

THE HIGH COURT

[2022] IEHC 192
[2021 No. 350 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

JAN BALAZ

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 22nd day of February, 2022

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 12th of August 2020 ("the EAW"). The EAW was issued by Mgr Ondrej Perich, Judge of the Regional Court in Usti Nad Labem as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of 3 years imprisonment imposed upon the respondent on the 31st day of August 2017 by the Regional Court in Usti nad Labem, and confirmed by the High Court in Prague on the 29th of August 2018.
3. The respondent was arrested on the 14th day of December 2021, on foot of a Schengen Information System II alert, and brought before the High Court that day. The EAW was produced to the High Court on the 21st of December 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. The EAW is based on the enforceable judgment of the Regional Court in Ústí nad Labem of 31/08/2017, Reference 49 T 4/2017-2753, in conjunction with the Judgment of the High Court in Prague of 29/08/2018, Reference 15 to 40/2-18-3251. The EAW relates to one offence described in Part e as follows:
 - I. "On 13/10/2015 on the basis of the instructions of the already deceased Eduard Lázok, born on 20/05/1984, when the defendant Jan Baláž was aware that in order to import medicaments needed for the production of the drug call methamphetamine, he made an agreement with Defendant Martin Čapek who agreed on importing drugs for him, from Poland to the Czech Republic, for the promise of a reward in the form of medicine (called Cirrus), from which a drug

designated as pervitine will be manufactured with the help of other people; Defendant Martin Čapek, who brought drugs containing pseudophedrine/ mostly Cirrus/ from the so far unidentified person from the village of Pojarov in Poland, crossed the state border in the municipality of Hrádek nad Nisou, the District of Liberec, and thus took over at least 150 packs of Cirrus medicine, each pack containing 14 tablets and each tablet containing 120mg of the psychotropic substance designated as (pseudo) ephedrine; he did it in spite of being aware of the fact that this medicine will be misused exclusively for unauthorized production of the psychotropic substance methamphetamine. Being instructed by Eduard Lázok, he handed over the medicine to Defendants Rafal Andrezej Zita and Tomáš Sedláček, who made a contract with Eduard Lázok for the production of the drug designated as pervitine and these two defendants subsequently, on 14/10/2015 really produced the drug from the imported medicine;

II. Based on the instructions of the already deceased Eduard Lázok, born on 20/05/1984, when Defendant Jan Baláž was aware that in order to import medicaments needed for the production of the drug called methamphetamine, he made an agreement with Defendant Martin Čapek, who agreed on importing drugs from Poland to the Czech Republic, based on instructions from the late Eduard Lázok. Defendant Jan Baláž made an agreement with Martin Čapek to import the medicine called Cirrus from Poland to the Czech Republic for a promise of a reward in the form of medicaments and from that medicine, defendants Zita and Sedláček will subsequently produce a drug called pervitin from at least 19/10/2015 to 21/10/2015 with the use of the drug called Cirrus, chemicals and items needed for this purpose. The above-named Defendant participated in the production of the drug in a garden hut in Ústí nad Labem – Střekov, the District of Ústí nad Labem, and thus he participated also in the production of a drug called methamphetamine, which he carried out together with defendants Rafaj Andrzej Zita and Tomáš Sedláček, who he hired for that purpose from Eduard Lázok and together with them he produced at least 360g of that drug.”

8. The respondent objected to surrender on the following grounds:

- “1. The respondent herein does not consent to being surrendered to the issuing state and hereby awaits inquiry and proof of all matters that are necessary to ground an order for his surrender to the issuing State pursuant to the European Arrest Warrant 2003 (as amended) and/or the Framework Decision.
2. The purposed surrender of the respondent is not in compliance with section 45 of the European Arrest Warrant Act, 2003 (as amended).
3. The surrender of the respondent would amount to a disproportionate interference with the respondent’s constitutional and ECHR rights, in particular, Article 8 of the ECHR.

4. In the alternative and without prejudice to the foregoing, the European Arrest Warrant fails to disclose the necessary correspondence.”
9. This Court sought further information and clarification from the issuing judicial authority in relation to a number of issues. Following receipt of the responses from the issuing judicial authority the respondent in oral and written submission indicated that the respondent had instructed that he did not consent to his surrender and that the applicant was on proof of all matters that were necessary to ground an order for his surrender however, no substantive submission was to be made in favour of resisting the application.
10. 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 Framework Decision applies and carry a maximum penalty in the issuing state of at least three years’ imprisonment. In this instance, the issuing judicial authority has certified that the offences referred to in 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 three years’ imprisonment and has indicated the appropriate box for “illicit trafficking in narcotic drugs and psychotropic substances.” There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same.
11. At Part D of the EAW, it is indicated that the respondent appeared at the hearing which resulted in the decision which is sought to be enforced. In circumstances where Part B(2) referred to two judgments, one of the 31st of August 2017 and the other of the 29th of August 2018, this Court sought clarification in relation to the matters certified at part D. From the information in the EAW and the additional information received, this Court can determine as follows:
 - i) the respondent was personally present at the initial hearing before the Regional Court in Ústí nad Labem on 2 May 2017.
 - ii) the respondent was personally questioned by Judge Peric, Presiding Chairman of the Panel of Judges of that Court.
 - iii) the respondent was represented by a lawyer of his own choosing at that hearing.
 - iv) the respondent received a copy of the Judgment of the Regional Court in Ústí nad Labem by accepting same at his place of residence on 3 January 2018.
 - v) after the verdict of the Regional Court in Ústí nad Labem of 3 January 2018, the respondent’s lawyer terminated his power of attorney as he was not being paid and the High Court in Prague “immediately appointed this defence counsel (Mgr. Jan Port) ex officio.”
 - vi) the respondent appealed against both the conviction and sentence of the Regional Court in Ústí nad Labem on 2 May 2017.

- vii) the respondent was represented by the defence counsel Mgr. Jan Port at the hearing before the High Court in Prague held on 27 - 29 August 2018.
 - viii) the respondent knew of the existence of these proceedings before the High Court in Prague.
 - ix) the respondent received a copy of the Judgment of High Court in Prague by accepting same at his place of residence on 18 October 2018.
12. In addition to the foregoing, counsel for the respondent accepted on behalf of the respondent at the oral hearing on the 22nd of February 2022 that the respondent was present during the trial at first instance. Counsel for the respondent also accepted that at the appeal of the matter the respondent had instructed a lawyer to represent him and the lawyer duly did so. I am satisfied that respondent's rights pursuant to Section 45 have been fully adhered to and no issue arises in relation to same.
13. The respondent resided at 46 Cahercalla Estate, Kilrush Road, Ennis, Co. Clare; the address from which he was arrested. The respondent has been domiciled in Ireland since approximately 2016. The respondent has worked in a number of restaurants and was in employment, for in excess of one year, with Clean Ireland Bin Collection at the time of the arrest. The respondent's ties to this jurisdiction include his wife and two children who reside with him. He also has a brother and sister in this jurisdiction.
14. The respondent accepted in written and oral submissions that the matters set out in the respondent's affidavit has not set out any factual matters that support an argument relating to his personal or family circumstances under Article 8, that would be sufficient to reach the threshold of cogent evidence required under *Minitser for Justice and Equality v Vestartas* [2020] IESC 12. No submission therefore is advanced in relation to this ground of objection. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.
15. It, therefore, follows that this Court will make an order pursuant to Section 16 of the Act of 2003 for the surrender of the respondent to the Czech Republic.