention should have been dispositive for purposes of gauging the risks he would face if returned to Romania. He made the point that, unless so interpreted by the CJEU, the rules of EU law did not appear to say that where a person had secured the protection of a member State as a refugee, the mere fact that his or her State of nationality had later joined the European Union led *ipso facto* to the loss of that protection.

83. The applicant further argued that it had not been for the French courts to pass judgment on the grant of refugee status by the Swedish authorities, which had told them, moreover, that it was still in effect. By not having regard to the protection attaching to his refugee status, in his view, the French courts had breached Article 3 of the Convention. Their decision had amounted to a denial of the protection which a State party to the European Convention and an EU member State had intended to grant in pursuance of vital imperatives, and, considering the interests which a grant of refugee status served to protect, fell foul of the principle of *non-refoulement* which was binding on France under both the Geneva Convention and the European Convention.

84. The applicant went on to allege, on the assumption that it had been within the power of the French courts to explore whether the threat underlying Sweden's choice to grant him refugee status had been real, that the assessment they had reached in that regard had lacked an adequate basis and justification. In contrast to the Government (see paragraph 91 below), he took the view that the absence of any risk of political persecution could not be inferred solely from the judgment handed down by the Court in *Amarandei and Others v. Romania* (no. 1443/10, §§ 7-14, 26 April 2016; see paragraph 129 below), as that judgment had focused purely on the possible political agenda behind a police operation carried out against MISA members on 18 March 2004, rather than the sum-total of the acts of persecution suffered by the movement, and neither had it included a determination regarding his particular situation, since he had not been an applicant to the Court in that case.

85. The applicant concluded from the above that by disregarding the protection owed to him as a refugee, and, what was more, failing to provide sufficiently substantial grounds to support their stance, the judicial authorities had exposed him, upon his surrender to the Romanian authorities, to a serious risk of treatment contrary to Article 3 of the Convention.

86. Moreover, on the subject of his exposure to a danger of inhuman and degrading treatment owing to detention conditions in Romania, the applicant placed emphasis on the fact that the mechanism of mutual recognition governing the EAW had been called into question by the CJEU in its judgment in *Aranyosi and Căldăraru*. From this he inferred that, barring a reversal of the burden of proof which lay first and foremost with the Romanian authorities, since only they had been in a position to guarantee that

he would be detained in humane conditions, he should not have been required, as the Government would have it, to provide the courts of general jurisdiction with specifics in that regard; a *prima facie* case should have been adequate. He submitted that he had drawn the courts' attention to, and provided them with documentation of, the exceedingly poor prison conditions in Romania, a problem oft-highlighted by the Court and of which he said the Government were feigning ignorance (see paragraph 93 below). He furthermore criticised the failure to make a request to the Romanian authorities for information or assurances as to the conditions in which he would be held so as to ascertain whether there was a specific and genuine risk of violation of the Convention in the event of surrender. He maintained that the risk fell to be assessed as at the time of his surrender, as was the case in proceedings relating to expulsion (see *F.G. v. Sweden* [GC], no. 43611/11, § 115, 23 March 2016), and hence the Government could not derive assistance from the fact that he had remained in prison for only a year and had not complained to the Court of the conditions in which he had been held in Romania (see paragraph 95 below).

(ii) The Government's observations

87. Contrary to the applicant, the Government considered that the presumption of equivalent protection was applicable in the circumstances. Pointing to the underlying basis of the EAW, they took the view that the national courts had had no margin of manoeuvre to postpone or question the applicant's surrender, as none of the grounds of non-execution contemplated by the Framework Decision had been applicable in the circumstances.

88. The Government furthermore submitted that the fact that no reference had been made to the CJEU during the proceedings did not displace the presumption of equivalent protection. In that regard they pointed out, first, that the applicant had not applied to the Investigation Division for a reference. Second, they argued that the Court of Cassation had not been under a duty to make a reference for a preliminary ruling since the CJEU's previous rulings had already stated precisely how the provisions of the Framework Decision were to be interpreted in a manner compatible with fundamental rights. Specifically, the CJEU had made clear that the exceptions to the principle of automatic surrender were strictly circumscribed; in particular, the existence of an asylum claim or an application for subsidiary protection was not a ground for non-execution of an EAW (see the judgment in *I.B.*, cited at paragraph 55 above). Thirdly, in the Government's submission, no serious issue as to the interpretation of EU law had arisen in the circumstances, for the following reasons: from the time of its accession to the Union in 2007, Romania had been entitled, *vis-à-vis* all other EU member States, to the benefit of the principle of mutual recognition and to the presumption that it observed EU law, including the fundamental rights enshrined therein; furthermore, Protocol no. 24 TFEU (see paragraph 47 above) stipulated that Romania was to be considered a safe country of origin in respect of the other

member States for all legal and practical purposes relating to asylum matters; it was also a party to the ECHR, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; lastly, there had not arisen any other serious issue as to the interpretation of EU law in so far as the EAW had not been politically motivated and its only purpose had been to enable the enforcement of the sentence of 14 June 2013, which had been pronounced in respect of a non-political offence. The Government pointed in this regard to the Court's finding in *Bivolaru (no. 2)*, cited above, that the sentence had been the outcome of a fair trial.

89. The Government accordingly concluded that it was clear from the applicable legal framework that refugee status could not have operated in bar of execution of the EAW issued in respect of the applicant.

90. The Government then endeavoured to make the case that, in executing the EAW issued in respect of the applicant, the French courts had thoroughly satisfied themselves that there was no manifest deficiency in the protection of Convention rights.

