

THE HIGH COURT

RECORD NUMBER 2019/42 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ZORKA ROGIĆ

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 14th day of December, 2020

1. By this application the applicant seeks an order for the surrender of the respondent to the Republic of Croatia ("Croatia") pursuant to a European arrest warrant dated 14th November, 2017 ("the EAW") issued by Judge Tatjana Čargonja, of the Municipal Court in Rijeka, Croatia, as the issuing judicial authority. The EAW seeks the surrender of the respondent to face prosecution in respect of two offences of unlawful possession of narcotics and unlawful possession of ammunition, respectively.
2. The EAW was endorsed on 11th February, 2019 and the respondent was arrested and brought before this Court on 11th April, 2019. The respondent was originally granted bail but failed to appear at the hearing date for the surrender application and remained at large until arrested and brought before the High Court again on 30th January, 2020. She was remanded in custody and then re-admitted to bail on 31st July, 2020 due to the length of time spent in custody as a result of the protracted nature of the disputed proceedings.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), are met. The offences in respect of which surrender is sought carry a maximum penalty of 12 years' imprisonment in respect of the narcotics offence and 3 years' imprisonment in respect of the ammunition offence.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
6. An issue was taken in respect of correspondence between the offences referred to in the EAW and offences under Irish law.
7. Points of objection were delivered which can be summarised as follows:-
 - (i) surrender is precluded under s. 38 of the Act of 2003 as correspondence cannot be established between the offences in the EAW and offences under the law of the State;

- (ii) surrender is precluded under ss. 10 and 21A of the Act of 2003 as it was unclear that a decision had been made in the issuing state to charge and try the respondent; and
 - (iii) surrender is precluded as the particulars set out in the EAW were insufficient to meet the requirements of s. 11 of the Act of 2003.
8. Subsequently, the respondent delivered a supplemental notice of objection dated 9th March, 2020 to the effect that:-
- (iv) surrender is precluded under s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR"), in particular:-
 - (a) due to the conditions in which the respondent is likely to be detained in the issuing state and/or that she would be exposed to threats or violence; and
 - (b) as state actors had influenced the investigation and/or the prosecution of the respondent.
9. Prior to the arrest of the respondent, additional information was requested from the issuing judicial authority and replied to by letter dated 14th November, 2018, setting out the maximum penalties for each of the offences, giving the location for the offences and explaining that the narcotics offence consisted of two separate acts, essentially of possessing and selling. By letter dated 5th February, 2019, the issuing state confirmed that the respondent was not registered in respect of any weapon.
10. By further letter dated 8th March, 2019, the issuing judicial authority confirmed that on the relevant date, the police had seized from the respondent one 7.65mm bullet found in the search of her bedroom, but stated that it had no detailed description of the ammunition or its characteristics.
11. The respondent swore an affidavit dated 29th April, 2019 for the purposes of a bail application.
12. By letter dated 20th February, 2020, the solicitor for the respondent queried whether the EAW had been issued by a competent court in Croatia according to Croatian law. Following a request for additional information in this regard, the issuing judicial authority, by letters dated 28th February, 2020 and 13th March, 2020, confirmed that the issuing court was competent to issue the EAW.

Issuing Judicial Authority

13. I am satisfied that the EAW was issued by a competent issuing judicial authority. This has been confirmed by the issuing state and was not seriously challenged at the hearing of this matter.

Correspondence

14. Section 38 of the Act of 2003 provides as follows:-

"(1) Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—

(a) the offence corresponds to an offence under the law of the State, and—

(i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or

(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,

or

(b) the offence is an offence to which paragraph 2 of Article 2 of the Framework Decision applies, and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than 3 years.

(2) The surrender of a person to an issuing state under this Act shall not be refused on the ground that, in relation to a revenue offence—

(a) no tax or duty of the kind to which the offence relates is imposed in the State,

or

(b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

(3) In this section 'revenue offence' means, in relation to an issuing state, an offence in connection with taxes, duties, customs or exchange control."

In effect, s. 38(1)(a) of the Act of 2003 precludes surrender in respect of an offence unless the acts stated to constitute that offence would also constitute an offence in this State and carry a maximum penalty in the issuing state of at least 12 months' imprisonment, or a sentence of at least 4 months' imprisonment has been imposed by the issuing state in respect of the offence. However, s. 38(1)(b) provides an alternative procedure whereby it is not necessary for the applicant to establish the requirements of s. 38(1)(a) where the offence is an offence to which article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States ("the Framework Decision") applies and which carries a maximum penalty of at least 3 years' imprisonment under the law of the issuing state.

15. The issuing state has not indicated a reliance upon article 2(2) of the Framework Decision in respect of either offence referred to in the EAW, and therefore the Court must be

satisfied that each of those offences corresponds with an offence under the law of the State before surrender in respect of such offence in the EAW can be ordered.

16. At part E of the EAW, a description of the offences is given as follows:-

"1. on 23 September 2014 in Viškovo, in her flat, she sold to [MP] 4.69 grams of heroin, of the value of HRK 2 000.00, and on 24 September 2014, in her flat in Viškovo, she kept 42.88 grams of heroin, a narcotic which is listed on the List of narcotic drugs, psychotropic substances and plants from which drugs can be obtained and substances which can be used for the production of narcotic substances.

