

**THE HIGH COURT**

**[2022 No. 125 EXT.]**

**[2022 No. 139 EXT.]**

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**NUTU REDNIC**

**RESPONDENT**

**Judgment of Mr. Justice Kerida Naidoo delivered on the 6th day of November, 2023.**

1. There are two warrants before the court for the surrender of the respondent. The history of the warrants is intertwined, and it is therefore convenient to deal with the two warrants together.

The 2019 warrant

2. By this application, the applicant seeks an order for the surrender of the respondent to The Republic of Romania pursuant to a European Arrest Warrant dated 13th March 2019. The EAW was issued by a named judge of Timis County Court, as the Issuing Judicial Authority ("the IJA").
3. The EAW seeks the surrender of the respondent in order to enforce a sentence of 2 years, 2 months and 80 days' imprisonment imposed upon him on 17th November 2015 by the Timis County Court. It became final on 14th December 2015. The original sentence, less the 7 days' the respondent spent in custody, remains to be served.
4. The issuing State has certified that the 2 offences to which the EAW relates are contrary to the following provisions of Romanian law, namely,
  - a. An offence of initiation and setting up of an organised criminal group contrary to Article 367 of the Criminal Code.
  - b. An offence of smuggling contrary to Article 270(3) of Law No. 86/2006.
5. The total aggregate sentence in the 2019 warrant was in respect of sentence number 355. The Timis County Court imposed a sentence of 8 months' imprisonment on the respondent for the offence of initiation and setting up of an organised criminal group and a sentence of 2 years and 2 months' imprisonment for the offence of smuggling. Those offences were merged into an aggregate sentence of 2 years, 2 months and 80 days' imprisonment which was calculated on the basis of taking the larger of the sentences, being the 2 years and 2 months for smuggling, and adding one third of the other sentence, being the 8 months' for initiating and setting up an organised criminal group. Particulars of those offences were provided by the IJA. The aggregate sentence was imposed on 17th November 2015 and became final on 4th February 2019.

6. The respondent was arrested on 22nd June 2022, on foot of a Schengen Information System II alert, and brought before the High Court on the same date. The EAW was produced to the High Court on 5th July 2022.
7. The respondent was present at the hearing resulting in the decision.

#### The 2020 warrant

8. By this application, the applicant seeks an order for the surrender of the respondent to The Republic of Romania pursuant to a European Arrest Warrant dated 15th January 2020. The EAW was issued by a named Judge of the Court of Justice Sighetu-Marmatiei, as the Issuing Judicial Authority.
9. The EAW seeks the surrender of the respondent in order to enforce a sentence of 2 years and 8 months' imprisonment imposed upon the respondent on 9th April 2019 that became final on 3rd December 2019, of which the entirety remains to be served.
10. The issuing State has certified that the offences to which the EAW relates are contrary to the following provisions of Romanian law, namely: an offence of smuggling contrary to Article 270(3) of Law No. 86/2006.
11. The EAW was endorsed by the High Court on the 5th July 2022 and the respondent was arrested and brought before the High Court on the same date on foot of same.
12. The 2020 warrant relates to a 2 year and 8 months' sentence. It is an aggregate sentence that comprises of the 2 year, 2 months and 80 days' sentence, being sentence number 355 to which the 2019 warrant relates, which was increased by 6 months for an additional smuggling charge imposed on 3rd December 2019. The sentence is the larger of the penalties in sentence number 355 of 2 years and 2 months', plus 6 months from sentence 297, which gives the total of 2 years and 8 months' imprisonment.
13. The respondent was not present at the hearing that resulted in the decision but is guaranteed a full right of appeal pursuant to Part D 3.4 of the 2020 warrant.

#### Uncontroversial matters in both warrants

14. I am satisfied that the person before the court, the respondent, is the person in respect of whom both EAWs were issued. No issue was raised in that regard.
15. I am satisfied that none of the matters referred to in section 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.
16. 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.

