Neutral Citation [2013] IEHC 215

THE HIGH COURT

Record No. 2011/266 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 (AS AMENDED)

BETWEEN:

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

-and-

ANDRIS EGLITIS

Respondent

JUDGMENT of Mr Justice Edwards delivered on the 16th day of May, 2013

Introduction:
This judgment contains this Court's detailed reasons for its ruling, given on 7th May, 2013, declining to exercise its power under s. 20(1) of the European Arrest Warrant Act 2003 (as amended by s. 78 of the Criminal Justice (Terrorist Offences) Act 2005) to require the issuing judicial authority, or the issuing state, to provide it with additional documentation or information, and in particular:

> (i) A copy of the Order, and the judgment /written reasons (if any) of Riga Regional Court dismissing an appeal brought by the respondent against his conviction for the offence of theft before Riga District Court on the 27th July 2009, which said appeal was heard by Riga Regional Court on the 22nd December 2010;
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> (ii) A copy of the Order, and the judgment /written reasons (if any), in respect of a further appeal by the respondent to the Latvian Supreme Court (Court of Cassation), which said further appeal was dismissed on the 14th of April, 2011;
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> (iii) A copy of the decision of the Riga District Prosecutor, and any record in writing of the reasons given for that decision, of the 5th of May 2011 refusing an application by the respondent to have his case re-opened on the basis of newly discovered evidence.
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> (iv) A copy of the decision of the Riga District Chief Prosecutor, and any record in writing of the reasons given for that decision, of the 26th of May 2011 rejecting an appeal by the respondent against the refusal by the Riga District Prosecutor of the application by the respondent to have his case re-opened on the basis of newly discovered evidence.

Counsel for the respondent had urged that the Court should do this on the basis that his client had placed sufficient evidence before it to, at the very least, place the Court upon enquiry as to whether the respondent had received a fair trial before Riga District Court in respect of the offence the subject matter of the warrant. It was submitted that in those circumstances the said information was required to enable the Court to perform its functions under the Act of 2003, and specifically to determine whether the surrender of the respondent would be incompatible with this State's obligations to the respondent under the European Convention on Human Rights and its Protocols, alternatively constitute a contravention of a provision of the Constitution of Ireland.

This Court notes that it is a condition precedent to the exercise of the power granted by s.20(1) of the Act of 2001 that the Court should hold the opinion that the documentation or information provided to it was not sufficient to enable it to perform its functions under the Act of 2003. The Court has taken full account of the eloquent submissions of counsel for the respondent, both oral and written. However, notwithstanding all that had been urged upon it with respect to the evidence, the Court was not persuaded that the documentation or information provided to it was not sufficient to enable it to perform its functions under the Act of 2003. The Court was not therefore possessed of the required opinion and accordingly was neither entitled, nor disposed in the circumstances, to make a request under s. 20(1).

The evidence relied upon by the respondent
The application is primarily supported by an affidavit sworn by his Latvian Lawyer, a Mr Saulvedis Varpins, Attorney at Law, on the 8th of May 2012. Mr Varpins states:

> "4. I say that on the 1st of March 2005 an offence of Theft under Section 175 (3) of the Latvian Criminal Law occurred. The police suspected the respondent and a co accused Mr Igors Jakovlevs of the offence. I say that during the trial it was argued on behalf of the respondent that the investigation into the offence was somewhat vague and questioning of witnesses superficially. Consequently considerable contradictions in case materials and witness statements were not eliminated and therefore raised suspicions regarding the absence of an objective investigation.
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> 5. The accusation against the respondent is based on a statement from his co accused Mr Igors Jakovlevs. Mr Igors Jakovjevs informed the court that the information given to the police was erroneous and only given by persuasion of a police officer and his girlfriend. Mr Jakovlevs explained to the court that in fact he does not remember what happened during that day, because he was drunk and under narcotic intoxication. I say that Mr Igors Jakov|evs is also mentally retarded. Mr Jakovjevs was subjected to two psychiatric expert examinations. The findings created doubts on the fact that he was the author of the evidence. The experts have concluded that he has a narrow vocabulary, difficulties with phrasing of his thoughts, he speaks short sentences, sometimes vague. The experts have concluded that Mr. Jakovjevs has "organic disturbances of personality and behaviour".
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> 6. I say that during the pre trial investigation a Ms. Ilze Akmene provided a witness statement to the police and gave a description to the police. This formed part of the evidence in the case. I say that on 27th July 2009 the Respondent was convicted and sentenced to a period of 2 years imprisonment by the Riga District Court. I say that on 22nd of December

2010 the Riga Regional Court varied the sentence somewhat to one of 1 year and 9 months.

