

## THE HIGH COURT

2008 166 EXT

BETWEEN:

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND

JELENA VOZNUKA

RESPONDENT

**Judgment of Mr Justice Michael Peart delivered on the 23rd day of April 2009:**

The surrender of the respondent is sought by a judicial authority in Latvia, a designated state for the purpose of s. 3 of the European Arrest warrant Act, 2003 as amended ("the Act"), under a European arrest warrant which issued there on the 4th September, 2007. That warrant was endorsed for execution by the High Court on the 19th September, 2008, and the respondent was duly arrested on foot of same on the 24th November, 2008 and, as required by s. 13 of the Act, was brought before the High Court, from where she has been remanded from time to time on bail pending the hearing of this application for her surrender.

No issue is raised as to the respondent's identity and I am satisfied in any event from the affidavit filed herein by Sgt. James Kirwan, the arresting Garda officer, that the person who he arrested on that date is the person in respect of whom this warrant has been issued in Latvia.

Her surrender is sought so that she can be prosecuted for a single offence described as "*an illegal entry into apartment against will of person living there*". That Latvian offence satisfies the minimum gravity requirement under the Framework Decision since it attracts a maximum penalty of up to two years imprisonment, and in some circumstances up to four years, according to the information contained in the warrant. The only issue raised against surrender in this case is that of correspondence and I will come to that.

Otherwise, I am satisfied that the Court is not required to refuse to order surrender by any provision of ss 21A, 22, 23 or 24 of the Act, and that he surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

**Correspondence:**

The warrant contains details of the acts of the respondent said to give rise to the offence. That information is added to by some additional information provided by letter from the Latvian Court to the Central authority here. The details in the warrant, as translated, appear as follows:

*"[The respondent] committed an illegal entering into apartment against will of person living there.*

*Namely, on August 11, 2005 t 9.00-10.00 a.m. [the respondent] being aware that living premises at [address] are lawfully occupied by Ieva Viktorija Mizane and that she lives therein, [the respondent] deceived the employees of house management company SIA Jurmalas Namsaimnieks regarding necessity to unplug the gas supply in the mentioned living premises in absence of Ieva Viktorija Mizane while a possibility existed to get into touch with Ieva Viktorija Mizane, without permission of the latter and while there existed no circumstances when immediate getting into apartment would be lawfully based, through intermediation of employees of SIA Jurmalas Namsaimnieks who prized up the door locks of mentioned apartment, illegally and against to (sic) will of Ieva Viktorija Mizane, entered the living premises at [address]. Hence [respondent] with her illegal actions rudely violated the fundamental interests of Ieva Viktorija Mizane regarding inviolability of her residential premises which provides for that nobody has rights to enter a residential premises without lawful grounds and against will of person who lives in the concerned apartment, namely committed a criminal offence provided for by the 1st Part of 143rd Section of the Criminal Law."*

The additional information provided by the issuing judicial authority states, inter alia, that on 4th August 2005 (i.e. some days prior to the date of this alleged offence) the landlord of the apartment had failed to obtain an eviction order against the tenant, and that on the 9th August 2005 (a couple of days prior to the date of this alleged offence) the respondent "as authorized representative" of the landlord had submitted an application to the local gas company to have the gas supply disconnected. It is stated also that in making that application the respondent deceived the gas company by stating that the tenant was "waiving" a gas supply service.

This information states additionally that "*[the respondent] with intention illegally enter into the apartment of another against will of person living there with officials of the Municipal Police prized up the door of apartment and dismantled the gas meter specifying in the statement on dismantle or disconnecting of gas meter and gas equipment that reason of that doing is waiving of concerned subscriber from gas supply services. The lock was replaced as well.*" (my emphasis)

It also states that the respondent did not have the consent of the tenant to enter the apartment, that the rental agreement was not terminated, and that the owner and her authorised representative (i.e. the respondent) had no rights to unilaterally breach the agreement. It is stated also that while entering the apartment the door was damaged, and that certain documentation disappeared from the apartment.

Lastly I should refer to the fact that this additional information states at paragraph 8:

*"It can not be concluded on the basis of the files of the criminal case what was the intention of [the respondent] and her further actions."*

On these facts Caroline Cummings BL for the applicant submits that if these acts were done by a person in this State a number of different offences would be committed and that correspondence is established for the purpose of s. 5 of the Act. The first candidate for correspondence submitted is an offence contrary to s. 11 (1) of the Criminal Justice (Public Order) Act, 1994 which provides:

*"11. – (1) It shall be an offence for a person –*

*(a) to enter any building or the curtilage of any building or any part of such building or curtilage as a trespasser, or*

*(b) to be within the vicinity of any such building or cartilage or part of such building or cartilage for the purpose of trespassing thereon,*

*in circumstances giving rise to the reasonable inference that such entry or presence was with intent to commit an offence or with intent to unlawfully interfere with any property situate therein."* (my emphasis)

Dean Kelly BL for the respondent submits that the additional information which has been provided makes it clear by reference to the existence of a tenancy agreement that the facts said to give rise to the offence in Latvia would in this jurisdiction be regarded simply as a civil dispute as between a landlord and a tenant, and that there is no criminal offence here of trespass *simpliciter*. He submits that there is no evidence that the respondent did not have the consent of the owner of the premises, and in fact the evidence is that she had that consent. He submits also that there is nothing to show any intention to commit an offence or to unlawfully interfere with property in the apartment. He suggests that in the absence of any knowledge as to the precise terms of the tenancy agreement between the landlord and the tenant it cannot be inferred reasonably that what occurred was contrary to that agreement, and he refers to the fact that the information provided states clearly that what the respondent is alleged to have done occurred in the presence of the municipal police as can be regarded as being lawful therefore.

