

THE HIGH COURT

2010 122 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003 AS AMENDED

BETWEEN/

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

- AND -

PETER PUSKAS

RESPONDENT

JUDGMENT of Mr Justice John Edwards delivered on the 4th day of March 2011

Introduction:

The respondent is the subject of a European Arrest Warrant issued by the Republic of Hungary on the 24th of November, 2009. The warrant was endorsed for execution by the High Court in this jurisdiction. The respondent was arrested at the Criminal Courts of Justice, Parkgate Street, Dublin 8 on the 30th of June 2010 but does not consent to his surrender to the Republic of Hungary. Accordingly, this Court is now being asked by the applicant to make an Order pursuant to s. 16 of the European Arrest Warrant Act, 2003 as amended (hereinafter referred to as "the 2003 Act") directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether it is appropriate to do so having regard to the terms of s.16 of the 2003 Act.

In that regard the central point that the Court is required to consider in the particular circumstances of this case is whether, having regard to what the respondent characterises as the relatively minor nature of the offence, his record and ties in this jurisdiction, to surrender him would breach his constitutional and convention rights to family life as guaranteed under Article 41 of the Constitution of Ireland and Article 8 of the European Convention on Human Rights.

Uncontroversial s. 16 issues

The applicant has been put on full proof by the respondent. Accordingly, as no admissions have been made, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied.

The Court has received an affidavit of Sergeant Sean Fallon sworn on the 10th of November, 2010 and has also received and scrutinised a copy of the European Arrest Warrant in this case. Moreover the Court has also inspected the original European Arrest Warrant which is on the Court's file and which bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

- (a) the person before it is the person in respect of whom the European arrest warrant was issued;
- (b) the European arrest warrant has been endorsed for execution in accordance with s. 13 of the 2003 Act;
- (c) the Court does not require to receive an undertaking in accordance with s.45 of the 2003 Act in the circumstances of the case;
- (d) the High Court is not required, under s. 21A, 22, 23, or 24 (inserted by ss 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005), to refuse to surrender the respondent under the 2003 Act.

The Court is further satisfied that the European Arrest Warrant in this case is in the correct form, and that the requirements of the statute with respect to correspondence and minimum gravity are met – (the offences are of the "ticked box" variety, namely "illicit trafficking in narcotic drugs and psychotropic substances", but there would in any case be correspondence in respect of the first of the two offences with the offence of possession of a controlled drug for sale or supply contrary to s. 15 of the Misuse of Drugs Act, 1977 as amended, and in the case of the second of the two offences with simple possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act, 1977 as amended).

The warrant is a sentence type warrant and the respondent is wanted in the Republic of Hungary to serve a sentence of one year and six months imposed upon him by the Szekszárd Municipal Court and to date from the 27th of October 2006. This was a composite sentence in respect of the offences mentioned in the warrant.

In addition the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No 3) Order 2004, S.I. 206/2004 (hereinafter referred to as "the 2004 Designation Order"), and duly notes that by a combination of s 3(1) of the 2003 Act, and article 2 of, and the Schedule to, the 2004 Designation Order the Republic of Hungary is designated for the purposes of the 2003 Act as being a state that has under its national law given effect to the Framework Decision.

The main controversy

The sole remaining issue is therefore whether the surrender of the respondent is prohibited by Part 3 of the 2003 Act, or by the Framework Decision (including the recitals thereto.) In that regard s. 37(1) of the 2003 Act, which is within Part 3 aforesaid provides that a person shall not be surrendered under the 2003 Act if, *inter alia*, his or her surrender would be incompatible with the State's obligations under (a) - (i) the European Convention on Human Rights and Fundamental Freedoms or (ii) the Protocols to that Convention (listed at s. 37(2)), or (b) his or her surrender would constitute a contravention of any provision of the Constitution

(other than for a particular stated reason which is not relevant to this case).

Relevant Points of Objection

It is pleaded by way of objection that:

"The respondent is a Hungarian national who was convicted of two separate offences involving the use and sale of drugs and sentenced to two and a half years imprisonment, which was reduced to eighteen months on appeal. The respondent was not sentenced as the principal offender and before and after his sentence was reduced on appeal, he was permitted to leave Hungary by the court. Since arriving in this jurisdiction in March 2005, he has worked variously as a carpenter and driver and is due to marry his Irish partner in November 2010. In such circumstances, having regard to the relatively minor nature of the offence, his record and ties in this jurisdiction, it is submitted that his surrender would be disproportionate, and would be contrary to section 37 of the European Arrest Warrant Act 2003 as it would breach his constitutional and Convention rights to family life as guaranteed under Article 41 of the Constitution of Ireland and Article 8 of the European Convention on Human Rights."

The respondent's evidence

The respondent has placed before the Court an affidavit sworn by him on the 9th of November 2010. In this affidavit he states that he initially came to Ireland in March 2005 to look for work and this was apparently before he was charged with any offence. He was subsequently charged with the offences which are the subject of the warrant and he says that he returned to Hungary for all of his court appearances. He sets out the circumstances of his conviction and sentence and in doing so has exhibited the written judgments of the court of first instance (the Tolna District Court) which initially imposed a two and a half year sentence on him, and also of the appeal court (the Szekszárd Municipal Court) which reduced that sentence to eighteen months.

