

THE HIGH COURT

Record Number 2006 No. 78 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

**AND
MAROS SULEJ**

RESPONDENT

THE HIGH COURT

Record Number 2006 No. 79 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

**AND
TOMAS PUTA**

RESPONDENT

THE HIGH COURT

Record Number 2006 No. 6123P

BETWEEN

MAROS SULEJ

PLAINTIFF

**AND
THE ATTORNEY GENERAL, AND THE MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM**

THE HIGH COURT

Record Number 2006 No. 6121P

BETWEEN

TOMAS PUTA

PLAINTIFF

**AND
THE ATTORNEY GENERAL, AND THE MINISTER FOR JUSTICE,
EQUALITY AND LAW REFORM**

Judgment of Mr Justice Michael Peart delivered on the 24th day of April 2007

These two applications for surrender can conveniently be dealt with together.

Each respondent is sought to be surrendered to the Czech Republic, each on foot of a separate European arrest warrant dated the 10th July 2006. Each warrant was duly endorsed for execution by the High Court on the 14th July 2006, and each respondent was arrested on the 25th August 2006 and brought before the Court as required by s. 13 of the European Arrest Warrant Act, 2003 as amended ("the Act"). They were remanded in custody pending the hearing of the present application under s. 16 of the Act.

No issue has been raised by either respondent as to their identity, and I am satisfied from the evidence given by way of affidavit by the arresting Garda officer, Thomas Malone, that each person before the Court is the person in respect of whom the respective European arrest warrant has been issued.

The offences for which each is sought are a combination of robbery offences and theft. I am satisfied that the acts set forth in respect of these offences in the warrants would if committed in this State be offences respectively of robbery under s. 14 of the Criminal Justice (Theft and Fraud offences) Act, 2001, and of theft under s. 4 of the same Act. No issue has been raised by either respondent in relation to correspondence, and I am satisfied also that the offences for which these respondents are sought satisfy the minimum gravity requirement under the Act.

These are not cases in which any prosecution or punishment has occurred in absentia, so no undertaking under s. 45 of the Act is required.

Issues have been raised by each respondent in relation to the rule of specialty and sections 22 and 24 of the Act, and I will come to those issues.

In addition the respondents have raised issues in relation to fundamental rights under Part III of the Act, and I will deal with those also.

Subject to reaching conclusions on these issues, I am satisfied that the Court is required to make the order which is sought in respect of each respondent under s. 16 of the Act.

Points of Objection relied upon:

1. The European arrest warrants have not been "duly issued" in accordance with law and do not 'trigger' s.10 of the Act, the said purported issuing being in breach of the Constitution of the Czech Republic:

The basis for this objection is the fact that prior to the issue of the European arrest warrants in each case on the 10th July 2006, the authorities in the Czech Republic had forwarded prior warrants, and that these could not be dealt with here given the then state of Czech law. It appears that as a result of representations made to the Czech authorities by the Central Authority here, the law was changed in the Czech Republic by the passing of Law Number 253/2006, effective from 1st July 2006 in relation to the possibility to extradite Czech Nationals in respect of offences committed prior to 1st January 2005.

The respondents submit that these warrants, which issued on the 10th July 2006 were not 'duly issued' for the purpose of s. 10 of the Act, since they were issued under a Czech Law which had been amended so as to retrospectively cover these respondents.

There is no merit in this point of objection. The amendment to the law was in respect of persons whose extradition may be sought from the Czech Republic by another Member State, and not the reverse. In any event, this Court is entitled and required to presume