2. in the period between 23 and 24 September 2014, in Viškovo, in her flat, she held 7.65 mm ammunition."

17. Section 5 of the Act of 2003, which deals with correspondence, provides:-

"For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence under the law of the issuing state would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State."

18. In *Minister for Justice, Equality & Law Reform v Dolny* [2009] IESC 48, Denham J., as she then was, stated at para. 38, of her judgment:-

"In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."

19. As regards offence 1. in the EAW, I am satisfied that correspondence exists with offences under the law of the State, viz. offences contrary to ss. 3 and 15 of the Misuse of Drugs Act, 1977, as amended. This was not seriously put in issue.

20. As regards offence 2. in the EAW, by way of correspondence, the applicant proposed s. 2(1) of the Firearms Act, 1925, as amended ("the Act of 1925"), which provides as follows:-

"Subject to the exceptions from this section hereinafter mentioned, it shall not be lawful for any person after the commencement of this Act to have in his possession,

use, or carry any firearm or ammunition save in so far as such possession, use, or carriage is authorised by a firearm certificate granted under this Act and for the time being in force."

Ammunition is defined in s. 1(1) of the Act of 1925 as follows:-

"In this Act—

'ammunition' (except where used in relation to a prohibited weapon) means ammunition for a firearm and includes —

- (a) grenades, bombs and other similar missiles, whether or not capable of being used with a firearm,*
- (b) any ingredient or component part of any such ammunition or missile, and*
- (c) restricted ammunition, unless the context otherwise requires."*

21. Counsel on behalf of the respondent submitted that in the absence of a ballistics analysis or a more detailed description of the ammunition or its characteristics, the Court could not be satisfied as to correspondence with s. 2 of the Act of 1925.
22. In *Minister for Justice and Equality v. AW* [2019] IEHC 251, the surrender of the respondent was sought in respect of an offence of conspiracy to possess a firearm and ammunition. It was argued on behalf of AW that information as to the nature of the firearms and the nature of the ammunition was required before the court could hold that there was correspondence. The issuing state had described the ammunition by setting out the calibre and make of same in the following terms, as Donnelly J. outlined at para. 25 of her judgment:-

"25. (iii) 65x 2.2 long rifle calibre cartridges, 64 of Winchester brand and 1 of CCI brand. They had all been loaded with bullets designed to expand on impact,

(iv) 5 9x19mm Parabellum Winchester brand cartridges. One was dismantled and found to consist of a semi – jacketed hollow point bullet and propellant in a primed case. They are a projectile designed to expand on impact,

(v) 4x7.65 BR calibre cartridges with various head stamps,

(vi) A 0.32in unfired rimfire calibre cartridge and two fired 12 gauge calibre cartridge cases, one of Ely brand and the other of the Kent brand together with two unfired 12 gauge calibre shotgun cartridges."

In dealing with the respondent's objections as regards correspondence, Donnelly J. stated at paras. 41-44 of her judgment:-

"41. In the decision of Dyer, the Supreme Court held that the enquiry into correspondence of offences was concerned with the factual components of the offence specified in the warrant. Although that case concerned the provisions of the

Extradition Act 1965, the Supreme Court in the case of Minister for Justice, Equality and Law Reform v. Szall [2013] IESC 7 confirmed that the same principles applied to offences under the Act of 2003.

42. *The Supreme Court in Dyer also confirmed that:-*

'Normally words used in an extradition warrant will be given their ordinary meaning. This enables the courts to give effect, without resort to extrinsic evidence, to extradition requests where words such as 'steal' 'rob' and 'murder' are used. It is possible that such words have different meanings in the law of the requesting state, but, in the absence of anything suggesting that, the courts will examine correspondence by attributing to such words, when used in a warrant, the meaning that they would have in Irish law. In some cases however, the word used in the requesting jurisdiction may be unfamiliar to Irish law.'

43. *Despite the Court having sought further information with a view to assisting in establishing whether there was correspondence, it is appropriate for the Court to assess in the course of this judgment, whether such information was truly necessary. The Court has considered that the above dicta in Dyer, covers the situation in the present case. In Irish law words such as 'steal', 'rob' and 'murder' have particular legal meanings. They are also words in common usage and understanding. Words such as 'conspiracy', 'firearm' and 'ammunition' also have particular legal meanings in this jurisdiction. On the other hand, they are common words in everyday usage. For example, conspiracy when given its ordinary and natural meaning in the context in which it appears, namely in respect of a criminal allegation, means an agreement between two persons to carry out an act that is criminal. Firearm is commonly understood to be a lethal weapon which discharges ammunition which, by definition, may cause death.*

44. *Unlike in the Swacha case, where a particular description of the firearm had been used in the EAW which gave rise to concerns about whether it was a firearm within the meaning of Irish law, there is nothing to suggest in the present EAW to suggest meanings that are different to what is meant in Irish law. In the absence of the respondent providing any information that they have different meanings, this Court must accept that there is correspondence of offences based upon the ordinary and nature meaning of 'conspiracy', 'firearm' and 'ammunition'."*

