

# THE HIGH COURT

[2025] IEHC 52

BETWEEN

Record No 2024 EXT 223

MINISTER FOR JUSTICE

APPLICANT

v.

IVAN SAMKO

RESPONDENT

## **JUDGMENT of Mr. Justice Patrick McGrath delivered on the 31 January 2025**

1. In this application, the applicant seeks an order for the surrender of the respondent on one European Arrest Warrant [‘EAW’]. The Respondent is sought by the issuing judicial authority, being a Judge of the District Court in Prague, for the purposes of prosecution.
2. The Respondent was arrested on 1 November 2024 on foot of a Shengen Information System II alert [‘SIS alert’] and brought before this Court on that date. He was remanded on bail initially to the 14 November 2024 and thereafter until the conclusion of these proceedings.
3. A section 20 request was sent to the Issuing Judicial Authority [‘IJA’] on the 5 December 2024 seeking further information and a reply thereto was received on the 10 December 2024.
4. The respondent is identified in part (a) of the Warrant. No issue is taken in regard to identity, and I am satisfied the Respondent is the person sought in the EAW.

5. The offences for which the Respondent is sought carry maximum sentences of 10 years imprisonment and the minimum gravity requirements of s. 38 of the European Arrest Warrant Act, 2003 [‘the 2003 Act’] are met.
6. I am satisfied that none of the matters referred to in sections 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended (“the 2003 Act”), 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.
7. The EAW was issued by Judge Maria Korbanova, a Judge of the District Court of Prague, who is an issuing judicial authority for the purposes of the Framework Decision and the 2003 Act.

### **POINTS OF OBJECTION**

8. The Respondent filed a Notice of Objection, dated the 26 November 2024, wherein he put the applicant on proof of all matters and then made the following specific objection:-
  - a. There is a lack of clarity in Part (e) of the Warrant in relation to the number of offences for which his surrender is sought;
  - b. The second offence set out in the Warrant does not correspond with an offence known to Irish Law
9. A section 20 request, dated the 5 December 2024, was then sent to the IJA seeking the following further information:

*‘1. Part ( e) of the said Warrant it is stated that the warrant relates in total to two offences. The warrant outlines the circumstances in which the offences were allegedly committed, including the time, place and degree of participation of the requested person in the offences. Please confirm the time period for which the requested person is sought in respect of:-*

  - (i) The offence contrary to Section 283 and;*
  - (ii) The offence contrary to Section 337*

*2. Please confirm that the surrender of the requested person is sought for the purpose of prosecution for 2 offences only, as stated in the first paragraph of Part (e) of the Warrant.*

*3. Please confirm that the issuing judicial authority seeks to invoke the provisions of Article 2.2 of the Framework Decision in respect of the offence contrary to Section 283 and not in respect of the offence contrary to Section 337*

*4. At part (e) of the warrant reference is made to a breach of Section 337 (1)(g) and of Section 337 (1)(h) of the Czech Criminal Code. For the purpose of clarity, please confirm under which subsection the requested person is sought for prosecution. Please also furnish the precise details of the circumstances in which this offence is alleged to have been committed*

10. In their reply of the 10 December 2024, the IJA stated:-

*'1) Both crimes were committed simultaneously. Criminal offences were committed in the period from 2/5/2020 to 6/5/2020, from 3/5/2020 to 8/5/2020, from 11/5/2020 to 14/5/2020, from 18/5/2020 to 26/5/2020, from 25/5/2020 to 2/6/2020, from 2/6/2020 to 5/6/2020*

*2) We confirm the surrender of the requested person is sought for the purpose of prosecution for 2 offences only*

*3) We confirm that the Issuing Judicial Authority seeks to invoke the provisions of Article 2.2 of the Framework Decision in respect of the offence contrary to section 283*

*4) The requested person is prosecuted according to Section 283 (1), (2) (a) of the Criminal Code and Section 337 (1)(h) of the Criminal Code, currently valid and effective wording'*

### **DETAIL AND CLARITY OF WARRANT**

11. At part (e) of the EAW is set out the circumstances in which the offences for which surrender are alleged to have been committed. In summary it is alleged that the Respondent, together with a co-accused who was also a prisoner, used a prison phone and authorised prison calls to organise and arrange the sending of narcotic and

psychotropic drugs into a particular prison, that he kept some of the drugs and sold or supplied the balance thereof to other prisoners. Following the additional information provided it was inter alia clarified that he was sought for two offences only and that the offending spanned the various periods of time set out in the EAW and additional information.