that if the authorities in the Czech Republic have sent a European arrest warrant for execution here that it has done so in accordance with the laws of the Czech Republic. The fact that the respondents may have instituted a challenge in the Czech Republic to the constitutionality of the new law and that this proceeding has been accepted by the Constitutional Court is something which cannot interfere with the obligation of this State to operate the Council Framework Decision in relation to a state which the Minister has designated in accordance with s. 3 of the Act. It would be entirely inappropriate for this Court to refuse to order surrender only on the basis of allowing the respondents to remain here until such time as their constitutional challenge to the Czech legislation has been concluded. The fact is that warrants issued on the 10th July 2006 were received here in August 2006. The Court can assume on the basis of the mutual trust and confidence between Member States referred to in the Recitals to the Framework Decision that these warrants have been duly issued, and having said that, I am satisfied that there is nothing appearing in the 'affidavits' from Czech lawyers on behalf of the respondents which establishes the contrary. Section 10 is 'triggered' - the phrase used by the respondents in their submissions.

2. The surrender of the respondents would be contrary to Part III of the Act, and in particular s. 37 thereof, constituting an unlawful deprivation of liberty:

The basis of this objection is that if an order of surrender is made under s. 16 of the Act, it is a requirement under s. 16(4) of the Act that between the making of the order and the surrender taking place that the respondents are committed to prison without the possibility of bail. I have concluded that this is the meaning to be given to s. 16(4) of the Act, and I have concluded also that such an interpretation in accordance with the ordinary meaning of the words used in the section is not unconstitutional and is a proportionate response to the obligation of this State to ensure that persons whose surrender has been ordered are available to be surrendered when arrangements have been put in place (see judgments in *Minister for Justice, Equality and Law Reform v. Draisey*, unreported, High Court, 24th November 2006 and *Minister for Justice, Equality and Law Reform v. Butenas*, High Court, unreported, December 2006). I have no reason to express a different view in the present cases, in spite of the able submissions to the contrary made in these cases by Kieran Kelly BL on these respondents' behalf on this point that, for example, in Part II cases under the Extradition Act, 1965, it is not a requirement following the making of an extradition order that the person be committed without bail pending extradition being effected, and that s. 16(4) of the European Arrest Warrant Act 2003, as amended cannot oust the original jurisdiction of the High Court to grant bail in all cases.

3. The surrender of the respondents would constitute a violation of their fundamental rights and freedoms and the rule of law in view of the risks such surrender, and corruption said by them to exist in the Czech Republic would pose to their rights to bodily integrity and life:

Each respondent has sworn in an affidavit that if surrendered their safety and lives cannot be guaranteed and they have each listed a number of persons who they say have been killed. They say that corruption is rife at all levels in the Czech Republic, and in particular he refers to this state of affairs pertaining in the police force. They fear that if returned false witnesses will swear facts against them for reward, and they say that they left that state for their safety. They also state that there has been much media coverage about them and that they cannot get a fair trial as a result. Judge Petr Franc, in his letter to the Minister for Justice, Equality and Law Reform dated 8th March 2007 has referred to this question of publicity, but has referred to the fact that it is not something which will affect the Court, and that there is no jury trial in the Czech Republic. He states that the trial will be before one professional judge and two lay judges. He is satisfied that the publicity, which he accepts has occurred, will not in any way affect the fairness of any trial, and that there is a right to appeal against any conviction.

The fact that these respondents allege that there is corruption rife in the Czech Republic cannot be a reason not to surrender them. The proposition put forward is far too general and unspecific to amount to anything of substance. There is nothing to establish that these respondents are the targets of such corruption other than their own unsubstantiated averments and this is not sufficient to rebut the presumption that their fundamental rights will be respected and protected.

It may well be that certain persons have disappeared or been killed as averred by them. It may well be that persons who are innocent have been interrogated and detained. But even if that be true, it cannot mean that these respondents will suffer a similar fate simply because they have some subjective fear that it will occur. If they are in any danger upon surrender, this Court is entitled to presume that they will be afforded whatever protection may be required to protect their safety. It seems likely for example that if surrendered they will be detained in custody given the fact that their surrender is being sought from this State. This affords protection from unwanted attention. This point of objection lacks any sufficient substance to enable this Court to conclude that their surrender is prohibited under Part III of the Act or the Framework Decision.

