

**THE HIGH COURT**

[2021] IEHC 491  
**[2021 No. 029 EXT]**

**BETWEEN**

**THE MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**REMIGIJUS JANČAUSKAS**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 12th day of July, 2021**

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania pursuant to a European arrest warrant dated 23rd July, 2020 ("the EAW"). The EAW was issued by Tomas Krušna, Chief Prosecutor, Prosecutor General's Office of the Republic of Lithuania ("the Prosecutor General's Office"), as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to prosecute him in respect of two offences.
3. The EAW was endorsed by the High Court on 8th February, 2021, the respondent was arrested on foot of same on 15th March, 2021 and was brought before the High Court on the following day, 16th March, 2021.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. 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 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.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences in respect of which surrender is sought carries a maximum penalty of at least 12 months' imprisonment.
7. A number of potential grounds for refusing surrender were initially suggested on behalf of the respondent but were, quite rightly, not pursued at hearing, including the suggestion that the respondent had already been arrested on foot of a European arrest warrant in respect of the offences in question and a determination was made in respect thereof. By additional information dated 22nd April, 2021, it was confirmed that the surrender of the respondent is sought, that the offences referred to in the EAW have not been the subject of any previous European arrest warrant and that the charges against him are still valid.
8. As regards the suggestions that surrender should be refused because the Prosecutor General's Office is not a competent issuing judicial authority or because the respondent had not been provided with information pursuant to Directive 2013/48/EU of the

European Parliament and of the Council, these were not pursued in light of the applicable jurisprudence.

9. At part E of the EAW, details of the two offences are set out. The first offence corresponds to an offence under the law of this State, viz. assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997. The second offence alleges that the respondent, acting with another, seized the bicycle belonging to K.G. from an unlocked common premises. I am satisfied that second offence referred to in the EAW corresponds with an offence under the law of the State, viz. unauthorised taking of a bicycle contrary to s. 112(3) of the Road Traffic Act, 1961, as amended. Counsel on behalf of the respondent conceded that this was a corresponding offence.
10. Counsel on behalf of the respondent submits that surrender is precluded by reason of s. 37 of the Act of 2003 as it would amount to a breach of the respondent's right not to be subjected to inhuman or degrading treatment as protected by Article 3 of the European Convention on Human Rights ("the ECHR"). He submitted that the Covid-19 pandemic has proved particularly challenging for the Lithuanian authorities and that there would be an unacceptable risk to the health of the respondent if he were to be surrendered and detained in prison.
11. Counsel for the respondent put before the Court various reports and materials concerning prison conditions in the issuing state, including reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the U.S. State Department and Seimas Ombudsmen's Office. Counsel submitted that the Covid-19 virus infection rate has been particularly high in Lithuanian prisons.
12. On foot of the materials opened to it, the Court sought additional information concerning prison conditions. By additional information dated 7th June, 2021 (received 29th June, 2021), the issuing judicial authority enclosed a letter from the Prison Department of the Ministry of Justice of Lithuania. The letter from the Prison Department indicates that while on remand, the respondent would be detained in one of four remand prison facilities and that, generally, detainees are to stay in the facility located nearest to the court which has imposed the arrest. It is indicated that prisoners detained on remand are kept in small cells (presumably as opposed to large dormitory-type cells) and each person is provided with an area of at least three square metres. It is indicated that single-bed cells, of very small area, are not used in the Lithuanian detention facilities. Sentenced persons are kept in larger living quarters or smaller cells but every detainee is provided with at least three square metres of living space. As regards safe detention conditions, it is indicated that there are specialists working in the Criminal Intelligence Division and the supervision and security of the sentenced and arrested persons is maintained by staff of the Security Management Division and Social Rehabilitation Division. In order to prevent violence, staff continuously interact with the arrested and sentenced persons. Also, individual preventive interviews are conducted with detainees and if there is an indication of a conflict, the detainees are transferred to other living quarters or other detention facilities. In the event of a conflict or violence between detainees, they are isolated and the circumstances of the

incident are investigated. All cases of violence in detention facilities are carefully assessed and investigated and staff take the necessary measures to prevent their recurrence. Sentenced persons who do not comply with the requirements of the penal regime may be transferred to a disciplinary area and kept in locked cells under enhanced supervision. Also, detainees who adversely affect other detainees or who may be at risk in the detention facility are subjected to enhanced security and care.

13. The letter deals with general prison conditions and sets out conditions which overall meet or exceed a satisfactory minimum. As regards healthcare, it is indicated that all persons entering a detention facility shall be examined by healthcare specialists. Detainees with addiction issues are invited to take part in rehabilitation programmes. Primary level out-patient healthcare services are provided on the premises of the correctional facility. Secondary level healthcare services, not provided in a prison hospital, and tertiary level healthcare services are provided by the state municipal healthcare institutions closest to the facility which are able to provide the relevant services.

14. The letter ends by stating:-

*"Considering the abovementioned, we hereby ensure that the conditions for the detention of R Jancauskas in Lithuanian detention facilities, if he is surrendered to the Republic of Lithuania under the European arrest warrant, will meet the minimum international standards, and he will be provided with the living space of at least 3 sq. m., and if there is any threat to his safety, the administration of the detention facility will take appropriate measures to ensure his safety."*

15. I note that the additional information in relation to the prison conditions does not come directly from the issuing judicial authority but rather from the Prisons Department of the Ministry of Justice in Lithuania. This is not surprising as, presumably, the Prison Department is the relevant entity with most knowledge of the prison conditions and the day-to-day operation of same. Counsel for the respondent submitted that information coming from a source other than an issuing judicial authority carries less evidential weight. Nevertheless, it is for the Court to determine the weight to attach to such information. I am satisfied to attach significant weight to the additional information, coming as it does from an emanation of the Lithuanian state and which has been provided in response to a request to the issuing judicial authority. There is no evidence before the Court to call into question the *bona fides* of the reply provided.

16. As regards the Covid-19 pandemic, this has proved challenging for many states to deal with, both as regards detention facilities and the general population. However, I do not believe that on the information before the Court, surrender should be refused on the basis of pandemic figures which rise and fall with time. It may be that particular pandemic conditions in a state or in the detention facilities of a state may be such as to justify postponement of surrender, but that is a different matter from refusal of surrender.

17. Having taken all of the information before the Court into consideration, I am not satisfied that there are substantial grounds for believing that, if surrendered, the respondent will

be at a real or serious risk of a breach of his fundamental rights due to the likely prison conditions. In particular, I am not satisfied that there are substantial grounds for believing that, if surrendered, the respondent will be subjected to inhuman or degrading treatment.

18. By virtue of s. 4A of the Act of 2003, it is presumed that an issuing state will comply with the requirements of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), unless the contrary is shown. The Framework Decision incorporates respect for fundamental human rights. I am satisfied that the presumption contained in s. 4A of the Act of 2003 has not been rebutted.
19. Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine if surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would contravene any provision of the Constitution. I find that the surrender of the respondent would not be so incompatible with the State's obligations and nor would it contravene any provision of the Constitution.
20. I dismiss the respondent's objection to surrender based upon prison conditions.

#### **Conclusion**

21. I am satisfied that the surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any provision of that Act.
22. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order for surrender pursuant to s. 16 of the Act of 2003 to the Republic of Lithuania.