

THE HIGH COURT

Record Number: 2007 No. 52 Ext.

BETWEEN:

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
ROMUALDAS STUINA

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 20th day of June 2007

1. The surrender of the respondent is sought to the Republic of Lithuania on foot of a European arrest warrant which issued there on the 14th September 2005. It was received here in March 2007, and was endorsed for execution by the High Court on the 20th March 2007. Thereafter on the 25th April 2007 the respondent was duly arrested and brought before the High Court pursuant to the requirements of s. 13 of the European Arrest Warrant Act, 2003 as amended ("the Act"). Thereafter he was remanded in custody to await the outcome of the present application under s. 16 of the Act for his surrender.

2. The respondent's identity has not been put in issue and the Court is in any event satisfied from the information available that the person who has been arrested and brought before the Court is the person in respect of which the warrant has been issued.

3. The offences in respect of which his surrender is sought are of rape and attempted rape. The requesting authority has ticked two categories of offence in the list of offences set forth in Article 2.2 of the Framework Decision, namely "sexual exploitation of children" and "rape". The facts described in the warrant which are said to give rise to the charges being brought certainly fall within these categories, and in such circumstances double criminality does not require to be verified. In fact no submission to the contrary is urged on the respondent's behalf. The minimum gravity requirement of the Act is also satisfied in respect of the charges in question.

4. I am satisfied that there is no reason under sections, 22, 23 or 24 of the Act to refuse to order surrender, but an issue has been raised by way of rebuttal of the presumption contained in s. 21A of the Act, and I will come to that issue in due course.

5. I am satisfied also that the surrender of the respondent is not prohibited by any provision of Part III of the Act or of the Framework Decision.

6. Subject therefore to dealing with the very nett point raised by the respondent the Court is satisfied that the order of surrender should be made.

Point of Objection:

7. No affidavit of Lithuanian law has been filed by the respondent. However, it is submitted that there is sufficient evidence within the terms of the warrant itself that no decision has yet been taken by the authorities in the requesting state to prosecute the respondent for the offences set forth in the warrant, in order to rebut the presumption contained in s. 21 A of the Act, that a decision to prosecute the respondent has been made.

8. That section, which was inserted by s.79 of the Criminal Justice (Terrorist Offences) Act 2005, provides:

"21A.-(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.

(2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, *it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved.*" (my emphasis)

9. Emphasis must be placed upon the existence of the presumption "*unless the contrary is proved*". The usual and proper way to rebut such a presumption is by evidence, taking the form of an affidavit from some person suitably qualified to establish the position of the respondent under Lithuanian law. That has not occurred in this case. Rather, as I have said, the respondent seeks to support for his submission by reference to certain information contained in the warrant itself. The material in question appears in paragraph (f) of the warrant which reads as follows:

"Romualdas Stuina has gone into hiding from the pre-trial investigation, on 10 August 2005 he was declared wanted, since that moment the time limit for making a judgment of conviction has been suspended (Paragraph 3, Article 95 of the Criminal Code of the Republic of Lithuania)" (sic).

10. It must be remarked also at this point that the warrant at its very commencement states as follows:

"I, Vaida Urmonaite, a Deputy Prosecutor General, hereby request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution". (my emphasis)

11. Mr Dwyer on behalf of the respondent refers to the fact that the offences are alleged to have taken place on the 30th April 2005 and that the domestic warrant which was issued for the arrest of the respondent was issued on the 16th August 2005, and he suggests that this is a short period of time within which a decision to prosecute would be made, and that this fact therefore supports the submission that despite what is stated at the outset of the European arrest warrant itself, the reality as evidenced from the reference in paragraph (f) to the respondent "going into hiding from pre-trial investigation" is that matters are still at the investigation stage, and no decision to prosecute has been made.

12. Micheal P. O'Higgins BL for the applicant submits that the presumption has not been rebutted, and that in the absence of evidence of Lithuanian law by an appropriate expert same cannot be rebutted. He suggests that what the respondent is doing is indulging in mere speculation and trying to create some doubt about the matter without expert evidence. He refers to the judgments of this Court in *Minister for Justice, Equality and Law Reform v. Balciunas* [2007] 1 ILRM 516, and to that also in *Minister for Justice, Equality and Law Reform v. Ostrovskij*, unreported, High Court, 26 June 2006. These judgments have emphasised the necessity, where it is sought to rebut presumptions in the Act, such as that in s. 21A thereof, of doing something stronger than assertion, surmise or speculation in order to suggest that some ambiguity or uncertainty exists as to the position.

13. In order to succeed in rebutting the presumption in this case that a decision to prosecute the respondent has been made, there must be evidence which puts the matter beyond any uncertainty. I do not rule out the possibility in an appropriate case that the material contained in the warrant may be such as to be sufficient to make the matter so clear as to remove doubt, but in the present case the material relied upon is nowhere near strong enough to rebut the presumption, particularly where there is no expert evidence of Lithuanian law. It must be remembered that the stated purpose of the Framework Decision is to remove complexities and delays which resulted at least in part from the fact that the legal systems of different Member State of the European Union will differ, often significantly, in many respects. In some member states for example prosecutors are also judges. In some member states the prosecution is regarded as commencing at a point much earlier than would be the case in this country. If the respondent in the present case wished to establish that under the law of the Republic of Lithuania, the point at which he absconded "from pre-trial investigation" was before the authorities had decided to prosecute him for the offences set forth in the warrant, then very strong, categorical and clear evidence would be required to be adduced. Otherwise the presumption remains.

14. The fact that the Framework Decision has been adopted by countries who are member states of that Union is indicative of a mutual trust and confidence in those differing legal systems and the procedures which operate, and that expression of trust and confidence is recorded in the Recitals to the Framework Decision. That trust and confidence extends in my view beyond the legal systems themselves, and into how the authorities in those states will operate the arrangements for surrender of persons between member states. For the purpose of the present case this Court is entitled to assume therefore that when a judicial authority in the Republic of Lithuania transmits a European arrest warrant for execution it is not doing so *mala fides* or for a purpose other than that for which the Framework Decision was adopted. It would require very strong evidence indeed to disturb that confidence.

15. In my view the presumption in s. 21A has not been rebutted, and there is no reason therefore why this Court is not required to make the order sought under s. 16 of the Act, and I will therefore make that order.