7. I say that Ms. Akmene knows the respondent and did not nominate him as the offender. Ms. Akmene was subsequently located in Great Britain in February 2011 after the appeal court had heard the case and had being living outside of Latvia. I say that Ms. Akmene on the Is1 March 2011 provided a further statement to the Latvian Embassy in England stating that the respondent was not the person involved in the offence. Ms. Akmene in her testimony indicated her place of residence and confirmed her commitment to come to court and testify. I say that the Latvian Courts declined to accept her statement or call her as a witness and the prosecutions refused to renew its investigation. I say that on 17th of January 2011 an application was made on behalf of the Respondent to the Latvian Supreme Court I say that the decision of Supreme Court of the Republic of Latvia on the 14th April 2011 did not modify the adjudication of the lower court.

I say that the on the 18th of April 2011 an application was submitted on behalf of the Respondent to the Riga District Prosecutor to re-open the case on the basis of newly discovered evidence. On the 5th of May 2011 the District Prosecutor issued a decision refusing to re-open the case. On the 16th of May 2011 a complaint was made to the Riga District Chief Prosecutor. I say this was effectively an appeal of the application that had been previously made to the District Prosecutor. On the 26th of May 2011 the complaint to the Chief Public Prosecutor was rejected. I say that on the 21st of July 2011 the European Arrest Warrant was issued.

8. I say that the respondent has exhausted all legal remedies in Latvia.

9. I say that an application was lodged with the European Court of Human Rights under Article 34 of the European Convention of Human Rights and Rules 45 and 4 of the rules of Court. In this regard T beg to refer to Appendix B and upon which marked with the letter "B" I have signed my name prior to the swearing hereof.

10. I say that I have received notice of receipt and registration No 63270/11, Eglitis vs. Latvia. I say that no further decisions have been made. In this regard I beg to refer to Appendix C and upon which marked with the letter "C" I have signed my name prior to the swearing hereof.

11. I say that an application to the European Court of Human Rights is that that there is a defect in the Latvian Law in relation to the fact that witnesses can be relied on where they are not present and there is little that can be done after the fact where it transpires that the testimony relied upon was demonstrably wrong.

12. I say that Section 501 of the Criminal Procedure Law of the Republic of Latvia provides as follows:

Testimony previously given by any person in concrete criminal proceedings may be read or played in Court, if:

1) there are important contradictions between such testimony and the testimony given in Court;

2) the testifier has forgotten some circumstances of the case;

3) the testifier is not present at the court session due to a reason that excludes the possibility to arrive in court;

4) the testifier evades appearances in court or refuses to testify;

5) the court agrees to the instruction of a psychologist that the persons referred to in section 152, paragraph four of this Law shall not be interrogated in a court session or with the intermediation of a psychologist;

6) a testimony is provided by a person who has the right to not testify

13. I say that the applicable law permits the court to examine the testimonies in a formalistic manner just by reading them during the trial. There is no reason that would preclude the court basing its conclusions on the testimonies so read.

14. I say that if this Honourable Court orders the respondent surrender to Latvia before the decision of the European Court of Human Rights he will served (sic) the sentenced imposed by the Riga Regional Court."

The Court has also had provided to it, and has read, the respondent's "Application" to the European Court of Human Rights (hereinafter referred to as "the E.Ct H.R.") which is dated 6th of October 2011 and is exhibited to the said affidavit.

The Court regards it as a matter of some significance that, despite lodging this application, the respondent has made no application to the E.Ct H.R. for interim relief in circumstances where his rendition is sought from this State on foot of a European arrest warrant.

Case law
In my judgment in *Minister for Justice, Equality and Law Reform v Marjasz* [2012] IEHC 233 (unreported, Edwards J., 24th of April, 2012) I stated:

"….this Court considers that it is theoretically possible for a Court to refuse surrender on s.37(1) grounds where it is suggested that an extant conviction was the result of an unfair trial. The Court would add, however, that this jurisdiction is likely to be exercised very sparingly indeed, and only in cases where it has been established by the clearest and most cogent evidence that there was a truly egregious unfairness in the circumstances of the underlying trial, and where there is also evidence that all possible remedies / avenues of review / appeals in the issuing state have been tried without success and have been exhausted.

