SUPREME COURT'S
DECISION

Case no.
Ö 6598-19

delivered in Stockholm on 8 April 2020

PARTIES

Appellant

Prosecutor General

Box 5553

114 85 Stockholm

Respondent

OC

Counsel and Public Defender: Attorney KB

THE MATTER

Surrender in accordance with a European arrest warrant

RULING APPEALED

Decision of the Svea Court of Appeal of 20 November 2019 in case Ö 10436-19

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SUPREME COURT	Postal address	Telephone 08-561 666 00	Office hours
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THE SUPREME COURT'S DECISION

By modification of the Court of Appeal's decision, the Supreme Court grants surrender of OC to Romania for execution of a sentence in accordance with the European arrest warrant issued on 19 May 2015 by the District Court in Bacău (no. 22).

KB shall receive compensation from public funds for the representation of OC in the Supreme Court of SEK 52,866. Of the amount, SEK 40,365 relates to work, SEK 1,928 relates to loss of time and SEK 10,573 relates to value added tax. The state shall bear the cost.

CLAIMS IN THE SUPREME COURT

The Prosecutor General has claimed that the Supreme Court shall decide that OC is to be surrendered to Romania for execution of a sentence in accordance with the European arrest warrant.

OC has opposed modification of the decision of the Court of Appeal.

REASONS FOR THE DECISION

Background

1. On 19 May 2015, the District Court in Bacău, Romania, issued a European arrest warrant relating to surrender of the Romanian citizen, OC, for the execution of a prison sentence. The arrest warrant provides, *inter alia*, that OC, on 20 December 2013, was found guilty by the district court of drug crimes and participation in a criminal organisation and sentenced to a term of imprisonment of five years. The crimes were committed during the second-half of 2009 and up until 9 March 2010. The judgment was affirmed on 12 March 2015 by the Court of Appeal in Bacău.

2. OC was deprived of his liberty in Sweden in April 2016 as a consequence of the European arrest warrant. The prosecutor obtained an opinion from the Romanian correctional authority. The opinion provided that it was not possible to state in which

prisons OC would be placed, but it was guaranteed that he would have personal space of between two and three square metres, including a bed and other furniture.

3. In May 2016, the Solna District Court decided to deny the request for surrender of OC to Romania and he was released. The District Court was of the opinion that there were substantial grounds to assume that OC, if he was surrendered to Romania, was at great risk of being subjected to treatment in Romanian prison contrary to Article 3 of the European Convention on Human Rights. According to the District Court, this risk had not been removed by virtue of the information provided by the Romanian authorities.

4. During proceedings in the Court of Appeal, the prosecutor obtained a supplemental opinion from the Romanian correctional authority. The opinion provided, *inter alia*, that, irrespective of where OC would be placed, treatment of him would not be in contravention of Article 3 of the European Convention on Human Rights. In September 2016, the Svea Court of Appeal denied the prosecutor's appeal. The decision was not appealed to the Supreme Court.

5. Since the prosecutor, during the summer of 2019, obtained new information from the Romanian authorities regarding the treatment of OC in Romanian prison, OC was detained. In August 2019, the Uppsala District Court decided not to remand him in custody since the District Court thought there was no flight risk.

6. Thereafter, the prosecutor reiterated the request for the court's examination of the issue of the surrender of OC to Romania and referred, *inter alia*, to an opinion issued in June 2019 by the "Head of the Prison Safety and Regime Department" and which had been forwarded by the Romanian Ministry of Justice. The opinion contains information regarding, *inter alia*, the prisons in which OC would likely be placed, namely the Rahova prison for an initial period of 21 days, thereafter the closed Bacău correctional facility and, after not less than one-fifth of the sentence has been served, the Vaslui partially open correctional facility and/or the Iaşi open correctional facility. The opinion provides detailed information regarding the conditions in the prisons and it is assured that OC, for

the duration of the term of imprisonment, would have minimum personal space of three square metres, including bed and other furniture, but excluding a toilet.

7. OC opposed approval of the request for surrender. He claimed that the conditions in Romanian prisons are such that it would violate Article 3 of the European Convention on Human Rights to surrender him to Romania for execution of a sentence.

