

## THE HIGH COURT

Record Number: 2008 117 Ext

Between:

Minister for Justice, Equality and Law Reform

Applicant

And

Domenikas Paulauskas

Respondent

**Judgment of Mr Justice Michael Peart delivered on the 28th day of January 2009:**

The surrender of the respondent is sought by a judicial authority in Lithuania on foot of a European arrest warrant which issued there on the 4th April 2008. That warrant was endorsed here prior to the arrest of the respondent. That arrest occurred on the 16th June 2008, following which the respondent was brought before the High Court as required and he was remanded in custody from time to time pending the hearing of the present application for his surrender.

No issue is raised as to the identity of the respondent, and I am satisfied in any event from the affidavit evidence of Inspector Linehan that the person whom he arrested on that date is the person in respect of whom this warrant has been issued.

The respondent's surrender is sought so that he can be prosecuted for two offences set forth in the warrant. The first offence described is what can be loosely described as a public order offence, and I will come to that in more detail in due course. The second offence is one of having stabbed two named persons with a knife causing them serious injury as described in the warrant, and as a result of which the victims are stated to have "suffered serious health impairment". These words are important to the respondent's submissions in relation to correspondence, and I will come to that. Each of these offences is said to have occurred on the same occasion on the 18th December 2005.

I am satisfied that there is no reason why his surrender must be refused by any provision of sections 21A, 22, 23 or 24 of the Act, and, subject to addressing the somewhat net point raised in relation to correspondence in relation to these offences, I am satisfied that his surrender is not prohibited by any provision of Part III of the European Arrest Warrant Act, 2003, as amended ("the Act") or the Framework Decision.

As I have said there are two offences referred to in this warrant. The issuing judicial authority has ticked the box in paragraph E.I of the warrant to indicate that the stabbing offence is within the category of offence referred to in Article 2.2 of the Framework Decision as "grievous bodily harm". However, in paragraph E.II of the warrant the issuing judicial authority, under the heading "Full description of offence(s) not covered by section I above", has stated: "Violation of public order; serious health impairment". It is the existence of the words "serious health impairment" in paragraph E.II which grounds the issue raised as to correspondence and the validity of the warrant.

Conor Bowman BL has referred to the judgment of Denham J. in *Minister for Justice, Equality and Law Reform v. Desjatnikovs*, unreported, Supreme Court, 31st July 2008 wherein in the context of the facts of that case the learned judge referred to the need for a judicial authority to make a decision in relation to whether the offence is an Article 2.2 offence and in that case mark the box, as it were, to so indicate, or to require correspondence to be established. He submits that in relation to the stabbing offence the issuing judicial authority appears to have done both, and that this offends against that judgment. He submits that the inclusion of the stabbing offence in paragraph E.II contradicts the marking of the offence as an Article 2.2 offence, and that surrender should be regarded as prohibited as a result.

No other issue arises on this application. Remy Farrell BL disagrees that the way the issuing judicial authority has completed paragraph E of the warrant results in a prohibition of surrender. He submits that s. 38 of the Act does not prohibit surrender in the circumstances which have been referred to. He submits that marking the offence in paragraph E.I and including it also in E.II are not mutually exclusive, even if the latter was not necessary. But he accepts that having placed it in the latter paragraph means that correspondence must be established. He refers to the wording of s. 38 (1) of the Act which provides as relevant:

"38.—(1) Subject to subsection (2), a person **shall not be surrendered** to an issuing state under this Act in respect of an offence **unless—**

**(a) the offence corresponds to an offence under the law of the State, and—**

*(i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or*

*(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,*

**or**

**(b) the offence is an offence to which paragraph 2 of Article 2 of the Framework Decision applies or is an offence that consists of conduct specified in that paragraph, and under the law of the issuing state the offence is punishable by**

*imprisonment for a maximum period of not less than 3 years (my emphasis)."*

This is his submission means that the offence can either be shown to correspond in accordance with s. 5 of the Act, or it can be an offence within Article 2.2.

He submits that the decision in Desjatnikovs addressed a different difficulty in how the warrant in that case had been completed. In that case, the offence had not been marked as an Article 2.2 offence, and it was the case that the offence did not correspond in accordance with s. 5 of the Act, and the issue really was whether the additional provision in s. 38 related to the additional words "*or is an offence that consists of conduct specified in that paragraph*" which that judgment addressed, and that the comments of the learned judge as to the necessity for the issuing judicial authority to make a choice as to whether the offence was an Article 2.2 offence or one where correspondence must be established must be seen as in the context of the issue arising in that case, which is entirely different to the situation with the present warrant.

In the present case he submits that the facts giving rise to the stabbing offence would if committed in this State give rise to an offence under either s. 3 or s. 4 of the Non-Fatal Offences Against the Person Act, 1997. He submits that the public order offence corresponds to an offence here under s. 6 of the Criminal Justice (Public Order) Act, 1994.

I am satisfied that the candidates for correspondence put forward by Mr Farrell are corresponding offences to those the subject of this warrant.

I am not satisfied that the fact that the stabbing offence has been marked and included in paragraph E.II of the warrant constitutes an error such that surrender is prohibited. What the issuing judicial authority has done in that regard does not offence against Article 2 of the Framework Decision or the provisions of s. 38 of the Act, even if it would be more correct for that authority to have simply marked that offence as an Article 2.2, or not to have done so and simply included it in paragraph E.II.

For all these reasons I am satisfied that all the requirements of s. 16(1) of the Act have been complied with, and that the Court is required to make the order for surrender as sought. I will so order.