

THE HIGH COURT

[2021] IEHC 547
[2021 No. 182 EXT]

BETWEEN

MINISTER FOR JUSTICE

APPLICANT

AND

BARTOLOMEJ VERBERGER

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 26th day of July, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to the Czech Republic pursuant to a European arrest warrant dated 14th June, 2021 ("the EAW"). The EAW was issued by Judge Hana Muritova, of the District Court in Chomutov, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of ten months' imprisonment, all of which remains to be served.
3. The EAW was endorsed by the High Court on 24th June, 2021 and the respondent was arrested and brought before the High Court on 25th June, 2021 on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
7. At part E of the EAW, it is indicated that it relates to two offences. I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of the State, viz. an offence contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997 and an offence contrary to s. 6 of the Criminal Justice (Public Order) Act, 1994. Correspondence was conceded at hearing.
8. Part B of the EAW refers to the enforceable judgment as:-

"Judgment of the District Court in Chomutov of 28 November 2018, Reference No. 25T 125/2018-196, in connection with a resolution of the District Court in Chomutov of 19 May 2021, reference No. 25T 125/2018-259."
9. At part D of the EAW, by way of indication whether the respondent appeared in person at the trial resulting in the decision, the following is set out:-

- "(1) Yes, the person appeared in person at the trial resulting in the decision – judgment.
- (2) No, the person did not appear in person at the trial resulting in the decision - about conversion of the originally conditional sentence of imprisonment."

Also at part D, it is further stated:-

"the person was not personally served with the decision about the conversion of the originally conditional sentence of imprisonment, however the person was represented by a defence lawyer."

10. At part F of the EAW, the following is set out:-

"The resolution about the conversion of the originally conditional sentence of imprisonment could not be served on the convict, because he travelled out of the Czech Republic and became unreachable because of his fear of the enforcement of a sentence in another criminal case, namely in the case of the District Court in Břeclav, reference No. 3T 100/2015. The convict intentionally concealed the address of his actual stay, he knew about the running criminal proceeding, because he granted a power of attorney to the defence lawyer JUDr. Hájek to inspect the files and on the basis of his behaviour, whereby he evades the enforcement criminal proceeding on the territory of the Czech Republic due to his stay abroad, he obstructs the criminal proceedings.

The person, the surrender of whom it regards, has a defence lawyer, who was appointed for him because the proceeding is conducted against him in his capacity as the fugitive. (Mgr. Bohuslav Roll, attorney-at-law, with registered office Chomutov, Nerudova 63, the Czech Republic). The resolution of the District Court in Chomutov of 19 May 2021, reference No. 25T 125/2018-259, was served on him in accordance with the law of the Czech Republic. No complaint was lodged.

The criminal prosecution on the territory of the Czech Republic is not statute-barred."

11. At hearing, the respondent objects to surrender on the following grounds:-

- (i) surrender is precluded by reason of a lack of clarity in the EAW;
- (ii) surrender would amount to an abuse of process; and
- (iii) surrender is precluded by reason of s. 37 of the Act of 2003 due to prison conditions in the issuing state.

Lack of Clarity

12. Counsel on behalf of the respondent submitted that it was not clear from the EAW whether the sentence of ten months' imprisonment ordered to be served by the resolution of the District Court on 19th May, 2021 was simply the activation of a ten-month sentence previously imposed by the District Court on 28th November, 2018. He submitted

that the Court could not be certain that the District Court at the revocation hearing had not altered the original term of imprisonment imposed but suspended.

13. Counsel on behalf of the applicant referred the Court to additional information dated 25th June, 2021 which states:-

"Mr. Verberger was convicted, of the originally conditional sentence. By the judgment of the District Court in Chomutov of 28 November 2018, reference NO. 25T 125/2018-196. He has received this decision in person.

By the resolution of the District Court in Chomutov of 19 May 2021, reference NO. 25T 125/2018-259, it was decided that Mr. Verberger shall serve his sentence in prison. He did not receive this resolution, because he was not present during the court.

And because Mr. Verberger was present during the judgment, but not during the resolution, both 1 and 2 are ticked in the Table D of the warrant."

14. Counsel on behalf of the applicant submitted that it was clear from the EAW and also from the additional information provided that the revocation hearing had simply resulted in the initial term of imprisonment of ten months imposed, but suspended, being activated. She submitted that there is nothing before the Court that in any way suggests that the revocation hearing changed the nature or length of the original sentence imposed but suspended.
15. This matter was heard together with proceedings as regards another European arrest warrant seeking the surrender of the respondent (*Minister for Justice v. Verberger* [2021], record no. 2021/114 EXT.), referred to herein as "the first European arrest warrant". In those other proceedings, the respondent was arrested on foot of a Schengen Information System II alert and the first European arrest warrant was subsequently forwarded to the Central Authority for production to the High Court. A memo accompanying the transmission of the first European arrest warrant in that case made reference to the respondent's criminal conviction records. This referred to the sentence of three years' imprisonment imposed upon the respondent in respect of the other proceedings and also made reference to the conviction, the subject matter of these proceedings, as follows:-

"On 28.11.2018 VERENBERGER was released on suspended sentence of imprisonment for 10 months in lieu of incarceration. The reason of VERENBERGER's conviction were the offences of breach of public peace and bodily harm."

