

THE HIGH COURT

[2022] IEHC 214

Record No. 2016/43 EXT

BETWEEN/

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

MINDAUGAS VERESOVAS

RESPONDENT

**JUDGMENT of Ms. Justice Donnelly delivered on the 30th day of March, 2022**

1. The surrender of the respondent is sought by the Republic of Lithuania to face trial for the offence of causing grievous bodily harm pursuant to a European Arrest Warrant ("EAW") dated the 1st December, 2015. The respondent was arrested on the 26th May, 2016. The reason for the delay in delivering judgment is down to the failure of the respondent to appear in court to answer his bail on the 27th February, 2017 when this matter was listed for judgment. He was rearrested on the 9th March, 2022 and remanded in custody until today so that I could deliver judgment. In the proceedings before me, although a number of points of objection were filed on behalf of the respondent, the only focus in the oral hearing was on a single issue. That issue, common to three other cases then at hearing before me, was whether the Prosecutor General of Lithuania who issued the warrant can be considered a judicial authority within the meaning of the European Arrest Warrant Act, 2003 as amended ("the Act of 2003"). The four cases which raised this point were heard together over a number of dates, with different counsel for each party adopting each other's submissions. In those hearings, while counsel also argued discrete points of objection relevant to their own case, the main focus of each case was on the public prosecutor point of objection
2. On the 27th February, 2017, the day this respondent failed to appear, I gave judgment in the case of *Minister for Justice and Equality v. Lisauskas* [2017] IEHC 232. I indicated I was not in a position to give judgment in two of the other cases (one was the case of *Minister for Justice and Equality v. Firantas* [2020] IEHC 358) and I issued a bench warrant for this respondent. In *Lisauskas*, I held that the Lithuanian Prosecutor General was a judicial authority within the meaning of the Act of 2003. That decision was the subject of an appeal and was referred to the Court of Justice of the European Union and ultimately made its way back to the High Court for final determination. I will refer in more detail to that legal history when I consider this point. I will now proceed to consider the points of objection and all the legal matters with which this Court must concern itself when considering a request for surrender pursuant to a European arrest warrant.

**Points of Objection**

3. The respondent's Points of Objection were somewhat lengthy, but they only made four substantive points of objection as follows:-
  - The point related to the Prosecutor General as set out above.

- The proposed surrender of the respondent constituted a breach of s. 21A of the Act of 2003 as there was no decision to charge and try him. The respondent said he proposed to obtain suitable evidence in support of this point.
  - The surrender was prohibited by s. 37 as there was a risk he would be subjected to a breach of his right to bodily integrity and freedom from inhuman and degrading treatment because of Lithuanian prison/police detention conditions and a breach of his family rights in particular because of delay.
  - He awaited proof of the EAW and all and any lawful facts.
4. The respondent relied on certain affidavit evidence in support of some, but not all of these points of objection. Mr. Simas Tokarčakas, lawyer, swore an affidavit which dealt primarily with the issue of the status of the Prosecutor General in Lithuania. His affidavit also dealt with the position of the criminal case against the respondent. He gave his opinion about the standards of the prisons in Lithuania. Ms. Julija Kalpokienė, lawyer also swore an affidavit which touched on the pre-trial investigation situation in Lithuania but in the main she focused on conditions of detention. Additional information was obtained from the Lithuanian judicial authority and Mr. Tokarčakas swore a second affidavit addressing the pre-trial investigation. Further information was provided by the Lithuanian judicial authority.

**A Member State that has given effect to the Framework Decision**

5. The surrender provisions of the Act of 2003 apply to those Member States of the European Union that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Framework Decision of the 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision"). I am satisfied that by SI the Minister for Foreign Affairs has designated Lithuania as a Member State for the purposes of the Act of 2003.

**Identity**

6. I am satisfied on the basis of the affidavit of Emmet Ryan, member of An Garda Síochána and the details set out in the EAW that the respondent, Mindaugas Veresovas, who appears before me, is the person in respect of whom the EAW has issued.

**Endorsement**

7. I am satisfied that the EAW has been endorsed in accordance with s. 13 for execution in this jurisdiction.

**Sections 22, 23 and 24 of the Act of 2003 as amended**

8. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse his surrender under the above provisions of the Act of 2003 as amended.

**Part 3 of the Act of 2003 as amended**

9. Subject to further consideration of s. 37, s. 38 and s. 45 of the Act of 2003 as amended and having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

### **The provisions of s. 38**

10. The issuing judicial authority has indicated that this is an offence to which Article 2 para. 2 of the Framework Decision applies. This is an offence which has been indicated as an offence of grievous bodily injury in the ticked box in part E I of the EAW. He is liable to imprisonment for up to 10 years. This complies with the requirement of minimum gravity in respect of sentencing provisions. From the details provided in part E of the EAW, I am satisfied there is no manifest irregularity with the designation of this offence as a list offence. Therefore, the terms of s. 38 have been satisfied. No further demonstration of correspondence of offences is required.

