

THE HIGH COURT

[2021] IEHC 698
[2020 No. 346 EXT]

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

VOJTECH GABOR

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 23rd day of September, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to the Czech Republic pursuant to a European arrest warrant dated 26th February, 2020 ("the EAW"). The EAW was issued by Jaroslava Bartosova, Judge of the Regional Court in Brno, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of eight years' imprisonment imposed upon the respondent on 20th May, 2005 and upheld on appeal on 11th October, 2005. Seven years and 18 days of the sentence remains to be served.
3. The EAW was endorsed by the High Court on 14th December, 2020. The respondent was arrested on foot of same and brought before the High Court on 20th February, 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 is sought is in excess of four months' imprisonment.
7. At part D of the EAW, it is indicated that the respondent appeared in person at the trial resulting in the decision to be enforced.
8. At part E of the EAW, it is indicated that the warrant relates to three offences. However, by way of additional information dated 27th May, 2021 (received 2nd July, 2021) it is clarified that part E of the EAW in fact refers to four offences being an offence of attempted fraud, two offences of fraud and an offence of obstructing the execution of an official decision. By way of additional information dated 4th December, 2020, 11th December, 2020 and 27th May, 2021(received 2nd July,2021) , more detail as to the various offences is furnished.
9. 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 the 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, 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 "swindling". It is clear that this certification could not be applicable to the offence of obstructing the execution of an official decision in light of the details provided as regards the circumstances surrounding the commission of that offence. I am satisfied, however, that the certification could be properly applied to the three fraud-type offences. Insofar as there may be any ambiguity concerning the certification, I am satisfied that, in the absence of the procedure provided for by s. 38(1)(b) of the Act of 2003, correspondence can be established between the three fraud-type offences and offences under the law of the State, namely the offence at common law of attempted deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and the offence of deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. As regards the offence of obstructing the execution of an official decision, I am satisfied that correspondence can be established between that offence and an offence at Irish law of driving while disqualified contrary to s. 38 of the Road Traffic Act, 1961. This is dealt with at greater length hereinafter.

10. The respondent objected to surrender on the following grounds:-
- (i) surrender is precluded as there was lack of clarity surrounding the number of offences to which the EAW relates;
 - (ii) surrender is precluded by reason of s. 38 of the Act of 2003;
 - (iii) surrender is precluded by reason of s. 45 of the Act of 2003; and
 - (iv) surrender is precluded by reason of s. 37 of the Act of 2003.

Section 11 of the Act of 2003

11. Counsel for the respondent initially objected to surrender on the basis that it was unclear from the EAW whether same related to three or four offences. Counsel on behalf of the respondent also raised a concern as to whether the punishment for the driving offence was included in the eight-year term of imprisonment imposed. He submitted that if it was not so included, then there was no information before the Court to indicate whether the minimum gravity requirements of the Act of 2003 had been complied with in respect of same.
12. As indicated earlier herein, it has been clarified by the issuing judicial authority that the EAW relates to four offences. By way of additional information dated 4th December, 2020, the issuing judicial authority confirms that the punishment was for all offences. This is

again confirmed in additional information dated 21st July, 2021. I am satisfied that the EAW relates to a single aggregate sentence of eight years' imprisonment imposed in respect of four offences, including the offence of obstruction of execution of an official decision, and there is no remaining lack of clarity or ambiguity and I dismiss the respondent's objections in that regard.

Section 38 of the Act of 2003

13. Counsel on behalf of the respondent contested whether correspondence could be established between the offence of obstructing the execution of an official decision and any offence under the law of the State. The offence is described at part E of the EAW as follows:-

"The Judgment of the District Court in Přerov of 26th March 2001, ref. No. 1 T 254/2000, which became final and conclusive on 20th June 2001, found Vojtěch Gábor guilty of Obstructing the Execution of an Official Decision in accordance with S 171 (1) (c) of the Criminal Code; he committed the offence by driving a personal vehicle although the decision of the Traffic Inspectorate of the Police of the Czech Republic, Olomouc District Headquarters, prohibited him to undertake activities, namely driving of all motor vehicles."

14. By additional information dated 27th May, 2021, further details of that offence are set out as follows:-

"In case conducted by the District Court in Přerov under case ref. No. 1 T 254/2000 the act is described in the judgment so that on 6th January 2000, at about 00.55 A.M., Vojtěch Gábor was driving a personal motor vehicle BMW 318i, registration number: OCN 42-92 in Přeřov in the Komenského street and he was checked by a patrol of the Police of the ČR, when he was driving the motor vehicle despite the fact he had been found guilty of committing a misdemeanour against the traffic safety and traffic flow by a decision of the Traffic Authority of the Police CR, District Headquarters Olomouc of 5th January 2000, OROL-86/DI-99 and he was fined with CZK 7.000. Further, a ban of activity was imposed on him consisting of the driving disqualification for the period of 12 months at the time from 13 January 1999 until 12 January 2000, when this resolution became effective on 5th January 2000."