8. The District Court denied the request for surrender. The Court of Appeal has denied the prosecutor's appeal.

What is at issue in the case

9. At issue in the case is whether – notwithstanding the assurance provided by the Romanian authorities in the summer of 2019 – due to the conditions for detainees in Romania, there is a real risk that OC will be exposed to inhuman or degrading treatment within the meaning of Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the European Union.

Generally regarding European arrest warrant

10. The European arrest warrant is the instrument which, since 1 January 2004, applies for the surrender of criminal suspects or sentenced persons within the EU for legal proceedings and execution of a sentence. As between the Member States, the arrest warrant has replaced the traditional regime for extradition for crimes (*cf.* Section 1, second paragraph of the Swedish Extradition for Criminal Offences Act (Swedish Code of Statutes 1957:668)). It is conceived to be a swift and efficient regime for correctional cooperation between EU Member States.

11. The Swedish Surrender from Sweden According to the European Arrest Warrant Act (Swedish Code of Statutes 2003:1156) (the "European Arrest Warrant Act") is based on Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

12. The European arrest warrant system rests on the principle of mutual recognition of judicial decisions amongst EU Member States and, thereby, on a high degree of mutual trust in each other's legal systems; the European Council has called the principle a "cornerstone" of the legal cooperation (see whereas clauses 6 and 10 of the Framework Decision; *cf.* Article 82 (1) of the Treaty on the Functioning of the European Union). Articles 1 (1) and 1 (2) of the Framework Decision accordingly prescribe that a Member State (the Member State of enforcement), in accordance with the principle of mutual recognition and the provisions of the Framework Decision, shall accept and execute a request for arrest and surrender (arrest warrant) from another Member State (the issuing Member State). In order to emphasise the principle of mutual recognition of judicial decisions, the term "surrender" is used instead of "extradition" (Government Bill 2003/04:7, p. 57). However, Article 1 (3) provides that the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles set out in Article 6 (*cf.* current Articles 2 and 6) of the Treaty on the European Union (TEU).

13. The Framework Decision expressly sets forth the reasons why execution shall (Article 3) or may (Articles 4 and 4a) be refused and the guarantees to be given by the issuing Member State (Article 5). As an additional measure, whereas clause 10 of the Framework Decision states that the implementation of the Framework Decision may be suspended under certain circumstances relative to a Member State which seriously and persistently breaches the principles established in Article 6.1 (*cf.* current Article 2) of the TEU. Suspension requires that the breach has been determined by the Council in accordance with the procedure set out in Article 7 of the TEU.

14. Whereas clause 10 of the Framework Decision corresponds most closely to the provision in Chapter 1, Section 1, first paragraph, second sentence of the European Arrest Warrant Act in which it is stated that the Act shall not be applied in relation to a Member State if the EU by a separate decision has decided to suspend the application of the Framework Decision in relation to that state. In the preparatory works for the provision, which came about on proposal of the Committee on Justice, two different

situations were anticipated in which such a decision could be taken: in accordance with the procedure in Article 7 of the TEU and in accordance with the special terms for application of the Framework Decision according to the safeguard clause included in the Treaty of Accession for a new Member State. The Swedish Committee on Justice pointed out that it can be expected to take some time before a decision is taken by the EU regarding suspension of the application of the Framework Decision in a situation in which a Member State commits a grave breach of the basic principles and that, during such period of time, the provision in Chapter 2, Section 4, subsection 2 is to be applied instead as ground for refusal. (See Report 2003/04:JuU8, p. 20 f.).

15. According to Chapter 2, Section 4, point 2 of the European Arrest Warrant Act, surrender may not be granted if it would contravene the European Convention on Human Rights or the supplementary Protocols to the Convention which apply as law in Sweden. The preparatory works provide, *inter alia*, that the application of this ground for refusal should require manifest circumstances which provide cause to believe in the relevant case that surrender would contravene the provisions of the European Convention on Human Rights. In addition, it is stated that it is natural that the content of the arrest warrant is the starting point for such an assessment. (See, *ibid.*, Government Bill, p. 175.)

