

THE HIGH COURT**2008 64 Ext****Between:****Minister for Justice, Equality and Law Reform****Applicant****And****Jaroslav Mika****Respondent****Judgment of Mr Justice Michael Peart delivered on the 14th day of May 2010:**

The surrender of the respondent is sought by a judicial authority in Slovakia so that he can be prosecuted for a single offence as set forth in the European arrest warrant which issued on the 18th October 2007.

That warrant was endorsed for execution here by order of the High Court on the 2nd April 2008, and the respondent was duly arrested on foot of same on the 3rd November 2009, and brought before the High Court on the following day the 4th November 2009.

The identity of the respondent is not put in issue in this case, but I am satisfied in any event from the affidavit evidence of the arresting Garda Sergeant Gerard O'Daly that the person who he arrested and brought before the Court on that day and who is now before the Court is the person in respect of whom that warrant has been issued.

Minimum gravity is satisfied in respect of the offence in question.

Curiously the issuing judicial authority has neither marked the warrant in such a way in paragraph E.I to indicate that it is an offence to which Article 2.2 of the Framework Decision and therefore one in respect of which correspondence must be established; but neither has it been stated by the completion of paragraph E.II that it is an offence for which such correspondence must be established. However, this application has proceeded on the basis that correspondence must be established, and in that regard Anne-Marie Lawlor BL has submitted that if what is alleged in the warrant was done here an offence under s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 would be committed. That offence is committed where:

"6.- (1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act is guilty of an offence."

An issue arises in relation to correspondence and also in respect of specialty.

I will come to those points of objection in due course, but subject to reaching conclusions in relation to the issues raised, I am satisfied that there is no reason to refuse to order surrender by reason of any provision of sections 21A, 22, 23 or 24 of the Act, and that surrender is not prohibited by any provision of Part III or the Framework Decision.

The alleged offence:

Paragraph (e) of the warrant sets forth the facts of the case as follows:

"On 20 September 2001, in the subsidiary of the First Building Savings Bank, joint stock company, Namestie Banikov No. 36, the defendant Jaroslav Mika made a commitment for the credit without lien to grant the credit, with respect to the building savings contract No. 1873283702. Subsequently on 15 October 2001 on the basis of this credit commitment the above named concluded the contract of an extra intermediate credit and building loan with the First Building Savings Bank, joint stock company Bratislava. The subject of this contract was the grant of the extra intermediate credit in the amount of 600,000 - SK by the building savings bank. The above named presented fraudulent income confirmations of employees and he incurred a loss in the amount of 600,000 - SK to the First Building Savings Bank, joint stock company Bratislava."

Thus far, in spite of translation, it seems clear that what is alleged in broad terms is that the respondent is alleged to have obtained a loan sanction from the bank based on 'fraudulent income confirmations of employees' and having caused a loss to the bank in the sum of 600,000 SK.

Under cover of a letter dated 10th March 2008 from the Slovak Ministry of Justice to the Central Authority further information has been provided in the form of a 'report' dated 21st January 2008 from the issuing judicial authority to the Ministry of Justice in Bratislava. In paragraph 2 thereof further information is provided in relation to the alleged offence as follows:

"The accused Jaroslav Mika claimed a building credit in the amount of 600,000 - SKK from the First Building Savings Bank Ltd. Bratislava. Within the meaning of the contract terms, he deposited 20% of the contracted sum in the amount of 126,250 - SKK in favour of the Savings Bank, and subsequently on 25 October 2001 the Savings Bank paid him out the contracted sum in the amount of 599,000 - SKK (1,000 -- SKK is the sum charged for credit processing). The credit granted is bound on a specific purpose and the applicant was obliged to use the provided means for the equipment of his residence. He attested the use of the credit bound on purpose with the invoice No. 2001/2012 in the

amount of 607,136.50 SKK issued by the company RF Image Ltd. Kosice.

Apparently, the control document is fictitious inasmuch as the fact-finding carried out so far has failed to detect which residence was supposed to have been reconstructed or if at all there was a reconstruction of any residence. The accused has his permanent residence at Gocovo No. 129, district Rožnava, and he stated the address for the reconstruction works as Rožnava, Safarikova St. No. 120, where there are no accommodation units at all. It also results from (in examination carried out so far that the accused Jaroslav Mika indicated false data about his employment and income. The confirmation of his employment was issued by the company RF Image Ltd. Kosice whose owner however has not confirmed the contract of employment of the above named or the income which he stated in the documents required by the Savings Bank. It is also to be pointed out that the accused has concluded the contract without agreement of his wife, who appears in the credit contract as a joint debtor. Due to the fact that the accused moved off his place of residence, his wife Alena Mikova has to bear all the obligations resulting from the contract and the executor has taken hold of her income.

