

THE HIGH COURT

[2022] IEHC 194
[2021 No. 97 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

SVETLANA ALEHNOVITS

RESPONDENT

JUDGMENT of Mr. Justice Caroline Biggs delivered on the 4th day of March, 2022

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Estonia pursuant to a European Arrest Warrant dated 6th of March 2018 ("the EAW"). The EAW was issued by Tatjana Bogdanova, Judge of the Harju County Court, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent to enforce a sentence of imprisonment imposed upon the respondent on the 30th day of March 2015, of which one year, one month and 27 days of imprisonment remains to be served.
3. The respondent was arrested on the 8th of September 2021 on foot of the EAW and brought before the High Court on the same day. The EAW was previously endorsed by the High Court on the 26th of April 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. 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.e. Theft contrary to Section 4 of the Criminal Justice Theft and Fraud Offences Act 2001 and Arson (Criminal Damage by Fire) pursuant to Section 2(4) of the Criminal Damage Act 1991.
8. **Is surrender prohibited by Section 11 of the 2003 Act**

At the early stages of these proceedings, the respondent submitted that there was a lack of clarity in relation to the number and type of offences referred to in the EAW. The EAW stipulates that it relates to one offence, namely the offence of theft. This is outlined at Para E of the EAW. However, in Para F of the EAW it is stated that the sentence required to be served by the respondent related to an aggregate sentence. It was not clear how many other offences were involved in the aggregate sentence or indeed it was not clear

what those offences related to. A Section 20 request was sent on the 28th of April 2021 and a comprehensive reply was provided on the 5th of May 2021. In light of this additional information the chronology of events can be set out as follows:

- On the 25th of December 2012 the respondent commits the offence of arson.
 - On the 11th of October 2013 the respondent is convicted of this offence and given a ten-month custodial sentence, this sentence is suspended in full.
 - On the 28th of March 2015 the respondent commits the offence of theft.
 - On the 30th of March 2015 the respondent is sentenced to an aggregate term of four months on the theft charge and ten months on the arson charge. This sentence is reduced for a period of three days to take into account the time that the respondent spent in custody and then a community service order is imposed in lieu of the sentence of imprisonment.
 - In June 2015 the Probation Services bring to the attention of the courts, the fact that the respondent has been non-compliant with the earlier orders of the Court.
 - On the 24th of March 2016 the conditional suspension is lifted, and the respondent is required to serve 1 year, 1 month and 27 days of the sentence.
9. The respondent accepts that she now has sufficient clarity in relation to the number and type of offences. However, she submits that the length of imprisonment is ambiguous. As a consequence of retrieving the domestic court orders she submits that the most recent court order in her possession suggested that the length of the sentence is not 1 year, 1 month and 27 days, but in fact is 1 year, 1 month and 29 days.
10. In light of this submission and having received a copy of the relevant order, this Court sought clarification regarding these matters by way of a Section 20 request dated the 23rd of December 2021 and asked the following questions of the issuing judicial authority:

- "1. Please confirm the length of sentence which remains to be served by Ms Alehnovits. Such confirmation is sought in the following circumstances:

Section E of the Warrant specifies that the remaining sentence to be served is 1 year, 1 month and 27 days of imprisonment. Point 3 of the further information of 11th May also states that the "unserved part of the sentence is 1 year, 1 month and 27 days of imprisonment." The Order of the Harju County Court of 2nd June 2015 also refers to a sentence of 1 year, 1 month and 27 days imprisonment. The Order of the Harju County Court of 24th March 2016 refers on pages 1 and 3 of the Order to a sentence of "1 (one) year, 1 (one) month and 27 (twenty-seven) days imprisonment" and to "...a sentence imposed by decision and not served (422 hours of community service works, ie 1 year, 1 month and 27 days imprisonment)...". However, pages 2 and 4 of the Order of the Harju County Court of 24th March 2016

refer to a "...final punishment to be served was 1 year, 1 month and 29 days" and "...responsible for her behaviour by the sentence to be served in full (422 hours of community service, i.e. 1 year, 1 month and 29 days of imprisonment)".

For ease of reference, copies of the Order of 2nd June 2015 and 24th March 2016 are attached to this request for further information.