The European Convention on Human Rights and the Charter of Fundamental Rights of the European Union concerning conditions for detainees

16. A state which extradites a person to another state may be in breach of the European Convention on Human Rights if there is cause to assume that the person may be subjected to Convention violations in the receiving state (see the essential case, *Soering v the United Kingdom*, 7 July 1989, Series A no. 161).

17. It follows from Article 3 of the European Convention on Human Rights that a state may not surrender a person to another country if there are strong reasons to believe that he or she is facing a real risk of being subjected to torture or inhumane or degrading treatment or punishment in that country. What is to be assessed is the individual risk

facing the person sought. However, the general situation or, for example, harsh prison conditions in a country are elements of the assessments of the circumstances in an individual case. (*Cf.* Hans Danelius, *Mänskliga rättigheter i europeisk praxis* [Human Rights in European Practice], 5th ed. 2015, p. 93.) In order to constitute an infringement of Article 3 of the European Convention on Human Rights, it is necessary according to the precedents of the European Court of Human Rights that there is a risk of abuse of certain degree of severity. The degree of severity required is regarded as being relative and depends on an overall assessment of all circumstances, *inter alia*, the length of ill-treatment, its physical and psychological effects and, sometimes, the health of the victim. (See, for example, *Saadi v Italy* [GC], no. 37201/06, § 134, ECHR 2008.)

18. Article 4 of the Charter of Fundamental Rights of the European Union is nearly identical to Article 3 of the European Convention on Human Rights. The explanations relating to the Charter also state that the right in Article 4 corresponds to that guaranteed in Article 3 of the Convention (see OJ C 303, 14.12.2007, p. 18). According to Article 52 (3) of the Charter, it therefore has the same meaning and scope as in the European Convention on Human Rights. Furthermore, it follows from Article 51 (1) that the Member States are obliged to comply with Article 4 when applying EU law. According to Article 53, the provision is not to be interpreted as restricting or adversely affecting the rights protected by the European Convention on Human Rights.

19. As in Article 3 (*cf.* Article 15 (2)) of the European Convention on Human Rights, the right guaranteed by Article 4 of the Charter is absolute in character. This means that the right may not be weighed against considerations relating to the efficacy of judicial cooperation in criminal matters in the EU and to the principles of mutual trust and recognition (*cf.* judgment of the Court of Justice of the European Union of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, para. 82 ff.).

Requirements regarding conditions during detention

20. There are no minimum rules in EU law regarding the conditions which shall

apply during detention. However, the Court of Justice of the European Union has referred to the precedents of the European Court of Human Rights regarding which circumstances in this respect are covered by Article 3 of the European Convention on Human Rights (see the judgment of the Court of Justice of the European Union of 25 July 2018, *Generalstaatsanwaltschaft* (*Conditions de détention en Hongrie*), C- 220/18, EU:C:2018:589, para. 90 ff.).

21. It appears from precedents of the European Court of Human Rights that special weight is ascribed to the spatial factor when making an overall assessment of the conditions of detention; if the detained person has access to personal space which is less than three square metres in a shared prison cell, it will give rise to a strong presumption that Article 3 of the Convention on Human Rights has been breached. This strong presumption may be overcome normally only if (1) the reductions in the required minimum personal space of three square metres are short, occasional and minor, (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities for the detained and (3) the prison generally offers decent visiting conditions and the person concerned is not subject to other aggravating aspects of the conditions of his or her detention. The calculation of the available space in a shared cell should not include the area occupied by sanitary areas but, on the other hand, the area occupied by furniture. However, the detainees must be able to move in their cell in a normal way. (See *Muršić v. Croatia* [GC], no. 7334/13, §§ 114, 124 and 138, 20 October 2016.)

22. When a person in a shared cell has a personal area encompassing between three and four square metres, the space factor remains a weighty factor in the assessment of the adequacy of conditions of detention. In such instances, a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, for example, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements. (See *Muršić v. Croatia* [GC], § 139.)