### **Section 45**

11. This respondent has been sought for the purpose of prosecution. The EAW is not required to state the matters required by s. 45 as he is not being sought for the purpose of executing a custodial sentence or order of detention.

### **Is the Prosecutor General a Judicial Authority within the meaning of the Act of 2003 and the Framework Decision?**

12. Following my Order to surrender the respondent *Lisauskas*, I granted a certificate for leave to appeal to the Court of Appeal. That Court upheld my decision (*Minister for Justice and Equality v. Lisauskas* [2017] IECA 267). The Supreme Court granted leave to appeal pursuant to Article 34.5.3<sup>o</sup> of the Constitution. In due course, the matter was referred to the Court of Justice of the European Union. The CJEU gave its judgment in that case, reported as *Minister for Justice and Equality v. PF* (Case C-509/18). It is not necessary to give detail about that judgment, save to say that the CJEU ruled that the concept of "judicial authority" in Article 6(1) of the Framework Decision is capable of including authorities of a member state which, although not necessarily judges or courts, participate in the administration of criminal justice. It concluded on the facts before it that the Prosecutor General's office in Lithuania must be regarded as participating in the administration of justice of the relevant member state. It addressed requirements of independence and concluded on the facts before it that the Prosecutor General of Lithuania was a judicial authority within the autonomous meaning of the phrase in Article 6(1). However, the CJEU also determined that in circumstances where the issuing judicial authority is not a court "*the decision to issue such an arrest warrant and, inter alia, the proportionality of such a decision, must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection.*"
13. The Supreme Court in due course remitted the matter to the High Court to determine that issue. In his judgment in *Minister for Justice and Equality v. Lisauskas* [2020] IEHC 121, having received further information from the Lithuanian authorities, Binchy J. ruled that the Prosecutor General's decision was capable of being subject to court proceedings which meet in full the requirements of effective judicial protection. Therefore, the issue of whether the Prosecutor General was a judicial authority within the autonomous meaning of Article 6(1) was determined by the High Court.
14. That ruling did not satisfy one of the respondents whose judgment had remained outstanding since the 27th February, 2017. The issue was argued again before me in the

case of *Minister for Justice and Equality v. Firantas* where that respondent submitted that the approach taken by Binchy J. was incorrect. That respondent submitted that new evidence revealed that the situation as regards the access to court was otherwise than stated by the Lithuanian authorities in the *Lisauskas* case. More particularly the respondent in *Firantas* submitted that in his case, no new evidence had been received and therefore the earlier response of the Lithuanian authority could not be utilised. In my judgment in *Firantas*, I viewed the principle of mutual trust and confidence as requiring that where the High Court, as executing judicial authority, receiving information from the authorities in the issuing State on a discrete legal provision concerning the laws of that State, it was appropriate and necessary to proceed on the basis that both the information provided and the judgment delivered were accepted as correct until the contrary was demonstrated.

15. A certificate for leave to appeal to the Court of Appeal was granted in that case on the following question:-

*"To what extent[,] if any, is the High Court, as executing judicial authority, in reliance on the principles of mutual trust and confidence, and in the exercise of its functions under section 16 of the European Arrest Warrant Act of 2003, entitled to have regard to information provided in separate proceedings under the said Act, against another requested person, by an issuing judicial authority (or the issuing state) as to the law of the issuing state?"*

16. The Court of Appeal agreed with the approach I had taken. In particular, given the context of the case, where, inter alia, the case had been adjourned to await the outcome of *Lisauskas*, "there was very great force indeed in the views of the High Court judge that to insist on submitting a request for information in response to every request for surrender would be incompatible with the principles of mutual trust and confidence."

17. The Court of Appeal answered the certified question as follows:

*"The High Court[,] as executing judicial authority, in reliance on the principles of trust and confidence and in the exercise of its functions under section 16 of the 2003 Act, is entitled to have regard to information provided in separate proceedings by an issuing judicial authority as to the law of the issuing state where the information has been previously accepted by the High Court as executing judicial authority, is of universal applicability and the High Court has no reason on the facts as presented to seek further clarification from the issuing judicial authority."*

18. No further facts on this issue have been placed before me. For the reasons set out by Binchy J. in *Minister for Justice and Equality v. Lisauskas* and by me in *Minister for Justice and Equality v. Firantas*, I am satisfied that the Prosecutor General is a judicial authority within the meaning of Article 6(1) of the Framework Decision and the provisions of the Act of 2003 and that the decision to issue the EAW is capable of being subjected to court proceedings which meet in full the requirements of effective judicial protection.