91. They pointed out in this regard that the French courts had asked the Swedish authorities to provide information on the applicant's refugee status and the decisions they had reached. The domestic court had considered the ground on which refugee status had been granted and had concluded that, although that ground had provided the basis for a refusal to extradite in 2005, it could no longer be relied on in 2016 to justify a refusal to execute the EAW. Thereupon the Investigation Division had quoted the findings of this Court in *Amarandei and Others*, cited above, in support of its own conclusion that the applicant would not be persecuted in Romania.

92. Lastly, the Government maintained that the applicant could no longer continue to refuse to avail himself of Romania's protection given that, first, in the terms of Article 11 of Directive 2011/95/EU (see paragraph 48 above), the circumstances in connection with which he had been recognised as a refugee had, by virtue of Romania's accession to the European Union, ceased to exist, and second, in the terms of Article 12 of the same instrument (*ibid.*), he was to be excluded from being a refugee because he had, as established by the conviction and sentence handed down against him with final effect by the Romanian judicial authorities, committed a serious non-political crime outside the country which had granted him refugee status.

93. As to the risk of inhuman or degrading treatment in Romanian prisons, the Government rejected the applicant's claims regarding the inadequacies of the French courts' treatment of the issue. They asserted that the French courts had not been under a duty to seek information from the Romanian authorities where the material that the applicant had put before the Investigation Division in that regard had not been capable of constituting "objective, reliable, specific and properly updated" evidence of deficiencies within the meaning of *Aranyosi and Căldăraru*. In the Government's judgment it stood to reason

that mere allegations of a general character should not have the effect of calling into question the principle of mutual recognition. They also noted that at the time of the applicant's surrender the Court had not yet delivered the pilot judgment in *Rezmiveş and Others v. Romania* (nos. 61467/12 and 3 others, 25 April 2017) in which it had found there to be a structural problem with detention conditions in Romania.

94. In the light of the foregoing the Government urged the Court to find that the execution of the EAW had not been affected by a manifest deficiency capable of rebutting the presumption of equivalent protection which applied both to the EAW scheme and to the operation of that scheme in the applicant's specific case.

95. In the alternative, should the Court regard the presumption of equivalent protection as inapplicable in this instance, the Government advanced the view, informed by previous expulsion and extradition cases, that the surrender of the applicant to the Romanian authorities had not breached Article 3 of the Convention. The Government observed at the outset that the Court lacked jurisdiction to determine whether France had honoured its obligations under the Geneva Convention. However, notwithstanding the applicant's entitlement to the protection afforded by the Court's rulings in the cases referred to – which was owed to anyone facing expulsion or extradition – he had not established a real risk of infringement of his right under Article 3 of the Convention owing to his political or religious views. Nor had he established that he would be at risk of inhuman or degrading treatment in the Romanian prison estate. In this regard the Government noted, in addition to the point referenced at paragraph 93 above, that conditions in Romania's prison estate had not given cause for concern to Amnesty International or Human Rights Watch in their reports released around the time of the applicant's surrender. The Government further observed that the applicant had confined himself to claims of a very general nature regarding the Romanian prison system in his application to the Court; they contended that he could not rely on the media attention his case had attracted in his country of origin as evidence of a real risk that he might be treated in a manner contrary to Article 3 if surrendered. Lastly, the Government pointed out that the applicant had been released from custody on 13 September 2017, one year after his surrender, and had never complained to the Court of the conditions in which he had been held in Romania. In the circumstances, the Government concluded that the applicant had failed to make out a case for the existence of a real and substantial risk of his being subjected to treatment contrary to Article 3 following his surrender to the Romanian authorities.

2. *The Court's assessment*

(a) **General principles relating to the presumption of equivalent protection in the legal order of the European Union**

96. The general principles set forth in the judgment in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* ([GC], no. 45036/98, ECHR 2005-VI) and further developed in the judgments in *Michaud* and *Avotiņš*, cited above, as to the presumption of equivalent protection, may be summarised as follows.

97. When applying EU law, the Contracting States remain bound by the obligations they freely entered into on acceding to the Convention. However, those obligations must be assessed by reference to the presumption of equivalent protection. Acts done pursuant to international legal obligations are to be presumed justified where it is established that the protection afforded to fundamental rights by the organisation in question is at least equivalent – that is, not identical but “comparable” – to that afforded by the Convention, on the understanding that any such conclusion of “equivalent protection” must be open to review in the light of any relevant change in the protection of fundamental rights. If such equivalent protection is considered to be provided by the organisation, a State will be presumed not to have departed from the requirements of the Convention when it does no more than implement legal obligations flowing from its membership of the organisation. (see *Avotiņš*, cited above, § 101).

98. The application of the presumption of equivalent protection in the legal order of the European Union is subject to two conditions, namely the absence of any margin of manoeuvre on the part of the national authorities and the deployment of the full potential of the supervisory mechanism provided for by European Union law. First, the alleged interference with a Convention right must be the consequence of an international legal obligation of the respondent State in the discharge of which the domestic authorities have no discretion or margin of manoeuvre. Second, the fundamental rights supervisory mechanism in place under European Union law, which the Court has recognised as affording fundamental rights protection equivalent to that of the Convention, must have been used to its full potential (*ibid.*, § 105).

99. The second condition for the operation of the presumption of equivalent protection must be applied without excessive formalism and with due regard to the specific features of the supervisory mechanism in question. It would not be appropriate to make the implementation of the presumption subject to a requirement for the national court to request a ruling from the CJEU in all cases without exception, including those cases where no genuine and serious issue arises with regard to the protection of fundamental rights by EU law, or those in which the CJEU has already stated precisely how the applicable provisions of EU law should be interpreted in a manner compatible with fundamental rights (*ibid.*, § 109).

