

**THE HIGH COURT**

[2022] IEHC 200  
[2021 No. 200 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**MOHAMED HUIDA**

**RESPONDENT**

**JUDGMENT of Ms. Justice Caroline Biggs delivered on the 21st day of March, 2022**

1. By this application, the applicant seeks an order for the surrender of the respondent to The Kingdom of Spain pursuant to a European Arrest Warrant dated 21st of January 2021 (“the EAW”). Judge Maria Del Carme Servan Moreno sitting at Ceuta Criminal Court, is the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to prosecute him in respect of alleged assault-type offences.
3. The EAW was endorsed by the High Court on the 26th day of July 2021 and the respondent was arrested and brought before the High Court on the 5th day of August 2021.
4. 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.
5. Each of the offences in respect of which surrender of the respondent is sought carries a maximum penalty in excess of twelve months’ imprisonment, therefore the minimum gravity requirement of the 2003 Act is satisfied.
6. The respondent objected to surrender on the following grounds:
  - “1. The Respondent, whose name is Rafik Ben Salah, is not the person who was the subject of criminal proceedings in the requesting State, as referenced to in the warrant. He is not known as Mohamed Huida. Accordingly, the warrant has been executed against him in error. The herein proceedings are entirely without foundation.
  2. The warrant is lacking in essential details, in failing to specify the length of sentence imposed on the Respondent.
  3. The surrender of the Respondent is prohibited having regard to s. 45 of the 2004 Act as amended, in circumstances where he was not summonsed, personally or otherwise, or notified of his trial date.”

7. During the oral hearing of this matter on the 4th of March 2022 counsel on behalf of the respondent confirmed that only ground one in the notice of objection was being relied upon by the respondent, all other grounds were withdrawn.
8. In addition to the EAW this Court was also furnished with a copy of the Ruling of the Ceuta Court on the 11th of November 2020 and the contents of the EAW must be read in light of same. Paragraph e) of the EAW states:

"Total number of offences to which this warrant relates: TWO OFFENCES: ONE OFFENCE OF CAUSING INJURIES [LESIONES] AND ONE OF ASSAULTING AN OFFICER OF THE LAW [ATENTADO A UN AGENTE DE LA AUTORIDAD]

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

- The accusation is filed against MOHAMED HUIDA, an undocumented Algerian national of legal age and without a criminal record: at 06:00 on 16 August 2018 he was in the vicinity of Poblado Marinero in Ceuta when, for reasons unknown, he began to attack ABDESLAM HMAM, grabbing him violently and punching him in the face.

As a result of the attack, Abdeslam suffered a broken septum and required medical treatment consisting of a nasal splint. The injury took a full 45 days to heal. Subsequently, upon his arrest the accused resisted violently, hitting and kicking the police vehicle in which he was being transported and making an intimidating gesture to Officer 94665 insinuating that he was going to slit his throat-, thereby challenging the principle of authority.

- Nature and legal classification of the offence(s) and the applicable statutory provision/code:

The facts of the case constitute an offence of causing injury [lesions], as outlined in Article 147.1 of the Spanish Penal Code and an offence of assaulting an officer of the law [atentado a agente de la autoridad], as outlined in Article 550 of said code."

9. The offence of *'assaulting an officer of the law'* and the offence of *'causing injuries'* have been inserted among the 'ticked box' criteria. No such offences are contained in the list in the Framework Decision and it is clear that the offences have been inserted in error. The description of circumstances in part e) of the EAW outlines two discrete events, viz. the respondent's attack on Abdeslam Hmam which resulted in injuries to Mr Hmam, and the respondent's arrest, which he is alleged to have resisted violently. I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of this State, viz. assaulting a peace officer acting in the execution of his duty s. 19(1)(c) of the Criminal Justice (Public Order) Act, 1994 and/or

the offence of assault causing harm contrary to s. 3 of the Non-Fatal offences Against the Person Act 1997.

10. The respondent swore an affidavit dated 14th of March 2022 where he stated:

- “My name is not Mohamed Huida and I have never used that name. My name is Rafik Ben Salah and this is the only name I have ever used. I am originally from Tunisia. I beg to refer to a copy of my passport upon which marked with the letters ‘RBS’ I have signed my name prior to the swearing hereof.
- I was never arrested in Ceuta, Spain for assaulting Adeslam Hmam. I never appeared in Court in respect thereof and I know nothing about this matter. I was in Spain before I came to Ireland and I have been in Ceuta before. The Spanish police would have my fingerprints on file. But, I am concerned that they have accidentally merged my own details with those of Mohamed Huida.
- I was shown, during a video link consultation, a copy of the purported photograph of Mohamed Huida. I could not see it well enough to say whether this is a photograph of me.
- I would ask that my fingerprints would be taken to compare them to the fingerprints which are purportedly those of Mohamed Huida.”