4. There has been pre-judgment of the respondents in the Czech Republic, and they cannot get a fair trial:

The basis for this objection is that after the respondents were arrested here on foot of the warrants referred to, certain personnel including Judge Petr Franc have come to Ireland in order to be present at a mutual assistance request, and that he will be the judge who will preside over any trial of the respondents if they are surrendered, and that there has been pre-judgment therefore on his part, infringing principles of natural and constitutional justice. It appears that this judge has already presided over the trial of certain other persons implicated in the offences alleged against these respondents. The respondents submit that they cannot therefore receive a fair trial.

It is a fact that there was an examination on oath of the respondents before Judge William Early in Cloverhill District Court on the 22nd November 2006 at which Judge Petr Franc was present, and that this was part of a mutual assistance procedure resulting in a statement being taken from the respondents and that this occurred in the context of a criminal prosecution in which the respondents were themselves the accused.

The basis of the Framework Decision given effect to by the Act is that of co-operation and mutual assistance between judicial authorities in Member States. This is based on the high level of mutual trust and confidence between Member States. Prosecution procedures and judicial systems of Member States will inevitably vary and vary significantly in many instances. For example, in some member States, as is well known, the prosecutor will be a judge. These differences have been accommodated within the Framework Decision which is based on the confidence which all Member States have in each others' systems for administering justice. It is not open therefore for this Court to look at how the judicial or prosecution process works in the Czech Republic and determine that because some particular procedure is one which is unknown here that therefore a trial process in that State is an unfair one. Such a possibility would run totally against the spirit and purpose of the Framework Decision. Specific expression is given to that trust and confidence by the inclusion in the Act of the provisions of s. 4A, as inserted, and which provides:

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

The fact that under a separate regime mutual assistance was rendered to the prosecution authorities, albeit in a way which allowed the judge likely to hear the cases to be present cannot in my view be a reason for this Court to conclude now that any trial of the

respondents before the same judge will be a breach of their rights to natural and constitutional justice. Such a conclusion would fly in the face of the expressed basis of mutual trust and confidence in the judicial system of a designated state. It is to be presumed that the Minister for Foreign Affairs, prior to designating the Czech Republic under s. 3 of the Act was satisfied that the judicial system in that country is one in which mutual trust and confidence can be reposed. Nothing averred to or submitted by the respondents has gone anywhere near rebutting that presumption, and in any event it is a matter for the Minister under s. 3 to revoke the designation should any circumstances be felt to exist which would warrant so doing.

This point of objection is also grounded on the fact that two persons who could be regarded as co-accused of the respondents in relation to the offences for which their surrender has been sought have already had their cases dealt with and have been convicted. The point being made is that the judge who will be part of the panel of adjudicators when the respondents face their trial, if surrendered, has already heard and adjudicated upon the evidence against them and therefore will have pre-judged the evidence in question. The judge in question has written a letter dated 8th March 2007 to the Minister for Justice, Equality and Law Reform in response to a letter from him of the same date, and he deals with this point of objection. He confirms that the other two accused have been convicted on foot of evidence which will also be used against the two respondents herein, but goes on to state that they will have the entitlement to have that evidence presented again and to give their own evidence. He makes it clear that the prosecution which has already taken place was against the two other co-accused only, and that the respondents were not dealt with in absentia. This Court is obliged and entitled to assume that the procedures available in this regard satisfy at least minimum standards of fairness, for so long as the Czech Republic remains a state designated by the Minister for Foreign Affairs pursuant to s. 3 of the Act. The respondents have not rebutted that very strong presumption. The fact that procedures there differ from those here, or indeed that something which occurs there would not be acceptable here, does not of itself mean that the system of justice available in that state is one to which persons must not be surrendered. A designated state is entitled to enjoyment of the presumption that its judicial system operates at an acceptable level of fairness for other member States to have the level of trust and confidence referred to in the recital to the Framework Decision itself.

