THE HIGH COURT

[2021] IEHC 537

[2020 No. 269 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ISTVÁN SZÁNTÓ

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 23rd day of July, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to Hungary pursuant to a European arrest warrant dated 5th March, 2020 ("the EAW") issued by Dr. Katalin Benczéné Viczián, Judge of the Debrecan Regional Court, as the issuing judicial authority. The surrender of the respondent is sought to enforce a sentence of four years and three months' imprisonment in relation to a theft-type offence.

2. The EAW was endorsed by the High Court on 19th October, 2020. The respondent was arrested on foot of same on 20th December, 2020 and brought before this Court on 21st December, 2020.

3. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.

4. I am further 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 and that surrender of the respondent is not prohibited for the reasons set forth therein. This was not contested at hearing.

5. 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. Minimum gravity was not contested at hearing.

6. At part E of the EAW, the circumstances of the offence to which the sentence relates, including details of the extent of the respondent's involvement in same, are set out. I am satisfied that correspondence has been established between the offence referred to in the EAW and the offence under the law of this State of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. Correspondence was not contested at hearing.

7. The respondent objects to surrender on the following grounds:-

   (a) the EAW does not contain sufficient detail to satisfy the requirements of s. 11 of the Act of 2003; and

   (b) surrender is precluded under s. 37 of the Act of 2003 as it would be in breach of the State's obligations under the European Convention on Human Rights ("the ECHR") and/or the Constitution.

8. The respondent swore an affidavit dated 6th January, 2021 in which he avers that he came to Ireland in 2018 and is a member of the Roma community, which is discriminated against in Hungary. He avers that he suffers from heart disease, high blood pressure and depression and that he cannot be treated in prison or by ordinary treatment. He exhibits a report dated 13th January, 2017 from Dr. Zoltán Fülöp, which reviewed his medical records and concluded that his medical conditions were considered a direct threat to his life and were an obstacle to serving a custodial sentence. This report appears to have been prepared at the request of the respondent's lawyer in Hungary for use in the criminal proceedings in that jurisdiction, the subject matter of this application for surrender. It is not stated whether it was used before the courts in Hungary or if any evidence to the contrary was called by the prosecution but it is clear that, if it was relied upon, the courts in Hungary rejected the report as a basis for not imposing a custodial sentence as such a sentence was in fact imposed on 17th October, 2017 and upheld on appeal on 12th March, 2018. The respondent also exhibits various reports relating to discrimination against Roma people in Hungary and prison conditions there.

9. In a supplemental affidavit dated 2nd February, 2021, the respondent avers that he was admitted to hospital on 21st January, 2021 with angina. A letter from his consultant confirmed that his condition had been stabilised and that angiography had demonstrated unobstructed coronary arteries. The consultant recommended the respondent should avoid air travel until vaccinated in respect of Covid-19 as he would be considered a high risk in the event of contracting same. The respondent also exhibits a letter from a Hungarian solicitor, Dr. Csenge Katona, dated 7th January, 2021, which states that healthcare in Hungarian prisons is inadequate, that the respondent's care can only be provided in civilian conditions and that prisons are overcrowded and unhygienic. The affidavit also exhibits various reports concerning conditions in Hungarian prisons and the treatment of persons of Roma ethnicity. A report of the Hungarian National Ethnic Minorities Interest Protection Association EKE & IMA dated 15th January, 2021 suggested that the respondent had been wrongly convicted and sentenced harshly due to his Roma ethnicity. The report indicates that the respondent has been a member of the Hungarian Minorities Party since 2005 and has suffered physical attacks from racists, the last being in 2018. A further report from the Hungarian solicitor, Dr. Katona, dated 28th January, 2021, refers to a medical opinion that the respondent requires continuous treatment in a special cardiology ward in hospital. However, these opinions appear to date back to a period between 2011 and 2017.

Section 11 of the Act of 2003

10. Counsel for the respondent submits that the EAW lacked sufficient clarity as regards the decision upon which it is based and the period of detention which the respondent is required to serve.

11. At part B of the EAW, under the heading "*Enforceable judgement*" two judgments are set out as follows:-

> *"Judgement No. 1.B.1784/2015/92 of the District Court of Debrecan, dated 17 October 2017*

Judgement No. 2.Bf.621/2017/11 of the Debrecan Regional Court, dated 12 March 2018."

At part C of the EAW, it is stated that the sentence imposed was four years and three months' imprisonment, all of which remains to be served. At part D, it is indicated that the respondent appeared in person at the trial resulting in the decision.