23. Applying the reasoning in *Dolny*, *AW* and *Dyer*, I am satisfied that ammunition and bullets can be given their ordinary meaning of a projectile fired from a firearm. I am satisfied that the offence referred to in the EAW concerns the unlawful possession of ammunition and that the information from the issuing state alleges that the respondent possessed ammunition without having the requisite registration to render such possession lawful. I am satisfied that correspondence has been established with the offence under s. 2 of the Act of 1925 in this State. Moreover, I am satisfied that in so far as the offence in the issuing state and the offence in this State consist of a breach of the regulatory regime in place in each state for the regulation of possession of firearms and ammunition, such

regulatory regimes are sufficiently similar to allow correspondence to be established, as provided for by the Supreme Court in *Min for Justice v. Szall* [2013] IESC 7, [2013] 1 IR 470.

Decision to Charge and Try the Respondent

24. Section 21A of the Act of 2003 provides:-

"(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 or her 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."

25. I am satisfied that a decision has been made in the issuing state to charge and try the respondent with the offences set out in the EAW. The respondent has failed to adduce any cogent evidence to displace the presumption contained in s. 21A(2) of the Act of 2003. The EAW states on its face that surrender is sought for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order. In fairness to counsel for the respondent, this was not seriously pursued at hearing.

Section 11 of the Act of 2003

26. I am satisfied that taking the EAW and additional information received as a whole, the issuing state has provided sufficient details so as to satisfy the requirements of s. 11 of the Act of 2003. In particular, sufficient details have been provided as to the offences alleged against the respondent, including the date and place of same and the degree of involvement of the respondent.

Prison Conditions in Croatia

27. It was submitted on behalf of the respondent that surrender was precluded under s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR"), in particular article 3 thereof, due to the conditions in which the respondent was likely to be detained in the issuing state and/or that she would be exposed to threats or violence. The objection as regards state actors having influenced the investigation or prosecution of the respondent was not followed up.

28. As regards the likely conditions which the respondent would face if detained in the issuing state, the respondent's solicitor, Ms. Kate McGhee, swore an affidavit dated 13th May, 2020 in which she averred that she had been instructed that the respondent had spent two months on remand in prison in Rijeka, and set out various criticisms the respondent had of the said prison conditions. The respondent also relied upon an affidavit of a Croatian lawyer, Lidija Horvat, dated 19th March, 2020, exhibiting her opinion dated the

same date. The opinion set out Ms. Horvat's views as to the conditions the respondent was likely to be held in if detained as well as judgments of the European Court of Human Rights in which Croatia had been found to be in violation of article 3 ECHR as a result of prison conditions, and ultimately expressed the opinion that there was a risk that the respondent would be subjected to inhuman and degrading treatment if surrendered.

29. The Court sought additional information from the issuing judicial authority as to the conditions in which the respondent would be held if detained following surrender. By reply dated 2nd June, 2020, the issuing judicial authority indicated that if held in pre-trial detention, the respondent would be detained in prison in Rijeka, and set out the relevant provisions of Croatian Law regulating conditions in pre-trial detention. The Court sought further and more detailed information concerning the actual conditions in which the respondent would be held if detained following surrender, as regards pre-trial and post-trial detention. The affidavit of Ms. McGhee and the opinion of Ms. Horvat were enclosed with the request for additional information.
30. In additional information dated 2nd July, 2020, the Ministry of Justice set out in considerable detail the conditions in which the respondent would be held in Rijeka Prison while in pre-trial detention. It was indicated that if the respondent received a custodial sentence of up to six months' imprisonment, she would also be detained in Rijeka Prison. For sentences in excess of six months' imprisonment she would be detained in the Diagnostic Centre in Zagreb for up to 30 days to determine where the remainder of the sentence should be served. It was indicated that regardless of which prison the balance of the sentence was to be served in, the fundamental rights of the inmates are protected.
31. In a further opinion dated 8th July, 2020, exhibited by way of affidavit dated 16th July, 2020, Ms. Horvat took issue with the reply of the Ministry of Justice dated 2nd July, 2020. She referred to the Ombudsman for the Republic of Croatia report for 2019 which highlighted overcrowding in Croatian prisons and a lack of appropriate conditions in many prisons.
32. The Court again sought more specific information from the issuing judicial authority and by reply dated 18th August, 2020, the Croatian Ministry of Justice indicated that during pre-trial detention in prison in Rijeka, the respondent would have a minimum individual floor space of 3 m² and would be allowed to spend a minimum of two hours in the open prison yard, with the rest of the time being spent in her bedroom. The same conditions would apply if she had to serve a sentence in Rijeka Prison or if she had to go to the Diagnostic Centre. It was indicated that following a maximum of 30 days in the Diagnostic Centre she would likely be detained in a specialised women's prison in Požega and a description of the conditions there was set out including a minimum of two hours in the open air for prisoners in the closed category and several hours in the open air for prisoners in the semi-open and open categories. Work and leisure facilities are available and prisoners can move around their units during the day. The reply did not state the minimum floor space available to prisoners in prison in Požega. Following a further request for additional information, the Croatian Ministry for Justice confirmed that if

required to serve a sentence in prison in Požega, the respondent would have a minimum personal floor space of 3 m², excluding sanitary facilities, and indicated that the occupancy level of that prison was only 57.58%.

