

THE HIGH COURT

RECORD NUMBER 2019/395 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

TOMAS TAMULAITIS

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 24th day of July, 2020.

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania ("Lithuania") pursuant to a European arrest warrant dated 21st March, 2019 ("the warrant") issued by the Prosecutor General's Office of the Republic of Lithuania ("the Prosecutor General's Office") as the issuing judicial authority.
2. The warrant was endorsed by the High Court on 13th January, 2020 and the respondent was arrested and brought before the High Court on 3rd February, 2020 when he was admitted to bail.
3. I am satisfied that person before the Court is the person in respect of whom the warrant was issued.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), have been met. The offence in respect of which the surrender of the respondent is sought carries a maximum penalty of 10 years' imprisonment.
5. The respondent delivered points of objection dated 17th June, 2020 contending that surrender should be refused:-
 - (a) due to the inordinate delay on the part of the issuing member state in issuing the warrant and taking steps to enforce same;
 - (b) due to the lack of correspondence between the offence set out in the warrant and an offence under Irish law; and
 - (c) due to the lack of clarity as to whether the decision had been made in the issuing member state to charge and try the respondent in respect of the offence referred to in the warrant.

At hearing, Counsel on behalf of the respondent indicated that he was only relying upon the objection set out at (c) above.

6. Section 21A of the Act of 2003 provides as follows:-

"(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court

shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him for, that offence in the issuing state.

(2) *Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved."*

7. Counsel on behalf of the respondent conceded that he was not in a position at this stage to prove that a decision had not been made to charge the respondent with the offence referred to in the warrant. However, he submitted that it was enough for him to raise sufficient doubt so as to put the Court upon enquiry into whether in fact such a decision had been made. He referred to *Minister for Justice and Equality v. Jociene* [2013] IEHC 290, in which Edwards J. had refused surrender pursuant to a Lithuanian European arrest warrant in circumstances where the issuing member state had failed to satisfy the court of its intention to charge and try the requested person for the offence set out in the warrant. I do not regard the decision in *Jociene* as setting down a precedent for future cases, either on the issue of whether the presumption has been rebutted or on the issue of refusal to surrender. The decision turns very much on its own facts and on the protracted and confused interaction between the respective authorities in that matter.
8. In the present case, the respondent directed the Court to various parts of the warrant which he submitted were such a source of confusion or uncertainty as to displace the statutory presumption contained in s. 21A(2) of the Act of 2003. He relied upon the following:-
- (a) at part B of the warrant, the domestic arrest warrant is described as "*Ruling to impose the coercive measure – arrest (pre-trial investigation no. 02-2-00303-18)*";
 - (b) at part E of the warrant, at the description of the circumstances in which the offence was committed, the details commence as follows: "*Tomas Tamulaitis is suspected of having misappropriated property entrusted to him...*"; and
 - (c) at part F of the warrant under the heading, "*Other circumstances relevant to the case (optional information)*", it is stated: "*Tomas Tamulaitis absconded from the pre-trial investigation, therefore, on 13/09/2019 he was announced wanted*".
9. In *Minister for Justice, Equality and Law Reform v. Olssen* [2011] IESC 1, O'Donnell J. stated at para. 33:-

"When s. 21A speaks of 'a decision' it does not describe such decision as final or irrevocable, nor can it be so interpreted in the light of the framework decision. The fact that a further decision might be made eventually not to proceed, would not therefore mean that the statute had not been complied with, once the relevant intention to do so existed at the time the warrant was issued. The Act of 2003 does not require any particular formality as to the decision; in fact, s. 21 focuses on (and

requires proof of) the absence of one. The issuing state does not have to demonstrate a decision. A court is only to refuse to surrender a requested person when it is satisfied that no decision has been made to charge or try that person. This would be so where there is no intention to try the requested person on the charges at the time the warrant was issued. In such circumstances, the warrant could not be for the purpose of conducting a criminal prosecution."

10. It is clear from the above quote, and in particular the portion thereof which I have emphasised, that by virtue of s. 21A(2) of the Act of 2003, the issuing state does not have to demonstrate a decision and that the Court is only to refuse surrender of a requested person when it is satisfied that no decision has been made to charge and try that person.

11. O'Donnell J. further stated in *Olssen* at para. 36:-

"...Certainly even without the presumption contained in s. 21A(2), the section requires clear proof. Once a court finds the European arrest warrant to be in order (and therefore on its face a request made for the purpose of prosecution or trial), then before a court can refuse to surrender a person requested under such a warrant, it must be satisfied by cogent evidence to the contrary that a decision has not been made to charge the particular person with, and try him or her for, the offence."

12. In addition to the presumption contained at s. 21A(2), in the present case the warrant expressly states at the outset:-

"This warrant has been issued by the Prosecutor General's Office of the Republic of Lithuania. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution."

13. I find the matters raised by Counsel on behalf of the respondent are not of sufficient cogency to rebut or displace the presumption, particularly when the presumption is considered in light of the express declaration that the warrant has been issued for the purposes of conducting a criminal prosecution of the requested person. Nor do I regard the matters raised as of sufficient cogency as to necessitate an enquiry on the part of this Court as to whether or not a decision has been made to charge and try the respondent. In such circumstances, I dismiss the respondent's objection to surrender based upon s. 21A of the Act of 2003.

14. While not pursued at hearing by the respondent, for the purposes of completeness I should point out that I am satisfied that the offence set out in the warrant corresponds to an offence under Irish law, viz. an offence of making a gain or causing loss by deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. Further, I am satisfied that the refusal of the surrender of the respondent is not warranted due to any lapse in time involved in the requesting state seeking a European arrest warrant and/or taking steps to enforce same. In *Minister for Justice and Equality v. Vestartas*

[2020] IESC 12, the Supreme Court emphasised that only in truly exceptional or egregious cases could delay be a ground for refusal of surrender. The circumstances of this case cannot possibly be regarded as falling within such category.

15. I am satisfied that the surrender of the respondent is not prohibited by reason of any of the matters referred to in ss. 21A, 22, 23, or 24 of the Act of 2003.
16. I am satisfied that surrender of the respondent is not prohibited under part three of the Act of 2003.
17. Having dismissed the respondent's objections 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 Lithuania.