The second such candidate offence is one contrary to s. 13 (1) of the Criminal Justice (Public Order) Act, 1994 which provides:

*"13.—(1) It shall be an offence for a person, without reasonable excuse, to trespass on any building or the cartilage thereof in such a manner as causes or is likely to cause fear in another person."*

The basis for this offence is said to be a statement in the additional information at paragraph 6 thereof as follows:

*"While entering into the apartment there was a probability to put into fear the inhabitants of next door apartments when door of concerned apartment was prized up. When the tenant returned to the apartment she was reasonably concerned because of prized doors and dismantled meter."*

Mr Kelly submits that there is nothing of a factual nature in the warrant itself to support this offence, and that what is contained in the additional information is attempting to "dress up" the warrant in a way which is not permissible for the purpose of establishing correspondence. He submits that the known facts go nowhere near establishing that the respondent caused or was likely to cause fear in another person. He refers also to the fact that, as already referred to, the additional information at paragraph 8 thereof states clearly that it is not possible to say what was the respondent's intention.

The third candidate put forward is an offence of burglary contrary to s. 12 (1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 which provides:

*"12. – (1) A person is guilty of burglary if he or she*

*(a) enters any building or part of a building as a trespasser and with intent to commit an arrestable offence, or*

*(b) having entered any building or part of a building as a trespasser, commits or attempts to commit any such offence therein."*

The "arrestable offence" for the purpose of the present case is submitted to be one contrary to s. 2 (1) of the Criminal Damage Act, 1991 which in turn provides:

*"2.—(1) A person who without lawful excuse damages any property belonging to another intending to damage any such property or being reckless as to whether any such property would be damaged shall be guilty of an offence."*

Again, Mr Kelly refers to the fact that it is stated that it is not possible to know the respondent's intention, and that for the offence under s. 12 (1)(a) it is a necessary ingredient that a person enters a building with the intention to commit an arrestable offence, and that in relation to (b) there is nothing to show that having entered the apartment any arrestable offence was committed.

#### **Conclusion:**

A person will commit an offence under s. 11 of the Criminal Justice (Public Order) Act, 1994 if a number of ingredients are met, and, inter alia for this case, the following:

1. enter a building
2. do so as a trespasser
3. there is a reasonable inference that entry was with intent to unlawfully interfere with any property therein.

I am satisfied that it is clear from the warrant and information that the respondent entered the apartment. The question arises as to whether she did so as a trespasser. Mr Kelly suggests that since she had the consent of the owner (as opposed to the tenant) she cannot be classified as a trespasser. Ms. Cummins on the other hand submits that without the consent of the tenant who was living there on foot of a tenancy agreement any entry becomes a trespass. I agree with that submission. The information provided states that the tenancy agreement had not been terminated, and the owner was not entitled to unilaterally breach the agreement. For the purpose of correspondence, matters must be established by reference to Irish law, and what is or is not a trespass must be considered by reference to that law. In that regard I refer to the judgment of Kenny J. in *Whelan v. Madigan* [1978] ILRM 136. In that case the defendant landlord was held to be liable in damages for trespass where, during the currency of the tenancy in respect of one of the plaintiff tenants, he had damaged the door of the premises with the intention of breaking it down and by making a hole in a partition wall in the premises. There was a trespass also when the landlord removed a letter box. In the case of a second tenant it was held that the removal of a door and a letter box also constituted trespass by the landlord. In the present case the respondent is alleged to have, with the consent of the landlord, "prized up" the door and dismantled the gas meter. These would be acts of trespass if done here in the circumstances in which they are alleged to have been done in Latvia. In my view if the respondent did here what she is alleged to have done in Latvia she would enter the apartment as a trespasser, being a person so entering without the consent of the person actually living there as opposed to the consent of the landlord.

The final ingredient is that the circumstances and facts must reasonably give rise to the inference that entry was with intent to unlawfully interfere with any property therein. Mr Kelly has submitted, as outlined already, that the additional information states that it cannot be concluded from the criminal file what was the respondent's intention. That may well be the case. But it is another matter altogether to conclude from that statement that a reasonable inference as to that intention is not possible on a reasonable reading of the known facts. I think it is perfectly reasonable to infer from what is known that what is alleged is that the respondent entered the apartment with the intention of dismantling the gas meter. That is an interference with property.

In my view all the ingredients for an offence contrary to s. 11 (1) of the Criminal Justice (Public Order) Act 1994 are established and there is correspondence with that offence.

In these circumstances it is unnecessary to consider whether there is correspondence made out in relation to the second and third candidate offences, and I express no view on them.

I will therefore make the order sought on this application for the respondent's surrender to Latvia.