12. By way of additional information dated 29th October, 2020, the issuing judicial authority clarified that the judgment dated 17th October, 2017 was a judgment at first instance where the respondent had appeared in person and the judgment dated 12th March, 2018 was a judgment at second instance where the respondent was not present, although he had been summoned personally and was represented by a legal counsellor appointed by the state.

13. Among the exhibits to the respondent's affidavit dated 6th January, 2021 is a memorandum of Dr. Iván Molnár, solicitor, dated 29th December, 2020 confirming that, as the respondent's representative, he had filed a review petition on 19th July, 2018 that the respondent was fully aware of same and had participated in the preparation of same. Dr. Molnár does not suggest that the respondent's right to notification of, or to participate in, any earlier hearings was not respected. Nor does the respondent himself make any similar complaints. It is clear that he had a lawyer, Mr. Szabo, representing him prior to the trial at first instance, as that lawyer commissioned the medical report of Dr. Fülöp prior to the trial. There is no suggestion that such representation ceased or that the mandate given to that lawyer was withdrawn prior to the appeal. In his affidavits, the respondent did not contest the information received from the issuing state as regards his having been personally summoned in relation to the appeal.

14. I am satisfied on foot of the papers before me that there is no lack of clarity concerning the judgment to be enforced or the sentence to be served and I dismiss the respondent's objection in that regard.

Section 37 of the Act of 2003

15. The respondent swore an affidavit dated 6th January, 2021 in which he avers that he suffers from a serious heart condition, depression and high blood pressure and that imprisonment would constitute a direct threat to his life. He exhibits various medical reports. He avers that he is a member of the Roma community and would face discrimination and persecution if surrendered. He exhibits a number of reports concerning discrimination of Roma persons in Hungary. As regards prisons in Hungary, the respondent sets out that same are overcrowded with generally poor conditions, including discrimination against Roma persons, and various reports are exhibited.

16. The Court sought additional information and by reply dated 8th February, 2021, the Hungarian Ministry of Justice confirms that, if surrendered, the respondent would be detained in a prison environment compatible with the ECHR, United Nations Standard Minimum Rules for the Treatment of Prisoners and the Council of Europe Recommendation No. R (87) 3 on the European Prison Rules. It is also confirmed that the respondent, if

surrendered, will be guaranteed three square metres of personal space, exclusive of sanitary facilities. The Court was subsequently furnished with a letter from the Hungarian Prison Service to the Hungarian Ministry of Justice dated 18th February, 2021, referring to the respondent and confirming that, under the relevant Hungarian laws, discrimination and segregation due to ethnicity are prohibited and that regular healthcare is provided including access to in-patient and out-patient services with civilian healthcare providers. While it could not be stated for certain what prison the respondent would be detained in, due to measures taken there was no longer an over-occupancy rate in Hungarian prisons and this is continuously monitored, with the occupancy rate now at 96%. It was envisaged that, if surrendered, the respondent would initially be placed in Budapest Remand Prison and possibly thereafter in Tiszalök National Prison.

17. The respondent referred the Court to a report of the Hungarian Helsinki Committee ("the HHC") dated 20th April, 2020 in relation to *Kovacs and Varga and Others v. Hungary* (application numbers 15707/10, 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13) which had been before the European Court of Human Rights ("the ECtHR"). The report acknowledges that prison occupancy rates had decreased but stated that certain penitentiaries could still be overcrowded, as demonstrated by figures from 2019. It acknowledged the Government's intention to build new prisons although they had not been built at that stage. General conditions in prisons were criticised in the report. The report appears to focus on the restriction of prisoners' rights to compensation in respect of detention conditions. The Court was referred to an updated report from the HHC dated 2nd February, 2021 which was critical of an action plan submitted by the Hungarian Government.

18. The respondent relied upon a letter from a medical GP attached to the Doctor 365 service in Cork dated 27th February, 2021. This states that a recent angiogram showed the respondent had mild to moderate heart disease. He is currently on medication for high blood pressure and high cholesterol. The letter refers to the respondent's medical records from Hungary showing a history of hypertension and heart issues since 2010 and that his doctor, presumably in Hungary, recommended monitoring these issues. The letter goes on to state:-

> *"In case of any deterioration relevant health services will not be available in the prison in case he will be sent to, to which I agree."*

The basis for this opinion is not set out.

19. In an affidavit dated 29th April, 2021, the respondent exhibits a number of statements from persons indicating that they had suffered from poor healthcare and overcrowding while detained in Hungary. These statements also indicated generally poor conditions within the prison system.