19. I therefore reject this point of objection.

**Section 21A**

20. Section 21A of the 2003 Act as amended provides as follows:

- “(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.
- (2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved.”

21. The heading to the EAW stated that the respondent’s arrest and surrender is sought for “the purpose of conducting a criminal prosecution.” In the description of the circumstances of the offence, the EAW says that the exact place and time of commission of the offence (although it occurred in a forest in a named village after 4.00pm on the 19th July, 2014) “has not been established by the pre-trial investigation”. The EAW also states that the respondent hid from the pre-trial investigation and that where a person hides from “a pre-trial investigation or a trial” the calculation of the statute of limitations shall cease.
22. This issue was addressed briefly in the written submissions of the respondent. In the course of the hearing on the 2nd February, 2017, counsel for the respondent did not address his oral arguments to the issue of s. 21A, instead counsel left the matter to rest on the papers before the Court. Those submissions urged upon the court the opinions expressed by Mr. Tokarčakas that there had been no decision to even charge this respondent as the matter remained at the pre-trial stage. The Court therefore was primarily concerned with the affidavits of the two Lithuanian lawyers as well as the responses from the issuing judicial authority.
23. Mr. Tokarčakas stated that as this case was only at the pre-trial investigation stage there was no discussion of any decision of a Lithuanian court analysing the question of his guilt. He said that there was no charge against him. He said the pre-trial investigation stage was the primary one in criminal procedure and that it means the prosecutor believes that in the future there is a possibility of charging the respondent. He also said that this was not a criminal case, and there had been a mistake in the translation when it said it purported to give the record number of the criminal case; this was a pre-investigation record number. Ms. Kalpokienė’s evidence was to the effect that as he was only at the pre-trial stage, if he was sent for trial he would be subject to imprisonment on remand. She also said that ultimately the offence for which he may be tried may be differing from the one in which the investigation is carried out.

24. The issuing judicial authority replied confirming that the criminal case against the respondent was at pre-trial investigation stage. The reply said that "having ascertained that sufficient evidence has been collected in the course of the pre-trial investigation to substantiate the suspected person's guilt in the commission of the criminal offence, the prosecutor draws up the act of indictment, which finishes the stage of the pre-trial investigation and the suspected person becomes the defendant." The office drew attention to the fact that the measures of coercion imposed by the District Court in this case (arrest warrant) may only be imposed "when there are reasonable grounds to believe that the suspected person has committed the criminal offence."
25. In a further response, the issuing judicial authority confirmed that a notice of suspicion was served on this respondent regarding the commission of the criminal offence and that he was interviewed as a suspect, "however, actually he did not give any evidence saying that he would give evidence at court". Most importantly in this case, the issuing judicial authority says that on the 26th June, 2015 "the criminal case was referred alongside with the Bill of Indictment to the District Court of Tauragė Region. On 1 September 2015, the District Court [...] following the provisions of [Lithuanian criminal law], referred the criminal case to the Prosecutor in order to complete the investigation since the copy of the Bill of Indictment has not been served upon the [respondent]."
26. Mr. Tokarčakas replied to this by repeating that this was not a criminal case and that the number assigned to it was a pre-trial investigation number. He says that it cannot be referred to as a criminal case because it is at the pre-trial investigation stage. He says that when it was transferred to the court, it was by the decision of the District Court returned to the prosecutor for further investigation.
27. The central authority referred this back to the issuing judicial authority asking, *inter alia*, for confirmation if a decision to prosecute the respondent had been made for the offence. The issuing judicial authority replied confirming that a technical mistake had been made regarding the pre-trial investigation number of the case. The issuing judicial authority stated that the information about the decision to conduct the criminal prosecution had been conveyed in the previous letter. They again confirmed that the criminal case, which included the Act of Indictment, was referred to the District Court but it was returned to the prosecutor for the purposes of supplementing therefor because the respondent had not been served with the Act of Indictment.
28. The facts above demonstrate that the presumption in s.21A has not been displaced by the respondent herein. However, even without resort to the presumption, I am satisfied that the facts demonstrate that there has been a decision by the prosecutor to charge the respondent and try him for the offence in the EAW. This case has even reached the stage where an Act of Indictment has been drawn up against the respondent. The reason it remains at the pre-trial stage is because that Act of Indictment has not been served on the respondent; he has hidden from the pre-trial investigation.
29. I therefore reject this point of objection.

