

THE HIGH COURT

[2023] IEHC 769

Record No: 2023/61

**IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT,
2003 (AS AMENDED)**

BETWEEN:

MINISTER FOR JUSTICE & EQUALITY

Applicant

-and-

FILIP BRAZDA

Respondent

Decision of Ms. Justice Melanie Greally delivered on 19th December 2023

1. By this application, the applicant seeks an order for the surrender of the Respondent to the Czech Republic pursuant to an European Arrest Warrant (hereinafter the “EAW”) dated 12th October 2022 issued by Jan Jouza, Judge of the District Court in Louny, Czech Republic, as the Issuing Judicial Authority (hereinafter the “IJA”).
2. The surrender of the Respondent is sought to make him amenable to serving a sentence of 7 months imprisonment in respect of one offence.
3. The European Arrest Warrant was endorsed for execution on the 17th of April 2023. The Respondent was arrested on the 24th of April 2023.
4. At the outset of the proceedings the Court was satisfied that the Respondent is the person in respect of whom the European Arrest Warrant was issued.
5. Part A of the warrant sets out the Respondent’s personal details and there is no dispute as to identity.
6. Part B of the warrant states the decision upon which the EAW is based to be an arrest warrant dated 14th January 2022. The basis for the domestic arrest warrant is set out in Section F of the EAW.

7. Part C of the EAW states the maximum available sentence to be one of 2 years imprisonment. The satisfaction of the minimum gravity requirement is in dispute and is a matter to which I will revert below.
8. The EAW itself does not contain a completed Section D, an omission which has been addressed by means of a Section 20 request.
9. Part E of the EAW sets out the description of the circumstances in which the offence was committed which can be summarised as follows: On the 27th of March 2020, the Respondent was pulled over by police when driving a motor vehicle having been banned from driving for two years on the 30th of October 2019. It also sets out the relevant provision under the Czech Criminal Code.
10. Section F sets out the proceedings which have taken place to date as follows:
A judgement delivered on the 15 June 2020 ordered the Respondent to pay a fine of 70,000 CZK (Ref No 15T 49/2020-57) (hereinafter referred to as “hearing #1”).
A substitute sentence of 7 months imposed on 18 January 2021 due to failure to pay the fined. (Ref No 15T 49/2020-84) (hereinafter referred to as “hearing #2”).
11. It further states that Respondent was invited to attend the hearing at which the sentence was imposed but did not appear.
12. The Respondent filed grounds of objection on the 4th of May 2023 which raised numerous points including the failure to provide a Form D table, a failure to provide information in respect of all decisions that come within the meaning of Article 4A of the Framework Decision, a lack of clarity and non-compliance with the requirements of Section 10 and Section 11(1A)(e) of the 2003 Act as amended.
13. Following receipt of the grounds of objection three Section 20 requests issued.
14. Request Number One issued on the 10th May 2023 and sought clarification of why Part B of the EAW makes reference to the maximum available sentence of two years and an enforceable judgement “still pending” when Part F indicates the Respondent was found guilty and was ordered to pay a fine and thereafter sentenced to 7 months imprisonment.
15. The reply from the IJA dated 15th May 2023 states that the court resolution of 18th January 2021 imposed the 7-month sentence but due to the non-attendance and subsequent cessation of contact with the Respondent he could not be served with the order and therefore it could not enter into legal force.
16. In these circumstances the IJA considered it necessary to provide the maximum penalty of two years in Part C as it did not consider the decision given in Part B came under the heading “enforceable” judgement.

