

THE HIGH COURT

[2021] IEHC 197
[2020 No. 052 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

NATALIJA HAVRÁNKOVÁ

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 18th day of March, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to the Czech Republic pursuant to a European arrest warrant dated 17th January, 2019 (“the EAW”), issued by Mgr. Michaela Řezníčková of the District Court in Tachov as the issuing judicial authority. The surrender of the respondent is sought to enforce a sentence of 2 years and 6 months’ imprisonment imposed on the respondent on 16th June 2016, which was upheld on appeal, of which 2 years, 4 months and 17 days remains to be served.
2. The EAW was endorsed by the High Court on 17th February, 2020, and the respondent was arrested and brought before this Court on 2nd November, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended (“the Act of 2003”), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 are met. The sentence to be served is in excess of 4 months’ imprisonment.
6. Section 38(1)(b) of the Act of 2003 provides for a procedure whereby it is not necessary for the applicant to establish correspondence, or double criminality as it is sometimes referred to, where the offence is an offence to which article 2(2) of 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”), applies and which carries a maximum penalty of at least 3 years’ imprisonment under the law of the issuing state. At part E.I. of the EAW, the issuing judicial authority has invoked the procedure provided for at s. 38(1)(b) of the Act of 2003 by certifying that the offences carry a maximum penalty of at least 3 years’ imprisonment and ticking the box for “*illicit trafficking in narcotic drugs and psychotropic substances*”, as the relevant offence to which article 2(2) of the Framework Decision applies. I am satisfied that there is no manifest error or ambiguity about such certification so as to warrant this Court looking beyond same. I am satisfied that, if it was necessary to do so, correspondence could be established between the offences referred to in the EAW and an offence under the law of this State, viz. possession of controlled drugs for the purpose of unlawful supply of same to another, contrary to s. 15 of the Misuse of Drugs Act, 1977. Correspondence was not contested by the respondent.

7. A number of matters arose as regards the contents of the EAW:-
 - (i) part D of the EAW was not completed;
 - (ii) there appeared to be a discrepancy between the original Czech language version and the English version of the EAW as regards the remainder of the sentence to be served; and
 - (iii) part F of the EAW referred to other criminal proceedings ongoing against the respondent.

8. By additional information dated 11th December, 2020, the issuing judicial authority confirmed:-
 - (i) that the respondent was personally present at the hearing on 16th June, 2016. She was personally summoned to appear on 1st August, 2018 but did not appear. The decision ordering her to serve the sentence unconditionally was sent to her and she filed an appeal which was rejected by the Regional Court in Plzeň on 9th October, 2018;
 - (ii) The remainder of the sentence of imprisonment to be served is 2 years, 4 months and 17 days; and
 - (iii) The other proceedings were no longer being pursued.

9. By further additional information dated 7th January, 2021, the issuing judicial authority indicates that the respondent did not appear before the court on 9th October, 2018, as the appeal filed is dealt with in a closed session. The decision of the appeal court was sent to the respondent but she did not pick up the mail as she had moved to an unknown address and travelled to Ireland.

10. Further additional information dated 16th February, 2021 indicates that the sentence imposed had initially been conditionally suspended and had been activated because the respondent had failed to abide by the conditions and in particular had not refrained from using narcotics and psychotropic substances. The Court, in activating the sentence, could have added further duties for the probationary period or simply activated the sentence. It had activated the sentence and the appeal court had simply affirmed this. The respondent was not notified of the date in the appeal court as the court deals with such appeals in a closed session where nobody is notified. It also indicates that the respondent was under an obligation to stay in contact with the court and probation officer but she 'escaped' to Ireland without informing the court of any new address or her intention to leave.

11. I am satisfied that the respondent was present for the hearing in the District Court which resulted in her conviction and suspended sentence on 16th June, 2016. I am satisfied that the subsequent hearing in the District Court to activate the sentence and the appeal hearing in respect of same were not hearings to which the requirements of article 4a of the Framework Decision or s. 45 of the Act of 2003 apply.

12. In *Ardic* (Case C-571/17 PPU) the Court of Justice of the European Union (“the CJEU”) gave a ruling in the following terms:-

“Where a party has appeared in person in criminal proceedings that result in a judicial decision which definitively finds him guilty of an offence and, as a consequence, imposes a custodial sentence the execution of which is subsequently suspended in part, subject to certain conditions, the concept of ‘trial resulting in the decision’, as referred to in Article 4a(1) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as not including subsequent proceedings in which that suspension is revoked on grounds of infringement of those conditions during the probationary period, provided that the revocation decision adopted at the end of those proceedings does not change the nature or the level of the sentence initially imposed.”

13. In *Minister for Justice and Equality v. Lipinski* [2018] IESC 8, the Supreme Court had to consider whether the absence of the respondent at a hearing which led to the revocation of suspension of a sentence of imprisonment engaged the in absentia requirements of the Framework Decision. While the Supreme Court initially made a reference to the CJEU on the point, it transpired that such reference was unnecessary by virtue of the decision of the CJEU in *Ardic*. Clarke C.J., at para. 3.7 of the Supreme Court decision, held:-

“It is clear, therefore, that a hearing at which a suspension of sentence is revoked on grounds of infringement of conditions attaching to that suspension is not considered to be part of a ‘trial resulting in the decision’ for the purposes of the Framework Decision unless the revocation decision changes ‘the nature of the level of the sentence initially imposed’. If the consequence of the revocation is to alter the sentence originally imposed then different considerations may apply.”

14. In this instance, the suspended sentence was simply activated without any change to the nature or level of the sentence initially imposed.
15. Furthermore, I am satisfied that the defence rights of the respondent were respected and were not breached. She was present for the initial hearing, she appealed the revocation of sentence and in breach of her obligation to stay in touch with the court and probation service, she simply left the Czech Republic.
16. I am satisfied that the surrender of the respondent is not precluded by part 3 of the Act of 2003 or any provision of the said Act.
17. Accordingly, this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to the Czech Republic.