100. The principles distilled in the judgments cited at paragraph 96 above apply to all mutual-recognition mechanisms in place under the law of the European Union (*ibid.*, § 113). It follows that where the domestic authorities lack discretion in giving effect to European Union law, the presumption of equivalent protection applies. This is the case when mutual-recognition mechanisms require the domestic court to presume sufficient observance of fundamental rights on the part of another member State (*ibid.*, § 115).

101. However, this presumption may be rebutted in the circumstances of a particular case. Although the Court will seek to take into account, in a spirit of complementarity, the manner in which mutual-recognition mechanisms operate and in particular the aim of effectiveness at which they are directed, it must verify that the principle of mutual recognition is not applied automatically and mechanically, to the detriment of fundamental rights (*ibid.*, § 116).

102. In that spirit, where the courts of a State which is both a party to the Convention and a member State of the European Union are called upon to apply a mutual-recognition mechanism established by EU law, such as that prescribed for the execution of an EAW issued by another EU member State, and where there is no manifest deficiency regarding the rights protected by the Convention, they will give full effect to that mechanism (*ibid.*, § 116).

103. However, if a serious and substantiated complaint is put to them which alleges a manifest deficiency in the protection of a Convention right which cannot be remedied by EU law, they cannot refrain from examining that complaint on the sole ground that they are applying EU law (*ibid.*, § 116). In such cases they must read and apply the rules of EU law in conformity with the Convention (see *Pirozzi v. Belgium*, no. 21055/11, § 64, 17 April 2018).

(b) Application of those principles to European arrest warrant cases

104. In its judgment in *Pirozzi* (cited above, §§ 66 and 71) the Court concluded that, unless there were grounds for not doing so, the executing judicial authority was under an obligation to execute the EAW, so that the presumption of equivalent protection was brought into operation. Nonetheless it underscored that the authority in that case had satisfied itself that execution of the EAW would not give rise, *vis-à-vis* the applicant, to a manifest deficiency in the protection of Convention rights, having reiterated in the following terms that the EAW system was not inherently incompatible with the Convention:

“58. ... the EAW Framework Decision relies on a mutual-recognition mechanism which itself is predicated on the principle of mutual trust between EU member States (see paragraphs 24-29 above).

59. The Court is mindful of the importance of mutual-recognition mechanisms when it comes to building the area of freedom, security and justice, and of the mutual trust they require. The EAWs for which the Framework Decision provides are a concrete measure implementing that principle of mutual trust, in a sphere which serves to ensure

the free movement of judicial decisions in criminal matters throughout the area of freedom, security and justice. The EAW is a document authorising an arrest to be made on the basis of a judicial decision issued by the competent judicial authority of a European Union member State with a view to the arrest and surrender, by the competent judicial authority of another member State, of a person sought for criminal prosecution or for the enforcement of a custodial sentence or detention order.

60. The Court has stated its commitment to international and European cooperation. It considers the creation of an area of freedom, security and justice in Europe, and the adoption of the means necessary to that end, to be wholly legitimate from the standpoint of the Convention as far as the principle behind it is concerned (see, in particular, *Avotiņš v. Latvia* ([GC], no. 17502/07, § 113, 23 May 2016). Accordingly, in its view, the EAW system is not inherently incompatible with the Convention.”

105. In the *Romeo Castaño* judgment (cited above) the Court held that a refusal to execute an EAW on the ground that surrender would carry a risk of breach of the fundamental rights of the person sought might, if lacking a sufficient factual basis, run counter to the procedural obligation to cooperate under Article 2 of the Convention. It reiterated the principles set forth in its previous judgments to the effect that, in the context of execution of an EAW by an EU member State, the machinery of mutual recognition should not be applied automatically and mechanically to the detriment of fundamental rights. It held that a risk of inhuman and degrading treatment to the person whose surrender was sought might constitute a legitimate ground for refusing to execute an EAW, provided that the finding of such a risk had a sufficient factual basis (*ibid.*, §§ 82-91).

106. In the particular case of a risk of inhuman and degrading treatment owing to the conditions under which the person sought pursuant to the EAW would be detained in the issuing State, the Court indicated that it was for the executing judicial authority to make a detailed and up-to-date assessment of the situation by ascertaining whether there was a real risk, to that individual, of a violation of his or her Convention rights (*ibid.*, § 86).

(c) General principles relating to the Court’s assessment of whether the return of the applicant to his or her country of origin would be compatible with Article 3 of the Convention

107. The Court has consistently held that States are under an obligation not to extradite a person to a requesting country where substantial grounds have been shown for believing that if extradited to that country he or she would face a real risk of being subjected to treatment contrary to Article 3 (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161, and *Romeo Castaño*, cited above, § 92), and are therefore under an obligation to satisfy themselves that no such risk exists (*ibid.*).

108. Also worthy of reference in this regard are the general principles applicable in the context of expulsion, different though it is, which are encapsulated in the judgments in *F.G.* (cited above, §§ 111-127), and *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 79-105, 23 August 2016).

109. The Court reiterates that it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts thereby raised (see *J.K. and Others*, cited above, § 91; *Allanazarova v. Russia*, no. 46721/15, § 71, 14 February 2017; and *A.M. v. France*, no. 12148/18, § 118 and 119, 29 April 2019).

