

THE HIGH COURT

[2021] IEHC 271
[2020 No. 213 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

DORIN CONSTANTIN RAGABEJA

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 16th day of April, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 11th June, 2019 (“the EAW”), issued by Judge Constantin Magdalina of the Tribunal of Neamț as the issuing judicial authority. The surrender of the respondent is sought to enforce a sentence of 4 years’ imprisonment imposed on the respondent on 6th February, 2019, upheld on appeal on 4th June, 2019, all of which remains to be served. The sentence was imposed in respect of a single offence concerning making and sharing sexual images of a girl aged 13 years and 9 months.
2. The EAW was endorsed by the High Court on 22nd September, 2020 and the respondent was arrested and brought before this Court on 16th January, 2021.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
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 and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 are met. The sentence to be served is in excess of 4 months’ imprisonment.
6. At the start of part E of the EAW, a description of the circumstances of the offence is set out. Further details of same are set out at part E.II. of the EAW. I am satisfied upon reading the EAW as a whole that correspondence can be established between the offence the subject- matter of the EAW and an offence under the law of the State, viz. an offence contrary to s. 5 and/or s. 6 of the Child Trafficking and Pornography Act, 1998. No issue was taken in respect of correspondence.
7. At part D of the EAW, it is indicated that the respondent was present at the trial resulting in the decision. I am satisfied that no issue arises in respect of s. 45 of the Act of 2003.
8. Counsel on behalf of the respondent indicated that she was maintaining a single objection to surrender as follows:-
 - (i) surrender is precluded by s. 37 of the Act of 2003 as there was a real risk that the respondent would be subjected to inhuman and degrading treatment due to conditions in Romanian prisons.

9. The solicitor for the respondent, Mr. Kenneth Cunningham, swore an affidavit dated 26th February, 2021 exhibiting a report from the European Council Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") dated 19th March, 2019, in respect of a visit to Romania in February 2018. The respondent also relied upon a report from a Romanian lawyer, Mr. Bugnariu Dănuț-Ioan, dated 25th February, 2021, and an addendum to that report dated 10th March, 2021.
10. The CPT report, in its executive summary, noted positively the efforts invested in reform of the Romanian prison system since 2014. While the prison population had been reduced by 30%, there were still issues with overcrowding but this was not evenly spread among or within prisons, with the most serious levels observed in closed regime, pre-trial and admission (quarantine) cells. In general, conditions in prisons were poor.
11. The expert report of Mr. Dănuț-Ioan indicates that prisoners serving sentences exceeding 3 years but less than 13 years are usually held in a 'closed' regime with two inmates per cell (if possible, with at least 4 square metres of personal space), are allowed to work and take part in various activities under supervision. The applicable regime is reviewed after one-fifth of the sentence has been served. In the opinion of Mr. Dănuț-Ioan, the respondent, if surrendered, was likely to be held in a closed regime in Bacau prison. There are six prison facilities within Bacau and statistics showed that in 2019, facilities no. 3 and no. 5 had improper conditions in that personal space fell below 4 square metres per detainee. On 23rd February, 2021, the occupancy rate was approximately 103% on the basis of 4 square metres per detainee. The last report of the Romanian Ombudsman regarding Bacau Prison, dated 22nd June, 2020, established that for the whole prison, there was an average occupancy rate of 99.75% on the basis of 4 square metres per detainee, but that in the closed regime there was an overcrowding rate of 196%.
12. The Court requested additional information from the issuing judicial authority regarding the conditions in which the respondent was likely to be detained if surrendered. By reply dated 5th April, 2021, the issuing judicial authority enclosed a letter from the Romanian National Administration of Penitentiaries of the same date. This letter indicates that, if surrendered, the respondent will initially spend 21 days in quarantine in Bucharest-Rahova Penitentiary where he will have a minimum of 3 square metres individual space. As regards any sentence, bearing in mind the relevant criteria to be applied, the respondent is likely to initially be detained in a close status and possibly in Bacau Penitentiary. The conditions for same are set out in the letter. After serving one-fifth of the penalty, the status of the respondent will be re-assessed and, depending upon behaviour, he may move to a semi-open status, most likely in Miercurea-Ciuc Penitentiary. The conditions for this regime and institution are set out in the letter. If the respondent is assigned to serve the penalty in an open regime, then he is likely to be transferred to Iasi Penitentiary and again the relevant conditions in respect of same are set out. The letter concludes with the following assurance:-

"Considering the perspective of implementing the measures comprised in 'Action Plan 2020 – 2025 for executing the pilot-decision Rezmives and others vs. Romania

as well as the decisions delivered in the group of matters Bragadireanu vs. Romania', as well as the actual trend of the number of inmates held in custody by the National Administration of Penitentiaries, following the criminal law policies adopted by the Romanian state, the National Administration of Penitentiaries warrants for ensuring a minimum individual space of 3 square meters throughout the penalty serving term, including the bed and related furniture, without comprising the space intended for restroom."

13. Having reviewed and evaluated all of the information before the Court, I am not satisfied that there are substantial grounds for believing that, if surrendered, the respondent is at a real risk of being subjected to inhuman or degrading treatment contrary to article 3 of the European Convention on Human Rights ("the ECHR") or article 4 of the Charter of Fundamental Rights of the European Union by virtue of the likely conditions of his detention. I regard the assurances contained in the letter from the Romanian National Administration of Penitentiaries as having been endorsed by the issuing judicial authority as the letter was provided to this Court by the issuing judicial authority. Moreover, even regarding the said assurances as coming from an entity other than the issuing judicial authority, on reviewing and evaluating same in the context of all the information before the Court, I am satisfied that same can be given significant weight, as the assurances are specifically related to the respondent, to the regimes he is likely to be detained under and to the institutions he is likely to be detained in. The assurances are specifically given in the context of the judgments and requirements of the European Court of Human Rights.
14. It should be noted that s. 4A of the Act of 2003 provides for a presumption that Member States will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. On considering all of the evidence before the Court, I am satisfied that the presumption in s. 4A of the Act of 2003 has not been rebutted.
15. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine if surrender of the respondent would be incompatible with the obligations of the State under the ECHR, the protocols thereto, or the Constitution. I am satisfied that surrender would not be incompatible with such obligations.
16. I dismiss the respondent's objection to surrender based on s. 37 of the Act of 2003.
17. I am satisfied that the surrender of the respondent is not precluded by part 3 of the Act of 2003 or any other provision of that Act.
18. Having dismissed the respondent's objection to surrender, 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 Romania.