

**THE HIGH COURT**

[2021] IEHC 207  
[2020 No. 311 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**JEVĢENIJS PLINTA**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 19th day of March, 2021**

1. By this application the applicant seeks an order for the surrender of the respondent to the Republic of Latvia ("Latvia") pursuant to a European arrest warrant dated 2nd September, 2020 ("the EAW"). The EAW was issued by Mr. K. Kalniņš, of the Prosecutor General's Office of the Republic of Latvia. The EAW seeks the surrender of the respondent in order to enforce a sentence of 10 months' imprisonment imposed on 16th October, 2019 of which 9 months and 12 days remains to be served.
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 26th January, 2021.
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 that the sentence in respect of which surrender is sought is in excess of 4 months' imprisonment.
6. I am satisfied that correspondence can be established between the offence in the EAW and an offence under the law of the State, viz. theft and/or burglary contrary to ss. 4 and 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, respectively. Correspondence was not contested at hearing.
7. The respondent delivered points of objection dated 11th February, 2021, as follows: -
  - (i) surrender is precluded by s. 45 of the Act of 2003; and
  - (ii) surrender should be postponed to allow the respondent make plans as regards arrangements in respect of his two children.
8. The solicitor for the respondent, Mr. Philip English, swore an affidavit dated 27th January, 2021 in support of a bail application. He swore three supplemental affidavits dated 4th, 5th and 9th March, 2021, respectively, in support of the respondent's objection to surrender.

9. Section 45 of the Act of 2003 incorporates article 4a of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), into Irish law and provides as follows:-

*"45.—A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section.*

TABLE

(d) *Indicate if the person appeared in person at the trial resulting in the decision:*

1. *Yes, the person appeared in person at the trial resulting in the decision.*
2. *No, the person did not appear in person at the trial resulting in the decision.*
3. *If you have ticked the box under point 2, please confirm the existence of one of the following:*
  - 3.1a. *the person was summoned in person on . . . (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;*

OR
  - 3.1b. *the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;*

OR
  - 3.2. *being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;*

OR
  - 3.3. *the person was served with the decision on . . . (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and*

*the person expressly stated that he or she does not contest this decision,*

OR

*the person did not request a retrial or appeal within the applicable time frame;*

OR

- 3.4. *the person was not personally served with the decision, but*
- *the person will be personally served with this decision without delay after the surrender, and*
  - *when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and*
  - *the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be . . . days.*

4. *If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met."*

10. At part D of the EAW, the issuing judicial authority indicates that the respondent did not appear in person at the trial resulting in the decision and goes on to highlight the equivalent of point 3.4 of the table set out at s. 45 of the Act of 2003 as follows:-

*"3.4 the person was not personally served with the judgment, but*

- *the person will be personally served with this decision without delay after the surrender, and*
- *when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and*
- *the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be 30 days."*

11. Counsel for the respondent submitted that there was an element of ambiguity in relation to whether the respondent would have a right to a retrial/appeal or merely a right to request same, which said request might be acceded to or refused.

12. The Court sought additional information and by way of reply dated 17th February, 2021, the issuing judicial authority states:-

*"According to the provisions of Section 465(3) and (3I) of the Criminal Procedure Law, if Jevgeņijs Plinta will lodge the appeal complaint regarding Daugavpils Court judgment of 16 October 2019, then as of the moment when he will be actually*

*surrendered to Latvia for serving the liberty deprivation sentence he will have the status of defendant and all rights of defendant, including the rights to appeal the court ruling. In this given case the enforcement of Daugavpils Court judgment of 16 October 2019 will be suspended until the moment when the higher level court will review his appeal complaint and the court ruling will enter into force.”*

The relevant statutory provisions of the Latvian Criminal Procedure Law were enclosed with the reply.

13. The respondent obtained a report from a Latvian lawyer as regards the reply from the issuing judicial authority. The said report confirms that the respondent will be entitled to a full appeal if surrendered.
14. I am satisfied on the basis of the documentation before the Court that, if surrendered, the respondent will have a right to appeal the decision resulting in the sentence of 10 months' imprisonment in respect of which his surrender is sought. I am satisfied that the requirements of s. 45 of the Act of 2003 and article 4a of the Framework Decision have been met. I dismiss the respondent's objection to surrender based on s. 45 of the Act of 2003.
15. I am satisfied that the personal circumstances of the respondent fall far short of being truly exceptional so as to justify refusal of surrender under s. 37 of the Act of 2003.
16. I am satisfied that the surrender of the respondent is not precluded by part 3 of the Act of 2003 or any provision of that Act.
17. 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 Latvia. The Court will hear a separate application in respect of postponement of surrender.