16. It is clear from the above that the initial sentence imposed was a conditional sentence of ten months' imprisonment.
17. It should also be noted that the respondent has not challenged any of the information received from the issuing state. He was present when the initial suspended sentence was imposed and, therefore, can be taken to be fully aware as to what the initial sentence

was. He has not put forward any evidence to suggest it was anything other than a sentence of ten months' imprisonment, suspended.

18. I am satisfied that the revocation hearing did no more than lift the suspension on the initial sentence of ten months' imprisonment. It did not change the nature or length of the sentence. In such circumstances, the revocation hearing is not to be treated as a hearing or trial for the purposes of article 4a of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), or s. 45 of the Act of 2003 (see *Ardic* (Case C-571/17 PPU) and also *Minister for Justice and Equality v. Lipinski* [2017] IESC 26).
19. The appropriate hearing for the purposes of Article 4a of the Framework Decision and s. 45 of the Act of 2003 is the initial hearing before the district court on 19th May, 2021. The respondent was present in person at same.
20. I am satisfied that no issue arises by virtue of s. 45 of the Act of 2003 which precludes surrender of the respondent.

Abuse of Process

21. Turning once more to the other proceedings heard alongside these proceedings, counsel for the respondent submits that the respondent had been arrested on foot of same on 7th May, 2021 and this information had been conveyed to the issuing state. He submitted that the respondent was "*alarmed*" that an *in absentia* hearing had proceeded against him in respect of this matter on 19th May, 2021 despite his arrest on the other matter. Other than expressing alarm, counsel on behalf of the respondent was not in a position to indicate any basis for suspecting an abuse of process or *mala fides* on the part of the issuing state. I note that the warrant in each case was issued by a different issuing judicial authority. There is no evidence to suggest that the issuing judicial authority in these proceedings had been informed of the arrest of the respondent on foot of the first European arrest warrant. In any event, I do not believe that the judicial authorities in the Czech Republic were under an obligation to suspend all other proceedings concerning the respondent until the determination of the first European arrest warrant. Moreover, by virtue of the rule of specialty, as provided for by Article 27 of the Framework Decision, surrender of the respondent on foot of the first European arrest warrant would not entitle the issuing state to deprive the respondent of his liberty in respect of the offences to which this EAW relates except in the limited circumstances set out therein.
22. I am satisfied that, on the materials put before the Court, there is no basis for refusing to surrender the respondent simply because the revocation hearing took place a number of days after he was arrested in this jurisdiction on foot of the first European arrest warrant which was issued by a different issuing judicial authority in the same issuing state. I am also satisfied that no evidential basis was put before the Court to suggest any abuse of process or *mala fides* on the part of the issuing state.

Section 37 of the Act of 2003

23. It is submitted on behalf of the respondent that surrender is precluded as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR"), the protocols thereto and/or would contravene the Constitution.
24. It is submitted that due to prison conditions in the Czech Republic, if surrendered, the respondent would face a real risk of a breach of his right not to be subjected to inhuman or degrading treatment or punishment. The Court was referred to a number of reports from the European Council Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the US State Department and other bodies.
25. Having heard submissions and considered the documentation presented, the Court sought additional information from the issuing state as regards the likely prison conditions which the respondent would face, if surrendered.
26. By additional information dated 1st July, 2021, it is indicated that the Court does not determine the specific place of execution of the sentence and that this is a matter for the prison service. It is indicated that the legislation in the Czech Republic in respect of the execution of sentences is in compliance with European Union standards. Initially, persons surrendered on the basis of a European arrest warrant are placed in custody in Prague Ruzyně. It is then a matter for the prison service to determine where the sentence will be served. The additional information sets out details of the general conditions of incarceration. It is emphasised that a personal space of not less than three square metres is provided. It is confirmed that, upon admission, a convicted person is subject to a personal examination and necessary hygienic and anti-epidemic measures. An initial medical examination is carried out and medical services are provided if necessary. Medical services are provided in the medical facility of the prison service and out-patient or in-patient care is provided in the nearest medical facility. It should be noted that the additional information specifically references the respondent as the convicted person and, therefore, reference as to "*convicted person*" in the information can be treated as references to the respondent.
27. Having considered all of the information before the Court, I am not satisfied that there are substantial reasons for believing that, if surrendered, the respondent faces a real risk of a breach of his fundamental rights due to prison conditions. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. I am satisfied that the presumption contained in s. 4A of the Act of 2003 has not been rebutted. Bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would contravene a provision of the Constitution. I am satisfied that surrender would not be incompatible with the State's obligations in that regard and nor would it contravene any provision of the Constitution.

Conclusion

28. I am satisfied that surrender of the respondent is not precluded by Part 3 of the Act of 2003 or any other provision of that Act.
29. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order pursuant to s. 16 for the surrender of the respondent to the Czech Republic.