

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

AND
LADISLAV KLIER

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 19th day of July 2005

1. The authorities in the Czech Republic are seeking the extradition of the respondent so that he can be returned to that State for the purpose of serving a sentence of 22 months imprisonment imposed upon him following his conviction on a charge of fraud on the 6th September 2002.
2. The facts alleged do not need to be set forth more fully, as the main point raised by way of objection on his behalf and which falls to be decided is not related to correspondence. Kieran Kelly BL on behalf of the respondent has made some submissions on the issue of correspondence, but in view of the conclusion which I have reached on the main point raised on the present application, it is preferable that I make no findings in relation to correspondence at this stage, lest it prejudices any further application which may be made in the future for the extradition of the respondent.
3. On the 22nd April 2004, the Minister for Justice received a Request dated 2nd April 2004 from the Czech Republic, under Part II of the Extradition Act, 1965 ("the 1965 Act") for the extradition of the respondent from this State to the Czech Republic. Part II of that Act was applied by the Government to, inter alia, the Czech Republic, by Order dated 19th December 2000. No issue arises as to that fact.
4. It appears that following the receipt of that Request further information was requested and in due course, on or about the 9th February 2005, this requested information was received from the requesting state.
5. The Minister for Justice issued a Certificate dated the 10th March 2005 under s.26(1)(A) of the 1965 Act, as amended, to the effect that on the 22nd April 2004 he had received a Request from the Czech Republic.
6. On the 15th March 2005 an application for a Warrant of Arrest was made to Hanna J. in the High Court, and was granted pursuant to the provisions of s.26(1)(b) of the 1965 Act, as amended.
7. On the 18th May 2005, the respondent was arrested on foot of that Warrant of Arrest, and was brought before the High Court as required immediately thereafter and where he was thereafter remanded from time to time until the matter was heard by me on the 12th July 2005.
8. The issue raised by Mr Kelly on behalf of the respondent is one arising from the fact that from 1st January 2004, the European Arrest Warrant Act, 2003 ("the 2003 Act") was in operation here. The head-note of that Act states that it is:

"An Act to give effect to the Council Framework Decision dated 13th June 2002 on the European Arrest Warrant and the surrender procedures between Member States; to amend the Extradition Act 1965 and certain other enactments; and to provide for matters connected therewith." (my emphasis)

9. On the 1st May 2004 the Czech Republic became a member of the European Union, and by The European Arrest Warrant Act 2003 (Designated Member States) Order 2005 dated 25th January 2005 (S.I.No 27 of 2005), The Minister for Foreign Affairs, Dermot Ahern **designated the Czech Republic** for the purposes of s.3 of the European Arrest Warrant Act 2003, which provides:

"3. – (1) For the purposes of this Act, the Minister for Foreign Affairs may, by order, designate a Member State that has, under its national law, given effect to the Framework Decision.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this subsection."

10. It is Mr Kelly's submission that in these circumstances, Part II of the 1965 Act ceased to be the appropriate legislative provisions for the purposes of any request from the Czech Republic seeking the extradition of any person from this State, and that the correct and only way of proceeding was for the Czech Republic to seek the respondent's extradition by means of a European Arrest Warrant. It would follow in his submission that the order made under Part II ought not to have been applied for, and that the arrest on foot of the Warrant issued was bad and that the respondent should be discharged.
11. As part of this submission, Mr Kelly has referred the Court to s.50 (1) of the 2003 Act which specifically repeals Part III of the 1965 Act, which up to its repeal had provided for the endorsement and execution of warrants in respect of persons whose surrender was sought to Northern Ireland, England and Wales, Scotland, the Isle of Man and the Channel Islands.
12. However, there was also, as provided by s.50 (2) of the 2003 Act, a saver or transitional provision in respect of certain such Part III warrants which by the 1st January 2004 were already "in the system" so to speak by having been "produced to the Commissioner" prior to the 1st January 2004, but where arrest and surrender had not yet taken place. Mr Kelly points to the fact that this saver applied only to warrants under Part III and that there is no such saver in respect of Part II, being in respect of countries, other than Part III countries, and with whom this State has bilateral extradition arrangements, including the Czech Republic.
13. The Court has also been referred to the provisions of s.10 of the 2003 Act which provides:

"10. – Where a judicial authority in an issuing state duly issues a European Arrest Warrant in respect of a person –

(a) against whom that state intends to bring proceedings for the offence to which the European Arrest Warrant relates, or

(b) on whom a sentence of imprisonment or detention has been imposed and who fled from the issuing state before he or she –

(i) commenced serving that sentence, or

(ii) completed serving that sentence'

that person **shall**, subject to and in accordance with the provisions of this Act and the Framework Decision be arrested and surrendered to the issuing state." (my emphasis)

14. Section 4 (1) of the 2003 Act provides as follows:

"4.– (1) Subject to subsections (2) and (3), this Act shall apply in relation to an offence, whether committed or alleged to have been committed before or after the commencement of this Act."

