

THE HIGH COURT

[2021] IEHC 149
[2020 No. 313 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

MARIUS KARALIŪNAS

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 3rd day of March, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania ("Lithuania") pursuant to a European arrest warrant dated 15th July, 2020 ("the EAW"). The EAW was issued by Mr. Darius Karčinskas, Deputy Prosecutor General of the Republic of Lithuania. The EAW seeks the surrender of the respondent to face prosecution in respect of 26 offences relating to a furniture business carried on by the respondent.
2. The EAW was endorsed by the High Court on 2nd November, 2020 and the respondent was arrested and brought before the High Court on 5th January, 2021. The respondent was admitted to bail.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. No issue was raised in this respect.
4. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not prohibited for any of the reasons set forth in any of those sections.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met in respect of the offences save for the offences numbered 10, 12, 13 and 19 at part E of the EAW, which are said to be offences contrary to article 182(3) of the Criminal Code of the Republic of Lithuania and which are stated at part C of the EAW to carry a maximum penalty of up to 45 days' arrest. I am satisfied that by additional information dated 2nd November, 2020, the issuing judicial authority has confirmed that the maximum penalty in respect of those offences is 45 days' arrest and acknowledges that the Court can refuse surrender in respect of same. I am satisfied that the reference to criminal acts numbered 4 and 7 in the translated response is an error. I am satisfied that the Court must refuse surrender in respect of the offences numbered 10, 12, 13 and 19 in the EAW. The offences numbered 25 and 26 carry a maximum penalty of 4 years' imprisonment and the remainder of the offences carry a maximum penalty of 3 years' imprisonment.
6. The respondent delivered points of objection dated 27th May, 2019 and, following a change in solicitor, delivered amended points of objection but at hearing, counsel for the respondent indicated he was only pursuing two grounds of objection as follows:-

- (i) surrender is precluded by s. 38 of the Act of 2003 as it is not possible to establish correspondence between the offences in the EAW and offences under the law of the State; and
 - (ii) surrender is precluded by s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR").
7. The respondent swore an affidavit in which he sets out various circumstances surrounding the conduct and failure of his business in Lithuania, the breakdown in his marriage, his move to Ireland and the commencement of a new relationship. He also sets out how he is attempting to service outstanding debt. The respondent indicates he has retained a lawyer in Lithuania who has advised him that even in a worse-case scenario, it is likely he will receive a fine or a suspended sentence and that he is willing to participate in any procedures remotely. He also expressed his concerns as regards the Covid pandemic. In a supplemental affidavit, the respondent exhibited correspondence from his lawyer in Lithuania stating it is unlikely a custodial sentence will be imposed and that there was a possibility of participating in the proceedings remotely if the prosecution did not object. It should be noted that at hearing, counsel for the respondent conceded that a request to so participate remotely had been rejected by the Lithuanian authorities.

Correspondence

8. Section 38(1)(b) of the Act of 2003 provides for a procedure whereby it is not necessary for the applicant to establish correspondence, or double criminality as it is sometimes referred to, where the offence is an offence to which article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States ("the Framework Decision") applies and which carries a maximum penalty of at least 3 years' imprisonment under the law of the issuing state. At part E.I of the EAW, the issuing judicial authority has invoked the procedure provided for at s. 38(1)(b) by certifying that the offences carry a maximum penalty of at least 3 years' imprisonment and ticking the box for "*swindling*", as the relevant offence to which article 2(2) of the Framework Decision applies. There appears to be an error in the English translation at part E.II of the EAW, with the offences not covered by the tick-box procedure at E.II indicated as being "*Law (sic) value swindling*" only, whereas in the original Lithuanian version, a second range of offences is also listed at part E.II, viz. "*Apgaulingas apskaitos tvarkymas*".
9. It is clear that the reference to "*Law value swindling*" is a typographical error and should read "*low-value swindling*" and refers to the four offences already referred to herein in respect of which there is a maximum penalty of 45 days' arrest. The second category of offences omitted from the English version appears to be a reference to the accounting offences numbered 25 and 26 at part E of the EAW, but there is undoubtedly some ambiguity in the documents currently before the Court. It is open to the Court to seek additional information from the issuing judicial authority or, if it is clear that correspondence can be established, to simply rely upon the establishment of correspondence under s. 38(1)(a) of the Act of 2003. I am satisfied that correspondence