20. In a further affidavit dated 5th May, 2021 the respondent exhibits an updated report from Dr. Fülöp. He also exhibits a statement from Olga Budai stating that her son died while in prison in Hungary in 2017. She states that her son had repeatedly asked the guards to

transfer him to an outside hospital but was ignored. She states that he was transferred to the prison hospital but because he had no money, the recommended medications were not given to him. She states that he died of heart disease and that she thinks if he had received the necessary medical care in time, he would not have died. There is no objective evidence put forward to support these contentions.

21. Dr. Fülöp opines that the respondent still suffers, along with other comorbidity, from serious hypertension disease, so-called prinzmetal angina, coronary heart disease and hypoxic heart disease. These conditions have been associated with his symptoms of heart failure and angina pectoralis. When the symptoms occur, special examinations (e.g. cardiac ultrasound etc.) require emergency care (intensive emergency therapy). Based on the findings, even interventional cardiology care (interventional coronarography) intervention is possible. He opines:-

> *"These treatments are not fully available in Hungarian Penitentiary conditions (not in the Fővárosi Penitentiary, not in Tiszalök, nor in the Penitentiary Central Hospital, Tököl)."*

He opines that if a person was detained in one of those penitentiary institutes, the consequences of severe hypertension and consequent coronary artery spasm could realistically be expected to lead to chest pain syndrome, symptoms of heart failure which could lead to death *"if left untreated or inadequate*". He states that the current status of the respondent "*can be legally classified as 'directly endangering his life', so this qualifies as a barrier to Penitentiary admission under Hungarian law*" (if Dr. Fülöp is correct in this last opinion then presumably an application can be made to the Hungarian courts for the release of the respondent if his condition was to deteriorate significantly).

22. A copy of Dr. Fülöp's report was furnished to the issuing judicial authority.

23. By letter dated 12th May, 2021 from the Hungarian Prison Service Headquarters, it is again set out that Hungary complies with the relevant international standards as regards the treatment of prisoners. It states that ethnic discrimination, separation and segregation are not permitted under Hungarian law. As regards health treatment, it is stated that in all institutions there is at least a specialist nurse and primary healthcare available in all institutions. There is also out-patient and in-patient care and special medical treatment provided by the Central Hospital of the Prison Service and the Forensic Psychiatric and Mental Institution. The prison institutions have also concluded cooperation agreements with the civil health service providers in the relevant territory. It is again emphasised that prison occupancy has been reduced to 96% and that same is managed so that each institution does not exceed the total capacity of 100%. It is specifically stated that if the respondent is surrendered, he will be placed in a penitentiary institution compliant with the provisions of the ECHR, the United Nations Recommendation on the Minimum Principles of Humane Treatment of Prisoners, as well as the Council of Europe Recommendation No. R (87) 3 on the European Prison Rules and the substituting Council of Europe Recommendation No. Rec(2006)2. It was indicated that the respondent is likely

to go initially to the Penitentiary Institution of Budapest and it is possible he could be detained in the National Penitentiary Institution of Tiszalök.

24. Specifically, in relation to the report of Dr. Fulop, the Hungarian authorities provided a letter from the head of the Health Department of the Hungarian Prison Service confirming that the respondent can be properly treated in the Hungarian prison system by using contracted healthcare providers for his special healthcare needs (see email dated 7th June, 2021). In his letter dated 28th May, 2021, Captain Dr. László Rago notes the conclusions of Dr. Fülöp. He points out that the documents made accessible do not contain any medical findings for the past three years except for documents prepared this year. It is pointed out that the documents do not explain what medical treatment would be necessary which is not available in the Hungarian prison system. He states that the active care required for Mr. Szántó's cardiological diseases, highlighted in a report dated 2017, is currently not available directly within the prison system but can be provided by external healthcare institutions. He states that depending on the development of the epidemiological situation (presumably Covid-19), the in-patient care of the prison service expects to be able to ensure the admission of the respondent in July 2021, with his continuous monitoring and the care of the disease requiring active treatment as necessary. He states that in the event of any further legal proceedings in Hungary, it would be possible to have a more complex assessment of the respondent's health condition carried out by an independent medical expert appointed by the judicial body hearing the case.

