

THE HIGH COURT

[2021] IEHC 830
[2021 No. 128 EXT]

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

TIBOR CSIKI

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 13th day of December, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to Hungary pursuant to a European arrest warrant dated 10th May, 2021 ("the EAW"). The EAW was issued by Dr. Eszter Bicskey, Penitentiary Judge of the Budapest Environs Regional Court, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of 3 years and 6 months' imprisonment imposed upon the respondent on 29th September, 2017 and upheld on appeal on 19th January, 2018, of which 974 and a half days remain to be served.
3. The respondent was arrested on 17th May, 2021 on foot of a Schengen Information System II alert and brought before the High Court on 19th May, 2021. The EAW was produced to the High Court on 19th May, 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. The sentence in respect of which surrender is sought is in excess of 4 months' imprisonment.
7. The EAW relates to two offences described as "*the felony of causing bodily harm*" and "*the felony of trespass*", respectively. The description of the circumstances in which the offences were committed is set out at part E of the EAW. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between an offence to which the EAW relates and an offence under the law of the State where the offence referred to in the EAW is an offence 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 carries a maximum penalty in the issuing state of at least 3 years' imprisonment. In this instance, the issuing judicial authority has certified that the offence of causing bodily harm referred to in the EAW is an offence to which

Article 2.2. of the Framework Decision applies, that same is punishable by a maximum penalty of at least 3 years' imprisonment and has indicated the appropriate box for "murder, grievous bodily injury". It was not initially clear whether the tick-box procedure was invoked in relation to both offences or simply to one offence and by way of additional information dated 1st June, 2021, transmitted by way of email, it is indicated that, strictly speaking, the offence of causing bodily harm is covered by the tick-box procedure but the trespassing offence is not, although both offences occurred at the same time. I am satisfied that the tick-box procedure has been appropriately invoked as regards the "felony of causing bodily harm". I am further satisfied that correspondence can be established between both offences referred to in the EAW and offences under the law of this State. As regards "the felony of causing bodily harm" I find correspondence with the offence of causing serious harm contrary to s. 4 of the Non-Fatal Offences Against the Person Act, 1997 and/or the offence of assault causing harm contrary to s. 3 of the said Act. As regards "the felony of trespass" as described in the EAW, I find correspondence with the offence of forcible entry contrary to s. 2 of the Prohibition of Forcible Entry and Occupation Act, 1971 and/or making threats to kill or cause serious injury contrary to s. 5 of the Non-Fatal Offences Against The Person Act, 1997. Correspondence was not contested.

8. At part D of the EAW, it is indicated that the respondent appeared in person at the trial resulting in the decision as follows:-

"1. Yes, the person appeared in person at the trial resulting in the decision. His defence counsel also appeared at the trials of the first instance and the second instance; the defendant did not want to exercise his right of last plea at the public session; his defence counsel had pleadings at the trials of the first instance and the second instance."

It is also indicated:-

"3.2 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."

By additional information dated 6th September, 2021, the issuing judicial authority confirms that the respondent appeared in person in the proceedings both at first and second instance. An objection to surrender pursuant to s. 45 of the Act of 2003 was not pursued at hearing. As the respondent appeared at both the proceedings at first instance and on appeal, the requirements of s. 45 of the Act of 2003 do not arise.