(d) Application of those principles to Mr Moldovan's case

110. The decision to surrender the applicant to the authorities of the State that had issued the EAW was taken notwithstanding his claim that execution of the warrant would put him at real risk of inhuman and degrading treatment owing to the conditions in which he would be held in Romania. It is not for the Court to pronounce upon Romania's compliance with its obligations under the Convention. The sole object of scrutiny for the Court is the decision of the French judicial authorities to execute the EAW for the applicant notwithstanding his submission to them that to do so would have the effect of exposing him to treatment contrary to Article 3. As the evidence adduced by the applicant in support of his allegations comes from judgments of the Court concerning detention conditions in Romania, a brief recapitulation of the relevant judgments is called for. Before assessing the merits of the complaint of a breach of Article 3, it will be necessary to decide whether the presumption of equivalent protection was applicable in the circumstances.

(i) Judgments of the Court relied on by the applicant as evidence of a risk that he would be held in conditions contrary to Article 3

111. In the proceedings before the Investigation Division the applicant relied initially on four judgments delivered in 2014 (see paragraph 8 above) which had found violations of Article 3 of the Convention on grounds of the inhumane detention conditions that the applicants had experienced in several Romanian prisons, including Rahova Prison in Bucharest, as a result of overcrowding, a lack of heating and hot water, and poor hygiene practices. Those judgments make reference to the leading case of *Iacov Stanciu v. Romania* (no. 35972/05, 24 July 2012), where the Court, in its reasoning under Article 46 of the Convention, observed that it had regularly found Convention violations on grounds of overcrowding, poor hygiene and lack of appropriate health care in prisons including Gherla (*ibid.*, § 195). The applicant subsequently referred to the judgment in *Axinte* (cited at paragraph 11 above), which was also concerned with, among other things, conditions of detention in Gherla prison. In that judgment the Court found that the applicant had endured circumstances of severe overcrowding and that he had been afforded less than 3 sq.m, and sometimes less than 2 sq.m, of

individual space (ibid., § 48). The Court also pointed out that it had “already found Article 3 violations in many cases, mainly on grounds of a lack of sufficient individual space, unhygienic conditions or inadequate ventilation or lighting in the prisons of Gherla (see *Porumb v. Romania*, no. 19832/04, § 72, 7 December 2010, and *Radu Pop v. Romania*, no. 14337/04, § 96, 17 July 2012) ...” (ibid., § 49).

(ii) *Application of the presumption of equivalent protection*

112. The Court must ascertain whether the conditions for the application of the presumption of equivalent protection, as set forth at paragraphs 98 and 99 above, are met in the present circumstances.

113. As to the first condition, the Court notes that the legal obligation placed upon the judicial authority tasked with deciding whether to give effect to an EAW stems from the relevant terms of the Framework Decision as they have been interpreted by the CJEU since its ruling in *Aranyosi and Căldăraru* (see paragraph 50 above). Under the jurisprudence of the CJEU as it stood, the executing judicial authority was entitled to depart in exceptional cases from the principles of trust and mutual recognition between member States by postponing or, where necessary, refusing execution of the EAW. Its task, in dealing with the objection raised to execution of the EAW on the ground that it would place the applicant at risk of being held in Romania in conditions contrary to Article 4 of the Charter of Fundamental rights, was to determine whether the systemic deficiencies alleged by the applicant to exist in the issuing State did in fact exist, and, if so, to undertake a specific and precise examination of the risk of inhuman and degrading treatment to which he, as an individual, would be exposed if surrendered.

114. Regarding the establishment of a real risk to the individual, the Court notes that the requirements laid down by the CJEU – which has called for the executing judicial authority to apply a two-stage test, first assessing whether there are systemic or generalised deficiencies in the issuing State and then determining, specifically and precisely, whether there are substantial grounds to believe that the person concerned will face a real risk of treatment contrary to Article 4 of the Charter of Fundamental Rights on account of the conditions in which he or she will be held in the issuing State (see paragraphs 50 and 52 above) – are to the same effect as those arising out of its own previous judgments, which place the national authorities under a duty to assess in concrete terms whether there is a real and individualised risk that the person concerned will be subjected to treatment contrary to Article 3 on account of the same circumstances (see paragraph 106 above). It would therefore have been incumbent on the Investigation Division to refuse to execute the EAW if, on performing the exercise just described, it had concluded that there were substantial grounds for believing that the applicant, if surrendered, would face a real risk of inhuman and degrading treatment owing to the conditions in which he would be held. However, this power of the judicial authority to

assess the facts and circumstances and determine the legal consequences properly attaching thereto is exercised within the parameters strictly delineated by the judgments of the CJEU, in order to ensure that a legal obligation is performed with due regard for EU law, specifically Article 4 of the Charter of Fundamental Rights, which affords protection equivalent to that of Article 3 of the Convention. Accordingly, the executing judicial authority, in deciding whether to grant or refuse execution of an EAW, cannot be said to enjoy an independent margin of manoeuvre such that the presumption of equivalent protection does not apply (see *Avotiņš*, cited above, § 107).

115. Regarding the second condition for application of the presumption, the Court notes that, in the light of the aforementioned CJEU jurisprudence (see paragraphs 50 and 113 above), no serious difficulty arises concerning the interpretation of the Framework Decision and the question of its compatibility with fundamental rights so as to suggest the need for a reference to the CJEU for a preliminary ruling. The second condition for application of the presumption of equivalent protection must therefore be regarded as met.