The instructions of the Court of Justice of the European Union for the procedure for examining whether a surrender is compatible with Article 4 of the Charter of Fundamental Rights of the European Union

23. The Framework Decision thus expressly states the reasons according to which execution shall or may be refused (see para. 13). However, the Court of Justice of the European Union has established that the principles regarding mutual recognition and mutual trust between the Member States may be limited under "exceptional circumstances" (judgment of the Court of Justice of the European Union of 5 April 2016, *Aranyosi and Căldăraru*, C 404/15 and C-659/15 PPU, EU:C:2016:98, para. 82). Accordingly, the court has found that the executing judicial authority may, under certain conditions, be entitled to discontinue the surrender proceeding when a surrender entails a risk that the person sought would be subjected to such inhumane or degrading treatment referred to in Article 4 of the Charter.

24. The Court of Justice of the European Union has provided in its precedents essentially the following instructions for the procedure which the national executing judicial authorities are to follow if they are in possession of evidence according to which individuals in detention in the issuing Member State are subject to a real risk of being subjected to such treatment. (*Cf.* the EU Commission's handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.2017, p. 33 f.)

25. The executing judicial authority shall initially make an assessment of whether there is a real risk that the person sought will be subjected to inhumane or degrading treatment in accordance with Article 4 of the Charter due to the *general conditions of detention* in the issuing Member State. This assessment shall be made on the basis of objective, reliable, specific and properly updated information. (*Aranyosi and Căldăraru*, para. 89 ff.)

26. Whenever the existence of such a risk is identified due to the general conditions of detention, a determination shall be made in a second step as to whether there are

substantial grounds to believe that a real risk exists for inhumane or degrading treatment under the *specific conditions which exist for the person sought*. The executing judicial authority shall, in this respect, request supplemental information from the issuing state in accordance with Article 15.2 of the Framework Decision and postpone its decision regarding surrender until it has received supplemental information which makes it possible to discount the existence of such a risk. (*Aranyosi and Căldăraru*, paras. 92 ff. and 95 ff.)

27. The executing judicial authority is solely required to assess the conditions of detention in the prisons in which, according to the information available, it is actually intended that the person concerned will be detained. Also, the conditions at such correctional facility in which placement is only temporary, e.g. where the person will be placed for further transport to another facility, shall be investigated. (*Generalstaatsanwaltschaft*, para. 87)

28. If an assurance (guarantee) has been given, or at least endorsed, by the issuing judicial authority that the person concerned will not be subjected to inhumane or degrading treatment, the executing judicial authority shall rely on such assurance. In any case, it must rely on that assurance in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of Article 4 of the Charter (*Generalstaatsanwaltschaft*, para. 112).

29. Accordingly, it is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding an assurance provided by the issuing judicial authority or, in any case, approved by the authority, there is a real risk that the person concerned will be subjected to inhumane or degrading treatment (*Dorobantu*, para. 69).

30. An assurance which has not been given or, in any case, approved, by the issuing judicial authority shall instead be examined in the context of an overall assessment of the circumstances available to the issuing judicial authority (*Generalstaatsanwaltschaft*,

paras. 114 and 117).

31. If the executing judicial authority finds that the real risk that the person concerned will be subjected to inhumane or degrading treatment cannot be discounted within a reasonable period of time, the authority shall determine whether there is cause to bring the surrender procedure to an end (*Aranyosi and Căldăraru*, para. 104).

Prison conditions in Romania

32. All EU law is fully applicable in the relations with Romania. There remains in relation to Romania a safeguard clause (*cf.* para. 14) regarding mutual recognition in the areas of both criminal and civil law. However, this has not given rise to any measures of protection on the part of the EU. Instead, recurrent monitoring and follow-up of the reforms required of Romania in order to improve the legal system and combat corruption and organised crime are taking place.

33. The material conditions for detention in Romania have long been criticised by several international organisations. The conditions in Romanian prisons have also been found by the European Court of Human Rights to violate Article 3 of the European Convention on Human Rights in a large number of rulings.

34. In *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 others, 25 April 2017, a complaint from persons who had been detained in, *inter alia*, some of the prisons which are relevant in the current case (para. 6) was examined. In summary, the European Court of Human Rights found that the personal space of the detainees was less than three square metres during most of their stays at the prisons and that this grave lack of space had been exacerbated by other factors, e.g. lack of daylight, unhygienic toilets and poor ventilation.

35. The European Court of Human Rights stated that Romania’s problems regarding deficient prison conditions persisted notwithstanding criticism in previous decisions.

