

THE HIGH COURT

[2020 No. 018 EXT]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

FIREA MACICA

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 28th day of January, 2021

1. In this application the applicant seeks an order for the surrender of the respondent to the Kingdom of Spain ("Spain") pursuant to a European arrest warrant dated 13th September, 2019 ("the EAW"). The EAW was issued by Judge Luis Juan Delgado Muñoz of Criminal Court Number 12 of Barcelona, as the issuing judicial authority. The EAW indicates that it seeks the surrender of the respondent for the execution of a custodial sentence of 15 months' imprisonment, all of which remains to be served.
2. The EAW was endorsed by the High Court on 20th January, 2020, and the respondent was arrested and brought before the High Court on 27th January, 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 surrender of the respondent is sought to serve a sentence of 15 months' imprisonment.
5. At part E of the EAW, a description of the circumstances of the single offence in respect of which the sentence was imposed is given. In short, on 22nd September, 2017, while travelling on a train, the respondent pretended to lose his balance and placed his hands between the legs of a female passenger and touched her vagina. I am satisfied that the offence referred to in the EAW corresponds with the offence in this State of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act, 1990. Correspondence was not put in issue by the respondent.
6. The respondent's objections to surrender may be summarised as follows:-
 - (i) there is no corresponding offence under Irish law. This was not pursued at hearing;
 - (ii) surrender is precluded by virtue of s. 22 of the Act of 2003 as there was a real risk that the respondent would be prosecuted for other offences if surrendered. This was not seriously pursued at hearing; and
 - (iii) surrender is precluded by virtue of s. 45 of the Act of 2003 as the sentence had been imposed *in absentia* and the requirements of that section had not been met.

Section 45 of the Act of 2003

7. The enforceable judgment is stated at part B of the EAW to be a judgment handed down in the first instance in Criminal Court Number 8 of Barcelona on 7th March, 2018, which was declared final on 24th July, 2018. At part D of the EAW, it is indicated that the respondent did not appear at the hearing that resulted in the judgment and the relevant section is ticked indicating:-

"the accused was summonsed in person on 25/09/17 and thus informed of the time and place established for the hearing that gives rise to the judgment, and was also informed that a judgment could be issued in the event of failure to appear at the hearing."

8. The EAW was accompanied by a copy of the judgment of 7th March, 2018 and a copy of an order, dated 31st October, 2018, refusing to suspend the sentence. However, a document separate to the EAW was received by the central authority and appeared to be a judgment of an appeal court in respect of the respondent's conviction and sentence. This indicated that the respondent had brought an appeal against the judgment of 7th March, 2018, and such appeal was dismissed on 14th June, 2018. It was agreed by the parties that in accordance with the decision of the Court of Justice in the European Union ("the CJEU") in *Tupikas* (Case C-270/17 PPU) (2017), that the appeal hearing was the relevant hearing for the purposes of s. 45 of the Act of 2003 and that the issuing judicial authority was obliged to complete part D of the EAW in respect of that appeal hearing. The Court therefore issued a request for additional information and by reply dated 17th December, 2020, the issuing judicial authority indicated that the respondent had not appeared at the trial at first instance having been duly summoned but was assisted by a "Lawyer and a Solicitor". The respondent, assisted by the same lawyer and a solicitor, had filed an appeal. The appeal was a paper exercise and there was no appeal hearing as such. The result of the appeal had been notified to the respondent through his representatives together with notice as to the possibility of lodging a cassation appeal. An untranslated copy of the notice of the result of the appeal was furnished with the additional information. It was agreed by the parties that that document was not central to the issues and the Court could proceed to deal with the matter without such translation.
9. Counsel on behalf of the respondent informed the Court that he had been contacted by Mr. Regidor, the lawyer named by the issuing authority as having represented the respondent. Mr. Regidor had stated that he had last met in person with the respondent on 25th September, 2017, when they had been informed of the date for hearing at first instance. The respondent did not attend for the hearing on 7th March, 2018, and Mr. Regidor had represented him at that hearing and in respect of the appeal.
10. I am satisfied that the respondent was summoned in person for the first instance hearing, he was aware of the date for the first instance hearing and had requested a lawyer to represent him. The respondent took no further part in the proceedings and was in fact represented by that lawyer at first instance. The lawyer continued to act for him throughout the appeal process, which was a paper exercise as opposed to a physical hearing. I am satisfied that the requirements as set out at 3.2. of table D of s. 45 of the

Act of 2003 have been complied with as regards the appeal hearing. Furthermore, I am satisfied that in so far as the respondent absented himself from the proceedings of which he was aware, this was an informed decision on his part not to take any further personal part in the proceedings. There is no suggestion that he withdrew the mandate of his legal team to represent him. In such circumstances, I am satisfied that the defence rights of the respondent were adequately protected and were not breached. I dismiss the respondent's objection to surrender based on s. 45 of the Act of 2003.

Section 22 of the Act of 2003

11. For completeness, I should state that I find no basis for the respondent's objection to surrender grounded in s. 22 of the Act of 2003. The respondent adduced no cogent evidence to rebut the presumption in that section which provides:-

"(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to —

(a) proceed against him or her,

*(b) sentence or detain him or her for a purpose referred to in subsection (2)(a) ,
or*

(c) otherwise restrict him or her in his or her personal liberty,

in respect of an offence, unless the contrary is proved."

12. 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.

Conclusion

13. I note that a medical report was received by the Court confirming that the respondent was not suffering from any mental illness as defined by the Mental Health Act, 2001, or the Criminal Law (Insanity) Act, 2006, and was able to fully appreciate and participate in these proceedings.

14. I am satisfied that surrender of the respondent is not precluded by part 3 of the Act of 2003 or any of the provisions of the said Act.

15. Having dismissed the respondent's objections, 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 Spain. However, as the respondent is currently serving a sentence in this State for a similar offence, I will postpone surrender in accordance with s. 18 of the Act of 2003.