Therefore, Vojtěch Gábor committed the offence on 5th January 2000."

15. Counsel on behalf of the respondent submits that as the police in Ireland could not issue a driving ban, then there could be no correspondence between the acts committed by the respondent and an offence under Irish law.
16. Section 38 of the Road Traffic Act, 1961 provides as follows:-

"38-(1) A person shall not drive a mechanically propelled vehicle in a public place unless he holds a driving licence for the time being having effect and licensing him to drive the vehicle."

17. It is clear from the description of the circumstances of the offence as set out in the EAW and the additional information that the respondent drove a mechanically propelled vehicle in a public place when he did not have a driving licence having effect and licensing him to drive the vehicle at the time. This is the essence of the offence under s. 38 of the Road Traffic Act, 1961. It does not appear to be a prerequisite to an offence under s. 38 of the Road Traffic Act, 1961 that the person be disqualified from driving by a court. What is required is that the person does not have a valid and effective licence to cover his driving on the occasion.

18. Furthermore, while I do not believe it is strictly necessary to do so, I would apply the reasoning of the Supreme Court in *Minister for Justice v. Szall*, [2013] 1 I.R. 470, to this matter. In *Szall*, Clarke J., as he then was, set out the approach to be taken as follows at para. 49:-

"[49] The real question which must be asked is as to whether those statutory regimes themselves are sufficiently similar so that breach of one may be taken to correspond to breach of the other even though the schemes are not, for obvious reasons, the same scheme."

19. Dealing with the different systems for temporary release, he stated at para. 53:-

"[53] I am not persuaded that the difference in the identity of the person or body which has lawful authority to allow a temporary release or break, as the case may be, is of sufficient materiality to render the two statutory regimes sufficiently different so as to exclude correspondence. The range of persons or bodies who may have decision making power in respect of statutory regimes can vary enormously. Sometimes, as with Irish temporary release, the decision maker may be a political office holder. Sometimes, for example, such as, on the facts of this case, applies under article 242(3) of the Polish criminal code, the decision maker may be a court. In other circumstances, the decision maker may be a quasi judicial tribunal or a statutory body. Within each of those groups there can, of course, be variations in the designated decision maker from country to country, so that even if the same type of person or body has decision making power the precise identity of the person or body may vary. A decision in one country may rest with a Minister for Health whereas the same decision in a largely identical statutory regime in another country may rest with a Minister for the Environment. Even the precise parameters of the remit of ministers and governmental departments, let alone statutory officers or bodies, varies enormously from state to state. The breadth of the remit of statutory bodies or quasi judicial tribunals can vary greatly. There will often not be an exact correspondence between such persons or bodies however described from one country to another."

20. Later in his judgment, Clarke J. stated at para. 55:-

"[55] However, it seems to me that no such difficulties arise on the facts of this case. The power to release is simply given to different types of public office holders in,

respectively, Poland and Ireland. The fact that it happens to be a judge in one jurisdiction and a minister in another does not, in my view, give rise to any material distinction between the two regimes. The fact remains that both regimes make provision for a temporary release or break during a custodial sentence and provide a designated person who is entitled to make a decision as to whether that release or break should be allowed. Those regimes make it an offence not to return to prison at the end of a fixed period release or break. For those reasons, it does not seem to me that the difference in identity between the person or body having power to allow the release or break creates a material difference."

21. I am satisfied that there is sufficient similarity between the regime in the Czech Republic and that in Ireland for the disqualification of drivers and the enforcement of same to allow correspondence to be established. I do not believe that the fact that the disqualification may be ordered by a non-judicial entity in the Czech Republic is a sufficient distinction to prevent this Court establishing such correspondence.
22. I am satisfied that correspondence can be made out between the offence of obstructing the execution of an official decision referred to in the EAW and the offence of driving without a licence contrary to s. 38 of the Road Traffic Act, 1961.