It follows from what the Court has just said that in a conviction case the Court will, in general, be most reluctant to engage in any review of the trial process leading to the conviction on foot of which the warrant is based to determine whether it was fair and lawful. The default and starting position in all cases will be that the Court must proceed upon a presumption that the trial leading to the conviction in question was fair and respected the respondent's fundamental rights, and that in the event of him having some complaint in regard to the fairness of the trial that led to his conviction that it was incumbent upon him, at the material time, to seek an effective remedy in regard to that before the courts of the issuing state."

Later in the same judgment, I went on to state:

> "….this Court considers that it is entitled to expect in respect of any conviction which is the subject of a European arrest warrant that the issuing judicial authority would not knowingly seek a respondent's rendition in circumstances where he had not received a fair trial (as judged against widely accepted norms such as those expressed in provisions such as Article 6 of the European Convention on Human Rights, to which instrument all member states operating the European arrest warrant are signatories; alternatively Article 47 of the Charter of Fundamental Rights which is also binding on such member states post the coming into force of the Lisbon Treaty), and that it is therefore to be presumed that the respondent did in fact receive a fair trial that respected his fundamental rights. Such a presumption is, of course, capable of being rebutted in any particular case but the Court would require to have adduced before it very cogent and compelling evidence tending to rebut that presumption before it would be put upon enquiry and be justified in seeking to look behind the presumption.
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> There are also very sound practical and logistical reasons why a Court in an executing state should be very reluctant and slow to embark upon any such enquiry. In most cases the court in an executing state would be singularly ill-equipped to judge such an issue, not being intimately familiar with the laws and procedures of the issuing state, and not having access to the evidence or to transcripts of evidence, or to the exhibits, or to the court record, not to mention the very significant language and translation difficulties that would arise in many cases. A very similar point was made by the Supreme Court in *Minister for Justice Equality and Law Reform v Stapleton* [2008] 1 I.R. 669, albeit in the somewhat different context of an attempt by a respondent to resist his surrender for prosecution purposes on the grounds that there had been culpable prosecutorial delay in the case and that the proposed surrender would lead to a breach of his expeditious trial right. In his judgment in that case, Fennelly J. said at p. 692:
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> > ' ....on the facts of the case, it is demonstrably more efficient and more convenient that those matters be debated before the courts of the country where the respondent is to be tried. The prosecuting and police authorities as well as other witnesses are available to and amenable to the jurisdiction of the courts of that country. Documentary evidence, of the type demanded by the respondent, will be more readily available there. If not, its absence may be more readily explained. There may, in addition, be arguments or points of domestic law, whether based on precedents or otherwise, which the respondent can advantageously argue or rely upon which may not be available to him in this jurisdiction and of which an Irish court might not necessarily be aware. I would echo and adapt the words of Simon Brown L.J. in *Woodcock v. Government of New Zealand* [2003] EWHC 2668 (Admin), [2004] 1 W.L.R. 1979 and say that the English courts "will have an altogether clearer picture than we have of precisely what evidence is available and the issues likely to arise.'

The Court's decision

While not wishing to express any view at this stage on the merits of the respondent's s. 37 objection, his case seems to be that as a result of what he would characterise as being a fundamental defect in the system of justice in the issuing state his trial, conviction and sentence for the theft type offence to which the European arrest warrant relates was unfair, and conducted in breach of his rights under Article 6 ECHR. However, he does not make the case that he had no remedies available to him, in the sense of not being entitled under Latvian law to raise the issues of which he now complains. In fact, it is common case that various appeals, and requests for review, were open to him and, indeed, were pursued. His case is not that he had no remedies, but rather that he has tried all of the remedies available to him but was unsuccessful.

It seems to this Court that, at this point in time, it has sufficient information to enable it to determine whether the respondent has put before it sufficiently cogent evidence to put this Court upon enquiry as to whether or not the trial of the respondent leading to the conviction and sentence upon which the European arrest warrant is based was fair. It has not been demonstrated that the documentation or information before me is insufficient to enable this Court to perform its functions under the Act of 2003. I am not therefore of opinion that the suggested request for additional information is necessary and in the circumstances I am neither entitled, nor am I disposed, to make a request under s. 20(1).