2. Please provide a copy of the Order of the Harju County Court of 30th March 2015, if such a copy is available."
11. The issuing judicial authority replied by letter dated the 29th of December 2021 clarifying the length of the unserved portion of the sentence:

"[...] Svetlana Alehnovits must serve 1(one) year 1 (one) month and 27 (twenty-seven) days of imprisonment imposed on her by the Court Ruling of the Harju County Court No. 1-15-2535 of 30 March 2015.

You have correctly pointed out that in accordance with pages 2 and 4 of court ruling No. 115-2535 of Harju County Court of 24 March 2016 (ruling in absentia), the sentence of Svetlana Alehnovits is 1 (one) year 1 (one) month and 29 (twenty-nine) days of imprisonment. However, this length of sentence is incorrect, as the court order contains a typographical error."

12. As question 2 of the Section 20 request dated the 23rd of December 2021 was not answered by the issuing judicial authority, a further letter clarifying these matters was sent on the 31st of January 2022 to the central authority in Ireland:

"In response to your inquiry sent to the Harju County Court concerning the length of the unserved sentence of Svetlana Alehnovits (born: 24 November 1987), I once again confirm that it must be considered correct that Svetlana Alehnovits must serve 1 (one) year, 1 (one) month, and 27 (twenty-seven) days of imprisonment, which [has] been imposed on her by judgment No. 1-15-2535 of the Harju County Court of 30 March 2015 and executed by order No. 1-15-2535 of the Harju County Court of 24 March 2016 (order made by default)."

The court judgment dated the 30th of March 2015 from the Harju County Court enclosed with the letter dated the 31st of January 2022 reads as follows:

"Convict Svetlana Alehnovits pursuant to subsection 25(2) and clause 199 (2) 4) and 7) of the Penal Code and impose a sentence of imprisonment of six (6) months.

Reduce the punishment to be imposed on S. Alehnovits by one-third under subsection 238 (2) of the Code of Criminal Procedure, imposing an imprisonment of 4 (four) months as the punishment to be served.

In accordance with subsection 65 (2) of the Penal Code, add the unserved part of the sentence of 10 months of imprisonment imposed by the judgment of Harju

County Court of 11.10.2013 to the punishment imposed for the new offence and impose 1 (one) year and 2 (two) months of imprisonment as an aggregate punishment.

Pursuant to subsection 68 (1) of the Penal Code, include provisional custody on 28.30.03.2015, i.e. 3 (three) days, in the term of the punishment; 1 (one) year, 1 (one) month, and 27 (twenty-seven) days of imprisonment shall be served."

13. In light of the additional information this Court takes the view, and the respondent conceded, that there is now sufficient clarity in relation to the length of the sentence to be imposed.
14. However, counsel for the respondent drew the Court's attention to another sentence of 40 days imprisonment, which may have been part of the aggregate sentence, referred to in the court order dated 30th March 2015. This order referred to a judgment of the 12th of June 2006. A further Section 20 request dated the 15th February 2022 was sent requesting information in the following terms:

"The High Court gratefully acknowledges receipt of the Warrant, and the information contained therein. The High Court further gratefully acknowledges the further information provided on the 11th May 2021, the 6th December 2021, the 29th December 2021 and the 2nd February 2022.

The High Court respectfully requests further information as follows:

The additional information provided on the 11.05.2021 confirmed that the punishment of 1 year and 2 months (with 1 year, 1 month and 27 days still to serve) imposed on Ms Alehnovits and to which the Warrant relates was an aggregate punishment relating to the judgments of the Harju County Court on the 11.10.2013 and the 30.03.2015.

Page 1 of the Harju County Court Order of 30.03.2015 records that Ms Alehnovits "has been repeatedly convicted of a criminal offence 1) 12.06.2006 by the Harju County Court under clause 199 (2) (7) of the Penal Code 2) 11.10.2013 by the Harju County Court under clause 215 (2) (2) and section 203 of the Penal Code with *an aggregate punishment of 10 months imprisonment...*" (emphasis added).

Page 2 of the Harju County Court Order of 30.03.2015 records that the Harju County Court imposed a sentence of four months imprisonment on Ms Alehnovits for the offence of which she was convicted on that date and added that term of imprisonment to the term of imprisonment previously imposed by the Harju County Court on the 11.10.2013 and which remained unserved to impose an aggregate sentence of 1 year and 2 months.