### **Section 11 and Double Jeopardy**

17. The respondent filed the same points of objection and written submissions for both warrants. He objects to surrender on the basis that there is a deficiency in material particulars, that the warrants do not conform with the format required by the Act of 2003, do not comply with section 11 thereof, and do not provide other necessary details and information.
18. The respondent also says that the 2020 warrant purports to be in "competition" with other offences and with other penalties imposed by different courts in Romania and the EAW is confusing and contradictory. Furthermore, he says the warrant lacks the clarity that is required for a valid surrender application, such that the within application for the respondent's surrender should be refused.
19. In deciding whether to make an order for surrender under the Act of 2003 the court is entitled to have regard to the entirety of the material before it. The fact that the format of an EAW is not strictly in conformity with what is provided for in the Act and Framework Decision does not amount to a reason for refusal of surrender so long as the court has sufficient information available to it to exercise its functions under the Act.
20. Strictly speaking section 41 of the Act of 2003 prohibits, in effect, the surrender of a person for the purpose of them being proceeded against in the issuing State for an offence in respect of which a final judgment has been given in this State or another Member State. The respondent's surrender is not sought for the purpose of trying him for an offence. The real issue is that the sentence which is the subject of the 2020 warrant is an aggregate sentence for the offences in respect of which the respondent was convicted in 2015 and a further offence of smuggling for which he was convicted in 2019. The sentence that is the subject of the 2019 warrant relates only to the offences for which the respondent was convicted of between 2013 and 2015. If the respondent were required to separately serve those two sentences, he would then be subject to double punishment contrary to Article 50 of the Charter of Fundamental Rights of the European Union, in which case this court would be bound to refuse surrender.
21. In the instant case, it appears that the 2020 warrant supersedes the 2019 warrant in that it imposes a sentence that encompasses the sentence to which the 2019 warrant relates. That being so, the Timis IJA was asked in additional information of 27th April 2023 why the surrender of the respondent was sought pursuant to the 2019 warrant and to confirm that the respondent would not be punished twice for the same offence. In the reply, the Timis IJA provided assurances that the respondent would not be punished twice for the 2015 offences. The IJA also says that upon his surrender the respondent can appeal the Marmatiei Court decision. Alternatively, either he, or the prosecution, could make a request for the amendment of his punishment and a possible merger of the Timis Court judgment and the Marmatiei Court judgment. Based on the replies, if the two sentences are not merged, is not clear how the sentence would be amended, and it is not suggested that it would be annulled.

22. The Marmatiei Court decision imposed a penalty that consists of the entirety of the Timis Court smuggling sentence, plus 6 months. The Timis Court sentence is therefore different to that imposed by Marmatiei Court because it includes an additional 80 days for the possession and sale of smuggled cigarettes. Following surrender, the Timis Court decision would therefore have to be varied in some way, either by having it merged with the sentence imposed by the Marmatiei Court, or otherwise amended. If the latter sentence was appealed, the original, higher, sentence imposed by the Timis Court would remain.
23. All of the requests for additional information were sent to both the Timis Court and Marmatiei Court. The latter replied addressing each of the queries concerning its sentence but has given no indication about whether the prosecutor with responsibility for its case would deal with the Timis sentence. Although the Timis Court has given an assurance that the respondent will not be sentenced twice for the same offence, neither IJA has said what the sentence will be if there is an application to amend, by merger or otherwise, the sentence to which the 2019 or 2020 warrants relates.
24. It is unusual that two separate European arrest warrants were issued by two different judicial authorities seeking surrender to enforce to sentences for the same offences. In the *Minister for Justice and Equality and Law Reform v. Jaroslav Piotr Gotszlik* [2009] IESC 13, the Supreme Court held that surrender can be ordered on foot of multiple warrants. However, that was a case in which the European arrest warrants had been issued by the same judicial authority for separate offences. Nonetheless, I am satisfied that the issuing of two European arrest warrants by two different judicial authorities seeking surrender for the same sentence does not, in principle, mean surrender could not be ordered in respect of in one or both warrants. It would depend on the particular circumstances of the case.
25. The applicant has drawn the court's attention to *Minister for Justice v. Robert Gabco* [2021] IEHC 670 in which the High Court, Burns J., was presented with a similar, but not identical, situation as that in the instance case. In that case surrender was sought to enforce a sentence of 8 months' imprisonment for two separate incidents of shoplifting, one of which was the subject of an earlier sentence that had effectively been subsumed by a later one. In a reply to a request for additional information the High Court was told that the respondent could appeal the later sentence, and if the appeal was unsuccessful, the other sentence would be annulled so that, in any event, the respondent would serve only the sentence for which he was surrendered. The High Court ordered the surrender of the respondent in respect of both sentences so that one of them could be formally nullified if required.
26. In the instant case the IJA does make clear that if surrendered the respondent would not be sentenced twice for the same offence. The important distinction between this case and *Gabco*, however, is that in *Gabco* both sentences were imposed by the same IJA, which confirmed to the High Court that if the respondent did not appeal the aggregate, superseding, sentence, the earlier sentence would be annulled. There was therefore

