

**THE HIGH COURT**

**RECORD NUMBER 2012/52 EXT**

**BETWEEN**

**MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**APPLICANT**

**AND**

**MARTON GYOZO KIS**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 30th day of July 2020.**

1. In this application, the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European arrest warrant dated 18th January, 2011 ("the EAW"). The EAW was issued by Judge Alexandra Brebenel of Sibiu Law Court as the issuing judicial authority. The EAW seeks the surrender of the respondent to serve a sentence of 15 years' imprisonment, imposed upon him on 11th January, 2011 in respect of drug trafficking offences, of which the full 15 years remains to be served.
2. The EAW was endorsed by the High Court on 7th February, 2012 and the respondent was arrested and brought before the High Court on the 29th February, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. No issue was raised in this respect.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), have been met. The respondent is sought to serve a term of imprisonment of 15 years.
5. 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.
6. The respondent delivered points of objection dated 14th May, 2020 which may be summarised as follows:-
  - (a) surrender is prohibited by s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the Convention") and/or the Constitution;
  - (b) surrender is prohibited by s. 38 of the Act of 2003 as there was no correspondence between the offences referred to in the EAW and offences at Irish law; and
  - (c) surrender is prohibited by s. 45 of the Act of 2003 as the respondent had been tried and sentenced *in absentia*.
7. In a relatively brief hearing of this matter, Counsel on behalf of the respondent submitted that due to prison conditions in Romania, there was a real risk that the respondent would be subjected to inhuman or degrading treatment in breach of article 3 of the Convention, and therefore his surrender would be incompatible with the State's obligations under the

Convention and was thereby prohibited by reason of s. 37 of the Act of 2003. The respondent did not produce any report from a Romanian lawyer or other expert to support this contention but relied upon the High Court decision in *Minister for Justice and Equality v. Pal* [2020] IEHC 143, and an executive summary of the Council of Europe Committee for the Prevention of Torture ("the CPT") Report 2019, based on a visit to Romania in 2018. He submitted that this was enough to warrant the Court refusing surrender or, in the alternative, that this was enough to oblige the Court to seek additional information from the Romanian authorities as to the specific conditions in which the respondent would be detained. The Court was not referred to any particular passages of the *Pal* decision or to any particular aspect of the CPT report.

8. Counsel on behalf of the applicant submitted that, as the respondent had adduced absolutely no evidence in this application as regards the likely prison conditions in which he would be detained if surrendered, there was no evidential basis for the Court embarking upon an inquiry in that regard. It was submitted that under the Act of 2003 and the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), there was a presumption and strong public interest in favour of surrender, save for the express exceptions set out therein.
9. In *The Attorney General v. Davis* [2018] IESC 27, [2018] 2 IR 357 at para. 87 of his judgment, McKechnie J. pointed out that the threshold which the respondent had to meet was not a low threshold and he emphasised:-

*"There is a default presumption that the other country will act in good faith and that it will respect a proposed extraditee's fundamental rights... The basis for this presumption is the underlying principle of mutual trust, reciprocity and confidence which goes to the heart of the bilateral/multilateral extradition arrangements that have been entered into by the State on the international plane. Experience has shown that the presumption can indeed be rebutted, but such a conclusion will not be reached lightly. Thus while the courts will conduct a rigorous inquiry into any proposed objections to extradition, intervening where necessary to safeguard the subject respondent's fundamental rights, the onus is on that person to establish by evidence that there is a real risk of a violation of such rights if surrendered and extradited."*

10. In *ML v. Generalstaatsanwaltschaft Bremen* Case C-220/18 (25th July, 2018, First Chamber), the Court of Justice of the European Union ("the CJEU") emphasised that the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and mutual trust. A refusal to execute a warrant is intended to be an exception. The grounds of refusal listed in article 5 of the Framework Decision are to be interpreted strictly.
11. In *Aranyosi and Căldăraru* Joined Cases C-404/15 and C-659/15 (5th April, 2016, Grand Chamber), it was indicated that a court, when faced with evidence of the existence of

deficiencies in the prison system of the issuing member state that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing member state, he will run a real risk of being subjected to inhuman or degrading treatment, within the meaning of article 4 of the Charter of Fundamental Rights (“the Charter”).