15. Mr Kelly has referred also to Articles 31 and 32 of the Framework Decision itself, which is annexed to the 2003 Act, and it is appropriate to have regard to the terms thereof when interpreting the Act itself, since the Oireachtas when passing the 2003 Act for the purpose, inter alia, of giving effect to the Framework Decision, has seen fit to annex the Framework Decision in a Schedule to the Act. I will set out these provisions, as relevant:

"Article 31:

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this **Framework Decision shall, from 1 January 2004, replace** the corresponding provisions of the following conventions applicable in the field of extradition in relations between Member States:

....." (my emphasis)

16. There is no need to set in full the various Conventions and Agreements referred to in Article 31.

"Article 32:

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. **Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision.** However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 1 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time." (my emphasis)

17. No such statement has been made by this State, as contemplated by Article 32 above.

18. In Mr Kelly's submission this matter is very clear, since in the present case the extradition request was received as a matter of undisputed fact after the 1st January 2004, and both this State and the Czech Republic have each adopted the Framework Decision, as of the date on which the application for a Warrant for the arrest of the respondent came before Hanna J. on the 10th March 2005, and that therefore there is no room for an argument that the Request can be dealt with other than by reference to the European Arrest Warrant scheme as set forth in the Framework Decision, and as given effect to by the 2003 Act, and that this Court should therefore refuse to make the Order sought under Part II of the 1965 Act in this application, as same is inoperable as between this State and the Czech Republic at the relevant date.

19. Mr Kelly has also referred the Court to the judgment of Denham J. in *O'Rourke v. Governor of Cloverhill Prison* [2004] 2 I.R. 456, where the learned judge states:

"The Act of 1965 governed rendition between the jurisdictions of England and Wales and Ireland until the Act of 2003 came into effect. The Act of 2003 became applicable from 1st January, 2004. It retained certain saving clauses for cases then being processed. The Act of 2003 provided that in certain circumstances the Act of 2003 would not apply, that the Act of 1965 would still be applicable. One of the savers of the prior law of the Act of 1965 was where a warrant issued in a relevant jurisdiction was produced to the Commissioner of the Garda Síochána before 1st January, 2004 for the purposes of s.43 of the Act of 1965."

20. Mr Kelly has submitted that there is no saver in respect of Part II cases which are relevant to the present case, and submits that it is clear therefore that in respect of countries which have signed up to the Framework Decision, and have been designated here pursuant to s.3 of the 2003 Act, any requests for extradition received after 1st January 2004 must be governed by the 2003 Act. He submits that the wording of that Act is clear and precise in this regard and that no ambiguity exists.

21. In answer to Mr Kelly's submission in this regard, Mr Kerida Naidoo BL has urged that, contrary to what Mr Kelly has submitted, Part II endures in respect of a Request which predates the accession of the Czech Republic to the European Union and its adoption of the Framework Decision, and the designation of the Czech Republic by the Minister for Foreign Affairs under S.I. 27 of 2005 for the purposes of the 2003 Act. He submits that procedures under Part II of the 1965 Act as amended, and the new procedures under the 2003 Act co-exist, and that there is nothing in the 2003 Act which prevents the Request received in April 2004 from continuing to be dealt with under the Part II procedure. In this regard he points out that while Part III of the 1965 Act was specifically repealed by s.50 (1) of the 2003 Act, there is no repeal of Part II, and that its provisions survive intact.

22. Mr Naidoo has referred to the provisions of s.10 of the 2003 Act and to the fact that it makes provision for the arrest and surrender of a person "where a judicial authority in an issuing state duly issues a European Arrest Warrant". He submits that the Czech Republic has not in the present case issued a European Arrest Warrant, and that this section cannot apply to the Request received here in April 2004 because on that date, the Czech Republic had not been designated for the purpose of the 2003 Act, and that therefore it was not as of the date of the Request "an issuing state" in accordance with the definition of "an issuing state"

contained in s.2(1) of the 2003 Act, and that therefore the Request could only be dealt with under the Part II procedure of the 1965 Act, which as of the date of the Request (2nd April 2004) applied in relation to the Czech Republic.

Conclusions:

23. Clearly, if the Request which was received in this State on the 22nd April 2004 had been in order and complete, an application for a Warrant of Arrest for the respondent could have been applied for and granted pursuant to the provisions of Part II of the 1965 Act, since at that date the Czech Republic was not yet a Member of the European Union, and had not adopted the Framework Decision of 13 June 2002. This situation would have prevailed without difficulty perhaps, even beyond the date of accession by the Czech Republic on the 1st May 2004, and up to the date on which this State designated the Czech Republic for the purposes of s.3 of the 2003 Act on the 15th January 2005.

24. However, the application for a warrant was not made until 15th March 2005, by which time as we have seen the Czech Republic was a Member State of the European Union and had been designated by the Minister for Foreign Affairs, thereby becoming capable of being "an issuing state" of a European Arrest Warrant.

