

THE HIGH COURT

[2020 No. 060 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

RIČARDAS VALEŠKA

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 16th day of December, 2020

1. By an application pursuant to the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania ("Lithuania") on foot of a European arrest warrant dated 16th April, 2018 ("the EAW") issued by Tomas Krušna of the Office of the Prosecutor General of the Republic of Lithuania ("the Prosecutor General's Office") as the issuing judicial authority. The surrender of the respondent is sought in order to prosecute him in respect of one burglary-type offence.
2. The EAW was endorsed by the High Court on 2nd March, 2020. The respondent was arrested and brought before the High Court on 24th September, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued and no issue was taken in respect of this.
4. 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. No issue was taken in respect of those sections.
5. I am satisfied that the minimum gravity requirements as set out in the Act of 2003 are met, as the offence in question carries a maximum term of imprisonment of 6 years' imprisonment.
6. I am satisfied that correspondence exists between the offence referred to in the EAW and an offence under the law of this State, viz. an offence of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 ("the Act of 2001") and/or an offence of burglary contrary to s. 12 of the Act of 2001. No issue was taken in respect of correspondence.
7. A notice of objection to surrender was filed dated 29th September, 2020, but counsel for the respondent indicated at the hearing of this matter that he was only pursuing one ground of objection, viz. that surrender was precluded by virtue of s. 37 of the Act of 2003 due to prison conditions in Lithuania and, if surrendered, there was a real risk of a breach of the respondent's right under article 3 of the European Convention on Human Rights ("the ECHR") not to be subjected to inhuman or degrading treatment or punishment. In particular, it was submitted that the respondent had a number of medical conditions requiring treatment which might not be available in the Lithuanian prison

system. Upon surrender, the respondent could be detained in custody pending trial and, if convicted, he could be sentenced to a term of imprisonment.

8. The respondent relied upon an affidavit sworn by his solicitor, Mr. Tony Hughes, dated 22nd October, 2020 which set out that the respondent was residing in a temporary accommodation unit provided by the Simon Community and that the respondent suffered from a number of medical conditions which were listed therein. The affidavit exhibited a hospital discharge summary from St. James' Hospital, Dublin, dated 28th August, 2020 as well as correspondence from the Simon Community. It was submitted that the Lithuanian prison system would be challenged in catering for the respondent's medical needs.
9. It was further submitted that the respondent was undergoing a course of treatment which was very expensive and unlikely to be available to him in Lithuania. In relation to prison conditions, the respondent relied upon a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) dated 25th June, 2019, based on a visit to Lithuania carried out from 20th to 27th April, 2018. The response of the Lithuanian Government to the said report was also opened to the Court.
10. The Court notes that in the response of the Lithuanian government to the CPT report, the Lithuanian government states at p. 13:-

"In light of the fact that as of 1 May 2019, medication to treat prisoners with dangerous transmissible diseases (hepatitis B, hepatitis C, HIV, tuberculosis, etc.) is financed by the Compulsory Health Insurance Fund, penitentiary establishments will have the opportunity to immediately start treatment for persons infected with these diseases as soon as the disease is diagnosed."

11. The Court sought an assurance from the issuing state that if surrendered and required to spend time in detention, that the prison service would be able to provide adequate medical facilities and treatment for the respondent. By response dated 2nd December, 2020, the issuing state indicated:-

"Ričardas Valeška could undergo treatment of health disorders mentioned in the letter in Lithuanian places of imprisonment. The health assessment procedure would be performed immediately after the transfer of the person to Lithuania and his delivery to the prison. All necessary treatment will be prescribed by medical specialists, in terms of addictive diseases - by psychiatrists (if medical treatment is required). All treatment schemes are applied and medicines are prescribed in accordance with European Union standards. Psychologists work with people with addictions in Lithuanian prisons and apply behaviour correction schemes. Crisis Management Teams (hereinafter referred to as the Team) are formed in all places of imprisonment, which include specialists from different units of the institution (psychologists, officials of the Security Management Department, Resocialization Department and Health Care Specialists). ..."

Lithuanian healthcare specialists cannot guarantee the identical treatment to Ričardas Valeška, who is to be transferred to Lithuania, to the one he received in Ireland, but he will receive similar treatment to the most possible extent, taking into account all the recommendations of the specialists."

12. Having considered the documentation put before the Court, I am not satisfied that the respondent has established a real risk that, if surrendered, he will be subjected to inhuman or degrading treatment in breach of article 3 ECHR. In particular, the respondent has failed to establish by way of cogent evidence a real risk that the Lithuanian prison system would be unable to treat the respondent's various medical conditions. I dismiss the respondent's objection in that regard.
13. I am satisfied that the surrender of the respondent is not precluded by reason of part 3 of the Act of 2003.
14. Having dismissed the respondent's objection, 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 Lithuania. However, in light of the fact that the respondent is currently undergoing a course of treatment that will not be completed for a further short period of time, I am prepared to postpone the surrender pursuant to s. 18(1)(a) of the Act of 2003 to allow that course of treatment to be completed.