

THE HIGH COURT

[2021] IEHC 644
[2020 No. 167 EXT]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

RAZVAN HOAMEA

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 6th day of September, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 30th March, 2020 ("the EAW"). The EAW was issued by Judge Constantin Magdalina of the Law Court Neamt, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of five years and 22 days' imprisonment imposed upon the respondent on 27th April, 2018 and upheld on appeal on 4th December, 2018. All of the term of imprisonment remains to be served.
3. The EAW was endorsed by the High Court on 27th July, 2020 and the respondent was arrested and brought before the High Court on 14th 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. While it is not strictly relevant, by additional information dated 16th July, 2021, it is indicated that the maximum penalty for illegal tree felling at the relevant time, bearing in mind that the respondent was a minor at the time, was three years and six months' imprisonment.
7. Part E of the EAW indicates that it relates to two offences, namely an offence of attempted murder and an offence of the illegal felling of trees.
8. At part D of the EAW, it is indicated that, as regards the sentence dated 27th April, 2018, upheld on appeal on 4th December, 2018, the respondent was not present in person at the trial but that he was personally summoned for the first instance trial and each hearing date for same is set out. It is indicated that on 2nd May, 2018, through his elected defender, the respondent filed an appeal with the Appeal Court. At the appeal, the

respondent was not personally present but was represented by his elected attorney. Point 3.2 of Part D is ticked to the following effect:-

"Being aware of the said trial, he empowered an attorney who has been appointed either by the respective person, or by the Government, on the purpose of defending him, and he was actually defended by the respective attorney within the trial."

At Point 4 of Part D, the following is indicated:-

"We mention that, upon the proceedings on the merits, to the defendant Hoamea Razvan an attorney was appointed by the Government, pursuant to Article 90 of the Code of Criminal Procedure; he filed appeal against the conviction sentence and, upon the appeal trial, he was represented by elected attorney."

9. As regards the sentence delivered by the Law Court in Neamt on 13th December, 2013 (the tree felling offence), it is indicated at part D of the EAW that the respondent was present in person at the trial following which the decision was delivered.
10. The respondent opposes surrender on the following grounds:-
 - (i) surrender is precluded by reason of s. 38 of the Act of 2003;
 - (ii) surrender is precluded by reason of s. 45 of the Act of 2003; and
 - (iii) surrender is precluded by reason of s. 37 of the Act of 2003.
11. It should be noted that there was an earlier European arrest warrant issued for the surrender of the respondent in respect of the same sentence but which indicated that the sentence had been imposed solely in relation to the attempted murder offence. In the course of the proceedings concerning the earlier European arrest warrant, it became apparent that the sentence also incorporated a sentence in respect of the tree felling offence (which appears to have been 22 days) and as that offence was not referred to in the European arrest warrant, surrender was refused.
12. The parties agreed that relevant documentation from the previous proceedings could be adopted into these proceedings for consideration by the Court.
13. I note that in the earlier proceedings, the issuing judicial authority also indicated that, at first instance, the issuing state had appointed a lawyer to the respondent but, at appeal, he was represented by a lawyer of his own choice.
14. From the papers in the earlier proceedings, it appears that, as regards the tree felling offence, the respondent was originally sentenced on 13th December, 2013 to three months' imprisonment suspended, which was replaced on 27th April, 2013 with an educational measure of three months' in an educational facility and that the respondent was required to serve the entire penalty. This information was furnished in response to a request from the Irish central authority as to whether it would be possible to surrender

the respondent simply to serve the five-year penalty. By additional information dated 16th July, 2021 the issuing judicial authority confirms that the sentence of five years and 22 days' imprisonment is a single sentence consisting of five years' imprisonment in respect of the attempted murder and 22 days' imprisonment in respect of the unlawful tree felling (representing a quarter of the three months' educational measure).

