

**THE HIGH COURT**

[2021] IEHC 639  
[2021 No. 126 EXT]

**BETWEEN**

**THE MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**ROMEO ROSTAS**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 4th day of October, 2021**

1. By this application, the applicant seeks an order for the surrender of the respondent to the French Republic pursuant to a European arrest warrant dated the 16th April, 2021 ("the EAW"). The EAW was issued by Serge Bocoviz, Deputy General Prosecutor of the General Prosecutor's Office of Aix-en-Provence, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of three years' imprisonment, all of which remains to be served.
3. The respondent was arrested on 16th May, 2021 on foot of a Schengen Information System II alert, and brought before the High Court on the following day, 17th May, 2021. The EAW was produced to the High Court on 28th May, 2021.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. 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 precluded for any of the reasons set forth in any of those sections.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender of the respondent is sought is in excess of four months' imprisonment.
7. Part B of the EAW indicates that the judgment to be enforced is an order of the Court of Appeal of Aix-en-Provence, dated 14th January, 2015 (repeated default), reference no. 15/00037.

**Section 38 of the Act of 2003 - Correspondence**

8. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between the offences to which the EAW relates and offences under the law of this State where the offences referred to in the EAW are offences to which Article 2.2 of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), applies and carry a maximum penalty in the issuing state of at least three years' imprisonment. In this instance, at part E of the EAW the issuing judicial authority has certified that the offences referred to in the EAW are offences to which Article 2.2 of the Framework Decision applies, that same are punishable

by a maximum penalty of at least three years' imprisonment and has indicated the appropriate box for "*organised or armed robbery*".

9. At part E of the EAW, it is indicated that it relates to two offences. Under the heading "*Description of the circumstances in which the offence(s) was (were) committed, including the moment (date and time), place and degree of participation in the offence(s) by the requested person*", the issuing judicial authority has indicated the place as Taradeau (83); the date from 17th February, 2011 to 22nd February, 2011, and the degree of participation as "*perpetrator*". A description of the offences is then given as follows:-

*"On 31 January 2013, at about 11 p.m., Roméo ROSTAS was controlled by the French gendarmes during their surveillance mission in the municipality of TARADEAU, in a commercial vehicle parked in front of a car breakers' yard which had been burgled into several times previously. When he was heard, he admitted his participation in the metal robbery committed during the night of 22 February 2011, during which his D.N.A. was found on a trace of blood on the cut railing of the facility. However, he denied his participation in the robbery committed on 17 February 2011 in the same facility."*

10. It is not clear, from the description of the offences set out in the EAW, the basis upon which Article 2.2 and, in particular, "*organised or armed robbery*" can be relied upon in this instance. The description of the offences makes no reference to the respondent being armed or to being involved in any organised activity with other persons. On the basis of the additional information furnished, it appears that the respondent was acting in concert with others in committing the offences, but the actions do not amount to robbery as defined in Irish law. In any event, I am satisfied that if necessary, correspondence can be established between the offences to which the EAW refers and offences under the law of this State, viz. burglary contrary to s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and/or theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and/or criminal damage contrary to s. 2 of the Criminal Damage Act 1991. This was ultimately conceded by counsel for the respondent.

#### **Section 45 of the Act of 2003**

11. At part D of the EAW, the issuing judicial authority has failed to indicate specifically whether or not the respondent appeared at the proceedings which led to the decision. It has, however, indicated reliance upon a number of paragraphs at part D of the EAW, which would indicate that the respondent did not appear at the hearing which led to the decision.
12. The issuing judicial authority has indicated reliance upon the equivalent of point 3.1.a of the table set out at s. 45 of the Act of 2003, as follows:-

*"3.1 a) the person concerned was summoned in person on 10 November 2014 and was thus informed of the date and place of the lawsuit which led to the decision, and whether he was informed that a decision could be made in absentia."*

Reliance is also indicated upon the following:-

*"- 3.4 The person concerned has not received notice of the decision in person, but*

- he shall receive it immediately after service thereof, and*
- when he has received it, he shall be expressly informed of his right to new judgment proceedings or to appeal proceedings, which the person concerned is allowed to take part in and during which the case can be re-examined on the merits, with new evidence being taken into account, and which may lead to the initial decision being quashed, and*
- he shall be informed of the timeframe within which he must request new judgment or appeal proceedings, i.e. ... days."*

13. The issuing judicial authority then goes on to state as follows:-

*"Repeated default falls within the scope of Article 494 of the French Code of Criminal Procedure. It means that the person sentenced a first time in absentia submitted an application to set aside when he was informed of the first default order; a new hearing date was then notified to him so that he can be judged again but the person concerned failed to appear at such new hearing: in this case, the first decision is confirmed by Law. However, the rendered decision is already enforceable. When notice of the repeated default order is served on him, the person concerned shall be allowed to lodge an appeal."*