complete clarity as what the sentence would be and how it would be given effect to by the issuing State. The sentence was therefore immediately enforceable.

27. I have been given an assurance by the Timis Court that the respondent will not be punished twice for the same offence. However, although the offences to which the 2019 warrant relates are included in part of the 2020 sentence, the actual sentences are not the same, because the process that led to the aggregate sentence in the 2020 warrant effectively reduced the sentence for the offences in the 2019 warrant. I am, therefore, satisfied that the sentence in the 2019 warrant is not immediately enforceable because it will have to be varied, by way of merger or otherwise, in order to bring it in line with the sentence in the 2020 warrant. That means surrender must be refused in respect of the 2019 warrant.
28. The applicant submits that surrender can nonetheless be ordered in respect of the 2020 warrant. She says the sentence in that case is the result of an amalgamated one that involved merging the sentence in the 2019 warrant with the sentence for the additional offence in the 2020 warrant. She also says that because the Timis IJA has given an assurance that the respondent will not be punished twice for the same offence, the only sentence that can be imposed is the one to which the 2020 warrant relates. The applicant acknowledges that it is not clear how that outcome would be arrived at but says so long as the court is satisfied that the immediately enforceable sentence in the 2020 warrant, and no other, will be imposed there is no basis to refuse surrender.
29. The difficulty is that the Timis IJA says that the respondent or the prosecution could apply to vary, perhaps merge, the Timis Court and the Marmatiei Court sentences, although no commitment is given that the prosecution will do so. The Marmatiei IJA has given no indication that it will make any application to annul the sentence in the 2019 warrant. It is also not clear what the Marmatiei Court will do about the Timis Court sentence if surrender on the 2019 warrant is refused. In my view, the court, and more particularly the respondent, is entitled to know what would actually happen to the Timis sentence following surrender on foot of the 2020 warrant. There is, however, a lack of certainty in that regard because, unlike what happened in *Gabco*, neither IJA has given an assurance that the sentence in the 2019 warrant will, or can under the laws of the issuing State, be annulled if surrender is ordered in respect of the 2020 warrant.
30. Based on the information provided, if surrender is refused on both warrants, the laws of the issuing State would not prevent the issuing State from having the 2019 warrant sentence nullified or merged with the 2020 warrant. A single European arrest warrant could then be issued and there would be certainty as to the sentence the respondent will have to serve and no other sentence for the same offences would be live. So long as the respondent was guaranteed a right of appeal in respect of the resulting sentence, as it currently is in the 2020 warrant, section 45 of the Act of 2003 would not be a bar to surrender. Indeed if, as appears to the case, the 2020 warrant supersedes the 2019 warrant, it is somewhat difficult to understand why one of the other authorities in the issuing State did not take steps to amend or merge the sentence in the 2019 warrant into

the 2020 warrant once informed by this court that two European arrest warrants have been issued by different judicial authorities seeking surrender for two different sentences in respect of the same offences.

31. I am satisfied that the sentence to which the 2019 warrant relates is not immediately enforceable and surrender must therefore be refused in respect of that warrant.
32. I am also satisfied that, in the particular and unusual circumstances of this case, there is an impermissible lack of clarity about how the issuing State will deal with the existence of the sentence to which the 2019 warrant relates if surrender was ordered on foot of the 2020 warrant.
33. It therefore follows that this court will make an order under section 16 of the Act of 2003 releasing the respondent from both warrants.
34. The respondent objected to surrender on additional grounds that need not now be considered.