15. The solicitor for the respondent, Mr. Mark O'Sullivan, swore an affidavit dated 29th June, 2021, in which he avers that the respondent instructs him that the respondent did not instruct or empower or otherwise communicate with any lawyer prior to the trial at first instance or the appeal. He avers that the respondent instructs him that the respondent's only involvement in the legal process was to make a statement to the police which the police ignored and instead wrote a statement alleging that he had confessed, which the policeman tried to force him to sign. The respondent instructs that his father went to the authorities in Bucharest and made a complaint and the statement was withdrawn. He avers that the respondent instructs that he only found out about the result of the trial and appeal after the appeal judgment was made and it was only at that point that he made contact with the Romanian lawyer but not beforehand. Mr. O'Sullivan avers that the respondent fears that, if returned to Romania, he will be kept in dangerous and unhygienic prison conditions. He also avers that the police in Romania are corrupt and exhibited a number of documents relating to police corruption.

Section 38 of the Act of 2003 – Correspondence

16. The respondent initially objected to surrender on the grounds that there was no corresponding offence under the law of the State in relation to the offence of illegal tree felling. The applicant submitted that the relevant corresponding offence under the law of this State is s. 27(10) of the Forestry Act, 2014 which provides:-

"27. (10) A person who, without the permission of the Minister, causes or permits to be done to any tree (other than an exempted tree) any act or thing that causes or is calculated or likely to cause irremediable damage, death or decay to it, shall be guilty of an offence."

The trees in question would not have been exempted trees.

17. In the alternative, the applicant submits that s. 2 of the Criminal Damage Act, 1991 is also a corresponding offence.
18. In light of the applicant's submission, counsel for the respondent did not seriously pursue the issue of correspondence.
19. I am satisfied that correspondence has been established between the offence of illegal tree felling as referred to in the EAW and an offence under the law of this State, viz. an offence contrary to s. 27(10) of the Forestry Act, 2014 and also an offence of criminal damage contrary s. 2 of the Criminal Damage Act, 1991. I am also satisfied that correspondence can be established between the other offence to which the EAW relates and an offence under the law of the State, viz. attempted murder.

Section 45 of the Act of 2003 – Trial *in absentia*

20. Section 45 of the Act of 2003 transposes 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”), into Irish law and provides that:-

“45. – A person shall not be surrendered ... if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant ... was issued, unless ... the warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA ... as set out in the table to this section.”

21. Counsel on behalf of the respondent submits that the respondent was not present when the sentence of five years and 22 days’ imprisonment was imposed and that the requirements of s. 45 have not been met.
22. By additional information dated 16th July, 2021, it is indicated that the respondent was informed on 25th April, 2016 about his obligation to notify the judicial authorities regarding any change in address and the consequences of not complying with this obligation. A copy of the document signed by the respondent is enclosed. This additional information also confirms that the respondent was represented at the appeal trial by a lawyer he had chosen and not a lawyer appointed by the court. The lawyer was employed by the respondent or his family, being paid the lawyers fee. A copy of the power of attorney submitted to the appeal filed by the lawyer is enclosed. Other documents on the appeal file are also enclosed, including copies of the respondent’s birth certificate and identity card certified by a solicitor in Dublin.
23. I am satisfied that the relevant hearing for the purposes of s. 45 of the Act of 2003 is the appeal hearing resulting in the judgment dated 4th December, 2018. I am satisfied that the respondent did not appear at the trial at first instance and was represented by a lawyer appointed by the court. However, on appeal the respondent was represented by a lawyer of his choice and that lawyer acted on behalf of the respondent with the respondent’s consent. In so far as the respondent has disputed this, I prefer the information provided by the issuing judicial authority, supported by documentation. It would have been easy for the respondent to obtain confirmation from the named lawyer that he had received no mandate or instruction from the respondent, but this was not done. I also note that in relation to the tree felling offence, the respondent was present for the trial which resulted in his original conviction and suspended sentence. The suspension was revoked by reason of the commission of the attempted murder offence and the original three-month sentence was converted to a three-months in an educational institution and in turn converted to 22 days’ imprisonment by the court of appeal on 4th December, 2018.
24. On the basis of all the documentation before me, I am satisfied that the requirements of s. 45 of Act of 2003 have been complied with and, in particular, point 3.2 of Table D has

been complied with in that the respondent knew of the date of the appeal hearing and had given a mandate to a lawyer of his own choice to represent him and was so represented by that lawyer.

25. I am satisfied that the defence rights of the respondent were given effect at the hearing before the appeal court. I am satisfied that the mischief which Article 4A of the Framework Decision and s. 45 of the Act of 2003 seek to avoid did not arise in this matter.
26. I dismiss the respondent's objection to surrender based upon s. 45 of the Act of 2003.

