Neutral Citation Number: [2019] EWHC 74 (Admin)

Case No: CO/3326/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/01/2019

Before :

MR JUSTICE NICOL

- -

Between :

Iosop Lingurar	**Appellant**
- and -	
Baia Mare Court House, Romania	**Respondent**

- -
- -

Hannah Hinton (instructed by **MW Solicitors**) for the **Appellant**
Jonathan Swain (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 16th January 2019

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Approved Judgment

Mr Justice Nicol :

1. On 16th August 2018 District Judge Snow ordered the Appellant to be extradited to Romania to serve a sentence of imprisonment for an offence of theft pursuant to a European Arrest Warrant ('EAW'). This is an appeal against that decision brought with the permission of Julian Knowles J.

2. The EAW was a conviction arrant. It specified the sentence (all of which remained outstanding) as '4 months and 330 days'. It is that rather unusual mode of expression which led to one of the grounds of challenge before the District Judge and which is the foundation for the sole ground of appeal before me.

The EAW

3. The EAW was issued by a Judge of the Baia Mare Court. It was issued for the purpose of enforcing the criminal sentence of that court handed down on 28th June 2017 and which had been made final by the Cluj Court of Appeal – see box B of the EAW.

4. Box C of the EAW, specified the sentence. as I have said, as '4 months and 330 days'.

5. Box E of the EAW template is headed 'Offences'. In this case that box said that the

   > 'This warrant relates to in total 1 offence'.

   Offence 1 is then described in these terms,

   > 'On 01.02. 2015 while in the SC Kaufland Tomania SCS SA in Baia Mare, for the purpose of misrepresentation, the defendant stole a pair of boots, three pairs of socks and three Deospray deodarants, thus causing the injured party (SC Kaufland Romania SCS SA) a loss of 157.83 lei.'

   Box E said that the offence in question was,

   > 'theft provided by art.228, paragraph 1 of the Criminal Code with application of article 396 paragraph 10 of the Code of Criminal Procedure'

6. The unusual way in which the sentence was expressed led the Crown Prosecution Service ('CPS') to write to the Judicial Authority on 4th June 2018 and to ask, among other things,

   > 'At Part C of the EAW the sentence is recorded as 4 months and 330 days imprisonment. A custodial sentence would usually be expressed in years and months and days. Is the sentence recorded in the EAW correct?

7. On 11th June 2018 the judicial Authority responded,

   > 'The sentence recorded in the European arrest warrant is correct.'

8. This prompted the CPS to write again to the Judicial Authority on 18th July 2018. It mentioned that the extradition hearing had been adjourned 'because the court is not clear about the two sentences set out at Box C of the EAW.' The letter commented,

> 'In this case the EAW at Box C states that the sentence which the requested person faces is four months and 330 days. At Box E, the EAW [relates] states that it relates to a single offence.'

9. The CPS asked,

> 'Please can [you] confirm:
>
> 1. Why in this case, are there two separate sentences set out at Box C (namely 4 months and 330 days)? Do both sentences relate to the conduct at Box E? If so, how?
> 2. If one of these sentences, either 4 months or 330 days, relates to conduct other than the single offence from 1 February 2015 as set out in Box E, please can you provide the necessary information for that separate offence [to] comply with the requirements of Article 8 of the Framework Decision. These should include:
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>   a. A description of the conduct;
>
>   b. The date of the offence;
>
>   c. The location of that offence; and
>
>   d. The relevant provisions of the law which cover that conduct.'

10. The Judicial Authority responded on 6th August 2018. It said,

> 'By the criminal sentence 1977/28.06.2017 Lingurar Iosip was sentenced to 4 months imprisonment for the offence of theft.
>
> The 4 months and 330 days imprisonment resulted from the application of the sanctioning regime foreseen in art 129 para 2(b) of the Criminal Code as follows:
>
> According to the criminal record, the defendant Lingurar Iosip was convicted by the criminal sentence no. 612 of 24.10.2008 of the Maramures Court, final by the Criminal Decision no. 546/17.02.2009 of the High Court of Cassation and Justice, to the resultant penalty of 12 years and 6 months imprisonment for committing rape and qualified theft.
>
> By criminal sentence no. 57/01.02.2014 of the Cluj Court, final through the criminal decision no. 50/21.02.2014 of the Cluj Court of Appeal, the penalty applied by criminal sentence no 612/2008 of the Maramures Tribunal was amended; thus according to article 6 of the Criminal Code, the 12 years and 6 months imprisonment were reduced to 9 years and 6 months imprisonment. Then, by the same decision, the sentence of 9 years and 6 months imprisonment was replaced with 9 years and 6 months internment in a detention centre, according to art 125 of the New Criminal Code the complimentary punishment of the two year prohibition of the rights provided for in article 64 of the Criminal Code was removed.