12. The material relied upon by the respondent as regards his objection to surrender is neither specific nor updated and falls far short of what is usually adduced to support such a submission. In *Pal*, the High Court surrendered the respondent, albeit after a protracted interaction with the issuing member state. The executive summary of the CPT report based on a visit from 2018 could not be regarded as cogent, up-to-date evidence. Nothing was adduced which was in any sense specific to the respondent herein. The respondent has failed to meet the necessary evidential threshold so as to warrant this Court embarking upon an inquiry as to whether there is a real risk that, if surrendered, the respondent would be detained in conditions which would constitute a breach of article 3 of the Convention or article 4 of the Charter.
13. Counsel on behalf of the respondent submitted that there had been an inordinate delay on the part of both the issuing member state and the executing member state in relation to the enforcement or execution of the EAW. An earlier warrant had been issued on 16th February, 2010 seeking the surrender of the respondent for the purposes of prosecuting him. Subsequent to that, a trial in *absentia* had taken place in which the respondent was convicted and sentenced to 15 years’ imprisonment. The earlier warrant was withdrawn and replaced by the EAW herein, which was issued on 18th January, 2011. The respondent swore an affidavit dated 14th May, 2020, in which he stated that he had been living openly and transparently in Ireland since 2001, that the offence in question was alleged to have been committed in 2007 and that he denied any involvement in the offence. He averred that he resided in Ireland along with his partner who was recovering from cancer and that they had two children born in Ireland in 2003 and 2004 respectively. It was submitted that due to the considerable delay which had occurred and the fact that the respondent had established a private and family life in Ireland, that surrender at this stage would constitute an unwarranted interference or breach of his right to a private and family life as protected under article 8 of the Convention.
14. Counsel on behalf of the applicant referred the Court to an affidavit sworn herein by Detective Garda Anthony Keane of the extradition unit at the Garda National Bureau of Criminal Investigation, dated 4th June, 2020. Garda Keane set out in detail various efforts made by the Gardaí over a number of years to locate the respondent which had proved unsuccessful and also to set out how he was eventually traced through the registration of a motor vehicle. It was submitted that, in the circumstances, there was no culpable delay on the part of the issuing member state or the State as regards the enforcement or execution of the EAW.

15. I am satisfied that there has been no culpable delay on the part of the issuing member state or this State, as the executing member state. In *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, the Supreme Court emphasised that only in truly exceptional or egregious cases could delay be a ground for refusal of surrender. The Supreme Court also emphasised that it was only in truly exceptional cases that an order for surrender would be incompatible with the State's obligations under article 8 of the Convention. In the present case, I find the circumstances of the applicant to fall far short of being truly exceptional so as to render an order for his surrender incompatible with the State's obligations under article 8 of the Convention.
16. I dismiss the respondent's objections based upon s. 37 of the Act of 2003.
17. At hearing, Counsel on behalf of the respondent did not pursue any argument in respect of correspondence. It should be noted that in the EAW, the issuing judicial authority certified that the offence referred to in the EAW was an offence to which article 2(2) of the Framework Decision applied, and that under the law of the issuing state, the offence is punishable by imprisonment for a maximum period of not less than three years, so that pursuant to s. 38(1)(b) of the Act of 2003, the applicant was not required to establish correspondence with an offence in this jurisdiction. The relevant box for "*illicit traffic of drugs and psychotropic substances*" is ticked. There is no reason to regard such certification as inappropriate or an error. In any event, I am satisfied that if necessary, correspondence could be made out between the offence in the EAW and the offence under the law of this State.
18. The respondent was convicted and sentenced *in absentia*. By virtue of s. 45 of the Act of 2003, a person shall not be surrendered if he did not appear in person at the proceedings resulting in the sentence in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points two, three and four of point (d) of the form of warrant annexed to the Framework Decision, as set out in the table to s. 45 of the Act of 2003. In point (d) of the EAW herein, the issuing judicial authority had indicated that the respondent had been summoned in person at his house, and by posting the summons on the noticeboard of the local Council, had been informed of the date and place of the hearing which led to the decision rendered *in absentia* and indicated that the respondent could have a retrial according to the rules of the Romanian procedure. It was accepted by the parties that the matters set out at point (d) of the EAW did not comply with the requirements of s. 45 of the Act of 2003, as substituted by the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act, 2012, having been issued prior to that substitution. The issuing judicial authority was therefore requested to furnish a fresh completed table (d) in the format as set out in s. 45 of the Act of 2003. By reply dated 26th June, 2020 the issuing judicial authority furnished a completed table (d) indicating that the respondent did not appear in person at the trial resulting in the decision, and also indicating in the table (d):-

- 3.1 a that the respondent had been summoned in person at his home address, as well as by displaying the summons in the local council and with a bench warrant;
  - 3.2 that the interests of the respondent were defended by a court-appointed Counsellor,
  - 3.4 that the respondent was not personally served with the decision, but will be personally served with the decision without delay after surrender and would be expressly informed of his right to a retrial or appeal in which he has the right to participate, and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed and that he would be informed of the timeframe within which has to request a retrial or appeal of 30 days for re-opening the criminal proceedings.
19. I am satisfied that the requirements of s. 45 of the Act of 2003 have been met. In light of the re-completed table (d) furnished by the issuing judicial authority, this was not seriously contested on behalf of the respondent. I dismiss the respondent's objections in respect of s. 45 of the Act of 2003.
  20. I am satisfied that the surrender the respondent is not prohibited by part three of the Act of 2003.
  21. Having dismissed all the objections to surrender made on behalf of the respondent, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Romania.