

THE HIGH COURT

[2020] IEHC 694
[2020 No. 157 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

VĚSMA VEĹIČKO

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 16th day of December, 2020

1. By an application pursuant to the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), the applicant seeks an order for the surrender of the respondent to the Republic of Latvia ("Latvia") on foot of a European arrest warrant dated 27th May, 2008 ("the EAW") issued by Mr. K. Kalniņš of the Office of the Prosecutor General of the Republic of Latvia ("the Prosecutor General's Office") as the issuing authority. The surrender of the respondent is sought to prosecute her in respect of three offences, one alleged offence relating to the arrangement of sham marriages in order to facilitate illegal entry or residence within the European Union ("the EU") and two alleged offences of human trafficking.
2. The EAW was endorsed by the High Court on 20th July, 2020. The respondent was arrested and brought before the High Court on 29th September, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued and no issue was taken in respect of this.
4. 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. No issue was taken in respect of those sections.
5. I am satisfied that the minimum gravity requirements as set out in the Act of 2003 are met as the offences in question carry maximum terms of 12 years', 15 years' and 5 years' imprisonment, respectively.
6. At part (e) of the EAW, the issuing authority has certified that each of the offences carries a maximum penalty of at least 3 years' detention and has ticked the relevant boxes for "*trafficking in human beings*" and "*facilitation of unauthorized entry and residence*". This indicates that article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), applies to the offences so that by virtue of s. 38(1)(b) of the Act of 2003, it is not necessary for the applicant to establish correspondence between the offences referred to in the EAW and any offence under the law of Ireland. I am satisfied that there is no reason to believe that the said certification is in error, and so there is no need for the applicant to establish correspondence. No issue was taken in respect of this certification and in any event I am satisfied that, if necessary, correspondence could be established.

7. Counsel for the respondent indicated at the hearing of this matter that there were two grounds of objection to surrender being pursued as follows:-
- (i) that the EAW did not adequately set out the particulars required by s. 11(1A) of the Act of 2003; and
 - (ii) that surrender was precluded by reason of s. 44 of the Act of 2003.

Section 11 of the Act of 2003

8. The three offences in respect of which surrender is sought are set out at part (e) of the EAW which states:-

"This warrant relates to in total: 3 (three) offences."

The offences are stated to be:-

- "1) Vēsma Vejičko in the group of persons with covetous purpose committed malicious ensuring for person a possibility to acquire legally the right to reside in the Republic of Latvia, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, and such a possibility was ensured for two or more persons.... By her actions Vēsma Vejičko committed the criminal offence provided for by the Section 2852(2) of the Criminal Law.*
- 2) Vēsma Vejičko committed the human trafficking in the group of persons pursuant to prior agreement, By her actions Vēsma Vejičko committed the criminal offence provided for by the Section 1541(2) of the Criminal Law.*
- 3) Vēsma Vejičko committed the human trafficking in the organized group, By her actions Vēsma Vejičko committed the criminal offence provided for by the Section 1541(3) of the Criminal Law."*

Within each such statement, a lengthy and detailed description of each of the offences was set out.

9. Counsel for the respondent submitted that there was an unacceptable lack of clarity in the description of the offences. In particular, he submitted that offence 1) appeared to consist of five separate allegations of wrongdoing involving different allegations of fact, including different timeframes, different persons and different sums. He submitted that it was not clear if the respondent was in fact being prosecuted for five separate offences in this regard so that she would face five different sentences in respect of offence 1). The Court was referred to the Supreme Court decision in *Minister for Justice, Equality and Law Reform v. Connolly* [2014] IESC 34, [2014] 1 IR 720 as well as the High Court decisions in *Minister for Justice and Equality v. Sevik* [2017] IEHC 421 and *Minister for Justice and Equality v. Pozgay* [2020] IEHC 17. The last of these authorities is most apposite as it relates to a matter where the European arrest warrant referred to two offences but one of those offences appeared to consist of twelve separate incidents of wrongdoing. In that

case, the court sought additional information and was assured by the issuing judicial authority that there were only two offences to be prosecuted.