25. Counsel on behalf of the respondent submitted that the Court should not accept the assurances of the Hungarian authorities. In particular, he submitted that the assurances given were not sufficiently precise. He referred to *ML* (Case C-220/18 PPU) in which the Court of Justice of the European Union ("the CJEU") considered the weight to be attached to such assurances. The CJEU emphasised in para. 112 of its judgment that, in view of the mutual trust upon which the European arrest warrant system is based, an executing judicial authority must rely on an assurance given by, or at least endorsed by, the issuing judicial authority "*at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 4 of the Charter*". In that case, the assurance had been given by the Hungarian Ministry of Justice as opposed to the issuing judicial authority and in that regard, the CJEU indicated at para. 114:-

> *"114. As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority."*

Counsel submits that the replies from the Hungarian authorities did not sufficiently address matters and that there is a real risk that the respondent's fundamental rights would not be respected.

26. Counsel on behalf of the applicant submits that the assurances from the Hungarian authorities were more than sufficient.

27. I have evaluated all of the evidence before the Court and having done so, I am satisfied that the surrender of the respondent is not precluded by s. 37 of the Act of 2003. It is clear from the documentation before the Court that in the past, prison conditions in Hungary were sub-standard and, in particular, there was a systemic problem of overcrowding. However, it is also clear from the documentation that Hungary was subject to a pilot case procedure under the ECtHR as regards same and that genuine efforts have been made to tackle this problem. The information and assurances given by the Hungarian authorities go beyond merely stating that Hungary will comply with its domestic and international obligations. A specific reply concerning the respondent indicates the institution where the respondent is likely to be detained. A figure of 96% in relation to a prison occupancy rate has been set out and a specific assurance has been given that the respondent will be guaranteed a personal space of three square metres exclusive of sanitary facilities. As regards medical facilities, the correspondence from the Hungarian authorities indicates that regular healthcare is ensured in law enforcement institutions and that specialised care of in-patients and out-patients is managed by agreement with civil healthcare service providers. The respondent's particular healthcare needs have been specifically addressed. As regards ethnic discrimination, it is indicated that this is prohibited by national law and is contrary to the proper performance of their duties by law enforcement agencies. While the assurances have been provided by authorities other than a judicial authority, I am satisfied to accept same, coming as they do from an emanation of the Hungarian state with specific responsibility for, and knowledge of, prison conditions in that state. I note that in *Minister for Justice and Equality v. Henn* [2019] IEHC 379, Donnelly J. accepted the assurances of Dr. Tünde Forman and Major General Zanus Schmehl as to prison conditions and that the assurances in the present case have been given by the same two officials as regards the same two institutions as in *Henn*. I do not refer to same by way of a binding precedent but rather to illustrate that it is open to this Court to accept such assurances depending upon the circumstances of an individual case.

28. Having evaluated all of the information before the Court, I am satisfied that significant weight can be attached to the additional information provided by the issuing state. The information is provided by persons who are in a position to have personal and detailed knowledge of prison conditions, including physical conditions, treatment of prisoners including those of Roma ethnicity, and access to medical facilities afforded to prisoners. I am not satisfied that a real risk of ill-treatment on grounds of ethnicity has been made out so that this Court should refuse surrender.

29. The respondent suffers from a number of medical complaints which, while of considerable significance to the respondent, are not of such a nature as to be regarded as exceptional. The report from his Irish cardiac consultant does not indicate that incarceration represents a serious threat to his life or a serious threat of a deterioration in his condition. The opinion of his Irish GP as to the adequacy of prison facilities in Hungary appears to be given without reference to any basis for same. Counsel for the applicant laid emphasis on the fact that the respondent had not sought medical treatment in Ireland until October 2020 when he failed to appear at Cork District Court. In any event, his medical issues are

verified by medical practitioners and have been specifically addressed by the Hungarian authorities who have given an assurance that his healthcare needs will be met. The concern of the respondent's consultant cardiologist was the respondent's vulnerability to Covid-19 prior to vaccination. I am satisfied that vulnerability to Covid-19 pre-vaccination is not a sound basis for refusal of surrender although it may, in a particular case, be grounds for postponement of surrender.

30. As regards the respondent's objections concerning conditions he may face if surrendered, it should be noted that s. 4A of the Act of 2003 provides for a presumption that Member States will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. On considering all of the evidence before the Court, I am satisfied that the presumption in s. 4A of the Act of 2003 has not been rebutted.

31. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine whether the respondent's circumstances are such as would render an order for surrender incompatible with the State's obligations under the ECHR. I am satisfied that an order for surrender would not be incompatible with those obligations. I dismiss the respondent's objections to surrender based on s. 37 of the Act of 2003.

32. I am satisfied that the surrender of the respondent is not precluded by part 3 of the Act of 2003 or any provision of that Act.

33. 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 Hungary.