33. In a letter dated 26th November, 2020, Ms. Horvat expressed her disagreement with the contents of the additional information received from the issuing state. In particular, Ms. Horvat referred to the Ombudsman's report for 2019 indicating that in closed condition the capacity of Požega Prison was 167% in December 2019. She also referred to the criticism in the said report of conditions in Zagreb Prison, within which is the Diagnostic Centre, and advised that this Court should seek additional data on the capacity of Rijeka Prison. Ms. Horvat's letter did not deal with the issue of capacity within the Diagnostic Centre.
34. In *Minister for Justice and Equality v. Pal* [2020] IEHC 143, McDermott J. carried out a review of the relevant authorities from which the following non-exhaustive list of principles emerges:-
 - (a) the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and mutual trust;
 - (b) a refusal to execute a European arrest warrant is intended to be an exception;
 - (c) one of the exceptions arises when there is a real or substantial risk of inhuman or degrading treatment contrary to article 3 ECHR or article 4 of the European Union Charter of Fundamental Rights ("the Charter");
 - (d) the prohibition of surrender where there is a real or substantial risk of inhuman or degrading treatment is mandatory. The objectives of the Framework Decision cannot defeat an established risk of ill-treatment;
 - (e) the burden rests upon a respondent to adduce evidence capable of proving that there are substantial/reasonable grounds for believing that if he or she were returned to the requesting country, he or she will be exposed to a real risk of being subjected to treatment contrary to article 3 ECHR;
 - (f) the threshold which a respondent must meet in order to prevent extradition is not a low one. There is a default presumption that the requesting country will act in good faith and will respect the requested person's fundamental rights. Whilst the presumption can be rebutted, such a conclusion will not be reached lightly;
 - (g) in examining whether there is a real risk, the Court should consider all of the material before it and, if necessary, material obtained of its own motion;
 - (h) the Court may attach importance to reports of independent international human rights organisations or reports from government sources;

- (i) the relevant time to consider the conditions in the requesting state is at the time of the hearing;
- (j) when the personal space available to a detainee falls below 3 m² of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of article 3 ECHR arises. The burden of proof is then on the issuing state to rebut the presumption by demonstrating that there are factors capable of adequately compensating for the scarce allocation of personal space, and this presumption will normally be capable of being rebutted only if the following factors are cumulatively met:-
 - (i) the reductions in the required minimum personal space of 3 m² are short, occasional and minor;
 - (ii) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
 - (iii) the detainee is confined to what is, when viewed generally, an appropriate detention facility, and there are no aggravating aspects of the conditions of his or her detention;
- (k) a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to a refusal to execute a European arrest warrant. Whenever the existence of such a risk is identified, it is then necessary for the executing judicial authority to make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. The executing judicial authority should request of the issuing member state all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained;
- (l) an assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhuman or degrading treatment is something which the executing state cannot disregard and the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the member states on which the European arrest warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 3 ECHR or article 4 of the Charter; and
- (m) it is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member states.

35. Applying those principles and taking all of the information before the Court into account, I find that the respondent has failed to establish by way of cogent evidence a real risk that,

if surrendered, she will be subjected to inhuman or degrading treatment as to constitute a breach of article 3 ECHR, or article 4 of the Charter, that would justify a refusal of surrender. I note the additional information furnished by the issuing state as to the minimum individual floor space of 3m² to be afforded to the respondent if detained. However, I do not reach my finding on this simple mathematical calculation of floor space, but rather I have also considered the other circumstances and conditions pertaining to any likely detention of the respondent as set out in the various pieces of additional information provided. As regards any points of difference between the opinions of Ms. Horvat and the additional information provided by the issuing state, I accept the information provided by the issuing state on the basis of the mutual trust and confidence between member states which underpins the Framework Decision and also because it is more up to date. Furthermore, I note that counsel for the respondent submitted that less weight should be attached to the additional information which came from the Ministry of Justice as opposed to the issuing judicial authority. However, even taking that into account it seems to me that such information must carry considerable weight as the information requested is more likely to be within the knowledge of the Ministry of Justice as opposed to an individual judge or the judiciary in general. Indeed, it seems clear that while the request for information was sent to the issuing judicial authority, it was then forwarded to the Ministry of Justice by the issuing judicial authority and the reply was directed to the issuing judicial authority.

36. The additional information in question is too lengthy to set out herein but is appended to this judgment.
37. I dismiss the respondent's objections relating to the likely conditions of detention if detained following surrender.
38. I am satisfied that the surrender of the respondent is not precluded by reason of s. 37 of the Act of 2003 or any other provision contained within part 3 of the Act of 2003.

Conclusion

39. Having dismissed the respondent's objections 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 Croatia.

Appendix 1: Additional information dated 2nd July, 2020.

Appendix 2: Additional information dated 18th August, 2020.

Appendix 3: Additional information dated 12th November, 2020.