10. From experience in dealing with European arrest warrants, the Court is aware that in several member states, a process exists whereby several offences of a similar nature committed within a certain timeframe may be prosecuted as a single offence and that upon conviction, a single sentence is handed down in respect of same. However, for the purposes of clarity the Court sought additional information in this regard and by reply dated 17th November, 2020, the issuing authority confirmed that the respondent was only to be prosecuted in respect of three offences and that the alleged offence under s. 2852(2) of the Criminal Law was being treated as one continued criminal offence in respect of which only one sentence may be imposed.
11. I am satisfied that the EAW adequately sets out the matters required by s. 11(1A) of the Act of 2003 and that there is no significant lack of clarity therein. The respondent's surrender is sought to face prosecution for three offences only, and sufficient particulars thereof have been set out to allow the respondent to know what is alleged against her, the potential penalties she faces and such information as she might require for the purposes of the rule of specialty.

Section 44 of the Act of 2003

12. Under article 4 of the Framework Decision, optional grounds for non-execution of a European arrest warrant are set out including article 4.7.(b), which provides that an executing judicial authority may refuse to execute the European arrest warrant:-

"where the European arrest warrant relates to offences which:.... (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory."

13. Section 44 of the Act of 2003 incorporates article 4.7.(b) of the Framework Decision and provides as follows:-

"A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State."

14. It is clear that the above section sets out a two-part test for determining whether surrender is prohibited by virtue of that section. Firstly, it must be established that the offence specified in the European arrest warrant was committed or is alleged to have been committed in a place other than the issuing state. Secondly, it must be established that the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the

State. In *Minister for Justice and Equality v. Trust Egharevba* [2015] IESC 55, Denham C.J. stated at para. 15 of her judgment:-

"[15] The requirements set out in s. 44 of the Act of 2003, as amended, are conjunctive. Thus, both conditions are required to be met for the appellant to succeed."

15. Counsel on behalf of the respondent submitted that as regards the offences in the EAW, and in particular offence 2, these were offences which are alleged to have been committed in a place other than the issuing state and that the acts alleged would not, if committed outside Ireland, constitute offences under Irish law.
16. Counsel for the applicant submitted that there was no question of extraterritoriality and that as the offences were alleged to have been partly committed in the territory of Latvia, s. 44 of the Act of 2003 was not engaged and did not arise.
17. Turning to the two-part test as set out in s. 44 of the Act of 2003, the Court must first examine the offences alleged in the EAW to discern if it is alleged that the offences were committed in a place other than the issuing state.
18. As regards offence 1), from the information in the EAW it is clear that what is alleged is that the respondent conspired with other persons to recruit women in Latvia who would deliberately travel from Latvia to Ireland, specifically to enter into sham marriages intended to facilitate citizens of India or Pakistan to unlawfully obtain a right of residence in Ireland. The women were recruited while they were in Latvia and that was part of the offence. They travelled from Latvia to Ireland and that was part of the offence. The offence was partly carried out within Latvia.
19. As regards offence 2), from the information in the EAW it is clear that what is alleged is that the respondent conspired with other persons to arrange the human trafficking of U-Z from Latvia to Ireland by deceiving U-Z with an offer of paid work as a babysitter with the intention that on her arrival in Ireland, U-Z would be kept in servitude. This conspiracy was put into effect. As such, the offence was partly carried out within Latvia. U-Z was clearly deceived when she was in Latvia and this deception was part of the offence. On foot of that deception, U-Z travelled from Latvia to Ireland and this was also an essential part of the offence. The offence was partly carried out within Latvia.
20. As regards offence 3), from the information in the EAW it is clear that what is alleged is that the respondent conspired with other persons to deceive women in Latvia into going to Ireland to take up lawful employment and to then force them to enter into sham marriages intended to facilitate citizens of India or Pakistan to unlawfully obtain a right of residence in Ireland. These women were deceived while in Latvia and that was part of the offence. They travelled from Latvia to Ireland and that was part of the offence. The offence was partly carried out within Latvia.
21. It is a long-standing principle of criminal law that a person may commit an offence in one jurisdiction while being physically present in another jurisdiction. For instance, a person

on a computer in Ireland might deceive someone in France into moving funds into an account in Ireland. The offence has been committed in France where the victim was deceived and suffered loss. It has also been committed in Ireland where the perpetrator of the deception operated the computer and received the funds. In such circumstances, one or other or both states may take upon themselves jurisdiction to prosecute such matters. The question of jurisdiction is a separate matter from the place where the offence is alleged to have been committed. The offence would be regarded as committed partly in Ireland and partly in France.