Section 37 of the Act of 2003 – Prison Conditions

27. Counsel for the respondent submits that the likely conditions in which the respondent would be detained were such as would amount to a breach of his right not to be subjected to inhuman or degrading treatment as recognised in Article 3 of the European Convention on Human Rights ("the ECHR"). He relied upon various reports opened to the Court. As regards the prison conditions in which the respondent is likely to be detained, if surrendered, the issuing judicial authority in the earlier proceedings furnished letters from the National Administration of Penitentiaries in Romania dealing with such conditions. A letter dated 20th November, 2019 indicated that initially the respondent would be detained in Bucharest, Rahova Penitentiary for quarantine period of 21 days in a cell that ensures a minimum space of three square metres. After the quarantine period, the National Penitentiary Administration establishes where the respondent is to serve the custodial sentence. It is indicated that given the quantum of the sentence, the respondent is most likely to serve same initially in closed conditions in Focsani Penitentiary. Details of the conditions at Focsani Penitentiary and the particular regime which the respondent would be detained under are furnished in the letter. After serving one-fifth of the sentence, the respondent will be reassessed with a view to serving the sentence in a semi-open regime, most likely in Vaslui Penitentiary. Details are provided in respect of the conditions in Vaslui Penitentiary and the semi-open regime. If the respondent is assigned to serve his custodial sentence under an open regime, that would most likely be in Iasi Penitentiary and again the conditions in that institution together with the particular regime are set out. I am satisfied that the conditions of detention set out in the said letter are the conditions in which the respondent is likely to be detained and same would not amount to a breach of Article 3 ECHR. The letter specifically addresses the fact that overcrowding was a problem in Romanian prisons as reported by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") and that, on 17th January, 2018, the Government of Romania approved a programme to solve overcrowding between 2018 to 2024. The letter details the measures which the Romanian authorities have adopted to implement this programme. As regards alleged mistreatment, the letter indicates that the CPT based its criticisms in this regard on the basis of unconfirmed statements from prisoners. It states that prison personnel now wear portable video cameras. The letter candidly accepts that the penitentiary system cannot fully provide a minimum of four square metres personal space per prisoner but does provide a minimum of three square metres personal space.

28. The letter concludes by stating that, during his period of detention, the respondent is guaranteed three square metres personal space under closed conditions, two square metres under semi-open conditions and three square metres in open conditions.
29. Following submissions from the parties, the Court sought an up to date assurance from the issuing judicial authority that the respondent would be afforded a minimum of three square metres personal space. By reply dated 16th July 2021, the issuing judicial authority enclosed a letter from the Romanian Ministry of Justice, dated 15th July, 2021. This letter confirms the 21-day quarantine period in Rahova Prison. After that, the respondent is likely to serve his sentence in a closed regime in Bacau Penitentiary. The conditions of such regime are set out. After serving one-fifth of his sentence he may be assigned to a semi-open regime in Miercurea Ciuc Penitentiary and again the relevant conditions are set out. If he is to serve any of the sentence in an open regime this is likely to be in Iasi Penitentiary and again the conditions of same are set out. The letter concludes by stating:-

"Considering the perspective for implementing the measures included in the "Action plan for the period 2020-2025, drawn up for execution of the pilot decision Rezmives and others against Romania, as well as the decisions delivered in the group of cases Bragadireanu against Romania", as well as the number of prisoners currently in the custody of the National Administration of Penitentiaries, following the criminal policies adopted by the Romanian state, the National Administration of Penitentiaries shall guarantee a minimum individual space of 3 square metres during the entire period of execution of sentence, including the bed and the related furniture, without including the space for the toilet."

30. Taking into account all the information before the Court, I am not satisfied that there are substantial reasons for believing that, if surrendered, the respondent would be exposed to a real risk of a breach of his fundamental rights as a result of the likely prison conditions he will face.
31. 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 in this instance.
32. Ultimately, 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 the surrender of the respondent is not incompatible with the State's obligations in that regard and would not contravene any provision of the Constitution. I dismiss the respondent's objections to surrender based upon prison conditions.

33. I note that a potential ground of objection alleging police corruption in Romania was not pursued.

Conclusion

34. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act.

35. 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 Romania.