REPUBLIC OF CROATIA
MINISTRY OF JUSTICE

CLASS: 720-04/20-01-293
REG. NO. 514-08-01-03-01/2-20-02

Zagreb, 2 July 2020

By email

MUNICIPAL COURT IN RIJEKA
ŽRTAVA FAŠIZMA 7, 51000 RIJEKA
TATJANA ČARGONJA, JUDGE

RE: ZORKA ROGIĆ, PROCEDURE OF SURRENDER VIA THE EUN

- execution of pretrial detention
- provision of requested information

Your ref.: K-549/2015

Dear Judge,

The Central Office of the Ministry of Justice, Directorate for Prison System and Probation (hereinafter: the Central Office) received on 19 June 2020 your email concerning the procedure of surrender pursuant to the European arrest warrant issued in respect of Zorka Rogić and the request for additional information regarding the authorisation for the precited surrender submitted by the Irish competent authority. In response to this email, we submit the following information:

Pretrial detention in the Republic of Croatia is executed in prisons of the prison system of the Ministry of Justice Directorate for Prison System and Probation in a manner that does not offend the person and dignity of the individual executing it (hereinafter referred to as: the inmate(s)). The rights of the inmates are limited exclusively to the extent required to fulfil the purpose of pretrial detention, prevent the inmates from escaping and committing a criminal offence, and avert the threat to the life and health of people. In accordance with the Criminal Procedure Act and the Ordinance on House Rules in Pretrial Detention Facilities (including the Prison in Rijeka), inmates are accommodated in rooms of appropriate size that satisfy the necessary requirements for health and hygiene, as well as the climate conditions (inmate bedrooms). The rooms (bedrooms) in which inmates are accommodated are clean, dry and sufficiently large (as a rule, each inmate has a minimum of 4 square metres and 10 cubic metres of individual space), they are equipped with television sets, have daylighting and artificial light that enables reading and work without eyestrain. Each bedroom is equipped with sanitary facilities separated from the rest of the room to ensure privacy and make it possible for the inmates to satisfy their physiological needs in clean and appropriate conditions whenever they want, as well as have access to clean drinkable water. Each inmate has their own bed, bedding and bedlinen, a closet for their personal items and furniture that makes it possible for them to sit and have their meals. Inmates

are allowed to shower and have access to warm water daily, and the interior yard (the open space of the Prison) is also equipped with two "showers" and clean drinkable water taps together with the detergent for hand hygiene.

In this concrete case, following the approved and executed surrender to the Republic of Croatia, Zorka Rogić would be executing her pretrial detention in the Prison in Rijeka, which has a total of 33 bedrooms for inmates divided in 4 sectors – the ground floor, the first and second sectors, and the third sector in which are also accommodated convicted persons serving their term of imprisonment for an offence or misdemeanour, who are accommodated separate from the inmates executing their pretrial detention. The distribution of inmates inside the prison is the responsibility of the person in charge of the prison - the prison warden. The decision on their distribution is founded on the specific conditions of accommodation, where the multi-bed bedrooms are used for accommodation of persons of the same sex, and persons who will not negatively affect other inmates or the conduct of the criminal proceedings. Special attention is paid to the space capacity of a bedroom in order not to violate the inmates' right to accommodation with full respect of their dignity. Inmates' distribution in bedrooms is also dependent on the personal conduct of each inmate, their security assessment, health status and physical constitution. At present, due to the COVID-19 pandemic, newly arrived inmates are put in isolation for 14 days, after which period they are accommodated in a multi-bed bedroom.

During the execution of their pretrial detention, the inmates have access to the House Rules in Pretrial Detention and other regulations governing the needs of inmates, so they can be acquainted with their rights but also obligations during the execution of their pretrial detention. Each inmates' bedroom has a daily schedule for inmates which specifies the daily routine of their internment, so they are informed in advance of the manner and the dynamics of life in the Prison in Rijeka.

The inmates are in charge of cleaning themselves the rooms (bedrooms) and the space in which they spend their time or use for up to two hours a day (without remuneration), for which the prison provides them with the equipment and detergents. The prison also secures the products for their personal hygiene and daily showers, and the inmates are also required to maintain personal hygiene, make their beds and keep their personal items tidy. Moreover, in the event when an inmate has no personal underwear, clothing, footwear and bedlinen, the prison provides them with those. Laundry is organised according to the prison capacity and the established schedule, and the inmates may also give their dirty washing to their visitors and receive from them clean items. As a rule, the Prison in Rijeka changes the bedlinen every fifteen days and the towels every eight days, or more frequently, if necessary, and the inmates may also do their own washing if they ask for it.

The inmates may ask every day to be seen by a doctor in the prison infirmary, and following the doctor's opinion or their own request, they can also be taken to be seen by a specialist in an institution of public health – the Clinical Hospital Centre in Rijeka, or by a dentist – at the Health Centre in Rijeka. Within the scope of the health care provided to inmates, once a week they may ask to have a session with the specialist psychiatrist. We wish to stress that the inmates can put their written requests for a health checkup in a locked box provided for this purpose in each sector.