22. Conspiracy to commit a particular crime consists of an agreement entered into by two or more persons to bring about the commission of that crime. Insofar as each of the conspirators carries out an act or omission in furtherance of bringing about the commission of the crime intended, then each acts with the agreement, consent and authority of the others and each conspirator is, in effect, an agent of his co-conspirators so that his act or omission is also that of his co-conspirators. Conspiracy may transcend national borders. Acts taken in furtherance of the conspiracy may occur in a number of different states. One of the conspirators may never enter a state where another of the conspirators carries out some act or omission in furtherance of the conspiracy. Notwithstanding such matters, each conspirator will be taken to have carried out such act or omission wherever it was carried out by one of the other conspirators.
23. In *Ellis v. O'Dea (No. 2)* [1991] 1 I.R. 251, the principal judgment of the Supreme Court was delivered by Finlay C.J., with whom Griffin, Hederman, McCarthy and O'Flaherty JJ. agreed. The Court had to consider whether a person entering into a conspiracy outside Ireland, in furtherance of which an overt act is done in Ireland, is amenable to trial in the courts of Ireland. At p. 258 Finlay C.J. stated:-

"... it is a fundamental principle of the Irish common law, applicable to the criminal jurisdiction of the Irish courts, that a person entering into a conspiracy outside Ireland in furtherance of which an overt act is done in Ireland is amenable to trial in the courts of Ireland. I am equally satisfied that a person who, though located outside Ireland, does an act which either in itself or by reason of the conduct of an accomplice has the effect of completing a criminal offence in Ireland, is amenable to the Irish courts. The broad reason underlying these two principles is, of course, that the criminal law must take cognisance of any crime committed within the State and must make persons, if charged before it, amenable for that crime, irrespective of where they were located at the time of its commission. It would be the very negation of an adequate criminal jurisdiction and an absurdity if a person joining in a criminal act being either a conspiracy or a joint venture could escape responsibility by reason of the fact that he has committed no overt act within the jurisdiction."

24. In *Minister for Justice and Equality v Egharevba* [2015] IESC 55, the surrender of the respondent was sought by France to face prosecution for two offences, as outlined at para. 10 by Denham C.J.:-

"[10] ... laundering as an organised criminal gang, by investment, concealment or conversion, of the proceeds of the crimes of procuring and/or of living off immoral earnings, committed as an organised criminal gang, and of trafficking in human beings, committed as an organised criminal gang;

criminal conspiracy for the purposes of preparing to commit the crimes of procuring and/or of living off immoral earnings, committed as an organised criminal gang and of trafficking in human beings, committed as an organised criminal gang."

Ms. Egharevba was alleged to have received large sums of money into her bank accounts in Ireland, and to then have arranged to have those funds sent to Nigeria. Investigations had revealed that young Nigerian women had been procured by "mamas" in Nigeria, and had been taken to Italy and then to Grenoble in France where they were forced into prostitution in order to repay an imaginary debt in the amount of €50,000. The respondent had never been in France. The European arrest warrant stated that the offences of which she was accused were committed in Grenoble (Isere, France) on French national territory, and on an indivisible basis in Nigeria and in Ireland between certain dates. In the High Court (*Minister for Justice & Equality v T.E. (No 2)* [2014] IEHC 51), Edwards J. held at para. 100:-

"[100] In those circumstances the act of one participant committed in France can be regarded as the act of all of the participants. It is alleged in this case that monies, the proceeds of prostitution and people trafficking, were collected in France by R.O. and transferred to a bank account held in Ireland by the respondent. The issuing state is attributing those actions of R.O. to the respondent because both parties are said to have been participants in the organised group which this activity was intended to benefit, and that is sufficient to ground the laundering charge preferred against the respondent as having occurred within the territory of France."

