

THE HIGH COURT

Record Number: 2006 No. 19 Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

PLAINTIFF

AND
ALEKSEJS STELMAHS

DEFENDANTS

Judgment of Mr Justice Michael Peart delivered on the 4th day of October 2006

1. The surrender of the respondent is sought by the authorities in Latvia pursuant to a European arrest warrant which issued from the judicial authority in Latvia, namely the Riga Regional Court on the 7th December 2004. The domestic decision on which this warrant is based was issued on the 23rd September 2004 by the Riga Court Penal Court Board. The warrant seeks his surrender to Latvia so that he can face a charge related to an alleged incident on the 18th April 2003 (wrongly appearing in the English translation provided as "18 April 2004") in which it is alleged that the respondent and three other persons, wearing masks, gloves and carrying guns, entered a shop in Riga and robbed money to the value of 24753.51 Latvian Lats. The offence referred to in the warrant carries a punishment under Latvian law which is sufficient to satisfy the minimum gravity requirement.

2. I am satisfied that the person before the Court is the person referred to in the warrant, and indeed there has been no issue raised by Patrick McCarthy SC appearing on behalf of the respondent.

3. I am satisfied also that the warrant was duly endorsed for execution prior to the respondent's arrest.

4. In relation to correspondence, the offence for which his surrender is sought is one of those offences set forth in Article 2 of the Framework Decision dated 13th June 2002 (2002/584/JHA), namely "organized or armed robbery". As such, it is an offence in respect of which double criminality or correspondence does not have to be verified according to the terms of Article 2 aforesaid. In any event, there would be no difficulty in identifying an offence in this State to which the alleged act of the respondent would give rise.

5. This is not a case in which a trial has already taken place or punishment imposed in absentia, and accordingly no undertaking is required pursuant to s. 45 of the European Arrest Warrant Act, 2003 as amended ("the Act").

6. I am also satisfied that the Court is not required to refuse surrender under the provisions of any of sections 21A, 22, 23 or 24 of the Act, and neither is his surrender prohibited by Part 3 or the Framework Decision (including the recitals thereto).

7. Accordingly, subject to dealing with some specific points of objection which have been filed and argued by Mr McCarthy, I am satisfied that the surrender of the respondent must be ordered pursuant to the provisions of s. 16(1) of the Act.

8. It is submitted that surrender ought not to be ordered because of certain ambiguities or lack of clarity appearing in the warrant. Firstly it is submitted that it is not clear from the warrant that, as required, a warrant for the respondent's arrest or other order of a judicial authority in the issuing state having the same effect, has been issued. The warrant states in this regard under the appropriate heading in the warrant, according to the translation of same provided, that the decision in question is "September 23, 2004 decision of the Riga Regional Court Penal Court Board on the change of security measures for [the respondent] and proclaim of his quest". Mr McCarthy submits that the position is far from clear that what has been issued according to this translation is a decision which meets the requirement that it be "an arrest warrant or judicial decision having the same effect". There is no doubt that the translation is not clear. But it certainly seems to suggest that the respondent did not adhere to bail terms ('security measures') and that a form of bench warrant was issued (by reference to the phrase appearing as 'proclaim his quest'). It has been emphasised both in this Court and in the Supreme Court many times by now that the arrangements in relation to the European arrest warrant are based on a high level of confidence between member states of the European Union. As far as this case is concerned, this Court cannot and ought not to question whether the Latvian authority has failed to observe the requirements of the Framework Decision, despite the fact that the translation is not perhaps as accurate as would be desirable. It is quite clear from the warrant taken as a whole what the situation is, and the Court will not go behind this by placing reliance on the supposed frailty identified by Mr McCarthy. It is clear that the arrest of the respondent is sought so that he can face trial for the alleged offence. I am satisfied that it is a decision which comes within the meaning of s. 11(1)(e) of the Act.

9. The second point made is that the European arrest warrant itself has been issued by the Riga Regional Court ('the Judicial Authority'), whereas the domestic decision dated 23 September 2004 upon which the warrant is based was issued by "the Riga Regional Court Penal Court Board". Again Mr McCarthy points to this difference. But this point is entirely misplaced in my view, since even if both judicial bodies are different there would be no flaw in the warrant. It is entirely conceivable that, for example, in this jurisdiction a Bench Warrant would be issued in respect of a person who has failed to appear before the District Court, and on foot of that warrant, an application would be made to the judicial authority in this jurisdiction, namely the High Court, for the issue of a European arrest warrant in order to seek his surrender from another state. The fact that the judicial authority in Latvia may or is not the same as the body which issued the domestic warrant there is neither here nor there, and certainly could not constitute a ground for refusing surrender.

10. The final point of objection is in relation to whether the warrant is correct when it states that the respondent's surrender is sought so that he can face one offence, namely organised or armed robbery. The basis for this submission is that at paragraph (e) of the European arrest warrant under the heading "Nature and legal classification of the offence(s) and the applicable statutory provision/code" it is stated that robbery associated with violence using firearms is considered an offence under Section 176, part 4 of the Criminal Law of the Republic of Latvia, and goes on to say that it is also considered a criminal offence under Section 20, part 3 of that Criminal Law to "encourage another person to commit a criminal offence, or promote the commission of a criminal offence, or giving advice or direction in relation thereto. This according to Mr McCarthy's submission means that the respondent may be faced with two charges arising from the same facts rather than simply one charge of robbery as set forth in the warrant. Paragraph (e) of the warrant under the heading "Offences" states: "This warrant related [sic] to in total 1 offence".

11. However an undertaking accompanying the warrant and signed by the Riga Regional Court Judge states that the respondent "shall be called to criminal liability and brought to trial for the criminal offences stipulated in the Criminal Law Article 176 Part 4 and Article 20 Part 3, for which a European arrest warrant was issued against him on 7 December 2004."

12. This suggests that the respondent will face not one charge but two, namely robbery itself, and possibly some form of incitement

to rob charge or conspiracy to rob charge. Emily Farrell BL for the applicant submits that it is clear that he will face only the one charge of robbery but that if the court had a doubt about this, it would be able under s. 20 of the Act to seek a clarification from the Latvian authorities. In my view this is not necessary. This Court is entitled to rely on the warrant which has been issued, and it is entitled to have confidence that the Latvian authorities will comply with the requirements of the Framework Decision. Indeed, s.4A of the Act as amended states that "*it shall be presumed that an issuing state will comply with the requirements of the Framework Decision unless the contrary is shown*". This Court cannot be expected to look behind the warrant and examine in detail the legal systems of member states such as Latvia in order to see precisely the nature of the charge and whether in that State acts alleged to have been done by the respondent may give rise to one rather than two offences. Each member state's laws are different. There is also the difficulty that translations may not in every respect be clear. But there is no doubt in my mind but that this warrant makes it clear that the respondent will face one charge. That is what it states, in spite of what is contained under another heading or in the unnecessary accompanying undertaking. The respondent's fundamental rights are not breached in any way in this regard. He knows exactly what is alleged, and the facts giving rise to the offence alleged. Nothing which has been urged on his behalf overcomes in my view the very clear requirement contained in s. 10 of the Act (as inserted by s. 71 of the 2005 Act), that subject to and in accordance with the provisions of the Act and the Framework Decision, a person in respect of whom a European arrest warrant has issued shall be arrested and surrendered to the issuing state.

13. I therefore make the order sought in this application pursuant to the provisions of s. 16(1) of the Act and so order.