Among other things, it was noted that the occupancy rate during the period June 2015 until August 2016 amounted to between 149.11 and 154.36 per cent. The occupancy rate was calculated on the basis of four square metres per detainee. Furthermore, it was noted that the majority of the court's most recent rulings concerning Romania pertained to persons who had less than three and, in some cases, less than two square metres of personal space. According to the European Court of Human Rights, these problems originated in the fact that the Romanian prison system was structurally dysfunctional, which was stated to have affected large numbers of people and was likely to do so even in the future. (§§ 37, 110 and 115)

36. Romania was ordered by the European Court of Human Rights to provide, within six months, an action plan with measures to remedy the problem of prison overcrowding and to otherwise improve the material conditions for detention. The country was also urged to implement the possibility of paying compensation to persons who were detained in substandard conditions. Furthermore, the court decided to adjourn the examination of all pending cases pertaining to Romania prison conditions which had not yet been communicated to the Romanian government. The decisions concerning Romanian prison conditions delivered by the European Court of Human Rights after *Rezmiveș and Others v. Romania* thus primarily pertain to complaints regarding the conditions prevailing prior to 25 April 2017.

37. In January 2018, Romania presented its action plan in response to the order of the European Court of Human Rights. The action plan, which pertains to the period 2018–2024 and which was updated in November 2018, entails, *inter alia*, the construction of just over 8,000 new prison places, of which 1,900 places in two new prisons, and modernisation of approximately 1,350 existing prison places.

38. Romania's ongoing measures are regularly discussed and analysed in meetings with representatives of the Committee of Ministers of the Council of Europe. At a meeting in June 2019, it was noted, *inter alia*, that the occupancy rate in Romanian prisons had declined from 164 per cent in January 2015 to 112.94 per cent in April 2019.

According to Romania, the reduction was due to an increase in the use of sanctions other than imprisonment and the fact that a system had been introduced to reduce sentences due to deficient conditions. Romania also reported that improvements regarding material conditions had been undertaken, *inter alia*, in respect of hygienic and sanitary conditions and activities and food for the detainees.

39. At a meeting in June 2019, the Council expressed satisfaction with Romania's "significant and ongoing progress" in respect of the reduction of overcrowding while the country was encouraged, *inter alia*, to take immediate steps to balance the distribution of prisoners in the prisons. In addition, clarifications were requested in respect of, *inter alia*, the ongoing modernisation work. The Council also expressed concern regarding the fact that no system for economic compensation had yet been implemented.

40. At the following meeting in December 2019, Romania disclosed, *inter alia*, that the modernisation work of prison places was ongoing but that the work was delayed. Furthermore, it appeared that the Romanian Parliament had decided to do away with the system for reducing sentences for persons who were detained in substandard conditions. Romania undertook to present a new action plan for the Council of Europe. As a consequence of the changing government, however, no new action plan was presented at the last meeting of the Council of Europe which was held at the beginning of March 2020. It appears from the documents of the meeting, *inter alia*, that the occupancy rate in Romanian prisons was 112.77 per cent in February 2020. The Council of Europe has given notice that Romania's measures will be discussed next at the meeting not later than December 2020.

41. The Ministry of Foreign Affairs' most recent country report regarding Romania pertains to the situation as of 31 October 2018. It appears from the report as well as several other reports from international quarters in recent times (most recently, the report of the U.S. State Department regarding the situation in Romania in 2019) that the situation in Romanian prisons has improved somewhat but that the problem of overcrowding and substandard general conditions remain.

The assessment in this case

42. Unlike the examination to be conducted by the Supreme Court in extradition matters in accordance with the 1957 Swedish Extradition Act as regards potential impediments to extradition to states outside the EU, the courts shall, according to the European Arrest Warrant Act, normally only verify that the formal conditions for a surrender are fulfilled; the entire system involving arrest warrants is based on mutual recognition and trust between EU Member States (see para. 12; *cf.* case NJA 2007 p. 168 and "Execution of a Sentence in Poland", case NJA 2017 p. 300, para. 38). Where, on the other hand, surrender in accordance with an arrest warrant in a particular case would be in violation of the European Convention on Human Rights, surrender may not occur.