116. In view of the foregoing, the Court concludes that the presumption of equivalent protection is applicable in this instance. Accordingly, its task is confined to ascertaining whether the protection of the rights guaranteed by the Convention was, in the circumstances, manifestly deficient so as to rebut that presumption; if so, the interest of international cooperation is outweighed by observance of the Convention as a “constitutional instrument of European public order” in the field of human rights (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi*, cited above, § 156, and *Michaud*, cited above, § 103).

(iii) *Allegation of manifest deficiency in protection of Convention rights*

117. The Court would refer back to its conclusion in the *Romeo Castaño* judgment (cited above) that, from the standpoint of the Convention, a real risk to the individual whose surrender is sought of inhuman and degrading treatment owing to the conditions in which he or she will be held in the issuing State, provided those conditions have been assessed on a sufficient factual basis, is a legitimate ground for refusing to execute the European arrest warrant and thus for refusing to cooperate with the State in question. The Court does not see any reason to depart from its approach in *Romeo Castaño* (ibid., §§ 82-91), as set out at paragraphs 105 and 106 above.

118. The Court must now ascertain whether the fundamental rights protection afforded by the executing judicial authority was affected in this instance by a manifest deficiency such as to rebut the presumption of equivalent protection. To that end it will seek to determine whether the executing judicial authority had before it a sufficiently sound factual basis to compel it to the conclusion that executing the EAW would pose a specific,

individual risk to the applicant of treatment contrary to Article 3 owing to the conditions in which he would be held in Romania.

119. The Court observes at the outset that the applicant provided the domestic courts with evidence of the systemic or generalised deficiencies affecting the prisons of the issuing State. It notes the reliability and specificity of the material he adduced in support of his allegations before the Investigation Division and later the Court of Cassation (see paragraphs 8, 11 and 13 above), containing consistent and repeated reports of the deficiencies in the Romanian prison system and, in particular, of the conditions prevailing in Gherla Prison, the facility where the Romanian authorities planned to hold the applicant.

120. Next, the Court notes the steps taken by the domestic court, in the exercise of its power under Article 695-33 of the Code of Criminal Procedure, to seek further information from the Romanian authorities. From the material adduced by the applicant it appears that the court sought further information from the competent authorities of that State concerning the actual conditions in which he was to be held, so as to gauge whether there was a real risk that he would be exposed to inhuman and degrading treatment if surrendered.

121. On consideration of the particulars provided to it in the course of that exchange of information, the executing judicial authority took the view that execution of the EAW in question would not give rise to a risk of violation of the applicant's Article 3 rights. Looking at the same material, the Court concludes that the authority had before it a sufficient factual basis on which to find that there was such a risk.

122. First, the Court is of the view that the information provided by the issuing State was not sufficiently put into the context of its own judgments, particularly regarding the conditions at Gherla Prison, which was ostensibly the facility in which the applicant was to be held. In the *Axinte* judgment (cited at paragraph 111 above), on which the applicant relied before the executing judicial authority, it was pointed out that that prison suffered from an endemic level of overcrowding and that, in such circumstances, the lack of personal space was the central consideration in gauging whether a particular situation was not at odds with Article 3 of the Convention. Here, the Court notes that this aspect of the applicant's prospective conditions of detention was not afforded serious consideration; the Investigation Division relied on the prospect of "at least 2-3 sq.m" of space (see paragraph 12 above) whereas the Romanian authorities had stated that the applicant would have "2-3 sq.m" of space in Gherla Prison (see paragraph 10 above). Furthermore it had been specified that that measurement of personal space was inclusive of the space to be taken up by sanitary fixtures. In addition the Court observes that the other judgments on which the applicant relied (see paragraphs 8 and 111 above) make apparent that the detention conditions in Rahova Prison, identified as the facility where the applicant was to be quarantined on arriving in Romania, did not afford satisfactory personal space

to persons held there. (see *Voicu*, cited above, § 51, and *Constantin Aurelian Burlacu*, cited above, § 27).

123. The Court notes that it has previously held that 3 sq.m of floor area per person in a multi-occupancy cell is the minimum standard applicable within the requirements of Article 3 of the Convention (as affirmed in *Muršić v. Croatia* [GC], no. 7334/13, § 137, 20 October 2016). In the Court's view, considering the entirety of the material before it, in particular that provided by the Romanian authorities upon its request, the executing judicial authority had information concerning the personal space to be afforded to the applicant which warranted a strong presumption of a breach of Article 3.

124. Second, the Court observes that the undertakings given by the Romanian authorities concerning the other aspects of the detention conditions in Gherla Prison, such as freedom of movement and out-of-cell activities, which were meant to rule out a real risk of a breach of Article 3 (*ibid.*, §§ 135 and 138), used stock language and were not factored into the risk assessment made by the executing judicial authority.

125. Third, the Court considers that, whereas the Romanian authorities had not excluded the possibility that the applicant might be held in a prison other than Gherla, the precaution taken in that respect by the executing judicial authority – which was to recommend that the applicant should be held in a facility which afforded the same or better conditions – was not sufficient to rule out a real risk of inhuman and degrading treatment, as it did not enable such a risk to be assessed in respect of a particular facility, and as the evidence before that authority of the systemic deficiencies affecting the prison system of the issuing State established that the detention conditions in many prisons did not meet the standards laid down by the Court.

126. Considering all of the foregoing, the Court is of the view that the executing judicial authority had before it a sufficiently sound factual basis, provided in particular by the Court's own judgments (see paragraphs 111, 122 and 123 above) upon which to establish a real risk to the applicant of inhuman and degrading treatment on account of the conditions in which he would be held in Romania and could not, therefore, rely solely on the statements made by the Romanian authorities (see paragraph 10 above). It accordingly infers that in these particular circumstances there existed a manifest deficiency in the protection of fundamental rights such as to rebut the presumption of equivalent protection. As a result, the Court concludes that there has been a violation of Article 3 of the Convention.