can be established between the offences referred to in the EAW and offences under the law of this State. I am satisfied that as regards the offences numbered 1 to 24 inclusive, the corresponding offence under the law of the State is the offence of deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 ("the Act of 2001"). In essence, it is alleged that the respondent took money by deceit from another in respect of orders which he knew would not be fulfilled. As regards the offences numbered 25 and 26, I am satisfied that the corresponding offence under the law of the State is an offence contrary to s. 286(2) of the Companies Act, 2014 ("the Act of 2014") whereby a director of a company commits an offence if he/she fails to take reasonable steps to secure compliance by the company with the requirements of ss. 281 to 285 of that Act or, by his/her own intentional act, has been the cause of any default by the company under ss. 281 to 285 of that Act. Sections 281 to 285 of the Act of 2014 relate to the keeping of accounting records, and the acts alleged against the respondent would amount to a breach of s. 282. I am also satisfied that as regards the offences numbered 25 and 26 at part E of the EAW, correspondence can be established between those offences and the offence under the law of the State of false accounting contrary to s. 10 of the Act 2001. It is alleged that the respondent concealed and/or falsified accounts.

10. I dismiss the respondent's objection to surrender based on s. 38 of the Act of 2003.

ECHR Rights

11. Counsel on behalf of the respondent submitted that surrender would be incompatible with the State's obligations under the ECHR, as it would amount to a disproportionate and unjustified interference with the respondent's right to a private and family life as guaranteed by article 8 ECHR. He relied on the respondent's affidavits and pointed to the lapse of time since the alleged offences, the likelihood that no custodial sentence would be imposed, the willingness of the respondent to undergo a remote interview with the Lithuanian authorities and the fact that the respondent had moved on with his life in Ireland.
12. In *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, MacMenamin J. stated at para. 89:-

"89. Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues."
13. While there has been a considerable lapse of time since the alleged commission of the offences referred to in the EAW, I do not regard this in itself as being truly exceptional or egregious so as to constitute an abuse of process or to raise other constitutional or ECHR issues. The surrender of the respondent is sought to face trial. Any issues he has in relation to delay and/or a fair trial can be raised in the course of those proceedings in Poland. No cogent evidence has been adduced to dislodge the presumption contained in s. 4A of the Act of 2003 that the issuing state will comply with the Framework Decision,

including respect for fundamental rights and fundamental legal principles as enshrined in article 6 of the Treaty on the European Union.

14. In *Vestartas*, MacMenamin J. stated at para. 94:-

"94. The contrast with the exceptional facts in J.A.T. is plain. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s. 4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s. 37(1), they must be such as would render an order for surrender 'incompatible' with the State's obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."

15. I find that the family circumstances of the respondent, as set out in his affidavit, fall far short of being truly exceptional, such as would justify this Court in refusing surrender on the grounds that surrender would be incompatible with the State's obligations under the ECHR or the Constitution. It is an unfortunate fact of life that being accused of, and tried for, an offence will be disruptive of private and family life and stressful for the accused and family members. There is nothing contained within the affidavit of the respondent as regards his circumstances, looked at alone or in conjunction with the lapse of time, to take this matter into the realm of being truly exceptional.

16. I dismiss the respondent's objection to surrender based on s. 37 of the Act of 2003.

Conclusion

17. I am satisfied that the respondent's surrender is not prohibited by part 3 of the Act of 2003.

18. Having dismissed the respondent's objections, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Lithuania in respect of all the offences referred to in the EAW except the offences numbered 10, 12, 13 and 19 at part E of the EAW, which are said to be offences contrary to article 182(3) of the Criminal Code of the Republic of Lithuania.