11. Evidence available in relation to the issue of the Respondents identity:

a. Transcript of evidence of the 5th of August:

This Court sought a copy of the transcript of the arrest hearing in this matter, heard before Mr. Justice Burns on the 5th of August 2021. The following can be gleaned from same:

- (i) Sergeant James Kirwan said he had an original warrant for the arrest of Mohamed Huida also known as Rafik Ben Sala
- (ii) The respondent refused to give his name
- (iii) The respondent did not wish to speak English and engaged the services of an interpreter. With the assistance of an interpreter he was again asked his name and he refused to answer any questions.
- (iv) The respondent would not take a copy of the warrant.
- (v) Sergeant Kirwan stated that the respondent was Mohamed Huida was also known as Rafik Ben Sala,
- (vi) Sergeant Kirwan was satisfied of the respondent’s identification. Sergeant Kirwan indicated that he was so satisfied based on inquiries in relation to the respondent and he further indicated that there was a photo of the respondent attached to the SIS alert. Sergeant Kirwan was satisfied that the person in the photograph was the same person as the person that he had brought to Court.

- (vii) Sergeant Kirwan produced this photo to the Mr. Justice Burns, Sergeant Kirwan also informed Mr Justice Burns that the respondent used a variety of different names. Mr. Justice Burns was satisfied as to the identity of the respondent.

b. Photograph

This Court was provided with a good quality colour copy of the photograph that was attached to the SIS alert. This Court considered the photo on the 4th of March 2022 in Court. The respondent was invited by the Court to remove his mask (though advised that he could not be compelled to do so). The respondent did remove his mask and having done so this Court is satisfied that the person in the photo is the respondent, this Court has no doubt in that regard.

c. Fingerprints

Evidence in relation to fingerprint evidence and steps taken since the arrest of the respondent was given under oath by Detective Garda Kane on the 4th of March 2022:

- (i) Detective Garda Kane indicated that on the 22nd of November 2021, it was indicated in Court that if An Garda Síochana were prepared to take fingerprints from the respondent that he would provide consent to that course of action.
- (ii) On the 4th of January 2022 Detective Garda Kane travelled to the Midlands Prison where he met with Rafik Ben Sala (DOB 2.4.88) aka Mohamed Huida (DOB 1.1.80) aka Abdelkader Soulyman (DOB 2.4.84), the person that he had previously arrested on this warrant and took his wet prints.
- (iii) On the 5th of January 2022 the prints were delivered to the Forensic Science Laboratory, in the Phoenix Park, Dublin.
- (iv) Copy emails were provided to this court from the issuing judicial authority confirming that Abdelkader Soulyman is an alias of Mohamed Huida. The issuing judicial authority also provided a fingerprint file and photo that was attached to the SIS alert which is related to this EAW and related to the respondent aka Abdelkader Soulyman.
- (v) The Sirene Bureau requested that these prints would be cross referenced with the prints on the SIS alert relating to Mohamed Huida.
- (vi) On the 6th of January 2022 Detective Sergeant Lawlor, fingerprint expert compared the prints taken by Detective Kane to the prints on the SIS alert relating to the EAW seeking the surrender of Mohamed Huida aka Abdelkader Soulyman. Detective Sergeant Lawlor confirmed that as result of his comparison he was in no doubt that the two sets of prints were made by the same person. Therefore the prints attached to the SIS alert that related to the EAW proceedings seeking the surrender of the respondent were made by the same person who provided prints to Detective Garda Kane i.e. were made by the respondent.

(vii) Detective Garda Kane confirmed that the prints on the SIS alert were taken at the time of the respondent's arrest in Spain in relation to the charges the subject matter of the EAW.

12. It is important to bear in mind that the European Arrest Warrant system introduced by Framework Decision 2002/584 is based on the principle of mutual recognition, which is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter of Fundamental Rights of the European Union. Article 1(1) of Framework Decision 2002/584 defines the European Arrest Warrant as 'a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order'. The principle of mutual recognition proceeds from the assumption, in that regard, that only European Arrest Warrants, within the meaning of that provision, must be executed in accordance with the provisions of Framework Decision 2002/584.
13. Bearing in mind the system of mutual trust and cooperation that must exist between members states, and having considered the photographic evidence and the fingerprint evidence, I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued.
14. 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 s. 16 of the Act of 2003 for the surrender of the respondent to the Kingdom of Spain.