### **Section 37**

30. It is unnecessary to set out in detail any of the evidence upon which the respondent sought to rely in saying that surrender would be a violation of his constitutional and Convention rights. His point of objection in relation to claims of interference with his personal and family rights are utterly baseless in circumstances where he was evading the Lithuanian authorities in respect of the serious allegation of violence made against him and where he did not even file an affidavit attesting to his personal and family circumstances.
31. In respect of the remand and prison conditions that he may face, the respondent provided certain evidence on affidavit from lawyers. In that evidence there was a reference to the Committee for the Prevention of Torture's Report 2013 in respect of a visit to Lithuania in November and December 2012. There was also a reference to the Lithuanian Ombudsman's Report on Prison and a reference to a visit by the President of the Republic of Lithuania Dalia Grybauskaitė to Šiauliai Remand Prison who "noted that the state of the premises did not meet the requirements of Lithuanian and international legislation." There was no engagement in the written submissions with the decision I had given in *Minister for Justice and Equality v. Tagijevas* [2015] IEHC 455 in which on a fully argued case in respect of prison conditions in Lithuania I had rejected that as a point of objection. There was however reference to it in the oral hearing on the 2nd February, 2017. The respondent relied at the hearing on the decision of the *European Court of Human Rights in Mironovas & Others v. Lithuania* (App No.'s 40828/12, 29292/12, 69598/12, 40163/13, 66281/13, 70048/13, and 70065/13) dated 8th December 2015, which was delivered after the decision in *Tagijevas*. It is to be noted however that the decision in *Mironovas* involved detention conditions in prisons which appear to concern particular periods of imprisonment which dated prior to 2013. The decision of the European Court of Human Rights was to the effect that there were breaches of Article 3 based upon the conditions of detention coupled with overcrowding.
32. In the present case, the issuing judicial authority gave information that fundamental changes in the policy of the enforcement of sentences had been introduced and also referred to other measures which "contributed significantly to the decreased number of cases when the coercive measure of detention is applied." The issuing judicial authority said "As a result of this reform, the number of arrested and convicted persons has significantly decreased, which in turn resulted in the fact that in 2015 the Lithuanian detention facilities were no longer overcrowded." The issuing judicial authority also said that recommendations presented by the CPT after its visit in 2012 had been implemented. Finally, the issuing judicial authority said that "old buildings of detention facilities are being renovated and new buildings are being constructed." It was also said that in the above letter the Ministry of Justice confirmed that the conditions of detention in Lithuania meet the minimum international standards.
33. The respondent submitted that this ought not to be relied upon because the letter was not sent. I do not accept that submission. This Court must have regard to the principle of mutual trust and confidence and therefore it must accept that such letter was sent to

the issuing judicial authority and that the contents are accurately represented by the issuing judicial authority. This is confirmation by Lithuania as to the up to date position with respect to prisons.

34. The principles under which this Court must approach this issue have been well set out in the Supreme Court decision in *Minister for Justice and Equality v. Rettinger* [2010] 3 I.R. 783 and the *European Court of Justice in Aranyosi and Căldăraru v. Generalstaatsanwaltschaft Bremen* (Joined Cases C- 404/15 and 659/15 PPU). It is not necessary to spell them out but it is important to recall that this Court must be forward in its approach. The principle of mutual trust and confidence can be expressed as a presumption of good faith. The decision in *Aranyosi and Căldăraru* provides that where there is objective, specific, reliable and properly updated information that there are deficiencies, which may be systemic or generalised affecting certain places or certain people, that the executing judicial authority must determine specifically and precisely whether there are substantial grounds to believe that the requested person is at real risk of inhuman and degrading treatment if surrendered. I accept that if sufficient evidence is produced then it is for the issuing judicial authority to provide the supplementary evidence that will allow the executing judicial authority “to discount the existence of such a risk”.
35. In this case, even in February 2017, the evidence before me was not sufficiently updated or specific to reach the standard where this Court ought to postpone surrender in order to seek more specific information from the Lithuanian authorities to dispel the existence of such a risk. I have no doubt but that the position I adopted in the case of *Tagijevs* above was correct. Moreover, in the intervening period since 2017 I have not been made aware of any subsequent developments in prison conditions in Lithuania that would require me to make any further inquiry in this matter of the parties herein or of the issuing judicial authority. Having regard to the principles of mutual trust and confidence inherent in the EAW procedure, I am not satisfied that there is a real risk that this respondent would be subjected to inhuman and degrading treatment or that his right to bodily integrity would be violated if returned to Lithuania on account of remand or prison detention.
36. I reject this point of objection.

#### Conclusion

37. The final decision by the High Court on whether to surrender this respondent to Lithuania has been delayed because he failed to appear in answer to his bail as required on the 27th February, 2017. Having considered all the points of objection raised by the respondent and having considered all the requirements of the Act of 2003, I am satisfied that that the surrender of the respondent to Lithuania is not prohibited by the Act of 2003. This Court may therefore make an order for the surrender of this respondent to such other person as is duly authorised by Lithuania to receive him.