(e) Application of those principles to Mr Bivolaru's case

127. The complaint under Article 3 comprises two limbs: one concerning the consequences to be attached to the applicant's refugee status and the other concerning detention conditions in Romania.

(i) *Alleged breach of Article 3 of the Convention owing to the applicant's refugee status*

128. Before a decision is given on the application of the presumption of equivalent protection and the alleged breach of Article 3, it appears necessary to afford a brief outline of the *Amarandei and Others* judgment (cited above) on which the applicant relied before the Investigation Division to show that, as an opponent of the government, he would be at risk of inhuman and degrading treatment if the EAW were to be executed.

(α) *The Amarandei and Others v. Romania* judgment relied on by the applicant before the Investigation Division

129. The application was lodged by members and supporters of MISA, the movement which the present applicant had founded in 1990. It concerned a police operation conducted against them in 2004 to seize computer hardware which prosecutors had alleged was being used to produce and spread pornographic images online. The Court held that the operation and the ensuing arrests had breached Articles 3 and 5 because of the manner in which the gendarmerie had entered the buildings to be searched and the arbitrary deprivation of liberty suffered by the applicants in the wake of the operation. It also held that Article 8 of the Convention had been breached as a result of defects identified in the search of the premises, the seizure of property, searches performed on individual persons and the release of footage of the police operation to the media. Lastly, regarding the applicants' allegation under Articles 9 and 14 that they had suffered discrimination on the basis of their membership of MISA in respect of their right to manifest their beliefs, the Court declared the complaint inadmissible in the following terms:

“243. In this case the Court notes that the SRI had been monitoring MISA's activities since its founding in 1990. Although its reasons for doing so were partly related to the expression of views considered to be at odds with the State's foreign policy choices, nonetheless it is apparent from the material in the case file that the police operation of 18 March 2004 was preceded by evidence that criminal offences had been committed in some MISA buildings.

244. Consequently, the Court is of the view that it has not been provided with strong, clear and concordant evidence that the initiation of proceedings against G.B. and other MISA members, and the granting of an order to search those buildings, had a discriminatory purpose which violated the applicants' freedom to manifest their beliefs.

245. Furthermore, the Court observes that the allegations concerning the conduct of law enforcement representatives during the police operation of 18 March 2004 have been dealt with under Article 3 of the Convention.

246. As to the statements which are alleged to have expressed a negative view of MISA's activities, the Court notes that the statements of which the applicants complain originated not with the judicial authorities in charge of the conduct of the investigation but with various politicians. Moreover, the Court is of the opinion that those statements need to be viewed in the context of the case, which caused a considerable public outcry. In the Court's view, the statements in issue, as they appear in the media reports provided

by the applicants, are not capable of establishing the existence of a campaign of denigration and persecution orchestrated by certain politicians and directed against MISA and its membership.

247. Lastly, regarding the media coverage of the case, the Court is of the view that, in a democratic society, sensitive cases are bound to attract at times uncompromising journalistic comment.”

(β) Application of the presumption of equivalent protection

130. As regards the second condition for application of the presumption of equivalent protection under EU law, the Court reiterates its position that, viewed as a whole, the supervisory mechanism in place under EU law provides protection equivalent to that which is afforded by the Convention (see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi*, cited above, §§ 160-164).

131. In the present case the Court notes that the Court of Cassation dismissed the applicant’s request to seek a preliminary ruling from the CJEU on the consequences, for the execution of an EAW, of a grant of refugee status by a member State to a national of a third State which had subsequently also become a member State. The issue so framed is a genuine and serious one, never decided by the CJEU, going to the fundamental rights protection afforded by EU law and its interrelationship with the protection afforded by the 1951 Geneva Convention. The *I.B.* judgment cited by the Government (see paragraph 55 above) – wherein the CJEU ruled that an application for refugee status lodged in the executing State by the person sought on an EAW did not constitute a ground for non-execution of the EAW – concerns a different eventuality. The Court thus considers that the Court of Cassation’s choice not to make a reference to the CJEU meant that it gave its judgment in circumstances where the full potential of the relevant international machinery for the supervision of fundamental rights compliance – in principle equivalent to that of the Convention – had not been brought to bear. In view of that choice and the importance of what was at stake, the presumption of equivalent protection does not apply (see *Michaud*, cited above, § 115, and *Avotiņš*, cited above, § 111), and it is unnecessary to consider the first condition.

132. Accordingly, the exercise for the Court is to determine, with regard to the consequences of the applicant’s refugee status, whether his surrender to the Romanian authorities in pursuance of the EAW in issue contravened Article 3 of the Convention.

(γ) Whether the applicant’s surrender contravened Article 3 of the Convention

133. The Court’s task is to scrutinise how the executing judicial authority went about its inquiry into whether there was a real risk to the applicant, should the EAW be executed, of persecution amounting to inhuman and degrading treatment for his political and religious beliefs. It will endeavour

to determine whether the executing judicial authority had before it a sufficiently sound factual basis to compel it to the conclusion that execution of the EAW would entail a real, individual risk to the applicant of treatment contrary to Article 3 and to refuse to execute the EAW on that ground.

134. The Court observes that in the domestic courts the applicant relied mainly on his refugee status under the Geneva Convention and on the rule of *non-refoulement* laid down by Article 33 thereof to establish that there was a real risk of inhuman and degrading treatment should the EAW be executed. The Investigation Division and the Court of Cassation held that the applicant's refugee status did not place them under a duty to refuse to execute the EAW in issue.