25. The significance of designation under that section is clear from the words of the section itself. It is in effect an acknowledgement by the Minister for Foreign Affairs that the state so designated "*has, under its national law, given effect to the Framework Decision*".

26. It can therefore be assumed that from that date the extradition arrangements between this State and the designated state will thenceforth be governed by the procedures of that Framework Decision. If there were to be any exceptions to this, they would have to be specified in the legislation here, since that is the source of this Court's jurisdiction.

27. I have already set forth Article 32 of the Framework Decision in full. But the critical passage reads:

*"Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. **Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision.**"* (my emphasis)

28. This and other provisions of that Framework Decision were made in the context of the membership of the European Union as of the 13th June 2002, and does not make any reference to the situation which might arise for states which might accede to the European Union after 1st January 2004, such as the ten new Member States, including the Czech Republic. It could not be controversial to state that it must have been within the contemplation, and even the certain knowledge of the Council of the European Union, on the 13th June 2002 when it adopted the Framework Decision, that new Member States would join an enlarged Union in 2004. Yet there is no provision contained in the Framework Decision in relation to transitional arrangements other than that contained in Article 32 thereof, or arrangements specifically to take account of the situation of future Member States upon their accession.

29. The Oireachtas, when repealing Part III of the 1965 Act (since it was becoming obsolete following the introduction of the European Arrest Warrant procedures), included in the 2003 Act a transitional arrangement in respect of certain extant Part III requests, as appears in s.50 of that Act, but did not make transitional arrangements in respect of any other Member State countries who would have come within Part II of the 1965 Act up to the passing of the 2003 Act, such as the Czech Republic.

30. Even in the knowledge as of the 13th June 2002 that new Member States would accede thereafter, nothing is stated in the Framework Decision which permits or contemplates a postponement of the operation of the new procedures to a date beyond the date of accession (in this case the 1st May 2004).

31. However, as far as Ireland is concerned, in so far as the 2003 Act requires that an "issuing state" for the purpose of a European Arrest Warrant is one which has been designated under section 3 of the Act, a non-designation of any member state effectively postpones, pending designation, the operation of the new procedures between this State and such undesignated Member State.

32. However, though this is not relevant to the issue in the present case, even in that situation, perhaps through some lacuna in the Framework Decision or the 2003 Act, it could certainly be the subject of interesting debate as to whether after 1st January 2004, and pending such designation, the old Part II procedures will have survived in the event of the requesting state not having introduced its own domestic law giving effect to the Framework Decision. However that question will have to await a suitable, but perhaps unlikely occasion for consideration.

33. It follows in my view that once the Czech Republic had been designated for the purposes of s.3 of the 2003 Act, there was no other arrangement for extradition between that State and this State. Each state involved had brought into operation the European Arrest Warrant procedure, and I can identify no provision in our 2003 Act, nor any requirement to incorporate therein such a provision upon implementation of the Framework Provision, such as might enable Part III to remain operative on the 15th March 2005, in respect of a Request from the Czech Republic which predates 1st May 2004, or possibly its designation on 15th January 2005, even though (and unusually so given the length of time involved, namely 11 months), it had been "in the system" since 22nd April 2004.

34. By way of conclusion, it is worth noting some of the Preamble to the Framework Decision itself. For example, paragraph (1) thereof which states:

"WHEREAS:

*(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be **abolished** among Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.*

*(5) The objective set for the Union to become an area of freedom, security and justice leads to **abolishing** extradition between Member States and **replacing** it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of sentenced or suspected persons for the purpose of execution or prosecution of criminal offences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be **replaced** by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.*

(11) In relations between member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition." (my emphasis)

35. It is these objectives and considerations, inter alia, which inform the content of the procedures and arrangements contained in the Framework Decision which is given effect to by the 2003 Act, and which is appended to that Act. I have deliberately drawn attention to words such as "abolished", "replaced", "abolishing" and "replacing". It is clearly part of the scheme that existing arrangements as between Member States, and thereby under s.3 of the 2003 Act, designated states shall no longer exist. I cannot see that it is open to argument in the present case that Part III procedures survived in respect of requests which predate the Czech Republic's designation under s.3 of the 2003 Act, given the complete absence of any discernable intention from the clear and precise meaning of the words used in the Act, or any such intention that it ought to be so according to the Framework Decision.

36. Following the designation of the Czech Republic on the 25th January 2005, the Czech Republic ought to have withdrawn its Request dated 2nd April 2004 and proceeded to issue a European Arrest Warrant and to have transmitted same to this State, so that the respondent could have been processed thereunder under the European Arrest Warrant procedures by then in existence between the two States concerned.

37. For these reasons, I am of the view that the application made to the Court on the 15th March 2005 seeking a Warrant under Part III of the 1965 Act directing the arrest of the respondent, was one which was not appropriate, and that the order made on foot of such application ought not to have been made. It follows that the discharge of the respondent should be directed, and I so order.