

THE HIGH COURT

[2021] IEHC 847
[2021 No. 075 EXT.]

BETWEEN

MINISTER FOR JUSTICE

APPLICANT

AND

BASHKIM OSAJ

RESPONDENT

(No. 2)

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

1. By this application, the applicant seeks an order for the surrender of the respondent to the Kingdom of Belgium ("Belgium") pursuant to a European arrest warrant dated 2nd September, 2019 ("the EAW"). The EAW was issued by Marc Verhelst, Assistant Prosecutor-General at the Court of Appeal in Antwerp, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce the sentence of 15 years' imprisonment imposed upon the respondent on 26th June, 2019, of which 4,856 days remain to be served.
3. The EAW was endorsed by the High Court on 7th April, 2021 and the respondent was arrested and brought before the High Court on 10th May, 2021 on foot thereof.
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 4 months' imprisonment.
7. At part E of the EAW it is indicated that it relates to 5 offences committed in Voeren and elsewhere in Belgium between 1st July, 2015 and 2nd October, 2015. The offences are described as follows:-
 - "A. *Theft by means of violence or threats, by means of breaking entrance, clearing fences or using false keys, in a gang, with a vehicle, showing weapons, resulting in an incapacity to work for more than 4 months;*
 - B.I. *Hostage-taking resulting in an incapacity to work for more than 4 months;*
 - B.II. *Hostage-taking of an underaged person;*
 - C. *Attempted extortion, in a gang, with a vehicle, showing weapons;*

D. Building a gang in view of committing crimes which are punishable by life imprisonment or a custodial sentence of 10 up to 15 years or more."

8. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between the offences to which the EAW relates and offences under the law of the State where the offences referred to in the EAW are offences to which Article 2.2. 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"), applies and carry a maximum penalty in the issuing state of at least 3 years' imprisonment. In this instance, the issuing judicial authority has certified that the offences referred to at B.1. and B.2. in Part E of the EAW are offences to which Article 2.2 of the Framework Decision applies, that same are punishable by a maximum penalty of at least 3 years' imprisonment and has indicated the appropriate box for "*Kidnapping, illegal restraint and hostage-taking*". There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same. In any event, I am satisfied that if necessary, correspondence can be established between the offences B.I. and B.II. in the EAW and the offence in this State of false imprisonment contrary to s. 15 of the Non-Fatal Offences Against the Person Act, 1997.
9. A full description of the facts of the various offences is set out at Part E of the EAW. As regards offence A, I am satisfied that same corresponds to the offence in this State of burglary contrary to s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and/or aggravated burglary contrary to s. 13 of the said Act and/or robbery contrary to s. 14 of the said Act and/or theft contrary to s. 4 of the said Act. As regards offence C, I am satisfied that same corresponds to the offence in this jurisdiction contrary to common law of attempted robbery contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and/or the offence of extortion contrary to s. 17 of the Criminal Justice (Public Order) Act, 1994. As regards offence D, I am satisfied that same corresponds with the offence in this jurisdiction of participating in a criminal organisation contrary to s. 72 of the Criminal Justice Act, 2006 and/or conspiracy contrary to s. 71 of the said Act. Correspondence was not seriously contested at the hearing.
10. At part D of the EAW, it is indicated that the respondent did not appear in person at the hearing which led to the decision. Reliance is placed upon the equivalent of Point 3.1a. of the Table set out at s. 45 of the Act of 2003 to the effect that:-

"3.1 .a) the person concerned has been summoned in person on 26/10/2018, has been informed of the date and place of the hearing which led to the decision, and has been informed that a decision can be made if he will not appear at the hearing."

At Point 3.4 of the Table, it is indicated that a decision was not served on the respondent in person but it will be served on him immediately after surrender and he will be informed of his right of appeal which can be lodged within 15 days.

11. The respondent swore an affidavit dated 2nd July, 2021 in which he avers that he was extradited from Belgium to Ireland in June 2017 and that he last appeared in court in Belgium in respect of the offences, the subject matter of the EAW, in May 2017. He confirms that through his Belgium lawyer, he entered a guilty plea in respect of the offences before the Belgium courts and he conveyed his wish to be sentenced without delay as his extradition was sought at the time by the Irish authorities. He avers that he was told by his Belgium lawyer that he had been sentenced in his absence to the term of imprisonment as set out in the EAW but that the sentence was not to be imposed as he was already serving a sentence in Ireland. It was subsequently indicated to the court that the reference to entering a guilty plea was mistaken.
12. By letter dated 1st July, 2021, the Court sought additional information from the issuing judicial authority, noting that the judgment referred to in the EAW was a judgment of the Court of Appeal in Antwerp and requested details as to what had occurred at first instance. By reply dated 5th July, 2021 it was confirmed that at the court of first instance, the respondent was sentenced to 9 years' imprisonment, the first proceeding at the Court of Appeal Antwerp was on 14th November, 2018 and the case was then delayed until 27th June, 2019 and further delayed for judgment. The notification on 26th October, 2018, referred to at part D of the EAW, was in relation to the hearing in the Court of Appeal.
13. I am satisfied that the requirements of Article 4A of the Framework Decision and s. 45 of the Act of 2003 have been met as regards this matter. The respondent was fully aware of the proceedings against him and instructed a lawyer who represented him in court. He was informed of the outcome of the proceedings. I do not regard the respondent's reference to his lawyer telling him he would not have to serve the sentence in question as giving any grounds for refusing surrender. I am satisfied that the respondent's defence rights were respected and given effect to and that the mischief which Article 4A of the Framework Decision and s. 45 of the Act of 2003 seek to avoid has not arisen in this instance.
14. I am satisfied that the personal circumstances of the respondent are not so exceptional as would justify this Court in refusing his surrender. As indicated in the decision of the Supreme Court in *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, it is only in truly exceptional circumstances that rights under Article 8 of the European Convention on Human Rights ("the ECHR") could justify refusal of surrender on foot of a European arrest warrant. I accept that his surrender will cause significant disruption to his private and family life. However, disruption of private and family life is inherent in any system of extradition or criminal process, and in many instances, this will amount to a significant disruption. The respondent's private and family circumstances come nowhere near meeting the threshold set out in *Vestartas*, whereby Article 8 ECHR rights might justify a refusal of surrender.
15. I am satisfied that the surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act. It follows that this Court can make an

order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Belgium. However, as there is a separate request for the surrender of the respondent to face prosecution in Austria for other offences (proceedings record number 2021/ 007 EXT.) and as the Court considers that an order for surrender should also be made in respect of that matter, the Court will postpone making the surrender order in order to consider which application for surrender should be given effect to first.

[Following further consideration, the Court ordered the surrender of the respondent to Belgium in these proceedings and declined to make an Order for surrender in other proceedings.]