During their pretrial detention, the inmates receive daily three meals, the quantity and quality of which satisfy the hygienic and nutritive standards and are adapted to their age, health, religious and cultural requirements. Inmates engaged in work also receive an additional warm or cold meal. The Prison in Rijeka also has a shop in which the inmates may buy some foodstuff or other items for their personal use twice a week (on Mondays and Thursdays) according to their orders priorly submitted to the prison shop staff. Such items, prepared according to their orders, are delivered to the inmates in their rooms by the prison staff. The inmates may also purchase some other items that are not available in the prison

shop but are permitted by the House Rules in Pretrial Detention Facilities (such as, for instance, water cookers, television sets, shaving machines, food supplements according to the doctor's recommendation, etc.).

On daily basis, within twenty-four hours, inmates are entitled to eight-hour uninterrupted rest and stay outdoors in the prison yard of the Prison in Rijeka for a minimum of two hours. The open space of the Prison in Rijeka is equipped with gym machines, a basketball hoop, two table-tennis tables, and also a telephone booth which the inmates may use during their stay outdoors.

With the approval of the competent court and under its supervision, the inmates may receive visits (according to the inmates' daily schedule) by their relatives and, at the inmate's request, also by a physician and other persons. With a prior approval of the court and under its supervision, the inmates may also correspond with other people. They are also granted free, undisturbed and confidential consultations with their defence counsel in a separate room intended for such encounters, while written and telephone conversations with their defence counsel are enabled in a way that guarantees their confidentiality. Foreign inmates are allowed to receive visits by consulate and embassy representatives of their respective country. The Prison in Rijeka allows inmates to receive visits (across a glass partition) and packages from their visitors every Tuesday and on the first and the third Sunday in a month between 08:30 and 15:30 hours, while visits by inmates' minor children of up to 14 years of age are held in a separate room equipped with drawings and children's toys, in which they can be in direct contact with each other. Moreover, inmates of flawless conduct who do not represent a threat to the prison order and safety are granted direct contact with a visitor once a month lasting between 15 and 30 minutes. Defence counsel's visits to an inmate are allowed from Monday to Friday between 08:30 and 15:30 hours. It should be noted that lately, due to the COVID-19 pandemic, visits to inmates have been limited and are now allowed exclusively over a physical obstacle, without any direct contact and with strict abidance of the measures and recommendations of the Croatian Public Health Institute, while the inmates' contact with their minor children has been enabled via audio conference on computers placed in a room in such a way that it is not evident that it is a prison room, all in order to prevent any negative effect on the children.

The Prison in Rijeka enables its inmates to have telephone contacts with their family members and other people outside the prison by 21:00 hours, lasting up to 5 minutes, and also with their defence counsel for an unlimited period of time. During the implementation of measures linked to the COVID-19 pandemic, when visits to inmates were limited, the duration of the daily telephone conversations was extended from 5 to 10 minutes, which amounts to a total of 70 minutes weekly. The inmates who did not have enough money for the extended duration of their telephone conversations were allowed to use that time at the expense of the Prison.

It should be stressed that supervision of the execution of pretrial detention is carried out by the competent courts, namely, the president of the court or a person designated by them, who visit the inmates once a week and, if necessary, talk to them without the presence of the judicial police about the conditions of their life in the prison, the food, the accommodation, satisfaction of their other needs, treatment by the prison officers, etc. If the person in charge of the supervision detects some irregularities during their visit to the Prison, they may take the measures necessary for their rectification.

With the aim of defending their rights, inmates may make an oral or written complaint or request to the prison warden, who will inform the inmate about the steps taken within three days of the receipt of the complaint or request. Moreover, inmates may submit an oral or written complaint to the president of the court that has ordered their pretrial detention regarding a decision, measure or

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procedure taken by the prison warden or another prison officer due to which they feel that their rights are being unlawfully denied or limited, in order to obtain protection when such violations of their rights during detention are established.

In the case of a conviction with a sentence of imprisonment lasting up to 6 months, or when the remaining time of the imprisonment does not exceed 6 months, the convicts are sent to serve their sentence in a prison closest to their place of permanent or temporary residence, and if they have no permanent or temporary residence in the Republic of Croatia, they are sent to a prison closest to the seat of the executing judge in charge of their transfer (which, in this concrete case, would be the Prison in Rijeka). In the case of a conviction with a sentence of imprisonment lasting over 6 months, or when the remaining time of the imprisonment exceeds 6 months, the convicts are sent to serve their sentence to the Diagnostic Centre in Zagreb in order for them to undergo diagnostic processing (medical, social, psychological, pedagogical and criminological processing) on the basis of which each individual's orientation programme will be drafted and the appropriate penitentiary or prison for the serving of their sentence will be recommended. Inmates are detained in the Diagnostic Centre in Zagreb up to a maximum of 30 days, after which they are sent to serve their sentence in a penitentiary or prison designated in a special written order by the Central Office, made on the basis of the special commission for inmates' transfer and recommendation of the expert team of the Diagnostic Centre in Zagreb. It follows from the above that it is not possible to say definitely in advance in which penitentiary or prison an inmate is going to serve their sentence.

