

THE HIGH COURT

Record Number: 2005 No. 8 Ext

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
VALDEMARAS ALTARAVICIUS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 29th day of November 2005

1. The respondent seeks by way of discovery a copy of the domestic warrant on foot of which the European arrest warrant in this case issued in Lithuania. The Minister has stated that the domestic warrant said to have issued in Lithuania would not be provided to the respondent upon request because in his view it is not one of the statutory proofs required for the purpose of an application for surrender under s. 16 of the 2003 Act as amended. He also submits that in seeking this document by way of discovery, the respondent is indulging in the very fishing exercise which the caselaw on discovery is designed to prevent, and that no relevance has been shown to any issue raised by the Points of Objection filed and delivered in this case.

2. The respondent on the other hand submits that while there is a presumption contained in s. 4A of the Act as amended, to the effect that it is to be presumed that the issuing state will comply with the requirements of the Framework Decision, it is a rebuttable presumption given the words which follow the statement of the presumption, namely "unless the contrary is shown". Accordingly it is submitted that since the onus is upon the respondent to dislodge the presumption, he must as a matter of fair procedures be entitled to see a copy of the domestic warrant so that he can even consider whether the presumption can be rebutted.

3. In considering whether a respondent shall be entitled to be furnished with a copy of the domestic warrant, a number of parts of the statutory framework need to be looked at.

"Article 1. 2

4. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision."

5. It is necessary to point to the provisions of s.4A of the 2003 Act as amended (as inserted by s. 69 of the 2005 Act) which give effect to this statement by providing:

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

6. The provisions of the Framework Decision include the following:

"Article 8:

7. The arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) ...

(b) ...

(c) *evidence* of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having same effect, coming within the scope of Articles 1 and 2

(d) ...

(e) ...

(f) ...

(g) ..."

(my emphasis)

8. S. 11(1A) of the 2003 Act, (as substituted for s. 11(1) by s. 72(a) of the 2005 Act) by way of giving effect to that Article provides at paragraph (e) thereof in respect of Article 8 (c) above that the European arrest warrant shall specify:

" that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of that offence."

"Article 15. 2:

9. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17." (my emphasis)

10. I consider it to be relevant that the word "evidence" is used, and not simply the word "details" in Article 8 of the Framework Decision. I appreciate that s. 11(1A) of the 2003 Act, as amended does not use the word "evidence", but merely states that the European arrest warrant shall specify that such a domestic warrant is issued in the requesting state. But in so far as s. 10 of the 2003 Act, (as substituted by s. 71 of the 2005 Act) requires that the person shall, subject to the provisions of *the Act and of the Framework Decision*, be surrendered "where a judicial authority in an issuing state "duly issues" a European arrest warrant in respect of the person, it would appear to me that this Court may still be seen as bound to satisfy itself that the requirements of the Framework Decision have been met, and that the domestic warrant is one of the appropriate kind. To assist the Court in that task, as

I have set forth above, s. 4A of the 2003 Act provides a presumption by stating:

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

11. But this presumption is clearly rebuttable by the respondent. It is not an absolute presumption.

12. It seems to me that it is a reasonable requirement that a copy of the domestic warrant should be available at least to this Court, even if the requesting state does not see fit to attach a copy thereof to the European arrest warrant. The provisions of Article 15.2 of Framework Decision seem to reinforce this by attaching some importance to the question of the domestic warrant by the use of the words "in particular ...Article 8" as appearing therein.

13. This State is also entitled to presume in accordance with Article 1.2 above, that evidence of the making of the domestic warrant would be made available to the Court - and certainly upon a request being made in that regard.

14. The question as to whether the Court was under a duty to have regard to the domestic warrant was considered very helpfully by Finlay Geoghegan J. in *The Minister for Justice, Equality and Law Reform v. Fallon aka O Fallúin*, unreported, 9th September 2005. She referred to the use of the term "duly" in s. 10 of the 2003 Act, as amended. She noted that there was nothing in the act which precluded the Court from inquiring into the validity of the European arrest warrant or the domestic warrant in that case, and she accepted the definition of the word "duly" as being according to the Concise Oxford Dictionary "in accordance with what is required or expected". She also referred to the presumption in s. 4A to which I have referred, and questioned whether it applied to the issue of the European arrest warrant because of the use of the future tense, thereby implying perhaps that the presumption applied only to matters subsequent to its issue. But the learned judge states at page 11 of the unreported judgment as follows:

"...Even if the presumption in s. 4A does apply to the issue of a European arrest warrant it clearly indicates an intent by the Oireachtas that a respondent may demonstrate to the court that there has not been compliance by the issuing state with the requirements of the Framework Decision. If it does not apply then it appears to me that the use of the word "duly" in s. 10 means at a minimum that if a respondent puts before the court evidence which, if accepted, establishes as a matter of probability that the European arrest warrant was not issued in accordance with the requirements of the Framework Decision or the requirements of the Framework Decision as implemented in the issuing State then this Court is bound to inquire whether such European arrest warrant has been duly issued."

15. The learned judge in the same case went on to state that there was a second reason in that case why she was of the view that she was obliged to inquire into the validity of both the European arrest warrant and the underlying domestic warrant. This was in the light of the terms of s. 16(1)(e) of the 2003 Act, as amended which requires the Court to be satisfied before ordering the surrender of the person, that the surrender is not prohibited by Part III of the Act. She noted that s. 37(1)(b) of that Part provides that a person shall not be surrendered if his/her surrender would constitute a contravention of any provision of the Constitution, and that one such provision was Article 40.4.1 providing that:

"No citizen shall be deprived of his personal liberty save in accordance with law."

16. She concluded in that case as follows:

"If this Court were now to order the surrender of the respondent to the United Kingdom authorities pursuant to the European arrest warrant and it is a warrant which was not duly issued within the meaning of s. 10 of the Act of 2003 it appears to me that this court would be acting in breach of the rights of the respondent under Article 40.4.1 of the Constitution and hence his surrender is prohibited by Part 3 of the Act of 2003".

17. I would be of the same view. It would follow that the Court should have available to it at the least a copy of the underlying warrant, and that if that be so, fair procedures and natural justice would dictate that a copy should be furnished to the respondent. In this regard Recital (12) to the Framework Decision specifically states that a Member State may apply its own constitutional rules as to due process.

18. Since these considerations are likely to apply in all cases, it would seem to follow that in each case a copy of the underlying domestic warrant should either accompany the European arrest warrant or at least be available to the respondent and to the Court in sufficient time prior to the hearing of the application for the order for surrender. If that is done, it will obviate the need for an application for discovery. It is the case also, if I am correct about the Court's duty to ensure that the European arrest warrant is "duly" issued, that even if the respondent fails to satisfy the Court of the relevance and necessity for the production of the domestic warrant for the purpose of any issue raised by him by way of Points of Objection, his natural justice right to a copy of same would nevertheless be difficult to overlook.

19. In these circumstances I am content to deal with the matter not on the basis of a discovery application, but on the basis that a copy of the warrant is something to which the respondent is entitled, should he express a wish to be provided with same.

20. In any event, I fail to see why the furnishing of a copy of the underlying domestic warrant should be something to which such objection is being taken by any requesting state. It can serve only to undermine the "high level of confidence" between Member States referred to in Recital (10) to the Framework Decision.