9. The respondent objects to surrender on the following grounds:-

(a) surrender is precluded by reason of s. 37 of the Act of 2003; and

- (b) surrender is precluded by reason of a lack of clarity or sufficient information in the EAW as regards the penalty imposed.
10. The respondent swore an affidavit dated 9th July, 2021 in which he avers that he is a Hungarian national who has been living in Ireland since approximately May 2018. He avers that he had to cease working as a truck driver due to a cardiac arrest on 17th August, 2020. He avers that he is prescribed large levels of medication. He avers that he is under the care of Prof. Yousif in respect of suspected thyroid cancer. He exhibits various medical records and reports. He exhibits a number of materials relating to prison conditions in Hungary. He avers that he has previously spent six months in custody in Budapest and that his experiences of prison matched the conditions outlined in the various reports. He avers that during his previous incarceration in Hungary, he did not receive proper dental or hospital treatment. He avers that he was present at his trial and was represented by a solicitor who failed to lodge an appeal within the requisite period of time and, due to the delay in lodging the appeal, the decision at first instance was upheld.
11. The Court sought further information from the issuing judicial authority as to the conditions in which the respondent would be detained, if surrendered, and for confirmation that he will be medically assessed on arrival into custody and provided with appropriate medical treatment. By letter dated 27th July, 2021, the Head of the Department of International Criminal Law and Human Rights Section of the Ministry of Justice of Hungary replied indicating that it could not be determined in advance which prison the respondent would be held in but, generally, inmates are allocated to the prison nearest to their place of residence. In the said letter, the Ministry guarantees that, after his surrender, the respondent will be kept in a prison environment that is compatible with the European Convention on Human Rights ("the ECHR"), the United Nations' Standard Minimum Rules for the Treatment of Prisoners and the Council of Europe Committee of Ministers Recommendation No. R (87) 3 of the Committee of Ministers to Member States on the European Prison Rules. It confirms that the respondent, while detained, will be provided with sanitary conditions, natural light, artificial light, ventilation, clean mattresses and bedding, adequate and partitioned toilet facilities, basic hygiene products, outdoor exercise each day and satisfactory food. It is confirmed that during any period of detention, the respondent will be detained in conditions that guarantee at least three square metres of personal space exclusive of sanitary facilities. In relation to medical treatment, it is indicated that a further response would be forwarded.
12. The Court was furnished with a copy of a letter dated 30th July, 2021 from the Hungarian Prison Service Headquarters to Dr. Tunde Forman of the Hungarian Ministry of Justice. This indicates that:-

"... continuous medical care is ensured in the penitentiary institutions, the medical examination is part of the acceptance process. The distribution and ensuring of the medicines prescribed by the physician in the penitentiary institutions are regulated by professional orders; the dietetic board is ensured in all institutions. At least the

presence of a professional nurse and medical basic care, are ensured in all institutions.”

It is indicated that the institutions have concluded co-operative agreements with civil medical service providers as regards out-patient and in-patient medical treatments, in addition to the medical treatments provided for by the Medical Centre of the Penitentiary Service and the Forensic Psychiatric and Mental Institution. It is indicated that as a result of new measures having been introduced, the national average capacity of the penitentiary institutions has decreased from 112% to 96%, so that each institution does not exceed a total capacity of 100%.

13. By further letter dated 7th September, 2021, the Ministry of Justice of Hungary enclosed a reply from the issuing judicial authority dealing with details of the sentence and trial process.
14. In an affidavit dated 13th July, 2021, the respondent's solicitor, Mr. Edward King, exhibits a letter from a Hungarian lawyer addressed to the respondent dealing with prison conditions in Hungary. This acknowledges a reduction in overcrowding in prisons although it is still higher than the European average. The lawyer expresses his opinion that in the event of imprisonment in Hungary, the respondent could not be ensured the same quality of medical treatment that he receives in Ireland. He indicates that not all prisons have a doctor on the premises 24 hours a day and that, apart from cases requiring emergency medical attention, only the prison doctor can refer prisoners to out-patient and in-patient specialised care. He notes that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") report in March 2020 recommended that greater attention be paid to the medical supervision of prisoners in Hungarian prisons. He notes that, following criticism by the CPT of the Central Hospital of the Prison Service, this is being closed and its duties are to be fulfilled by a new central hospital for the prison service. In his affidavit, Mr. King further avers that he has endeavoured to obtain medical reports in relation to the respondent's medical condition but was unsuccessful in doing so. The matter was adjourned from time to time to enable the respondent to obtain medical reports.
15. In a further affidavit dated 3rd September, 2021, Mr. King again avers that he has endeavoured to obtain medical reports in relation to the respondent's medical condition but, again, was unsuccessful in doing so. He exhibits a letter from Prof. Yousef dated 30th June, 2021 which had been handed into Court on an earlier occasion confirming that the respondent attends Prof. Yousef at the out-patient clinic for hyperthyroidism, which is currently treated with medication, and that he requires regular follow-up and adjustment of treatment. The condition has no impact on his life expectancy. Prof. Yousef indicates he is not in a position to comment on the respondent's cardiac condition.
16. In a further affidavit dated 15th November, 2021, Mr. King exhibits a medical report from Dr. Hussein, the respondent's consultant cardiologist, dated 27th October, 2021. This confirms that the plaintiff had undergone two procedures in relation to ventricular fibrillation arrest from an occluded coronary vessel. At the last check performed in June