*not in code
also possible*

While serving their prison sentence, despite the difference in the size and construction of the penitentiaries and prisons in the Republic of Croatia, inmates enjoy the protection of their basic rights determined in the Constitution of the Republic of Croatia, international agreements and the Execution of Prison Sentence Act. Moreover, a penitentiary or prison takes all the necessary measures to make sure that that inmates' life in confinement resembles as much as possible the current general life circumstances, applying programmes within the institution that help inmates develop a sense of responsibility. While serving their prison sentence, inmates are guaranteed all the rights defined in the Execution of Prison Sentence Act (accommodation appropriate to human dignity and health standards, protection of privacy and confidentiality of personal details, regular meals and water consumption in full respect of health standards, work, education, professional legal aid and legal remedy for the protection of their rights prescribed by law, appropriate medical protection, contacts with the outside world, correspondence and conversations with their defence counsel, outdoor stay in the penitentiary or prison yard lasting a minimum of two hours, confession and conversation with authorised religious representatives, marriage within the penitentiary or prison, voting in general elections and other rights), as well as the protection of these rights (within and outside the prison system). The serving of a sentence is carried out with full respect of human dignity, and all procedures which would subject the inmates to any kind of torture, abuse or humiliation, or medical or scientific experiments are forbidden and punishable. An inmate who has been subjected to such forbidden acts is entitled to compensation of injuries incurred.

The serving of a prison sentence is supervised by the executing judge of the competent county court. The executing judge protects the rights of inmates, supervises the lawfulness of the procedures of sentence execution, and ensures the equality and parity of inmates before the law. An individual programme of sentence execution is drafted and adopted for each inmate separately in order to fulfil the main purpose of their imprisonment (prepare them for life in freedom in accordance with the law and social rules, with full respect of the inmates' dignity and treating them humanely). The individual programme of sentence execution defines the accommodation of the inmate in a penitentiary or prisons section, their working ability, use of their free time, professional training and education, contact with the outside world, benefits, special procedures (compulsory addiction treatment, social,

psychological and psychiatric assistance, etc.), special safety measures and a programme of preparation for their release and help after release. The individual programme of sentence execution of a given inmate is amended over time depending on the inmate's conduct and success in the implementation of this programme, as well as on the potential change of circumstances during the serving of the sentence. Inmates are encouraged to participate voluntarily in the drafting and implementation of their individual programme of sentence execution in order for them to develop personal responsibility. Inmates are entitled to lodge a complaint for the procedure and decision of the officers of the penitentiary or prison with the penitentiary or prison warden, the Central Office and/or the executing judge of the county court. They may also submit to the executing judge a request for judicial protection for a procedure or decision through which the inmate's rights established by law have been unlawfully denied or limited. The inmates are entitled to correspond without limit or supervision of the letter content with their defence counsel, bodies of the state authority and international organisations for the protection of human rights of which the Republic of Croatia is a member, and may also communicate without supervision with their defence counsel, institutions and associations for the protection of human rights.

Respectfully yours,

STATE SECRETARY
JURO MARTINOVIĆ
/signed and stamped/

I, Tatjana Paškvan-Čepić of Rijeka, permanent court interpreter for the English language appointed by Decree of the President of the County Court in Rijeka no. 4 Su-441/2019-8 of 19 November 2019 hereby certify that the above translation is a true copy of the original written in Croatian.

*Rijeka, 6 July 2020
Number: 28/20*

Tatjana Paškvan-Čepić

REPUBLIC OF CROATIA
MINISTRY OF JUSTICE AND ADMINISTRATION

CLASS: 720-04/20-01/293
REG. NO.: 514-08-01-03-01/2-20-097
Zagreb, 18 August 2020

URGENT
By electronic mail
MUNICIPAL COURT IN RIJEKA
JUDGE TATJANA ČARGONJA

RE: ZORKA ROGIĆ, PROCEDURE OF SURRENDER VIA THE EUN
- response to the query

Your ref.: K-549/2015

Dear Judge,

Further to your email to the Central Office of the Ministry of Justice, Directorate for Prison System and Probation received on 4 August 2020 concerning additional information and explanation requested by the competent Irish judicial authority regarding the procedure of surrender of Zorka Rogić to the Republic of Croatia pursuant to the European arrest warrant, we submit the following information and clarification.

1. During pretrial detention in the Prison in Rijeka:
 - a) the Respondent will be accommodated in a bedroom with a minimum of 3 square metres of individual floor space (not including the area of sanitary facilities),
 - b) the Respondent will be allowed to spend a minimum of 2 hours daily in the open air of the Prison yard, while the rest of the time she will spend in the bedroom.
2. During the serving of her sentence in the Prison in Rijeka:
 - a) the Respondent would be accommodated in a bedroom with a minimum of 3 square metres of individual floor space (not including the area of sanitary facilities),
 - b) the Respondent would be allowed to spend a minimum of 2 hours daily in the open air of the Prison yard, while the rest of the time she would spend in the bedroom.
3. While serving her sentence at the Diagnostic Centre in Zagreb, the Respondent would spend a maximum of 30 days, if she came to be sentenced to more than 6 months of imprisonment, in order to undergo diagnostic processing:
 - a) the Respondent would be accommodated in a bedroom with a minimum of 3 square metres of individual floor space (not including the area of sanitary facilities),
 - b) the Respondent would be allowed to spend a minimum of 2 hours daily in the open air, while the rest of the time she would spend in the bedroom.

