

THE HIGH COURT

[2021] IEHC 584
[2021 No. 84 EXT]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

GHEORGHITA PURCARIU

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 30th day of July, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to Romania pursuant to European arrest warrant dated 19th January, 2017 ("the EAW"). The EAW was issued by Judge Draghici Luminita of the Teleorman Regional Court – Criminal Section, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of two years and six months' imprisonment imposed upon the respondent on 10th May, 2016, all of which remains to be served.
3. The respondent was arrested on 14th April, 2021, on foot of a Schengen Information System II alert, and brought before the High Court on 15th April, 2021. The EAW was produced to the High Court on 26th April, 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 this 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. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
7. The respondent objects to surrender on the following grounds:-
 - I. Surrender is precluded by s. 38 of the Act of 2003 due to a lack of correspondence between the offences to which the EAW relates and an offence under the law of the State;
 - II. Surrender is precluded by reason of s. 45 of the Act of 2003 as the sentence was imposed *in absentia* and the requirements of s. 45 have not been met;
 - III. Surrender is precluded by reason of 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 ECHR") and/or the Constitution due to the personal circumstances of the respondent and prison conditions in Romania; and

- IV. Surrender is precluded as there is a lack of detail and clarity as required by s. 11 of the Act of 2003.
8. The respondent swore an affidavit dated 5th May, 2021 in which he avers that he was present for his initial sentencing hearing in which he received a sentence of three years' imprisonment, fully suspended. He avers that the sentence was the subject of an appeal and that he returned to Romania on three occasions for the purposes of the appeal. He avers that on the last occasion, he was informed by his lawyer that he did not need to return to Romania as he was receiving suspended sentences. He indicates that the Romanian authorities were at all times aware that he was residing and working in Ireland and they did not seek his surrender over the previous four years. He expresses concern as to the prison conditions in Romania and avers that it is general public knowledge that prisoners in Romanian prisons are subjected to inhuman and degrading conditions. He avers that he has been residing in Ireland since 2016 with his partner and child who is an Irish citizen. He is working and has purchased a house which is subject to a mortgage and if surrendered his partner would be unable to meet the mortgage repayments.

Correspondence

9. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between the offences to which the EAW relates and offences under the law of the State where the offences referred to in the EAW are offences to which Article 2.2 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"), applies and carry a maximum penalty in the issuing state of at least three years' imprisonment. In this instance, the issuing judicial authority has certified in part E of the EAW that the offences to which it relates are offences to which Article 2.2 of the Framework Decision applies, that same are punishable by a maximum penalty of at least three years' imprisonment and has indicated the appropriate boxes for "*participation in a criminal organisation*" and "*trafficking in human beings*".
10. Also, at part E of the EAW it is indicated that the EAW relates to two offences. A description of the circumstances in which the offences were committed is given as follows:-
- "In fact, the court recorded that between 2010 and 2012, the requested person participated in the recruitment (through deceitful acts), transfer, transport and accommodation of the victims [M.F.N., Z.C.M., and C.D.] for the purpose of their sexual exploitation in several towns across Ireland, whom he forced to prostitute for his own benefit and for the benefit of the other group members."*
11. Counsel on behalf of the respondent submits that there was a lack of clarity about what specific acts are alleged to have constituted the offences in question. By additional information dated 20th May, 2021, it is indicated that the various towns referred to in the EAW are Dublin, Letterkenny and Longford. Further particulars as to the offences are set out. It is confirmed that the EAW relates to two offences, namely; (i) creating or being a

member of an organised criminal group and (ii) human trafficking. It is stated that, acting in concert with other persons, the respondent recruited C.D. by deceitfully promising her a job in Ireland working in a car workshop and doing housework and thereby induced her to leave Romania. When C.D. arrived in Ireland, the respondent, along with others, provided her with clothing and posted up photographs of her in her underwear on a website offering escort services. The respondent informed C.D. what fees she was to charge for sexual services and she had to hand over any money received to the respondent. The respondent effectively forced C.D. into prostitution and took the receipts of same.

12. I am satisfied that there is sufficient clarity as regards the offences in respect of which the respondent was convicted and the extent of the respondent's involvement in same. I am satisfied that there is no apparent mistake or ambiguity which would justify this Court in looking beyond the certification in the EAW and that the requirements of s. 38(1)(b) of the Act of 2003 have been complied with. There is therefore no obligation on the part of the applicant to establish correspondence between the offences to which the EAW relates and offences under the law of the State. In any event, I am satisfied that, if necessary, such correspondence could be established between the acts constituting the offences to which the EAW relates and an offence under the law of the State, viz. human trafficking contrary to s. 6 of the Criminal Law (Human Trafficking) Act, 2008; an offence contrary to s. 71 of the Criminal Justice Act, 2006 of conspiracy to commit a serious offence, to wit: human trafficking; an offence of living off the earnings of prostitution contrary to s. 10 of the Criminal Law (Sexual Offences) Act, 1993 and an offence contrary to s. 73 of the Criminal Justice Act, 2006 of committing an offence, to wit: human trafficking, for a criminal organisation.
13. I dismiss the respondent's objection to surrender based upon s. 38 of the Act of 2003.

