Neutral Citation Number: [2006] IEHC 379

THE HIGH COURT

Record Number: 2006 No. 88 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
KASPARS KONCIS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 24th day of November 2006

1. The European arrest warrant in this case seeks the surrender of the respondent to Latvia for the purposes of conducting a criminal prosecution against him for offences set out therein as robbery, hooliganism and misappropriation. These offences are alleged to have been committed in May and June 2004. The warrant itself is dated 21st September 2005. The domestic warrants on foot of which it was issued are arrest warrants and are dated respectively 8th September 2004, 14th September 2004 and 7th October 2004.

2. The European arrest warrant was endorsed by the High Court on the 3rd August 2006, and thereafter the respondent was arrested here on the 22nd August 2006. He was brought before the High Court on the following day, and was thereafter remanded form time to time until the hearing of the present application.

3. Having read the details of the facts alleged to constitute the offences concerned, and it is unnecessary to set them out in any detail at this stage, it is clear that the respondent faces prosecution for offences which are the equivalent generally of offences of theft, and assault causing harm. Subject to addressing a submission on correspondence relating to the theft charges, I am satisfied that the acts alleged in the warrant would give rise to offences here of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud) Offences Act, 2001, and of assault causing harm contrary to s. 3 of the Non-Fatal Offences against the Person Act, 1997.

4. No issue is raised as to identity of the respondent, and I am in any event satisfied that he is the person in respect of which the warrant has been issued. I am satisfied also that there is no reason for refusing surrender under s. 21A, 22, 23 or 24 of the Act, and again subject to addressing a submission by Kieran Kelly BL as to delay, I am satisfied that the respondent's surrender is not prohibited by anything in Part 3 of the Act or the Framework Decision.

Correspondence

5. In relation to correspondence, Mr Kelly refers to the fact that in the narrative of the offences said to have been committed it states "At about 16.50 on May 9 [the respondent] *being punished for robbery* and under the influence of alcoholic drinks" did certain things amounting to robbery. The narrative for the second offence of robbery states that the respondent "being a person who had done robbery before" robbed the victim concerned in that robbery. He submits that since an essential ingredient of the offence is that the person be a person who has a previous conviction for robbery, he is being charged because he has a previous conviction, and that such an offence does not exist in this country and would be unconstitutional. Mr Kelly submits that such an ingredient of the offence infringes his constitutional rights to a trial in due course of law, since, as stated in *King v. DPP* [1981] IR 233 "*one of the concepts of justice which the Courts have always accepted is that evidence of character or of previous convictions shall not be given at a criminal trial except at the instigation of the accused, as that could prejudice the fair trial of the issue of the guilt or innocence of the accused*."

6. Robert Barron SC submits that the respondent for this submission would have to show that he was exposed in Latvia to a trial by a jury and that he has not done so. But in addition he submits that the ingredient of the offence about which complaint is made is not something which touches upon guilt or innocence but speaks only to severity of penalty which would be imposed. He refers to a part of the warrant which sets out the nature and legal classification of the offences which states that the offence of robbery is punishable under Article 176, Part 2 of the Criminal Law by a period of between six and twelve years, but under Part 3 of Article 176 a person who has "*done robbery before*" faces a higher penalty of between eight and fifteen years. Accordingly it is submitted that the categorization of the respondent as someone who had already robbed or been punished for robbery is relevant only to punishment and not to guilt or innocence.

7. He submits also that it must be presumed for the purposes of the Framework Decision and the Act that certain minimum guarantees of fair procedures exist in the Republic of Latvia, since they are Member States of the European Union and are a designated state here for the purposes of the European Arrest Warrant Act. He submits that there is absolutely no proof adduced that there would be any breach of fair procedures.

8. I agree with Mr Barron's submissions. It is clear from the passages of the Criminal Law of Latvia set forth in the warrant that there is a charge of robbery under Article 176 (presumably Part 1 thereof); that under Part 2 it is punishable by the period referred; and that if it is an offence to which Part 3 applies, in other words where a person has a previous conviction for robbery, a higher penalty is applicable. There can be no difficulty arising such as suggested by the respondent. As has been stated on a number of occasions by now, it is obvious that the legal systems of different Member States will differ both as to substantive law and criminal procedures. It cannot be a requirement that in every respect the laws and procedures of these states will be the same, or even similar or equivalent. For that reason there is to exist a high level of confidence between Member States. That follows from membership of the European Union, such states being required and expected to have within the laws of the state certain minimum standards of fair procedures and protection of fundamental rights. A respondent seeking to unsettle such a presumption and understanding has a heavy onus to discharge and a high hurdle to overcome before his/her surrender will be refused. This respondent has fallen well short of discharging that onus.

Delay

9. The points of objection state that there has been delay in making application for the indorsement and execution of the warrant contrary to s. 13 of the Act and Article 17 of the Framework Decision. The former states that such an application by the Central Authority shall be made "as soon as may be after it receives a European arrest warrant", whereas the latter Article states that "a European arrest warrant shall be dealt with and executed as a matter of urgency".

10. This complaint of delay is put on the basis that whereas the warrant issued on the 21st September 2005, the respondent was not arrested until the 22nd August 2006 – a period of eleven months. Mr Kelly points also to the fact the offences are alleged to have been committed in May 2004 and the domestic warrant was issued on the 8th September 2004. He points also to the failure to explain these delays in pursuing the respondent.

11. Mr Kelly submits that the phrase "as soon as may be" must be interpreted as meaning as soon as practicable or as soon as possible, and refers to the meaning given to the phrase "as soon as may be" in the English case of *Nikonovs v. The Governor of Brixton Prison* [2006] 1 All ER 927 where, in a post arrest situation, the respondent was found not to have been brought before the Court following arrest "as soon as may be" following his arrest, even though he had been brought before the Court within a couple of days. Other judgments on the meaning to be given to this type of phrase in various contexts, including extradition, have also been opened.

12. This Court has no evidence or information on this application as to when this warrant was received by the Central Authority. The respondent ahs not referred the Court to any correspondence in which such information was sought and to any reply he may or may not have received. This Court frequently enquires on the application under s. 13 of the Act for the endorsement as to the date on which the warrant was received if there is a significant period of time which has passed from the date of the warrant to the date of the application. In some cases of such a delay it has been the case that after receipt of the warrant certain further information was requested from the issuing state, and that has resulted in some time necessarily passing following receipt of the warrant. In the present case the respondent ahs not produced any information as to when the document was received. No attempt appears to have been made to ascertain that information. The Court must have been satisfied at the time of the endorsement that the application was made in accordance with s. 13 of the Act, and if the respondent is to establish otherwise it is incumbent upon him to adduce the necessary evidence in that regard.

13. This ground has not been made out and I reject it accordingly. I am satisfied that the person before the Court is the person in respect of whom the warrant has been issued, that the warrant has been duly endorsed for execution, that no undertaking is required under s. 45 of the Act, that there is no reason under sections 21A, 22, 23 or 24 of the Act to refuse surrender, and that surrender is not prohibited by Part 3 of the Act or the Framework Decision. The offences correspond and are of the minimum gravity to come within the Framework Decision and the Act.

14. I am satisfied therefore that the order must be made for the surrender of the respondent to the requesting state and I order accordingly.