135. First, it is not within the Court's remit to decide how the protection afforded to refugees by the Geneva Convention interrelates with the rules of EU law, here the Framework Decision. The Court's review will be confined to inquiring whether, in the present circumstances, the execution of the EAW for Mr Bivolaru gave rise to a violation of Article 3 (see, *mutatis mutandis*, *Paci v. Belgium*, no. 45597/09, § 73, 17 April 2018). Second, as regards the consequences to be attached by the Court to the applicant's refugee status, the Court observes that neither the Convention nor its Protocols protect the right to asylum as such. The protection they afford is confined to the rights they enshrine, including in particular the rights set out in Article 3. Article 3 prohibits the removal of any alien, who is within the jurisdiction of one of the Contracting States for the purposes of Article 1 of the Convention, to a State in which he or she may face a real risk of inhuman or degrading treatment or torture. In that respect it embraces the prohibition of *refoulement* under the Geneva Convention (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 188, 13 February 2020). The Court would also point out that it is not for it to inquire whether a decision of the authorities of a State party to the Geneva Convention to grant refugee status is to be interpreted as conferring on the person concerned the same status in all other States parties to that treaty (see *M.G. v. Bulgaria*, no. 59297/12, § 88, 25 March 2014).

136. Turning to its review of whether Article 3 was complied with in the present circumstances, the Court notes that the EAW Framework Decision does not provide for a ground of non-execution based on the refugee status of the person sought for surrender. Nonetheless it would point out that the Swedish authorities' grant of refugee status to the applicant makes clear that, at the time of the grant, they believed there was sufficient evidence to show he was at risk of persecution in his country of origin (see, *mutatis mutandis*, *M.G. v. Bulgaria*, cited above, § 88). The Court must have particular regard to such a factor when assessing whether there was a real risk to the applicant, if surrendered, of treatment contrary to Article 3 (*ibid.*). The Court must make its assessment by reference to the situation of the person concerned at the time the executing judicial authority took its decision and must have regard to the general scheme of the EAW.

137. As to how the executing judicial authority went about its assessment, it appears to the Court to have regarded the applicant's refugee status as a factor in need of particular attention, and one which it had to square with the principle of mutual trust, but not as giving rise by operation of law to an exception to that principle which by itself warranted a refusal to give effect to the EAW and to surrender him to the authorities of his country of origin. The Court is of the view that such a stance does not inherently fall foul of Article 3 of the Convention, provided that at the time of making its decision the executing judicial authority gauges whether the applicant would be at risk of inhuman or degrading treatment if surrendered. In this instance it sees that the executing judicial authorities did so by inquiring whether, irrespective of his refugee status, the applicant's individual situation did not amount to a bar, in the circumstances prevailing at the time of their decision, to his surrender to the Romanian authorities (see, *mutatis mutandis*, *Shikhsaitov v. Slovakia*, nos. 56751/16 and 33762/17, §§ 70-71, 10 December 2020).

138. The Investigation Division communicated to the Swedish authorities a request for particulars concerning the applicant's refugee status. It enquired specifically as to the consequences, if any, in their view, of Romania's entry into the European Union one year after that status had been granted. It also sought an update on the applicant's status and enquired whether a withdrawal of his refugee status was envisaged now that he had entered France under a false identity. The Swedish authorities replied that they intended to maintain the applicant's refugee status but did not express an opinion as to whether, ten years on from the grant of that status, the risk of persecution in his country of origin remained live.

139. Moreover the Court notes that, in conformity with the provisions of the Code of Criminal Procedure (Article 695-22 5°; see paragraph 59 above), the executing judicial authorities satisfied themselves that the request for execution of the EAW had not been issued for a discriminatory purpose or, specifically, because of the applicant's political views. They ascertained that the request to surrender the applicant had been predicated solely on a concern to enforce the sentence handed down against him for a non-political offence. In particular, they assessed whether his criminal conviction and sentence placed him at risk of inhuman and degrading treatment in the light of the reasons for the judgment in *Amarandei and Others* (cited above) on which the applicant relied as prime evidence of the persecution of MISA members. Having regard to those reasons, the executing judicial authorities concluded, following a review of the applicant's history in Romania, that the evidence before them did not support a finding that the EAW served a political purpose; they found that the applicant's mere membership of MISA was not sufficient, on the evidence before them, to give rise to an apprehension that his position would be prejudiced in Romania on the grounds of his opinions or beliefs (see paragraph 30 above). The Court notes that the applicant did not adduce any evidence, in his submissions to it, capable of substantiating a risk of

persecution amounting to treatment so severe as to rise to the threshold under Article 3. He merely argued that the executing judicial authorities had been wrong to consider that the reasons in the *Amarandei and Others* judgment afforded an adequate basis on which to conclude that he would not be at risk of persecution if surrendered.

140. The Court further observes that the applicant did not put the executing judicial authorities in a position to make a finding that he would suffer discrimination for his membership of MISA, as he never claimed a violation of Articles 9 and 14 of the Convention in the proceedings before the Investigation Division and only pleaded Article 9 in his third ground of review before the Court of Cassation, without setting out any argument in that regard (see paragraph 32 above).