In the Supreme Court, Denham C.J. affirmed the determination of the learned High Court judge on that issue at para. 14 of her judgment.

25. In *Minister for Justice and Equality v S.F.* [2016] IEHC 81 and *Minister for Justice and Equality v D.F.* [2016] IEHC 82, Donnelly J. outlined at para. 3 of both judgments that the surrender of each of the respondents was sought by France to serve a sentence imposed in respect of offences for:-

"[3] ... Offence 1: Complicity of smuggling of prohibited or heavily taxed goods as part of an organised group.

Offence 2: Complicity of attempted undeclared exportation of prohibited or heavily taxed goods committed as part of an organised group.

Offence 3: Participation in a conspiracy with the aim of preparing an offence punished by 10 years imprisonment."

The warrant in that case indicated at part (e), inter alia, that on 5th March, 2010, [JPB] was arrested in Veys, France, while driving a lorry which transported five tonnes of smuggled cigarettes. He had loaded those goods in the region of Paris and headed for Cherbourg to embark to Ireland. He was not in possession of the customs documents provided for by law. This driver, who was employed by a company located in Ireland, was managed by S.F. and D.F.. The ferries had been reserved by his bosses who had stayed in contact with him during the transport carried out with a lorry belonging to the company. Additional information received from the issuing judicial authority had asserted that the circumstances in which the offences were committed were, as set out at para. 33 of both D.F. and S.F., as follows:-

"[33] 'Having, on the Irish territory, but in connection with offences committed on the national territory and within the jurisdiction of the specialized inter regional court of Lille, in February 2020 and March 2010, in any cases within a time period not covered under statutes of limitations, been the accomplice of the offence of possession and transportation in breach of legal and statutory provisions heavily taxed goods, in the present case approximately 5 tons of Richman branded smuggled cigarettes, with this circumstance that the facts were committed as part of an organized group, of which [JPB] is accused, by knowingly helping or assisting him in his preparation or his consumption and by giving instructions to commit the offence, in the present case by providing the combination of vehicles having served for the transport of smuggled goods and by giving instructions in his capacity as company manager to his employee, some facts provided for by [various provisions of the French Customs Code and punished by various provisions of the French Customs Code and in consideration of various articles of the French criminal code]'."

Further additional information from the issuing judicial authority was set out at para. 34 as follows:-

"[34] 'The F. brothers were convicted as accomplice of transport and possession with the aim of smuggling prohibited or heavily taxed goods committed as part of an organized group as they were recognised as the two people who gave the orders and organised the traffic. [Same for the complicity of attempted exportation]'."

It was not alleged that the respondents were physically in France where the smuggled cigarettes were located but it was established that the substantive offences were committed in France, and as the conviction of the respondents was in respect of complicity in those offences, it was clear that the offences with which the respondents had been sentenced were committed in France. In both D.F. and S.F., Donnelly J. held at para. 69:-

"[69] In relation to the conspiracy offence, this had as its object the carrying out of the substantive offences in France. The law of France allows those who participate in the conspiracy to be held responsible for the offences which are carried out on the territory of France. In this case, it is clear that the substantive offences were

carried out in France and that the complicity and participation of the respondent is in those offences. In those circumstances, the act or acts committed by one participant in France can be regarded as the act or acts of all the participants. Therefore, these offences occurred within the territory of France.”

26. In the present case, I am satisfied that as regards each of the three offences referred to in the EAW, some of the acts alleged to constitute each offence were committed in Latvia and it is therefore not alleged that the offences took place in a place other than the issuing state. It follows that the respondent has failed to satisfy the first requirement of s. 44 of the Act of 2003, and as the two requirements of the section are conjunctive, the respondent has failed to meet the conditions set out in the section. In such circumstances, s. 44 of the Act of 2003 does not arise for consideration and I dismiss the respondent’s objection in that regard.

Conclusion

27. I am satisfied that the surrender of the respondent is not precluded by part 3 of the Act of 2003.
28. 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 Latvia.