From the execution of this educational measure applied for committing minor offences, Lingurar Iosif was released on April 1, 2014 with 1254 days left unexecuted.

By criminal sentence no.1977/28.06.2017 of the Baia Mare Court House, Lingurar Iosip was sentenced to four months' imprisonment for committing an offence of theft after the age of 18 on February 1, 2015 after having been released from the educational institution.

As a consequence, although the conviction applied by the Criminal sentence no. 1977/28.06.2017 refers to a single offence, the resultant penalty is 4 months and 330 days, following the provisions of art 2(b) of the Criminal Code to which, if the educational measure means deprivation of liberty and the punishment is imprisonment, imprisonment shall be imposed (which shall be increased by a duration of at least one fourth of the duration of the educational measure or of the remainder time unexecuted from it at the date of the crime committed after the age of 18.'

The UK legislative background

11. Extradition Act 2003 ('EA 2003') s.2 provides , so far as material, as follows:

'(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

.(2) A part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains –

...

(b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(5) The statement is one that –

(a) the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or serving a sentence of imprisonment or other form of detention imposed in respect of the offence.

(6) the information is –

(a) particulars of the person's identity;

(b) particulars of the conviction;

(c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;...

(e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.'

12. There is no dispute that, as a Member State of the EU, Romania is a category 1 territory.

13. Although EA 2003 distinguishes between EAWs issued for the purpose of prosecuting the requested person (accusation warrants) and for the purpose of returning a person for sentence (conviction warrants) the EU measure under which the whole EAW system operates (The Framework Decision of 2002) makes no such distinction. The features which both type of EAW must have are set out in Article 8 of the Framework Decision which says that the EAW must contain the following information:

'(a) The identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and email address of the issuing judicial authority;

(c) the evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.'

14. There is no dispute that the UK statute must be interpreted as far as possible consistently with the Framework Decision. Accordingly, the requirements of Article 8 of the Framework Decision will be treated as applying also to conviction warrants.

15. As a result of the Extradition Act 2003 (Multiple Offences) Order 2003 SI 2003 No 3150 where an EAW refers to multiple offences then each of them must comply with the obligations in the EA 2003.

The Appellant's argument

16. Ms Hinton, on behalf of the Appellant, submits that the EAW in this case did not comply with the requirements of the legislation. She argues that in truth his return was being sought to serve two distinct sentences: 4 months for the theft committed in 2015 and 330 days as a type of activation of the unexpired portion of the sentence imposed for the earlier offences of rape and 'qualified theft'. If that analysis is correct, she submits, neither the EAW nor either of the letters from the Judicial Authority provided the required information about those offences of rape and qualified theft.

17. In support of her analysis being correct she points to:

    i) The unusual expression of the sentence. If it had been a single sentence for the 2015 offence of theft, one would have expected it to be expressed as 16 months (or just short of that). By couching it in the divided way which the EAW did is a strong pointer in support of the analysis she advocates as the correct one.

    ii) In addition, the Further Information of 6th August 2018 expressly said that the Appellant 'was sentenced to 4 months for the offence of theft' [i.e. the theft in 2015].

    iii) The reference in the EAW to 330 days was an example of what was described in *Edutanu v Iasi Court of Law, Romania* [2016] 1 WLR 2933 (DC) at [9] and [113] as originating from 'unparticularised offences'.

Discussion

18. While I acknowledge the force of Ms Hinton's arguments, I do not, with respect, accept them.

    i) Although the expression of the sentence is unusual, it is not incapable of determination or being resolved as a single sentence.

    ii) The EAW says that the sentence was imposed for the single offence of theft (in 2015). It is axiomatic that what is said by an issuing judicial authority must be approached in a spirit of mutual trust and confidence. That said, this characterisation by the Judicial Authority is not determinative. There have been other cases involving EAWs which were expressed as being for single offences, which, on analysis, the Courts have found were in fact for multiple offences which may have been merged into a single sentence. The right approach is to consider the EAW as a whole. Earlier authorities precluded additional reliance on Further Information from the Judicial Authority, but later decisions of the ECJ and the Supreme Court have shown that is mistaken – Further Information can and should be taken into account when it is proper to do so.

    iii) In my view the further information of 6th August does not derogate from the EAW: it explains how the sentence in 2015 was constructed. In effect, the penalty for the offence of theft was enhanced because of the earlier offences of rape and qualified theft. In a domestic context we are well used to the concept of previous convictions being an aggravating factor which lead to an increased sentence. In Romania, it seems that in the circumstances covered by article 129(2)(b) the process is more formalised, but the effect is similar. As Mr Swain, on behalf of the Respondent, observed, the letter of 6th August 2018 described the index offence as,

        'an offense of theft after the age of 18, on February 1, 2015 after having been released from the educational institution.'