Section 45 of the Act of 2003

14. At part D of the EAW, it is indicated that the respondent was present in person at the trial where the decision had been given. It is further indicated that:-

"being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial."

15. The respondent in his affidavit sets out that he was present the trial at first instance when he received a three-year suspended sentence and it is clear from his affidavit that he had full knowledge of the appeal proceedings and indeed returned to Romania on three occasions in respect of the appeal. He avers that he was told by his lawyer that it was not necessary for him to turn up for the actual sentence hearing as he would be receiving a suspended sentence. If that was the advice he received then that advice was apparently mistaken, but it is not a reason to refuse surrender.

16. By way of additional information dated 20th May, 2021, it is confirmed that the respondent at first instance did indeed receive a sentence of three years' imprisonment suspended for seven years. This sentence was appealed and it is stated that the respondent attended the appeal with his lawyer. On appeal, the respondent was ordered to serve a term of imprisonment of two years and six months (with a deduction of the period from 28th January, 2016 to 10th May, 2016 in respect of time already served). There was no suspension of this term of imprisonment.
17. I am satisfied from all of the documentation before the Court that the respondent did appear at the appeal and that, in any event, he had mandated his own lawyer to conduct same and was in fact represented by his lawyer in the appeal. I am satisfied that there has been no failure to comply with the requirements of s. 45 of the Act of 2003. Furthermore, I am satisfied that the mischief which s. 45 of the Act of 2003 is designed to avoid does not arise in this instance and that the defence rights of the respondent were respected and given effect to. I dismiss the respondent's objection to surrender based upon s. 45 of the Act of 2003.

Section 37 of the Act of 2003 – Article 8 ECHR

18. Section 37 of the Act of 2003 provides that a person shall not be surrendered if same would be incompatible with the State's obligations under the ECHR, the protocols thereto or would constitute a contravention of the Constitution.
19. Counsel on behalf of the respondent submits that surrender of the respondent would constitute an unacceptable interference with the respondent's right to a private and family life as protected by Article 8 ECHR. He refers to the fact that the respondent has a partner and a young child in this State and the disruption that surrender would entail in that regard. In *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, the Supreme Court considered Article 8 ECHR in the context of European arrest warrant proceedings. MacMenamin J., delivering the judgment of the Court, stated at para. 23:-
- "23. *Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence. But that guarantee is subject to the proviso that public authorities shall not interfere with the exercise of that right, except such as in accordance with law, and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Article 8(2)). The terms of Article 8(2) are, therefore, sufficiently broad to encompass orders for extradition, or in this case, surrender. But as will be seen, these Article 8 considerations arise within a statutory framework which it is now necessary to consider.*"
20. As regards delay or lapse of time, MacMenamin J. stated at para. 89:-
- "89. *Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a*

point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues. The High Court judgment holds that there had been a significant dilution of the public interest which would ordinarily apply (para. 37). It posed what was characterised there as a modified and weakened public interest in surrender, evidenced by the elapses of time and other factors. Against this, it posed the private and family factors in the case (para. 38). But for the reasons set out above, there was a misapprehension as to the nature of the assessment. This is not a balancing exercise where public and private interests are placed equally on the scales. It is nonetheless necessary to have regard to the circumstances."

21. At para. 94, MacMenamin J. stated:-

"94. The contrast with the exceptional facts in J.A.T. is plain. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s.4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s.37(1), they must be such as would render an order for surrender 'incompatible' with the State's obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."

22. In the words of MacMenamin J. in *Vestartas*, at para. 94:-

"94. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."

23. I am satisfied that the personal circumstances of the respondent are not so exceptional as would justify this Court in refusing surrender. It is inherent in any system of extradition that disruption, sometimes significant disruption, will be occasioned to the lives of the requested person and his or her family. I am satisfied there has been no culpable or unconscionable delay in this matter. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine whether the respondent's family circumstances are such as would render an order for surrender "incompatible" with the State's obligations under Article 8 ECHR. I am satisfied that surrender of the respondent would not be incompatible with the State's obligations under the ECHR or constitute a contravention of the Constitution. I dismiss the respondent's objection to surrender based upon s. 37 of the Act of 2003 and Article 8 ECHR.