2021, this demonstrated maintained patency of his stent. It also confirms that the respondent has thyrotoxicosis and is under treatment with the endocrinology team. It is stated that there is a risk of a recurrent restenosis. It is stated that it is difficult to predict the effects of imprisonment on the respondent's condition. In response to a question concerning the effects of travelling and the possibility of exposure to Covid-19, it is stated that there is no contraindication for travelling provided he has been adequately vaccinated, but the recommendation was that he should not travel. Mr. King goes on to aver that he has been instructed by the respondent that the respondent has been informed by his treating doctors that he has malignant thyroid cancer. He outlines his attempts to obtain a report on that issue.

17. In an affidavit dated 15th November, 2021, the respondent avers that he has been informed by his treating doctors that he has malignant thyroid cancer. The matter was adjourned to enable the respondent to obtain a medical report confirming his diagnosis of thyroid cancer.
18. In a further affidavit dated 18th November, 2021, Mr. King exhibits a report from Dr. McEvoy dated 18th November, 2021 in which there is no reference to cancer. Mr. King indicates that he is not requesting any further time from the Court. The report from Mr. McEvoy indicates that the respondent had a history of hyperthyroidism for which he was on medication. An ultrasound carried out in March 2021 showed a "4.4 x 5.3 (*sic.*) nodule" in the left lobe of the thyroid. The respondent reported he was asymptomatic from the thyroid point of view and denied any neck swelling or difficulty breathing. His case was discussed on 12th October, 2021 and it was decided that surgery was not warranted and that it was recommended that he have a repeat ultrasound in a year to monitor the size of the nodule. When the matter next came before the Court, it was indicated that a report confirming that the respondent had thyroid cancer had not been obtained and that the respondent was no longer relying upon a diagnosis of malignant thyroid cancer. The Court was also informed that the respondent had no further submissions to make in respect of the matter.
19. Having considered all of the materials before the Court and the submissions made in respect thereof, I am not satisfied that there are substantial grounds for believing that, if surrendered, there is a real risk that the respondent will be subjected to inhuman or degrading treatment or that his medical needs will not be adequately met. I am satisfied to accept the assurances provided by the issuing judicial authority, on the basis of the mutual trust and confidence which underpins the European arrest warrant system. Where information has been provided by an emanation of the Hungarian state other than the issuing judicial authority, I am satisfied to accept same. The information provided in relation to the conditions in the Hungarian prison system including the provision of medical care therein, are provided by persons who can be expected to have a specialist knowledge of such matters. Furthermore, there is nothing before the Court to indicate that such persons are lacking in competence or bona fides. I am satisfied that the respondent has failed to make out any case that his current medical conditions cannot be adequately treated while in detention in Hungary.

20. 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 human rights. I am satisfied that the presumption provided for in s. 4A of the Act of 2003 has not been rebutted in this instance.
21. Bearing in mind the wording of s. 37 of the Act of 2003, I must consider whether the surrender of the respondent to Hungary would be incompatible with the State's obligations under the ECHR, the protocols thereto or would be in breach of a provision of the Constitution. I am satisfied that the surrender of the respondent would not be incompatible with the ECHR or the protocols thereto and I am also satisfied that the surrender of the respondent would not be in breach of any provision of the Constitution.
22. I dismiss the respondent's objection to surrender based on s. 37 of the Act of 2003.
23. As regards the respondent's objection as to a lack of clarity surrounding the sentence to be served, taking the EAW and the additional information provided as a whole, I am satisfied that there is no lack of clarity as regards the sentence imposed or the remaining term to be served or any other relevant aspect in this matter. As regards credit to be given to the respondent in respect of time already spent in prison in respect of the matters to which the EAW relates, this is a matter to be dealt with in the issuing state upon surrender.
24. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any provision of that Act.
25. 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 Hungary.