17. Request Number Two issued 27th June 2023 and sought confirmation of whether the Respondent appeared in person at hearing #1. If not, an indication was sought as to whether he was summoned in person and informed of the date and location of hearing #1 and of the possibility of a decision being made in his absence. Detail was sought as to precisely how service was affected or how the Respondent was unequivocally aware of date of hearing #1. Information was also sought regarding whether the Respondent was legally represented at hearing #1 and whether the lawyer was instructed by the Respondent or assigned in his absence. A new Part D was sought regarding hearing #1.
18. In respect of hearing #2, clarification was sought of whether the Court imposed the seven-month sentence or whether it ordered execution of a sentence imposed at hearing #1. The IJA was also asked if the Court had discretion to modify the sentence of seven months.
19. In its reply dated 28th June 2023, the IJA provided the requested Part D from which it was evident that the Respondent appeared in person at hearing #1. It clarified that the Court which imposed the seven-month sentence at hearing #2 did not have any discretion to modify or alter the sentence of 7 months.
20. The IJA added “for the sake of completeness, the court adds that the Criminal Procedure Code of the Czech Republic allows a convicted person to avert the execution of a prison sentence by paying the originally imposed financial penalty. (Section 344(2) of the Criminal Procedure Code)”.
21. In objecting to surrender the Respondent has submitted that in light of the foregoing the EAW is not, as was initially understood, a prosecution-type warrant and was, in fact, issued to make the Respondent amenable to serving a seven month sentence imposed in lieu of a fine imposed at hearing #1 and the Respondent relies strongly on the fact that the sentence is only enforceable if he does not avail of the option of paying the fine in the interim.
22. Mr Kelly BL for the Respondent maintains that, notwithstanding the Section 20 replies, the position remains unclear in relation to whether the prosecution has concluded and observes that if there are further steps outstanding in the prosecution of the offences the lack of discretion to impose a sentence in excess of seven months means that the minimum gravity requirement of 12 months under the Act cannot be satisfied.
23. Request Number Three was made on the 28th of July 2023 and sought details of the procedure which would be followed upon surrender of Mr Brazda and whether he will be required to serve the sentence of 7 months. The request also sought an indication of what sentence is currently enforceable.
24. The reply dated 2nd of August 2023 explained that Mr Brazda would, if surrendered, be served with the resolution from hearing #2 at a custody session and has a right of appeal within 3 days and that the financial penalty is the only sentence which has entered into legal force for now. The reply re-states that he can still avoid the execution of the sentence by paying the originally imposed fine.

Decision

25. It seems clear to me from the EAW when read in conjunction the replies to the Section 20 requests that the Respondent does not come within the provisions of Section 10 (a) (b) or (c) of the European Arrest Warrant Act, 2003 (as amended) because the proceedings at first instance concluded with a resolution of the Court on 18th of January 2021 imposing the default sentence of 7 months.
26. I am, however, satisfied from a combined reading of the information in the EAW and replies from the IJA that the Respondent comes within Section 10(d) of the 2003 Act being “a person on whom a sentence of imprisonment or detention has been imposed”.
27. I am also satisfied from Reply Number Three that any future court proceedings will be exclusively concerned with serving the Court order and executing the sentence. Accordingly, once the Respondent is served with the Court Order imposing the seven-month sentence, the sentence becomes immediately enforceable in accordance with Article 8 of the Framework Decision and Section 11(1A) (e) of the 2003 Act. (Minister for Justice, Equality and Law Reform V Jan Odstrcilik [2010] IEHC 315 followed).
28. I therefore dismiss the Respondent’s objections based on lack of clarity and non-compliance with Section 10 and 11 of the Act.
29. The seven-month sentence imposed at hearing #2 exceeds the minimum gravity threshold of 4 months, consequently, the minimum gravity requirement under the 2003 Act is satisfied.
30. At the conclusion of his submission, the Respondent tentatively advanced a further ground of objection being a lack of correspondence arising from the absence of information in Part E of the EAW concerning the Respondent’s attendance at the hearing when led to him being disqualified from driving which is the basis of the offence of driving while disqualified. Incidentally, this ground was not addressed in the Respondent’s written submissions.
31. I am firmly of the view that validity of the driving ban is a proof and matter of evidence for the court in the issuing State and that it does not bear on the issue of correspondence. I am satisfied in accordance with Section 5 of the Act of 2003 and its application in the Supreme Court decision in *Dolny* that the circumstances set out in Part E correspond to the offence of driving while disqualified contrary to Section 38(1) of the Road Traffic Act, 1961.
32. Accordingly, I dismiss the objection to surrender based on lack of correspondence.
33. I am satisfied that none of the matters referred to in ss 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.

34. I am satisfied that the surrender of the respondent is not precluded by s. 38 of the Act of 2003, any other provision of part 3 of the Act of 2003, or indeed any provision of the Act.
35. Having dismissed the Respondent's objections to surrender, it 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.