Neutral Citation Number: [2007] IEHC 363

THE HIGH COURT

Record Number: 2007 No. 98 Ext.

BETWEEN:

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND

MARIS PAVLOVS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 31st day of October 2007

The surrender of the respondent is sought by a judicial authority in the Republic of Latvia on foot of a European arrest warrant which issued on the 15th February 2007. This was endorsed for execution as required on the 6th June 2007, and he was arrested on foot of same on the 20th June 2007. Thereafter he was brought before the High Court as required under s. 13 of the European Arrest Warrant Act, 2003, as amended and was remanded from time to time until the hearing of the present application for his surrender under s. 16 of the Act.

His surrender is sought so that he can be prosecuted for an offence which in this State is known as drunken driving. There are some submissions made on his behalf in relation to the question of correspondence of that offence with an offence in this jurisdiction, and I will come to those submissions in due course.

The Court is satisfied, as it is required to be, that the person who was arrested and brought before the Court for the purpose of this application is the person in respect of whom this warrant has been issued. No issue has been raised in that regard.

The Court is also satisfied that no undertaking is required under s. 45 of the Act since there has been no conviction or sentence passed in absentia.

There is no reason to refuse surrender by virtue of sections 21A, 22, 23 or 24 of the Act, and, subject to addressing the submissions made on the respondent's behalf in relation to both correspondence and delay, neither is his surrender prohibited by any provision contained in Part III of the Act or the Framework Decision.

Points of Objection:

1. Delay:

This point is easily dealt with. There has been no delay which could possibly benefit the respondent in avoiding his surrender, and in any event there has been no attempt to demonstrate any prejudice. But even if there had been some evidence of that kind adduced, the respondent would have had an impossible task to overcome, namely the judgment of the Supreme Court in *Stapleton v. Minister for Justice, Equality and Law Reform*, unreported, Supreme Court, 26th July 2007. The alleged offence in the present case occurred in December 2003, there being a prior offence also in September 2003. An order for the arrest of the respondent was issued by Riga District Court on the 24th May 2004, and the European arrest warrant was issued on the 15th February 2007. By that time word had reached the authorities in Latvia that the respondent had been arrested in this State on charges alleged to have been committed by him in this State, and in respect of which he is currently serving a sentence of imprisonment here, and they issued the European arrest warrant in order to achieve his surrender. Counsel submitted that where the offence carried a one year sentence there was a greater onus on the authorities to progress matters with speed. While that may be something which can be of relevance in arguments concerning prosecutorial delay, the present case is very different, and the submission is without weight. The objection in the present case based on delay was always going to fail, and in my view ought not even to have been raised.

2. Correspondence:

The offence which is the subject of the warrant is one which is alleged to have been committed on the 27th December 20003 contrary to Section 262 of the Latvian Criminal Law, which according to the translation provided to this Court provides as follows:

> "Operating a vehicle while under the influence of alcoholic beverages or narcotic, psychotropic or other intoxicating substances."

It is further stated in the paragraph headed "Nature and Classification of the Offence" that where a person commits such an offence, and has done so within one year of a previous such offence, the sentence of imprisonment which can be imposed is, *inter alia*, one year.

In the present case it is alleged that prior to the 27th December 2003, namely on the 19th September 2003 the respondent had committed such an offence for which he was given a fine, and by having done so, the later offence becomes one for which he can face up to one year in prison. It is in this way that it is submitted that the offence in December 2003 achieves the minimum gravity of a maximum of not less than twelve months imprisonment.

The submission made by Counsel for the respondent is that since it is an essential ingredient to the offence referred to in this warrant that it be a second offence, distinguishes it from the offence here under s. 49 of the Road Traffic Act, 1961 as amended, and that correspondence is therefore absent. That is the argument in a nutshell. In my view this submission must fail given the provisions of s. 5 of the European Arrest Warrant Act, 2003, as amended which provides:

> "5.— For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State. "

There can be no doubt that if the respondent had driven here contrary to s. 49 of the Road Traffic Act, 1961 as amended, on the 15th February 2007 (date of issue of EAW), and had previously been convicted of having done so some months earlier, he would have committed an offence in this State. The fact that he had committed an earlier offence would speak to penalty, given the provisions of s. 26(5) of the Act in respect of a second such offence. I am completely satisfied that correspondence has been made out, and minimum gravity under the provisions of s. 38 of the European Arrest Warrant Act is satisfied as already indicated. This objection must also fail.

An existing sentence to be served in Latvia:

A final objection raised at the last minute, and not covered in any of the Points of Objection needs to be disposed of also. An affidavit

has been sworn by the respondent's solicitor, and not the respondent, in which she states that she has made inquiries in Latvia concerning the respondent's criminal record and has been furnished with a decision of a Court in Riga, Latvia dated 26th march 2002. It would appear from the translation of this ruling that the respondent on that date received, *inter alia*, a five year suspended sentence for an offence of theft to which he pleaded guilty. This previous conviction and sentence has not been referred to in the European arrest warrant, and it is submitted that under the rule of specialty the respondent, if surrendered on foot of the present warrant for prosecution for drunken driving, the respondent must not be required to serve the suspended sentence which might be activated on his return. The respondent submits that the existence of this previous conviction ought to have been referred to in the European arrest warrant and that the Court should not surrender him on foot of the warrant where there is a possibility that he would be required to serve this sentence not referred to.

The first thing to be said is that under the Framework Decision the rule of specialty as previously known and recognised has been disapplied. It no longer exists as between Member States of the European Union who have adopted the Framework Decision, such as this State and Latvia. However, provisions are contained in the Act here in s. 22 thereof which serve to address the situation pertaining to offences and sentences which would otherwise have come under the rule of specialty. The Framework Decision provides at Article 27:

Article 27 Possible prosecution for other offences
1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. *Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.*

3. Paragraph 2 does not apply in the following cases:

> (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
>
> (b) the offence is not punishable by a custodial sentence or detention order;
>
> (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
>
> (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
>
> (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
>
> (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
>
> (g) *where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.*
>
> (my emphasis)

Section 22 of the Act reflects these provisions, and it is quite clear that the Latvian authorities may request the consent of the High Court here if it wishes to require the respondent to serve any sentence imposed upon him for an offence other than that referred to in the European arrest warrant. This Court is entitled to expect that this will be done, if necessary, and must have the necessary trust and confidence that the Latvian authorities will comply with its obligations under the Framework Decision as provided in s. 4A of the Act (as inserted) which provides as follows:

> "4A.- It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown. "

It is a matter for the Latvian authorities to deal with any situation arising from any suspended sentence of imprisonment in respect of an offence committed prior to the offence the subject of the European arrest warrant. The presumption that they will deal with such a matter in accordance with their obligations under the Framework Decision is a real presumption, and this Court relies upon it. It is not up to this Court to wonder if in fact the Latvian authorities might overlook seeking the consent of the High Court simply because the previous sentence was not referred to in the warrant. The warrant states clearly that the respondent's surrender is sought thereunder for the purpose of prosecuting him for the offence referred to in the warrant and not for any other purpose. But if they come to realise in due course that there is another matter outstanding, there is a mechanism available to address that situation as I have stated. It is not a valid ground upon which to refuse to order his surrender.

I therefore am required to make the order sought for the respondent's surrender, given that all the requirements of s. 16 (1) of the Act have been complied with and are in order.