141. It is clear from the foregoing that neither the content of the case file compiled by the executing judicial authority nor the material placed before this Court by the applicant suggests that he remained at risk of persecution on religious grounds in Romania if surrendered. The view taken by the Court in these particular circumstances – the Swedish authorities’ lack of intention to lift the applicant’s refugee status notwithstanding – is that, on completion of the close and thorough assessment which the executing judicial authority made of the applicant’s individual situation, and which clearly shows the attention it paid to his refugee status, the authority did not have before it a sufficiently sound factual basis on which to find a real risk of breach of Article 3 of the Convention and to refuse to execute the EAW on that ground.

(ii) Risk of inhuman and degrading treatment owing to detention conditions in Romania

142. Regarding the second limb of the applicant’s complaint, namely that he was at risk of treatment contrary to Article 3 on account of the conditions in which he would be held if surrendered, the observations set out at paragraphs 113-115 above as to the conditions for application of the presumption of equivalent protection in that regard apply in his case as well. The Court’s task, as regards the application of the presumption in this case, is to determine whether the fundamental rights protection afforded by the executing judicial authority was, in the circumstances, manifestly deficient so as to rebut the presumption of equivalent protection.

143. As to whether the executing judicial authority had before it a sufficiently sound factual basis on which to conclude that executing the EAW would put the applicant at real risk of inhuman and degrading treatment owing to the conditions in which he would be held in Romania, the Court observes that in the domestic courts the applicant confined himself to allegations of a highly general nature concerning the treatment of opponents of the government, including those in prison, rather than detention conditions in the Romanian prison estate, with the consequence that the executing judicial authority lacked a sufficient basis for such a conclusion. In his case

before the Investigation Division he claimed that “torture and inhuman treatment remain[ed] routine in Romania” and alleged that a 2015 CPT report had noted “beatings of prisoners” (see paragraph 23 above). He also relied on the Article 3 violation arising from the police operation conducted against certain MISA members in 2004 (see paragraph 27 above). In the Court of Cassation he placed reliance on the *Aranyosi and Căldăraru* judgment (see paragraph 32 above).

144. In these circumstances the Court is of the view that the description of conditions in the Romanian prison estate which the applicant put to the executing judicial authority in support of his application to refuse execution of the EAW issued for him was neither sufficiently detailed nor sufficiently supported by evidence to make out a *prima facie* case of his being at real risk of treatment contrary to Article 3 if surrendered to the Romanian authorities (see, *mutatis mutandis*, *Muršić*, cited above, § 128). Furthermore it notes that, given the Court of Cassation’s remit as a court of last review on points of law – a remit which excludes any reassessment of the facts, let alone one based on considerations not put before the courts of substantive jurisdiction below – it was a futile undertaking to rely on the *Aranyosi and Căldăraru* judgment for the first time in the Court of Cassation in order to establish the existence of structural deficiencies. Having regard to all these factors, the Court considers that the executing judicial authority was not, in the circumstances at issue here, under a duty to request supplementary information from the Romanian authorities as to where, in what conditions and under what regime of detention the applicant would be held in order to identify whether there was a real risk to him of inhuman and degrading treatment owing to his conditions of detention.

145. That being so, the Court concludes that the material put before the executing judicial authority – which did not call for closer analysis on its part, as explained above – did not afford it a sufficiently sound factual basis on which to determine that there was a real risk of a breach of Article 3 of the Convention and to refuse to execute the EAW on that ground.

(iii) *Conclusion*

146. It is apparent from all the foregoing that the execution of the EAW in question did not violate Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION (APPLICATION NO. 12623/17)

147. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

148. Mr Moldovan claimed 7,000 euros (EUR) in respect of non-pecuniary damage as a result of the conditions in which he had been held in Romania, which he said were evidenced by the Romanian authorities' reply of 28 June 2016 (see paragraph 10 above), and as a result of his separation from his family, with whom he had been living in France.

149. The Government contended that the applicant's claim of non-pecuniary damage was unsupported by any evidence relating to his current situation and should be rejected. In the alternative, should the Court consider that his surrender had caused him damage, they advanced the view that a finding by the Court of a violation of the Convention would in itself provide adequate redress.

150. The Court concludes that it is appropriate to award Mr Moldovan EUR 5,000 in respect of non-pecuniary damage (see, *mutatis mutandis*, *Romeo Castaño v. Belgium*, no. 8351/17, § 96, 9 July 2019).

B. Costs and expenses

151. Mr Moldovan claimed EUR 2,520 in respect of costs and expenses incurred in the proceedings before the Court.

152. The Government advised that they did not intend to make observations on this point.

153. The Court has previously held that an applicant's costs and expenses are recoverable only in so far as it has been shown that they were actually and necessarily incurred and were reasonable as to quantum. In the present case, having regard to the documents before it and the criteria just stated, the Court considers it reasonable to award the applicant EUR 2,520 in respect of the proceedings before it, plus any tax chargeable thereon.

C. Default interest

154. The Court considers it appropriate to set the rate of default interest equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints under Article 3 of the Convention admissible and the remainder of application no. 40324/16 inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of application no. 12623/17;
4. *Holds* that there has been no violation of Article 3 of the Convention in respect of application no. 40324/16;
5. *Holds*
 - (a) that the respondent State is to pay the second applicant, Mr Moldovan (application no. 12623/17), within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:
 - (i) EUR 5,000 (five thousand euros), plus any tax thereon that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 2,520 (two thousand five hundred and twenty euros), plus any tax thereon that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from expiry of the above-mentioned period until settlement simple interest shall be payable on the above awards at a rate equal to the marginal lending rate of the European Central Bank during that period plus three percentage points;
6. *Dismisses* the remainder of the claim for just satisfaction.

Done in French and notified in writing on 25 March 2021 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Síofra O’Leary
President