Page 2 of the Harju County Court Order of 11.10.2013 records that "By decision of the Harju County Court of 12.06.2006 sentenced to 40 days imprisonment under 199 (2) (7) and 25 (2) of the Penal Code, sentence served" (emphasis added).

1. In the circumstances, please confirm whether the aggregate sentence imposed on Ms Alehnovits on the 30.03.2015 was also imposed in respect of the offence of which Ms Alehnovits was convicted on the 12.06.2006.
2. If the aggregate punishment imposed on Ms Alehnovits on the 30.03.2015 does also include the 12.06.2006 conviction of Ms Alehnovits, please provide details of the offence for which Ms Alehnovits was convicted on the 12.06.2006 including the nature of the offence and the circumstances in which the offence was committed.
3. We note that Ms Alehnovits has a right of appeal upon surrender, please indicate how many days will she have to file an appeal upon surrender."

15. A Section 20 response was received on the 25th February 2022, which stated as follows:

"In response to your inquiry sent to the Harju County Court regarding the remaining sentence of Svetlana Alehnovits (born on 24 November 1987) in criminal case No. 1-15-2535, I will explain and answer your questions:

1. Svetlana Alehnovits was not sentenced again by the Harju County court judgment No. 1- 15-2535 of 30 March 2015 for the offence imposed on her by judgment No. 1-06-l 0840 of Harju County Court of 12 September 2006 - 40 days of imprisonment. This punishment 40 days of imprisonment - had already been served by S. Alehnovits, which is also mentioned in the header of court judgment No. 1-13-6042 of the Harju County Court of 11 October 2013. Svetlana Alehnovits served 40 days in prison from 6 August to 14 September 2006;
2. the punishment imposed on Svetlana Alehnovits by court judgment No. 1-15-2535 of the Harju County Court of 30 March 2015 does not include the punishment imposed on her by court judgment No. 1 -06-10840 of the Harju County Court of 12 September 2006, therefore the court does not consider it necessary to clarify the circumstances related to this offence;
3. on the basis of subsection 432 (3) of the Code of Criminal Procedure, the convicted offender shall be taken to the judge in charge of execution of court judgments for interrogation not later than on the second day following the date of bringing the person into Estonia. Svetlana Alehnovits will then have 15 days to file an appeal against the court order to the court which prepared the court order within 15 days as of the day on which the person became aware or should have become aware of the court ruling."

16. The requirement for clarity in European Arrest Warrants has been considered in a number of cases in this jurisdiction. In *Minister for Justice & Equality v Herman* [2015] IESC 49, the Supreme Court stated at paragraph 17;-

"[17] At the core of this appeal is the issue of clarity; or the lack of it. It is essential when a court has before it a request in a European arrest warrant that there be

clarity as to the offences for which surrender is sought, and as to any proposed sentencing."

17. In *Minister for Justice and Equality -v- Connolly* [2014] IESC 34, [2014] 1 IR 720, Hardiman J. stated at paragraphs 30 and 31;-

"[30] This matter is of the greatest importance since the ability of the requesting State to put the respondent on trial is limited to the offences specified in the warrant. It is a mandatory requirement of the European arrest warrant procedure that there be unambiguous clarity about the number and nature of the offences for which the person sought is so sought. Presumably, the Spanish authorities know for how many offences they intend to put him on trial. I cannot understand why this has not been made clear. The relevance of this requirement, contained in s. 11 of the Act of 2003 is particularly clear in the present case because the objection was one to which s. 44 of the Act applies, and therefore one that requires a very specific knowledge of the precise Spanish offences for which delivery is sought. Minister for Justice v. Bailey [2012] IESC 16, [2012] 4 I.R. 1 emphasises the need to consider the issue of reciprocal offences which cannot be done without the specific knowledge of the Spanish offences referred to. This specific and unambiguous information is also required, as several citations above make clear, for the purpose of the implementation of the rule of specialty.

[31] I consider it to be an imperative duty of a court asked to order the compulsory delivery of a person for trial outside the State to ensure that it is affirmatively and unambiguously aware of the nature of the offences for which it is asked to have him forcibly delivered, and for which he may be tried abroad, and of the number of such offences.

I would, therefore, dismiss the appeal and decline to make an order for the delivery of the respondent."