On the basis of the burden of evidence gained so far, the criminal prosecution of the accused Jaroslav Mika for the criminal act of credit fraud pursuant to s. 250a, section 1, 3 of the Criminal Law effective until 31 December 2005 is justified."

This suggests that the purpose of the loan was for the 'equipment' of the respondent's residence, producing an invoice from RF Image in that regard in the sum of 607,136.50 SKK. It is alleged that this document is false and that it cannot be ascertained what, if any, premises was refurbished. It is also said that the employment records produced in support of the loan application were false, and further that he entered into this agreement without his wife's consent even though she is named as the joint debtor. All this is said to give rise to an offence referred to as "credit fraud".

The same additional information at paragraph 1 thereof sets out the detail of section 250 of the Criminal Law in which the offence is referred to as 'credit deceit'.

Remy Farrell submits that if one looks at the offence as recited in the warrant alone, there is not shown to be any causal link between the deception and the loss incurred by the bank, and that it was for that reason that further information was sought to fill that gap in order to avoid the difficulties encountered in the case of *The Attorney General v. Dyer* [2004] 1 I.R. 40.

The candidate offence for correspondence is, as stated already, that created by s. 6 of the Criminal Justice (Theft and Fraud offences) Act, 2001 which provides as follows:

"6.- (1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act is guilty of an offence."

According to what is contained in the warrant the respondent did a number of things. He (1) concluded an agreement for a loan from the bank, (ii) presented fraudulent income confirmations, (iii) caused a loss to the bank in question. It is by reason of these allegations that Mr Farrell has submitted that the ingredients of the s. 6 are not made out sufficiently, hence further information was sought in order to establish that causal link which is submitted to be absent, there being no allegation that the deception caused the loss in question to the Bank.

However, Mr Farrell submits that the additional information, far from improving the situation from the applicant's point of view, in fact makes the situation worse, in as it raises the spectre of the rule of specialty being breached if surrender is ordered. That submission is made on the basis in addition to what is alleged in the warrant as constituting the offence, the respondent has produced a false invoice, that he failed to use the loan for the stated purpose, and further that he made his wife a joint debtor without her consent.

In addition to submitting that the presumption regarding the observance of specialty upon surrender on the part of the issuing judicial authority is rebutted by the provision of these additional facts, Mr Farrell submits also that the task of being satisfied as to correspondence is not assisted by the information provided, as precisely what is alleged is still unclear.

I can see the force of an argument to the effect that if one confines one's knowledge to the facts as set forth in the warrant, there are shortcomings in meeting precisely the ingredients for a section 6 deception offence. But considerably more detail of what is alleged the respondent did in order to give rise to the offence referred to in the warrant is provided by the additional information. I am satisfied that it has been shown that the allegation is one that he acted dishonestly by the provision of false documentation to the bank to support his loan application, that he intended to make a gain by this means, and that this was the cause of loss to the bank in question in circumstances where the funds were not used for the purpose for which they were provided. In this way the deception is shown to have caused the loss, and I am entitled to have regard to both what is contained in the warrant as well as the additional information. Any difficulty in understanding what is alleged is derived only from translation difficulties, but close and careful study makes it clear what is alleged.

As to specialty, there is no room for doubt arising from the additional information that the issuing judicial authority will not observe its specialty obligations. The fact that the additional details provided gives more information in relation to the background to the credit deceit offence charged does not mean that there is a risk that the issuing judicial authority will breach specialty by prosecuting the respondent upon surrender in respect of offences other than that for which surrender is ordered. This Court can safely rely upon the presumption provided for in section 22 (3) of the European Arrest Warrant Act, 2003, as amended. For that presumption to be rebutted the contrary must be 'proved'. The respondent is merely speculating or worrying that he will be prosecuted for offences other than that for which surrender will be ordered. That is insufficient.

I am satisfied that an order must be made for the respondent's surrender and I will so order.