

THE HIGH COURT

[2021] IEHC 555
[2021 No. 114 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 23rd December, 2019 (“the EAW”). The EAW was issued by Judge Oldrich Rezek, of the District Court in Breclav, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of three years’ imprisonment, all of which remains to be served.
3. The respondent was arrested on on foot of a Schengen Information System II alert and brought before the High Court on 8th May, 2021. The EAW was produced to the High Court on 19th May, 2021.
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 hearing, the respondent objects to surrender on the following grounds:-
 - (i) surrender is precluded by reason of a lack of clarity and a lack of information in the EAW;
 - (ii) surrender is precluded by reason of s. 38 of the Act of 2003; and
 - (iii) surrender is precluded by reason of s. 37 of the Act of 2003.

Alleged Lack of Clarity

8. Counsel on behalf of the respondent submits that there is an unacceptable lack of clarity in the EAW as regards the number of offences to which it relates and the location of the offences.

9. At part E of the EAW, it is stated that it relates to one offence and, thereafter, details are set out under numbers (1) to (5) of various actions undertaken by the respondent, along with other persons, as regards fraud or conspiracy to defraud. The precise location of each of the actions is not indicated but the dates of same and the aggrieved parties are identified as well as the amounts of money involved and the mechanism by which the fraud was committed.
10. By additional information dated 1st July, 2021, it is confirmed that the EAW relates to one single criminal offence. It is pointed out that, according to the Criminal Code of the Czech Republic, the various matters set out are to be considered one single criminal offence. The additional information states that the locations where the crime took place are detailed in the judgment which is part of the EAW and it confirms that the crime was committed in the territory of the Czech Republic. It also confirms that the respondent committed the offence in question within an organised group. I am satisfied that there is no lack of clarity surrounding the number of offences to which the EAW relates. As regards the location of the offences, the judgment was not in fact included with the EAW, but I do not believe anything of significance turns on this. It has been confirmed that all of the offences occurred within the Czech Republic. Thus, there can be no uncertainty as to whether there was any extraterritorial element to the offences. Furthermore, this is a conviction warrant.
11. The EAW indicates that the respondent participated in the hearing on 18th December, 2017 and the hearing on 24th April, 2019. In such circumstances, the respondent must be fully aware of all of the relevant details pertaining to the offence in respect of which he was convicted. He has not put forward any evidence by way of affidavit indicating any particular prejudice he may suffer as a result of the EAW failing to indicate precisely where in the Czech Republic each offence occurred.
12. The respondent does not contest by way of affidavit evidence any of the facts as set out in the EAW.
13. At part B of the EAW, it is indicated that the enforceable judgment is a judgment of the District Court in Breclav dated 18th December, 2017 and an order of 24th April, 2019. At part D of the EAW, it is indicated that the respondent participated in person in the court hearing in which the decision was issued – the trial on 18th December, 2017 and the public hearing on 24th April, 2019. A memo accompanying the EAW indicates that on 18th December, 2017, the respondent was released on a suspended sentence of imprisonment for 36 months in lieu of incarceration. This decision was changed on 30th May, 2019 into an unconditional sentence of imprisonment of 36 months.
14. I dismiss the respondent's objections to surrender based on a lack of clarity or lack of information in the EAW or other documents.

Section 38 of the Act of 2003

15. Counsel on behalf of the respondent submits that if the EAW related to more than one offence, then he was disputing whether some of the actions set out at part E of the EAW

would constitute an offence under Irish law. However, he conceded that if the EAW related to a single offence incorporating all of the various actions set out at part E of the EAW, then he would have to concede correspondence.

16. As stated earlier, the additional information confirms that the EAW relates to only one offence. I am satisfied that correspondence can be established between the offence to which the EAW relates and an offence under the law of the State, namely the offence of deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 or an offence of obtaining services by deception contrary to s. 7 of that Act or the common law offence of conspiracy to defraud.
17. I dismiss the respondent's objections to surrender based upon s. 38 of the Act of 2003.

Section 37 of the Act of 2003

18. 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. 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.
19. 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.
20. 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 outside medical facility. It should be noted that the additional information specifically references the respondent as the convicted person and, therefore, references to "*convicted person*" in the information can be treated as references to the respondent.
21. 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 in the issuing state. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements 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"), 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.

22. I dismiss the respondent's objections to surrender based upon s. 37 of the Act of 2003.

Conclusion

23. I am satisfied that surrender is not precluded under Part 3 of the Act of 2003 or any other provision of that Act.

24. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the Czech Republic.