

THE HIGH COURT

Record Number: 2006 No. 159 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
KOLOMAN RACZ

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 27th day of April 2007

The surrender of the applicant to the Czech Republic is sought in this application pursuant to the provisions of the European Arrest Warrant Act, 2003, as amended so that he can serve a sentence of imprisonment of twenty six months imposed upon him there in 1999 arising out of two offences set forth in the translation of paragraph (e) of the European arrest warrant as theft and embezzlement.

The European arrest warrant issued on the 25th July 2006, and was duly endorsed for execution here by order of the High Court dated 28th November 2006. Thereafter on the 5th December 2006 the respondent was arrested and brought before the Court as required under s. 13 of the Act.

No issue is raised by the respondent as to his identity, but in any event I am satisfied by virtue of the evidence contained in the affidavit evidence of the arresting officer, Sgt. Thomas Malone that the person who was arrested and who is before the Court is the person in respect of whom this European arrest warrant has been issued.

As far as correspondence is concerned, while the acts set forth in the warrant which gave rise to these offences would if done in this State would in any event give rise to offences here under the Criminal Justice (Theft and Fraud Offences) Act, 2001, it is not in fact necessary that correspondence be established as the Czech authority has ticked boxes in paragraph (e) of the warrant to indicate that the offences concerned are among those referred to in Article 2.2 of the Framework Decision as being offences in respect of which double criminality does not have to be verified. Minimum gravity is also satisfied in respect of each offence.

Since the warrant itself recites the fact that the verdict of the Czech District Court was pronounced against the respondent while he was present in Court I am satisfied that no undertaking in respect of any re-trial is required, even though at paragraph (11) of his affidavit the respondent states that for his sentence to be finalised under Czech law a form should have been sent to him at his home in Prague, with details of the sentence imposed, and that no such form was received. He also states that he told the Court at the time sentence was being imposed that he wanted to appeal, and that no appeal papers were sent to him. I am not satisfied that either of these matters can give any cause to refuse surrender. Firstly, a basic evidential requirement to found any argument of this kind – indeed Patrick McCarthy SC for him acknowledged that this was so – is that there must be expert evidence adduced from a Czech lawyer as to what the legal requirements are and whether they have been fulfilled or not. But I am satisfied that the argument made is not made out in this application.

I am also satisfied that the presumptions which are provided by the Act in relation to sections 21A, 22, 23 and 24 of the Act have not been rebutted and that accordingly there is no reason arising from any of those sections why surrender should be refused, and I am further satisfied, subject to addressing the other issues raised by the respondent, that the surrender of the respondent is not prohibited by any provision in Part III of the Act or the Framework Decision.

Points of Objection relied upon

Mr McCarthy listed the points being relied upon as being in respect of the form of the warrant itself; delay since the imposition of sentence; and that surrender would breach the respondent's constitutional rights since he is a member of the Czech Roma community and that as such he is discriminated against in that State.

1. The form of the warrant

The only point made in this regard is that in detailing one of the offences for which sentence has been imposed the name of the victim of the crime is not given in the warrant. This is said to offend against the requirement that the warrant contain a description of the circumstances of the commission of the offences) including the date, place and the degree of participation of the requested person in the criminal acts. Without detailing in any way the brief submission made by Mr McCarthy on this issue, it suffices to say that there can be no merit in it. The fact that the victim of the theft or embezzlement is not named can have no bearing on the question of his surrender to serve the sentence imposed. He was present at his trial and conviction. He must be taken to already be well aware of who was the victim. But even if he does not know, it cannot have any relevance as to whether he should be surrendered to serve the sentence imposed upon him.

2. Delay

The offences in this case were committed in March 1997. His conviction was in April 1999. In his grounding affidavit he states that he left the Czech Republic in October 1999 when he travelled from Prague to Belgium. He arrived, according to his affidavit, in Ireland in 2001. He applied here for asylum, but withdrew that application in due course, and was granted residence on the basis of being the father of an Irish-born child. He subsequently married the child's mother in October 2003.