5. The surrender of the respondents would amount to a breach of sections 22 and 24 of the Act – i.e. 'specialty' provisions:
By section 22 of the Act, the traditional rule of specialty was disapplied whereby a person whose surrender or extradition was ordered in respect of an offence or offences referred to in the request for surrender, could not be prosecuted, detained or punished in respect of any offence other than those for which extradition had been ordered. Most extradition treaties contained such a provision. However, Article 27 of the Framework Decision provides for new arrangements in relation to the prosecution or punishment of offences which are other than those the subject of the European arrest warrant. Section 22 of the Act has given effect to that Article.

Article 27 provides as follows:

“Article 27 Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
3. Paragraph 2 does not apply in the following cases:
 - (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
 - (b) the offence is not punishable by a custodial sentence or detention order;
 - (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
 - (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
 - (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the specialty rule, in accordance with Article 13;
 - (f) when the person, after his/her surrender, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
 - (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.”

Section 22 of the Act makes provision in broadly similar terms.

This point being submitted by the respondents arises out of something said by a member of the Czech police, Major Gregor, who attended at an application for bail made at Cloverhill Prison by the respondents following their arrest on foot of these warrants. When objecting to bail being granted to the respondent, Puta, Major Gregor is recorded in the transcript of that bail hearing as having been asked by Mr Kelly whether he “may face additional charges which are still occurring in your investigation” (sic).

Major Gregor replied that “it is a bit problematic because there are some matters which are not in the European arrest warrant. First of all he will have to go to court and face the charges in the European arrest warrant. In relation to the other warrant they will have

to ask or issue another warrant for the charges which are not in the European arrest warrant. But these are legal matters, this is a matter for police, it is a legal matter". It was clarified in a subsequent question that he intended to say that "it was not a police issue".

In respect of the respondent, Sulej, Major Gregor was asked about an investigation into offences other than those referred to in the European arrest warrant. Major Gregor is recorded as stating: "What is in the European arrest warrant will be at the court but the other matters where Mr Sulej is suspect are being investigated". When asked if he might also face other charges if he is surrendered, Major Gregor stated: "There will be another court. Mr Sulej is not from the Czech Republic, he is from Slovak Republic. Another court will deal with this case." He went on to say that any other charges would be the subject of other warrants than the European arrest warrant.

It is submitted by Counsel for the respondents that this evidence is sufficient to rebut the presumption contained in s. 22 (3) of the Act which provides:

"(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to-

(a) proceed against him or her,

(b) sentence or detain him or her in his or her personal liberty,

in respect of an offence, unless the contrary is proved."

However, in my view, the evidence of Major Gregor, even if it is to be taken as confirmation that each respondent will be prosecuted, if surrendered, in respect of offences outside those referred to in the European arrest warrants on foot of which their surrender is currently sought, this Court is not required to refuse to surrender them in view of the later subsections of s. 22 which make provision for circumstances where, even in such circumstances, surrender will be ordered. Section 22 (6) and (7) are particularly relevant, since they provide that where the Court is satisfied that the respondents will not be so prosecuted or punished in respect of other offences "without the issuing judicial authority first obtaining the consent of the High Court", the Court shall not refuse to order surrender. These provisions give effect to what is provided in Article 27 of the Framework Decision.

Again it is necessary to refer to the provisions of s. 4A of the Act which creates a presumption that the issuing state will comply with its obligations under the Framework Decision, and nothing which Major Gregor has stated, even if it is taken as meaning that as a matter of probability the respondents will face other charges if surrendered, would satisfy this Court that the authorities in the Czech Republic will not, in the event of wishing to proceed against these respondents in respect of matters outside the European arrest warrants issued herein, do so without complying with the need to if necessary obtain the consent of the High Court as provided for. It is to be presumed that it will do so if necessary. This point of objection must fail.