43. In this case, the question is whether prison conditions in Romania are such that they are incompatible with Article 3 of the European Convention on Human Rights and Article 4 of the Charter of Fundamental Rights of the European Union and thereby constitute grounds for refusing surrender.

44. Prison conditions in Romania have undeniably been deeply concerning for a long time. However, in conjunction with extradition to countries outside the EU, the Supreme Court has been of the opinion that material deficiencies relating to prison conditions have not entailed that an extradition is incompatible with Article 3 of the European Convention on Human Rights (see, *inter alia*, case NJA 2007 N 36 regarding extradition to the Russian Federation, case NJA 2011 N8 regarding extradition to Kazakhstan, the decision of the Supreme Court regarding extradition to Turkey of 4 April 2019 in case Ö 426-19, para. 13 f. and "Extradition of the Union citizen", case NJA 2019 p. 377, para. 31 regarding extradition to Northern Macedonia).

45. Since 2018 Romania has also taken measures to reduce overcrowding and improve the material conditions for detainees (see paras. 36–40). It appears from the investigation that the rate of occupancy in Romanian prisons has declined markedly in recent years, and Romanian authorities have reported to the Council of Europe that other

improvements have also been implemented, *inter alia*, in respect of hygienic and sanitary conditions and in respect of the diet and occupation of the detainees.

46. Notwithstanding the fact that the measures in Romania to date have not followed the timetable and the final result appears to be uncertain, certain improvements have accordingly taken place and Romania continuously reports to the Council of Europe, which follows and evaluates the effort.

47. Against the background of, *inter alia*, international reports and the rulings of the European Court of Human Rights, it may be considered clarified that there is a general risk that surrender of OC to Romania would not be compatible with Article 3 of the European Convention on Human Rights. However, the question is whether there is a grounded reason to believe that there is a real risk of inhumane or degrading treatment under the circumstances prevailing specifically for OC (see para. 26).

48. Romania has provided an assurance concerning the prison conditions for OC. It states in detail what will apply in respect of the execution of his sentence; *inter alia*, he will have a minimum personal cell space of three square metres for the duration of the execution of his sentence. As stated above (paras. 28–30), in an individual case, generally deficient conditions may be remedied by the issuing state providing an assurance regarding the conditions which will be applicable to the person sought. Such an assurance shall – if it is provided or, in any case, approved, by the issuing judicial authority – normally be approved by the implementing state. (*Cf.* in respect of extradition in accordance with the Extradition Act, case NJA 2019 p. 611, para. 55 ff.)

49. In this case, however, it is not the issuing judicial authority – the Romanian court – which issued the assurance but, rather, it has been provided by the Romanian correctional authority. Even if the assurance thus cannot be accepted without reservation but, rather, is to be included in the overall assessment of all circumstances which is to be carried out, it should in a case such as this one be given considerable weight since it was provided by an authority which is responsible for corrections and is better situated than a

court to make a statement regarding the prison conditions in an individual case (see para. 30). The assurance has also been sent via the Ministry of Justice which functions as Romania's central authority in accordance with Article 7 of the Framework Decision.

50. Against the background of the available statistics and the comments made by the European Court of Human Rights regarding, *inter alia*, the Vaslui and Iaşi prisons, the possibilities of satisfying the assurance could be called into question. However, it can hardly be compatible with the mutual trust between Member States if an executing state, by reference to the issuing state's general inadequacies, demands that the state defend the assurance in a particular case.

51. Against the background of the above – and on basis of the fundamental view of mutual trust between EU Member States – there is no cause to question the assurance provided (para. 50). The Supreme Court thus makes the assessment that a surrender of OC to Romania would not entail in his case a strong presumption of an infringement of Article 3 of the European Convention on Human Rights or Article 4 of the Charter of Fundamental Rights of the EU (*cf.* para. 21). Accordingly, there is no reason to deny a surrender to Romania of OC for execution of his sentence. The decision of the Court of Appeal shall be modified in accordance with this.

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Justices of the Supreme Court Gudmund Toijer, Ann-Christine Lindeblad (reporting justice), Erik Nymansson, Eric M. Runesson and Stefan Reimer participated in the ruling.
Judge referee: Christina Berg