12. In *Minister for Justice v Connolly* [2014] 1 I.R. 720, Hardiman J stated at paragraph 30 thereof:-

*'30. It is mandatory requirement of the European arrest warrant procedure that there be unambiguous clarity about the number and nature of the offences for which the person is sought*

...

*31. I consider it to be an imperative duty of a court asked to order the compulsory deliver of a person for trial outside the state to ensure that it is affirmatively and unambiguously aware of the nature of the offences for which it is asked to have him forcibly delivered, and for which he may be tried abroad and the number of such offences'*

13. These comments emphasising the necessity of clarity in relation to essential matters, such as for example the offences for which surrender is sought and the maximum sentence for each offence, were similarly made by Murray CJ in *Minister for Justice v Rodnov* [Unreported] 1 June 2006 and Denham CJ in *Minister for Justice v Herman* [2015] IESC 49.

14. Having considered the description of the offences for which surrender is sought, the circumstances giving rise to these alleged offences as set out in paragraph (e) of the EAW and the additional information received from the IJA, I am satisfied that there is sufficient clarity provided for the purposes of this court carrying out its functions under the 2003 Act and the Framework Decision. There is sufficient detail as required by Section 11A of the Act. It is now clear:

- a. What is the legal definition of the offences for which surrender is sought;
- b. That the Respondent is being prosecuted for two offences;

- c. What is the time period during which it is alleged he carried out the conduct covered by the said two offences; and
- d. One offence is listed in Article 2.2 of the Framework Decision and one is not

## **CORRESPONDENCE**

15. Section 5 of the 2003 Act 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 so specified 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’.*

16. The relevant principles for showing correspondence are now well established. In assessing correspondence, the question is whether the acts or omissions that constitute the offence in the requesting state would, if carried out in this jurisdiction, amount to a criminal offence – *Minister for Justice v Dolny* [2009] IESC 48.
17. There is no issue in relation to correspondence so far as the first offence is concerned. The offence is one which is certified by the IJA as falling within the list of offences at Article 2.2 ‘*illicit trafficking in narcotic drugs and psychotropic substances.*’ There is no suggestion of any manifest error on the part of the IJA in this certification.
18. In any event this offence is one of ‘*Unauthorised Production and other Disposal with Narcotic and Psychotropic Substances and Poisons*’ contrary to Section 283 of the Czech Criminal Code. The conduct underlying the offence includes the importation, sale and supply and personal use of illegal drugs whilst in prison. The drugs in question are ones criminalised under the Misuse of Drugs Acts, 1977 to 1984 and I agree that this offence corresponds with offences contrary to ss 3 and 15 of those Acts.
19. It is however submitted that correspondence is not established in relation to the second offence for which surrender is sought. This offence is one of ‘*Obstruction of Justice*

*and Obstruction of a Sentence of Banishment*’ contrary to Section 337 of the Czech Criminal Code. Section 337 provides:-

*‘(1) Whoever interferes or considerably aggravates execution of a decision of court or other public authority by*

*....*

*(h) committing serious conduct to thwart execution of purpose of the sentence*

*.....*

*shall be sentenced to imprisonment for up to two years’*

20. The response received from the Czech authorities indicates that both crimes alleged were committed simultaneously. The circumstances set out in Part (e) of the EAW, together with the Additional Information provided in response to the Section 20 Request, relate to both offences. One set of facts is capable of giving rise to criminal liability for two offences and there is nothing objectionable to this course or action by the Czech authorities so far as the request for surrender is concerned. In *Minister for Justice v Hull* [2022] IEHC 159, Biggs J dealt with a request where surrender was sought in relation to two offences charged as alternatives and held there was no difficulty in this regard.

21. The test for correspondence was described as follows by Denham J in *Dolny* at paragraph 38:-

*‘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.’*

22. The particulars of the offence as set out in paragraph (e) and which are said to constitute inter alia an offence contrary to Section 337 of the Czech Criminal Code, correspond with a number of offences in this jurisdiction, including Section 3 and 15 and 15C (which penalises the supply of controlled drugs into a prison or place of detention) of the Misuse of Drugs Acts, 1977 to 1984. The fact that the acts described therein give rise to potentially two offences under Czech law, one of which is of a different nature to the offences which would arise from such behaviour in this jurisdiction, does not in my opinion lead to a correspondence issue. The acts described in the Warrant, which are criminalised under two sections of the Czech Criminal Code, would constitute a number of offences in Ireland.

23. I will therefore make an order for the surrender of the Respondent under section 16 of the 2003 Act, for the purposes of prosecution for both offences set out in the Warrant.