In respect of the respondent, Sulej, there is a submission based on the fact that he is not of Czech nationality but rather from Slovakia, that he may be surrendered on to that country if this Court orders his surrender to the Czech Republic, given the evidence of Major Gregor, and that this would be a breach of s. 24 of the Act which provides:

24.—(1) The High Court shall refuse to surrender a person under this Act if it is satisfied that-

(a) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be extradited to a third country without the consent of the High Court and the Minister first being obtained.

(b) the person will be extradited to a third country without such consent first being obtained.

(2) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to extradite him or her to a third country, unless the contrary is proved.

(3) The issuing state may request, in writing, the High Court to consent to the extradition to a third country by the issuing state of a person surrendered to the issuing state under this Act.

(4) The High Court give its consent to a request under subsection (3) if it is satisfied that

(a) were the person concerned in the State, and

(b) were a request for his or her extradition received in the State from the third country concerned,

his or her extradition pursuant to such a request would not be prohibited under the Extradition Acts"

For the same reasons given in respect of the s. 22 point just dealt with, this objection must also fail.

6. There is a lack of reciprocity in the manner in which the Czech Republic has enacted the Council Framework Decision dated 13th June 2002, in that the Czech Republic will not surrender persons to this State on the same basis as this State surrenders to that country:

The basis for this submission is that the law by which the Framework Decision was transposed into Czech national law (Law Number 539/2004) did so in a way did not permit a Czech national to be surrendered from the Czech Republic to another Member State in respect of any offence committed prior to 1st January 2005. That law was later amended after representations in the case of these respondents by the Irish Government, so that by the enactment in the Czech Republic of Law Number 253/2006 which provided that a Czech citizen could thereafter be surrendered to another Member State in respect of such offences. However, the respondents submit that the lack of reciprocity by reason of Law Number 539/2004 is submitted by the respondents to be a reason why this State should refuse to surrender them to the Czech Republic. Each respondent, through their Czech lawyers has lodged a challenge, on the

basis of retrospectivity, to this legislation with the Constitutional Court in the Czech Republic and the cases have been accepted by that Court for argument at some time in the future.

Without dealing with the submissions of Counsel in any detail, it is perfectly clear that even if there is some disparity between the manner in which the Framework Decision has been introduced into Czech law and how it has been given effect to in this State, there can be no reason resulting from that fact, if it be such, why this State should refuse to surrender in accordance with the requirements of the Framework Decision and the Act here. There can be no question of this Court examining how another Member State has given effect to the Framework Decision, and deciding in some case that because a member State may have given effect to it in some way different to this State, that we here should not honour obligations which we have entered into. This State has designated the Czech Republic for the purpose of s. 3 of the Act, and that is an end of the matter until such time as the Minister has revoked his Order of designation, as he/she is empowered to do by the section which provides as follows:

“3.—(1) For the purposes of this Act, the Minister for Foreign Affairs may, by order, designate a Member State that has, under its national law, given effect to the Framework Decision.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this section, including an order under this subsection.”

7. The European Arrest Warrant Act, 2003 is unconstitutional in that it is based on a Framework Decision not properly ratified in advance by the Oireachtas as required by Article 29 of the Constitution:

This point of objection has been fully dealt with in my judgment in the case of *Minister for Justice, Equality and Law Reform v. Iqbal* and in which I have given judgment subsequent to the argument of the same point in the present cases. It is unnecessary for me to set out both the factual and the legal basis for the point being urged herein, as it is fully dealt with in *Iqbal*. I have concluded that the Act suffers no constitutional frailty arising from anything which occurred in the Oireachtas either on the 12th December 2001 when the Oireachtas resolved to approve the draft proposal for the Framework Decision, or on the 28th December 2003 when the Act was passed, and that there has been no breach of Article 29 of the Constitution. I have no reason to express a different view herein. I accordingly dismiss the proceedings commenced by way of Plenary Summons in relation to this issue by each respondent.

I am satisfied that in respect of each respondent herein an order for surrender must be made under s. 16 of the Act, and I so order.