Apart from the brevity of the length of delay itself, a fundamental lacuna in relation to the factual basis for the delay objection is that nowhere in his affidavit has the respondent even attempted to establish how this delay may have prejudiced him in a way which would entitle this Court to refuse surrender. In a sentence case it is of course less open to plead prejudice in as much as the trial has already taken place, but I can find no reason based on the simple fact that he has settled down in this country since 2001 for refusing to surrender him so that he can serve the sentence imposed upon him. Mr McCarthy has sought to rely upon the judgment of this Court in *Minister for Justice, Equality and Law Reform v. Aamond*, unreported, 24th November 2006. But that was a truly exceptional case, and nowhere the circumstances of the present case. He has set forth in his affidavit a variety of illnesses or medical conditions from which he suffers, but there is no reason for believing that he will not receive appropriate treatment, should he require it after his surrender takes place.

I am completely satisfied that there is no basis to refuse surrender on the grounds of delay/passage of time in seeking the surrender of the respondent.

Membership of the Roma ethnic community of Czech Republic

The respondent seeks to establish that his human rights will not be protected if he is returned to the Czech Republic and that this

results from his being a member of the Roma ethnic minority in that country. He seeks to rely upon a number of reports which he has exhibited and which he submits shows that members of the Roma community in the Czech Republic are disadvantaged or discriminated against. These are very generalised reports and are in no way directed against the applicant or against any prison in particular where the respondent may be held upon his surrender, such as was sought to be relied upon in respect of the Republic of Lithuania in the recent judgment of this Court in *Minister for Justice, Equality and Law Reform v. Busjeva*, unreported, 27th March 2007.

I do not propose setting out in detail the contents of the reports in so far as the respondent has referred to them in his affidavit or through Counsel in submissions. But I have read them. Having done so, they are no more than generalised reports about conditions in the Czech Republic, and while they may indeed state for example that there have been incidents where a member or members of the Roma community have been injured at the hands of police, or that they are socially disadvantaged by being part of a group which has the highest incidence of chronic illness in the country, or that they suffer disproportionately from poverty, illiteracy, unemployment and so on, there is absolutely no suggestion that this is because of some apartheid-like government policy designed to ethnically cleanse the country of this group. I have little doubt that in most Member States of the European Union there will be a minority group or groups who would feel discriminated against in the sense that they do not appear to participate in the economic progress and or wealth of a country. But that is a far cry from establishing that by reason of the respondent's membership of such a minority grouping his human rights are so breached that the obligation of this State to surrender him to serve out a sentence lawfully passed upon him in a state which has been designated by the Minister for Foreign Affairs pursuant to s. 3 of the European Arrest Warrant Act 2003, as amended, need not be fulfilled.

With the accession of the Czech Republic to membership of the European Union and the designation by the Minister for Foreign Affairs under s. 3 of the Act come certain presumptions, one of which is that that the legal and judicial systems of such a state are of such a standard that fundamental rights will be protected to an acceptable level. Inevitably standards will differ from state to state but at no stage will the standard depart from what I might refer to as a minimum acceptable standard under the European Convention on Human Rights. Section 4A of the European Arrest Warrant Act, 2003 as amended creates a presumption that into the future following a surrender order being made the issuing state will comply with its obligations under the Framework Decision, one of which is to respect fundamental rights. Such an obligation exists in any event by reason of that state's accession to membership of the European Union.

The Chief Justice in his judgment in *The Attorney General v. Skripakova*, unreported, Supreme Court, 24th April 2006 has emphasised the high burden of proof which a person in the position of the respondent faces, and that "there must be evidence of a sufficiently cogent nature to persuade the High Court to conclude as a matter of probability that the person concerned was being prosecuted because of their nationality or ethnicity or that their position would be prejudiced on such grounds".

Reports of a general nature such as what the respondent in this case has exhibited in his affidavit are unspecific and general in nature and insufficient to begin to rebut the strong presumption of adherence to norms under the Convention in so far as the respondent is affected. As I have adverted to already, this is not a case where any question of the fairness of a trial is questioned, as that trial has already taken place and no complaint has been made in respect of how that was conducted. The respondent faces serving his sentence in a prison. There is no evidence to suggest as a matter of probability that during any period of his detention for that sentence his human rights or constitutional rights will be breached. Having completed that sentence, if he does not wish to remain in the Czech Republic he will as a citizen of the European Union be able to benefit from freedom of movement rights within the European Union.

There is nothing shown which under Part III of the Act, or the Framework Decision should prohibit his surrender. I am satisfied that the order sought under s. 16 of the Act must be made, and I so order.