Diagnostic processing of inmates at the Diagnostic Centre in Zagreb is performed by the Expert Team composed of a jurist, a psychologist, a welfare officer and a physician, also including, when necessary, a social educator and an educationalist, each of whom perform expert assessment of the inmate within the scope of their respective specialty (through dialogues, interviews, examination and other expert

methods), following which the Expert Team compile a joint report and draft the individual programme of the inmate's execution of their sentence of imprisonment, as well as propose the penitentiary or prison in which the inmate will serve their sentence. The final decision on the penitentiary or the prison for the execution of the sentence following the proposal of the Expert Team of the Diagnostic Centre in Zagreb rests with the Central Office of the Ministry of Justice Directorate for Prison System and Probation. Given that in the case at issue the Respondent is a female, Zorka Rogić would be serving her sentence in the specialised penitentiary for women, the Penitentiary in Požega, which comprises units for closed, semi-open and open regimes, as well as a separate nursery for pre-labour women and young mothers with their babies. Children of inmates stay with their mother in the Penitentiary up to their three years of age. The inmates of the Penitentiary in Požega serve their sentence together, move freely inside their respective unit during the day, use common areas, have their meals and perform other daily activities together. In accordance with the Penitentiary house rules and the daily schedule of inmates' activities, the inmates accommodated in the closed regime unit are entitled to a minimum of two hours' stay daily in the open air, while those in the semi-open and open regimes may spend several hours daily in the open space of the Penitentiary when they are not engaged in some other activity. Depending on their capacities, skills, health status and motivation for work, the inmates are deployed to some auxiliary tasks within the Penitentiary, such as help in the Penitentiary kitchen, the inmates' shop, tasks of companions in the nursery, in the Penitentiary garden, and the like. The inmates' spare time is planned and organised in various forms as free activities and their sections, such as handicraft and visual arts sections, in which they create various decorative items, the sports section, within which various competitions are organised, and the particularly popular literary, drama and dance sections. The inmates join these sections of their own free will and according to their wishes. Moreover, in their free time the inmates may listen to the radio, watch television, read books from the library, newspapers and magazines, watch films on video, and the like.

In conclusion, we wish to stress that inmates may be transferred to another penitentiary or prison to serve their sentence of imprisonment pursuant to a decision of the Central Office of the Ministry of Justice Directorate for Prison System and Probation made following a proposal of the penitentiary or prison warden. This may be done in order for the inmate to complete their individual programme of sentence execution, when this is necessary due to the organisation of the sentence execution and security, or when an inmate is being transferred to a milder form of sentence execution when the required prerequisites for this have been met.

Respectfully yours,

STATE SECRETARY
Josip Šalapić, MS
/signed and stamped/

I, Tatjana Paškvan-Čepić of Rijeka, permanent court interpreter for the English language appointed by Decree of the President of the County Court in Rijeka no. 4 Su-441/2019-8 of 19 November 2019 hereby certify that the above translation is a true copy of the original written in Croatian.

*Rijeka, 25 August 2020
Number: 36/20*

Tatjana Paškvan-Čepić

REPUBLIC OF CROATIA
MINISTRY OF JUSTICE AND ADMINISTRATION
DIRECTORATE FOR THE PRISON SYSTEM AND
PROBATION
Central Office for Prison System

CLASS: 720-04/20-01/293
REG. NO.: 514-08-01-03-01/2-20-10

Zagreb, 12 November 2020

URGENT
MUNICIPAL COURT IN RIJEKA
JUDGE TATJANA ČARGONJA
by electronic mail

RE: ZORKA ROGIĆ, PROCEDURE OF SURRENDER FOLLOWING THE EAW
- Supplemental response and additional information

Dear Judge,

Further to your email to the Central Office for Prison System of the Ministry of Justice, Directorate for Prison System and Probation received on 12 November 2020 concerning the request for additional information of the Irish Ministry of Justice regarding the procedure of surrender of Zorka Rogić to the Republic of Croatia, we hereby supplement our response dated 18 August 2020 and specify that if the Responded is convicted and sent to serve her sentence in the specialised penitentiary for women, the Penitentiary in Požega, the personal space afforded to her will be at least 3 m² of floor space (excluding sanitary facilities). In this regard, we also wish to inform you that the total number of female inmates accommodated in the Penitentiary in Požega allowed by law is 165, and on the day of 12 November 2020 there were 95 female inmates accommodated in it, which amounts to 57.58% occupancy.

Respectfully yours,

ASSISTANT MINISTER
Jana Špero
/signed and stamped/

I, Tatjana Paškvan-Čepić of Rijeka, permanent court interpreter for the English language appointed by Decree of the President of the County Court in Rijeka no. 4 Su-441/2019-8 of 19 November 2019 hereby certify that the above translation is a true copy of the original written in Croatian.

Rijeka, 16 November 2020
Number: 49/20

Tatjana Paškvan-Čepić