Section 45 of the Act of 2003

23. Section 45 of the Act of 2003 transposes Article 4A of 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 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]

24. At part D of the EAW, it is indicated that the respondent appeared in person at the trial resulting in the decision to be enforced. That decision is the judgment of the Regional Court in Brno of 20th May, 2005, ref. No. 40 T 10/2003-8345, in connection with the Judgment of the High Court in Olomouc of 11th October, 2005, ref. No. 2 To 102/2005-8746. The respondent's solicitor, Ms. Shalom Binchy, swore an affidavit dated 13th April, 2021 in which she avers that she was instructed by the respondent that he was not present at the hearing of the District Court in Prerov of 26th March, 2011 by which he was found guilty of the driving offence referred to in the EAW. It may be inferred from this averment that the respondent does not dispute that he was present for the hearing in relation to the sentence of eight years' imprisonment imposed in respect of all four matters on 20th May, 2005, upheld on appeal on 11th October, 2005.
25. By way of additional information dated 27th May, 2021, the issuing judicial authority completed a Table D in respect of the judgment of 26th March, 2001, concerning the

driving offence, indicating that the respondent did not appear in person at the trial resulting in the decision. It goes on to indicate reliance upon the following: -

"3.1a. the person was summoned in person on 12th March 2001 and thereby was 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;

...

3.3. the person was personally served with a decision on 11th June 2000 and the person was expressly informed of 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 did not request a retrial or appeal within the applicable timeframe."

26. Point 3.3 of Table D is completed by the issuing judicial authority and appears to contain a typographical error as it refers to the respondent being personally served with a decision on 11th June, 2000 whereas the decision is dated 26th March, 2001. By way of additional information dated 21st July, 2021, it is clarified that it should read "2001" instead of "2000".
27. The additional information of 27th May, 2021 sets out that as regards the driving offence, the maximum penalty is a custodial sentence of up to six months or a financial penalty. It further indicates that a financial penalty of CZK 20,000 was imposed on the respondent by the judgment of the District Court in Prerov of 26th March, 2001. However that penalty has now been subsumed into the sentence of eight years' imprisonment imposed in 2005 and cannot be separated from same. There is a single sentence to be enforced.
28. On the basis of the additional information furnished, I am satisfied that the requirements of s. 45 of the Act of 2003 have been met as regards the driving offence conviction in 2001.
29. I am satisfied that the requirements of s. 45 of the Act of 2003 have been met as regards the hearing in 2005 which resulted in the sentence which is to be enforced. The respondent was present for the hearings in 2005 in respect of which a single sentence was imposed in respect of all four offences referred to in the EAW. I am satisfied that the mischief which Article 4A of the Framework Decision and s. 45 of the Act of 2003 seek to avoid did not arise in the present case.

Section 37 of the Act of 2003

30. Counsel for the respondent submits that surrender of the respondent was incompatible with the State's obligations under the European Convention on Human Rights, the

protocols thereto or would be in contravention of the Constitution as it would subject the respondent to a real risk of a breach of his fundamental rights and, in particular, his right not to be subjected to inhuman or degrading treatment or punishment. It was also submitted that the respondent would be subjected to discriminatory treatment due to his Roma ethnicity.

31. On hearing submissions and having considered the information put before the Court, additional information was sought and by a brief reply dated 21st July, 2021, the issuing judicial authority indicates that it could not state what prison the respondent was likely to be detained in but confirms that he would be afforded a minimum of three square metres personal space. It also confirms that satisfactory general conditions of detention will be provided as regards the various conditions specifically raised by this Court, such as sanitary facilities, bedding, outdoor exercise, medical care and food. In answer to the request for confirmation that the respondent would not suffer discrimination on grounds of his Roma ethnicity, the Issuing judicial authority states: "*No, it isn't legal possible*". The Court sought clarification of this.
32. By additional information dated 11th August, 2021, the issuing judicial authority confirms that the respondent will not suffer any discrimination on grounds of his Roma ethnicity from prison staff or state authorities, although it is acknowledged that the same guarantee cannot be given as regards the hidden behaviour of other prisoners. It is stated again that it is not possible to indicate in which prison the respondent will most likely be detained but it is indicated that each prisoner will be accommodated with at least four square metres personal space. I find no reason to doubt the knowledge, competence or *bona fides* of the issuing judicial authority as regards the information provided. Nor do I find any reason not to afford the issuing judicial authority the normal mutual confidence which underpins the system of European arrest warrants.
33. Having evaluated all of information before the Court, I am not satisfied that there are substantial reasons for believing that there is a real risk that, if surrendered, the respondent will be exposed to a breach of his fundamental human rights while detained in the issuing state.
34. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements of Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental human rights. I am satisfied that the presumption provided for in s. 4A of the Act of 2003 has not been rebutted in this case.
35. Bearing in mind the wording of s. 37 of the Act of 2003, this Court must determine whether the surrender of the respondent would be incompatible with the State's obligations under the European Convention on Human Rights, the protocols thereto or would contravene the Constitution. I am satisfied that the surrender of the respondent would not be incompatible with the obligations of the State in that regard and nor would it contravene any provision of the Constitution.

36. I reject the respondent's objection to surrender based on prison conditions in the Czech Republic.

Conclusion

37. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act.

38. Having rejected the respondent's objections to surrender, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the Czech Republic.