Section 37 of the Act of 2003 – Article 3 ECHR

24. Counsel on behalf of the respondent also submits that due to prison conditions in Romania, surrender would constitute a breach of the respondent's right under Article 3

ECHR not to be subjected to inhuman or degrading treatment. He stated, and the respondent averred in his affidavit, that it was common knowledge that prisoners in Romanian prisons are subjected to inhuman and degrading conditions. The Court was referred to reports concerning prison conditions in Romania from various bodies including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") and the relevant Helsinki Committee. The respondent averred to his personal experience of poor conditions in Romanian prisons. The Court sought additional information in relation to the prison conditions the respondent would face, if surrendered.

25. By way of additional information, the Court was furnished with a letter dated 9th July, 2021 in which it is indicated that, if surrendered, the respondent will initially be quarantined in Rahova prison for 21 days where he will have a minimum space of three square metres. After that he is likely to commence serving his sentence in a semi-open regime in Vaslui prison. After serving one-fifth of his sentence, the applicable regime will be re-assessed and, if he is then subject to an open regime, he is likely to be transferred to Iasi prison. Considerable details of the relevant conditions for each of the prisons and each of the regimes are set out. These details indicate conditions which I regard as generally satisfactory and not such as would establish a real risk of a breach of Article 3 ECHR. The letter acknowledges the need to improve prison accommodation and refers to a programme to do so and the financing of same. The letter states that: -

"the National Prison Administration guarantees the provision of a minimum personal space of 3 m2 throughout the execution of the sentence, including the bed and related furniture, and excluding the bathroom space."

26. Counsel on behalf of the respondent submits that the response from the issuing judicial authority is inadequate and the Court should not surrender on foot of same. He submits that the response does not deal sufficiently with what steps have been taken to ameliorate the conditions criticised in the CPT report.
27. It should be noted that the additional information comes from the issuing judicial authority and not some other emanation of the issuing state. As such it should be given significant weight on the basis of the mutual trust and confidence between judicial authorities which underpins the European arrest warrant system (see *ML* (Case C-220/18 PPU)). Express assurances are provided, specifically as regards the respondent who is referenced at the start of the response. Significant details are provided in relation to the conditions in the prisons and the regimes operated in same. All issues raised by the Court have been addressed to varying degrees and this has not entailed repeated requests or an apparent reluctance to engage with the issues raised. Contrary to the submission of counsel for the respondent, the response includes a reference, albeit brief, in respect of dealing with prisoners who represent a threat to the safety of others including the transfer of such prisoners (p. 6 of letter of response). The response sets out how a programme of prison improvement has been put in place and how same is financed, including from external sources of finance. This explanation of financing is presumably

included to give assurance that such finance is available following an admission a number of years ago by a minister of the issuing state that misleading information in respect of prison budget had been given to the European Court of Human Rights. The response acknowledges that Romania has been subject to a pilot case procedure by the European Court of Human Rights and does not attempt to deny the need for further improvement. Such improvement is an ongoing process. It is indicated that as a result of the ongoing improvements and the number of persons in detention, it is possible to give the assurance as to minimum personal space.

28. Having evaluated all of the information before the Court, I am not satisfied that there are substantial reasons for believing that, if surrendered, the respondent faces a real risk of being subjected to inhuman and degrading punishment or treatment. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. That presumption has not been rebutted in this instance. Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court must determine whether surrender is incompatible with the State's obligations under the ECHR, the protocols thereto or would contravene the Constitution. I am satisfied that the surrender of the respondent would not be incompatible with the State's obligations under the ECHR or the protocols thereto and nor would it constitute a contravention of the Constitution. I dismiss the respondent's objection to surrender based upon s. 37 of the Act of 2003 and prison conditions in Romania.

Section 11 of the Act of 2003 – Lack of Clarity

29. Having evaluated all of the documentation before the Court, I am satisfied that sufficient clarity and details have been provided as regards the offences in question, the respondent's degree of participation in respect of same, the sentence imposed, the manner in which such sentence is calculated and the length of time to be served. Furthermore, I note in his affidavit that the respondent avers to the fact that he attended at the initial trial and was legally represented thereat. Similarly, the respondent avers he attended for some of the appeal hearings, had mandated a lawyer to represent him thereat and was so represented. The respondent does not indicate in his affidavit that he is unaware of any particulars concerning the offences in question. I dismiss the respondent's objection to surrender based upon an alleged lack of detail in the EAW or the other documentation received from the issuing state.

Conclusion

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