18. In *Minister for Justice, Equality and Law Reform v Desjatnikovs* [2008] IESC 53, [2009] 1 IR 618, the Supreme Court indicated at para. 35;-

"[35] The fact that there is a precise description of the facts of the case is important, even though the issue of double criminality is not required to be considered. It is important that there be a good description of the facts. An arrested person is entitled to be informed of the reasons for his arrest and of any charge against him in plain language which he can understand. Also, in view of the specialty rule, the facts upon which a warrant is based should be clearly stated."

19. In *Minister for Justice and Equality -v- AW* [2019] IEHC 251, Donnelly J. indicated at paragraphs 48 and 49;-

"48. The respondent has also claimed that his surrender is prohibited because the information does not set out the degree of participation of the respondent in the offences. The information in the EAW has already been set out. This does not list the names of the people he conspired with. The requirement for detail in the EAW is set out in the Framework Decision and in the Act of 2003. The Superior Courts in a number of cases have examined the reasons for the giving of details. These are to permit the High Court to carry out its functions under the Act of 2003 of endorsing the EAW and establishing correspondence and also to permit the respondent to challenge his surrender on grounds such as the rule of speciality (s.22), ne bis in idem and extraterritoriality (See *Minister for Justice and Equality v Cahill* [2012] IEHC 315 and *Minister for Justice Equality and Law Reform v Desjatnikovs* [2008] IESC 53). The respondent also has the right to know the reason for his arrest.

49. In the present case, any claimed lack of detail by the respondent, does not affect any of those items. The respondent has not indicated any real difficulty and therefore his complaints about lack of detail are only theoretical in nature. The issuing judicial authority is not required to give every single detail as to the degree of participation. (*Minister for Justice, Equality and Law Reform v Stafford* [2009] IESC 83). The details required are those which relate back to the reasons why such detail is required."

20. The requirement for clarity therefore serves two purposes:

- (i) It allows the Court to carry out its functions under the act endorsing the EAW and establishing correspondence, and also permits the respondent to challenge her surrender on grounds such as the rule of speciality (s.22), ne bis in idem and extraterritoriality.
- (ii) The respondent also has the right to know the reason for her arrest.

21. This Court considers that there is sufficient information in the EAW and in the additional information to allow this Court to fulfil its duties under the 2003 Act. In addition the respondent knows that she has been arrested and surrender is sought in order that she would serve a sentence of 1 year 1 month and 27 days. The Court therefore finds that the objection to surrender based on Section 11 of the 2003 Act is without merit and is dismissed.

22. **Is surrender prohibited by Section 45 of the 2003 Act**

At Part D of the EAW, it is indicated that the respondent appeared at the hearing which resulted in the decision which is sought to be enforced. Again, the respondent submitted that there was a lack of clarity in relation to this issue in circumstances where the respondent was clearly being sought to serve an aggregate sentence in relation to two offences. Two Section 20 requests were sent on the 24th of November 2021 and 23rd of December 2021, and further information was received on the 2nd of December 2021. In light of this further information this Court finds as follows:

- On the 11th of October 2013 when the 10-month sentence was imposed but suspended the respondent was present.
- On the 30th of March 2015 the 14th month aggregate sentence was imposed but community service imposed in lieu the respondent was present.
- On the 24th of March 2016 the respondent was not present when the sentence was activated

23. The issuing judicial authority provided the following additional information on the 2nd of December 2021:

- “1) Svetlana Alehnovits will be personally served the court order no. 1-15-2535 of the Harju County Court of 24 March 2016 without delay after surrender.
- 2) After being served the court order of 24 March 2016, Svetlana Alehnovits will be expressly informed of her right to a retrial or appeal, in which 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.
- 3) Svetlana Alehnovits will be informed of the timeframe within which she has to request such a retrial or appeal. Pursuant to subsection 432 (3) of the Code of Criminal Procedure, not later than on the second day following the date of bringing the person into Estonia, the convicted offender shall be taken to the judge in charge of execution of court judgments for interrogation.”

24. The issuing judicial authority confirmed in a further letter dated the 25th of February 2022 that the respondent will have 15 days to file an appeal. In this Court’s view, in light of this additional information the Section 45 issue has been resolved. As a consequence of the assurances provided by the issuing judicial authority in relation to the respondent’s right of appeal this Court is satisfied that the surrender is not prohibited by Section 45 of the 2003 Act and this ground of objection is dismissed.

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

26. It, therefore, 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 Republic of Estonia.