14. The respondent swore an affidavit dated 16th June, 2021 in which he avers that he was incarcerated in a prison in Marseilles, in the issuing state, on 22nd February, 2012 (and that he was not in custody in February 2011). He avers that he was arrested by the gendarmes in Taradeau on 31st January, 2013 in respect of a single offence committed on 22nd February, 2011. He avers that he spent approximately 24 hours in the custody of the gendarmes, during which period he made a formal statement admitting the theft of 12 or 13 car batteries and electric cables from an unoccupied/unattended scrapyards and also cutting through the scrapyards' fence to gain entry. He avers that he was brought to the local court on the following day, was convicted and given a six-month sentence and brought into custody. He avers that that sentence was then suspended/commuted on the same day by the same judge and he was told that he was free to leave. He returned to Romania. He had a new national identity card issued by the Romanian authorities and travelled to Ireland, arriving in 2014. He avers that he did not receive a summons in person on 10th November, 2014. He states that he arrived in Ireland in December 2014. He avers that he was not aware of any outstanding court dates, he did not evade justice and, if he had known of any outstanding court dates, he would have attended same. He avers that he did not make or instruct a lawyer to make any application to set aside any judgment.

15. By additional information dated 22nd June, 2021, it is indicated that:-

*"ROSTAS Romeo was prosecuted before the DRAGUIGNAN correctional court at the hearing of 4 02 2013 for having stolen in a meeting with several people and by breaking and entering:*

*1/ the 17 02 2011 in TARADEAU (France) 80 car batteries, a car aluminium rim, 600 klg of copper cables and a catalytic convertor by cutting the external grill to the prejudice of the company DELTA AUTO represented by mr Cyrile COURSOL, And in state of legal recidivism for having already been condemned by the correctional court of Aix en Provence the 27 04 2012 for similar facts*

*2// In the night of 22 to 23 02 2011 in TARADEAU (France) cable, 150 radiators, mechanical parts and 20 rims to the detriment of the company DELTA AUTO represented by mr Cyrile COURSOL And in a state of legal recidivism for having already been sentenced by the criminal court of Aix en Provence on 27 04 2012 for similar facts.*

*His DNA was found on the fence that he cut to enter the premises of the victim company."*

16. The additional information goes on to indicate that the Court of Draguignan, before which the respondent was present and assisted by his lawyer "*cancelled the procedure for formal defect and released ROSTAS*"; the prosecutor appealed and the court of appeal of Aix-en-Provence on 14th January, annulled the judgment of the lower court and sentenced the respondent to three years' imprisonment. The decision of the court of appeal was rendered by default, the respondent was notified of same on 10th November, 2014 and "*he immediately objected to this decision to be retried*". He was personally summoned by a judicial police officer for a new hearing on 14th January, 2015 to be retried and was therefore aware of the date and place of the trial concerning him. He did not appear at this trial and the court of appeal confirmed the sentence of three years' imprisonment.

17. By additional information dated 30th June, 2021 it is indicated as follows:-

*"... I can confirm that Romeo ROSTAS will have a period of 5 clear days to lodge appeal with the Court of Cassation from the day of notification of the Court of Appeal's decision, which will be made on the day he is handed over to the French judicial authority."*

18. In a supplemental affidavit dated 12th July, 2021, the respondent avers that he was not notified of his conviction on 10th November, 2014, he did not immediately object and he was not personally notified of the hearing on 14th January, 2015. He avers that if he had been made aware of court dates he would have attended same.

19. Following upon the supplemental affidavit sworn by the respondent, the Court sought further details as to how the decision of the court of appeal of 10th November, 2014 was notified to the respondent and how notice of the retrial on 14th January, 2015 was given

to the respondent. By response dated 11th August, 2021, the contents of the reply dated 22nd June, 2021 were reiterated and a copy of the court of appeal judgment in French of 14th January, 2015 was furnished. An English translation of same was furnished on 2nd September, 2021, in which the court of appeal expressly states that on 10th November, 2014, the respondent was notified of the sentence of three years' imprisonment, he immediately made an objection to same, he was summoned by an investigating officer for the hearing on 14th January, 2015 and failed to appear.

20. Section 45 of the Act of 2003 transposes into Irish law Article 4a of the Framework Decision and provides:-

*"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 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 set out thereafter.]

21. In essence the, applicant submits that the requirements of s. 45 of the Act of 2003 have been met. The issuing authority has indicated its reliance upon the equivalent of point 3.1. a as follows:-

*"3.1 a) the person concerned was summoned in person on 10 November 2014 and was thus informed of the date and place of lawsuit which led to the decision, and whether he was informed that a decision could be made in absentia."*

22. The respondent avers that he received no such summons or notice. Understandably to some extent, this remains a bare denial.

23. Bearing in mind the mutual trust and confidence which underpins the European arrest warrant system, I am satisfied to accept the information furnished by the issuing state to the effect that the respondent was personally summoned on 10th November, 2014 in respect of the hearing before the court of appeal on 15th January, 2015. In addition to the indication of same in the EAW, this has been specifically set out in response to a request from this Court. Furthermore, I note that in its decision of 15th January, 2015, the court of appeal of Aix-en-Provence expressly sets out that the respondent was so summoned.

24. While it is not strictly relevant to the issue to be determined, I take further comfort from the fact that the respondent will be entitled to appeal to the court of cassation upon his surrender.

25. I am satisfied that the requirements of s. 45 of the Act of 2003 have been met and I dismiss the respondent's objection based on that section.

## **Conclusion**

26. I am satisfied that the surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other part or provision of that Act.
27. It follows from the foregoing that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the French Republic.