He further states following the imposition of the initial sentence he instructed his lawyer to appeal. While this was being put in train he spent seven weeks in prison and was then released pending the hearing of his appeal. He contends that he was free to return to Ireland, which he did, and that he was not required to attend his appeal hearing.

He says that he has not come to Garda attention since his arrival in Ireland, and has worked as a carpenter and in groundwork for a number of companies. He is presently delivering linen, and at the date of his affidavit had been doing so for two months, for a firm called Prima Linen, and he also works part time as a disc jockey and has occasional casual work with a furniture removal firm called "Two Men and a Truck".

He stated that he was engaged to be married to an Irish Girl and was due to marry in November 2010. It was confirmed to the Court at the hearing that that marriage went ahead.

Finally, he avers that the circumstances of his life have changed completely since the offences were committed in 2004/2005. He says that he has now made his life in Ireland and has sought to make a contribution to the life of this country. He says that he intends to spend the rest of his life in this jurisdiction, and he contends that an order for his surrender to the issuing state would not be justified having regard to the disruption that it would cause to his life and prospects, and he submits that it would be disproportionate in all the circumstances for the court to make this order.

The Court's Decision

Counsel for the respondent placed considerable emphasis on the circumstances of the crime as revealed in the Hungarian Court judgments exhibited by the respondent, and sought to characterise both the offences, and the respondent's involvement in them, as relatively minor. It seems to me that the Court can attach very little weight to this for several reasons. First, by no yardstick could an offence corresponding in this jurisdiction to possession of drugs for sale or supply be considered a minor offence. That said, the Court does of course recognise that persons charged with such an offence may bear different degrees of culpability by virtue of the nature of their role in the matter, and the offence itself, though always serious, may vary in the degree of its seriousness, perhaps depending on the nature of the drugs involved, the quantity involved and the circumstances of the sale or supply. Second, it is not for this court to second guess the courts of the issuing state. It is clear from the judgments of the Hungarian Court, which are impressive in their detail, that the mitigating factors put forward by the respondent have already been taken into account. Thirdly, and this point was also made by Mr Justice Peart in the conjoined cases of *Minister for Justice, Equality and Law Reform v Mareka*, and *Minister for Justice, Equality and Law Reform v Miziak* [2010] IEHC 402 to which I have been referred, the Framework Decision has defined minimum gravity, and these offences come within that definition. Fourthly, while the nature of the offence and the respondents role in the offence can be taken into account to a degree in considering the issue of proportionality, and I do so, it is also incumbent on this court to weigh in the balance that there is a public interest in the prosecution of crime, and that the Court should therefore respect the entitlement of the Hungarian authorities to prosecute these offences, and to seek to have the respondent serve out the sentences imposed upon him.

The respondent has sought to rely upon the decision of this Court in *Minister for Justice, Equality and Law Reform v Gorman* [2010] IEHC 210. The Gorman decision depended very much upon its own particular facts, and the facts of the present case are very different. Nonetheless, Gorman is of considerable assistance in as much as Mr Justice Peart sets the approach that a court such this should adopt in considering whether an order for the surrender of the respondent would constitute a breach of this State's obligations under the Convention or its Protocols. He said:

"It seems to me to follow that for the purposes of the present application for the respondent's surrender, this Court is required to consider the following questions in arriving at a conclusion as to whether an order for the surrender of the respondent to the United Kingdom would constitute a breach of this State's obligations under the Convention or its Protocols: (1) does surrender constitute an interference with the respondent's private/family right; (2) if so, is that interference one that is in accordance with law; (3) if further so, is the interference, by surrender of the respondent, in pursuit of a legitimate aim or objective; (4) and further if so, whether that interference is necessary in a democratic society (the latter meaning that it is justified by a pressing social need) and proportionate to the legitimate aim pursued."

I have adopted the approach commended by Peart J in my consideration of the respondent's case and I am satisfied that I must answer each of the relevant questions in the affirmative. Although the respondent's surrender would constitute an interference with his family life any such interference would be in accordance with law. Moreover, I believe that his surrender is being sought in pursuit of a legitimate aim or objective, namely the public interest in the prosecution of crime, and the entitlement of the Hungarian authorities to prosecute these offences, and to seek to have the respondent serve out the sentences imposed upon him. Finally, I am satisfied that in the circumstances of this case the proposed interference is justified by a pressing social need and that it is proportionate to the legitimate aim that is being pursued.

On the question of proportionality, I find myself in agreement with the sentiments expressed by Fennelly J in *Minister for Justice, Equality and Law Reform v Gheorghe* [2009] IESC 76, to which I was also referred. Fennelly J said:

“Like Peart J, I would also dismiss the third ground of appeal in *limine*. It is a regrettable but inescapable incident of extradition in general and, as in this case, surrender pursuant to the system of the European arrest warrant, that persons sought for prosecution in another state will very often suffer disruption of their personal and family life. Some states have historically refused to extradite their own nationals, but that is a special case. The Framework Decision expressly provides that, in Article 1, that it does not “*have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in article 6 of the Treaty on European Union.*” No authority has been produced to support the proposition that surrender is to be refused where a person will, as a consequence, suffered disruption, even severe disruption of family relationships.”

I think those remarks are apposite to the respondent’s case as well.

In all the circumstances the Court is satisfied that the surrender of the respondent is not prohibited by Part 3 of the 2003 Act, or by the Framework Decision (including the recitals thereto.)