    iv) But, in any event, we must be wary of seeking to squeeze the criminal procedures of foreign courts into our familiar categories. That would be inconsistent with the 'cosmopolitan approach' which must be adopted in this

context. As the Court said in *R (Echimov) v Court of Babadag, Romania* [2011] EWHC 864 (Admin) at [10],

> 'the requested state should not adopt an unduly narrow or parochial approach in assessing [EAWs]' and
>
> 'the overall approach of the requested state should be to view the matter on, as it were, a cosmopolitan basis with a view to helping rather than hindering, the due operation of extradition requests between member states.'

v) It would not be appropriate for me to interpret Article 129 (2)(b) of the Romanian Criminal Code.. I would need expert evidence to engage on that exercise and there is no such evidence before me.

vi) In *Edutanu* (above) the Divisional Court drew a distinction between a sentence which was a composite of a sentence for an index offence and an activated sentence on the one hand and, on the other, a single sentence for an index offence aggravated by previous offending. In my judgment, a fair and cosmopolitan reading of the totality of the EAW and further information in the present case is that I am confronted with an example of the latter. In my view, D.J. Snow was correct to pose the issue before him in essentially these terms (see [16] of his judgment). He also rightly reminded himself that the burden of proof on this issue rested on the Judicial Authority and any doubt was to be resolved in favour of the requested person.

vii) D.J. Snow expressed his conclusion in this way,

> '[18] ... I am satisfied so that I am sure that a proper interpretation of the letter [of 6th August 2018] as a whole is that the court took the starting point for sentence for the offence of theft [i.e. the theft committed in 2015] to be 4 months imprisonment, however, because he had offended in the unexpired part of the prison sentence, the court was bound by the Criminal Code to increase the punishment for that offence by 330 days.
>
> [19] In other words I am satisfied so that I am sure that the court was merely increasing the sentence for the theft as required by the code. It was not sentencing for offences that were not particularised.'

viii) In short, I agree with D.J. Snow's view.

19. After Julian Knowles J. granted permission to appeal on 1st November 2018, the CPS wrote again to the Judicial Authority. This led to a third letter from it, this one dated 27th November 2018.This quoted from the Romanian Criminal Code article 129 (2)(b). It added as follows,

> 'As a consequence of article 129(2)(b) Criminal Code applies in such a way that it increased the sentence for theft committed on 01.02.2015 by 330 days and the resulting penalty of 4 months and 330 days was imposed only in respect of the theft committed on 01.02.2015.

Regarding the rape crime, it was in fact acknowledged that on 28 February 2008, the defendant Lingurar Iosip went with the victim Stoica Denisa Tiberia (7 years old) in the forest near Baia Sprie, Maramures County, where he had intimate relationships (vaginal and anal) with her through violence, causing her internal and external haemorrhage as a result of which she died. After this the defendant stole the girl's earrings while the victim was in agony.

Thus, the defendant determined the victim to follow him, taking advantage of the naivety of her age (the victim was only 7 years old) and her trust in him based on the relationship of kinship with the minor, he exercised violent acts of increased intensity (aspect proven by the severity of the injuries caused, of which a fracture of the nasal pyramid and a fracture of the skull bilaterally with the occipital suture discordance are defining in this sense) and, without regard to the lack of anatomical and physiological development of the victim, had normal and anal sexual relations, causing internal and external haemorrhage through anal and vaginal ruptures, these ultimately being lesions that caused the death of the little girl.'

20. Mr Swain applied to adduce this as further evidence in support of the decision of the District Judge. He relied on *FK v Stuttgart State Prosecutor's Office, Germany* [2017] EWHC 2160 (Admin) and argued that it would be in the interests of justice for the Judicial Authority to be able to be able to rely on this further information. He argued that this was further support for the conclusion which the District Judge had reached, namely that the EAW was in respect of the single offence of theft and a single sentence for that offence of 4 months and 330 days. Secondly, if he was wrong about that, this latest information provided the necessary particulars for the offence of rape and the offence of theft (of the earrings) committed at the same time.

21. Ms Hinton opposed the application to introduce the further evidence on the grounds that it could, and should have, been produced before the District Judge. There had been an adjournment to allow further information to be provided and there had been the two earlier letters from the Judicial Authority to which I have already referred. She argued that it would subvert the case management directions in the lower court for this further evidence to be admitted at the appellate stage.

22. I have decided that, on the evidence before the District Judge, he was right to conclude that sufficient particulars had been provided of the single offence for which the Appellant's return was sought. In those circumstances, the omission of particulars of the earlier offences of rape and theft was immaterial. It follows that the further information from the Judicial Authority is not necessary and, in those circumstances, I cannot conclude that it is in the interests of justice to admit it.

Article 8

23. Ms Hinton realistically accepted that this ground of appeal could not be sustained if the Appellant did not succeed on the s.2 challenge.

Conclusion

24. It follows that this appeal is dismissed.