THE HIGH COURT
AN ARD-CHÚIRT

[2023] IEHC 102

[2021 Nos. 248 and 263 EXT]

IN THE MATTER OF TWO APPLICATIONS UNDER S. 16 OF THE EUROPEAN ARREST WARRANT ACT 2003, AS AMENDED.

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

DARIO CELIK

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 28 February 2023

Introduction

1. The Minister for Justice ('the Minister') applies under s. 16, sub-ss. (1) and (2) of the European Arrest Warrant Act 2003, as amended ('the Act of 2003'), for an order directing the surrender of Dario Celik to the Republic of Croatia ('Croatia'), pursuant to each of two separate European Arrest Warrants ('the EAWs').

2. The first EAW was issued on 30 May 2019 by an identified enforcement judge on behalf of the County Court of Osijek, Croatia, as the issuing judicial authority in that Member State. It is the subject of the surrender proceedings bearing the record number 248 EXT of 2021.

3. The second EAW, which is the first in time, was issued on 11 January 2019 by the same identified enforcement judge on behalf of the same judicial authority in that Member State. It is the subject of the surrender proceedings bearing the record number 263 EXT of 2021.

Background

4. The first EAW seeks the surrender of Mr Celik to serve a sentence of imprisonment of 1 year imposed upon him by the municipal court in Osijek on 13 July 2016, which became final on 8 November 2016 and enforceable on 1 December 2016. That sentence was imposed for an offence of breaking into, and stealing property from, a kiosk in the early hours of 17 January 2015. The first EAW recites that the entire duration of that one-year sentence remains to be served.

5. Mr Celik was arrested and brought before the court (Paul Burns J) on 7 September 2021 on foot of an alert ('the SIS II alert') issued on 18 January 2019 under the second generation of the Schengen Information System, established by Council Decision 2007/533/JHA ('the SIS II Decision') in respect of the first EAW. The first EAW was provided to the court (once again, Paul Burns J) when Mr Celik came before it again on 20 September 2021. Under s. 14(4) of the Act of 2003, the court fixed 5 October 2021 as the date for the hearing of the s. 16 surrender application.

6. On 4 October 2021, the court (Paul Burns J) endorsed the second EAW for execution and, on the following day, 5 October 2021, it was executed. The second EAW seeks the surrender of Mr Celik to serve a sentence of imprisonment of 1 year imposed upon him by the municipal court in Osijek on 16 November 2016, which became final and enforceable on 11 January 2017. That sentence was imposed for four separate offences that comprise: breaking into, and stealing property from, the premises of an agricultural supplies business on 23 or 24 April 2013; breaking into, and stealing property from, the same premises on 14 or 15 May 2013; breaking into, and stealing property from, the premises of a fuel supply business on 30 June or 1 July 2013; and breaking into, and stealing property from, the same premises on 1 or 2 August 2013. The second EAW recites that the entire duration of that one-year sentence remains to be served.

7. By letters dated 6 October and 9 November 2021, the High Court, through the Minister as the Central Authority in the State, requested the issuing judicial authority to provide it with certain additional information concerning the sentence imposed in respect of the offences that are the subject of the second EAW. The issuing authority responded to those requests by letters dated 22 October and 30 November 2021. Nothing turns on that exchange of correspondence for the purpose of the arguments relied upon by Mr Celik.

8. Mr Celik filed points of objection to his surrender, dated 12 January 2022, in respect of each of the two EAWs that he faces. Those two documents are drafted in identical terms.

The issues

9. Mr Celik puts the Minister on strict proof of the matters that it is necessary to establish to obtain an order for surrender under s. 16(2) of the Act of 2003 on the first EAW and to obtain an order for surrender under s. 16(1) of that Act on the second EAW. In addition, Mr Celik submits that his surrender is prohibited under s. 37 of the Act of 2003 because it would expose him to a real risk of imprisonment in conditions that would amount to a breach of his right not to be subjected to inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights ('the Convention') and Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter').

10. Hence, before considering whether the necessary proofs are in order in respect of the application for surrender under each of the two EAWs before the court, I will first address the prison conditions objection.

The prison conditions objection

11. In *Minister for Justice v Angel* [2020] IEHC 699, (Unreported, High Court, 15 December 2020) ('Angel') (at para. 45), Paul Burns J identified the following non-exhaustive list of

principles that apply to objections to surrender based on an asserted risk of breach of fundamental rights and, in particular, of subjection to inhuman or degrading treatment or punishment in that event:

'(a) the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and mutual trust;

(b) a refusal to execute a European arrest warrant is intended to be an exception;

(c) one of the exceptions arises when there is a real or substantial risk of inhuman or degrading treatment contrary to article 3 ECHR or article 4 of the Charter of Fundamental Rights of the European Union ("the Charter");

(d) the prohibition of surrender where there is a real or substantial risk of inhuman or degrading treatment is mandatory. The objectives of the Framework Decision cannot defeat an established risk of ill-treatment;

(e) the burden rests upon a respondent to adduce evidence capable of proving that there are substantial/reasonable grounds for believing that if he or she were returned to the requesting country, he or she will be exposed to a real risk of being subjected to treatment contrary to article 3 ECHR;

(f) the threshold which a respondent must meet in order to prevent extradition [or surrender] is not a low one. There is a default presumption that the requesting country will act in good faith and will respect the requested person's fundamental rights. Whilst the presumption can be rebutted, such a conclusion will not be reached lightly;

(g) in examining whether there is a real risk, the Court should consider all of the material before it and if necessary, material obtained of its own motion;

(h) the Court may attach importance to reports of independent international human rights organisations or reports from government sources;

(i) the relevant time to consider the conditions in the requesting state is at the time of the hearing;

(j) when the personal space available to a detainee falls below 3m2 of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of article 3 ECHR arises. The burden of proof is then on the issuing state to rebut the presumption by demonstrating that there are factors capable of adequately compensating for the scarce allocation of personal space, and this presumption will normally be capable of being rebutted only if the following factors are cumulatively met:-

(1) the reductions in the required minimum personal space of 3m2 are short, occasional and minor;

(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and

(3) the detainee is confined to what is, when viewed generally, an appropriate detention facility, and there are no aggravating aspects of the conditions of his or her detention;

(k) a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to the refusal to execute a European arrest warrant. Whenever the existence of such a risk is identified, it is then necessary for the executing judicial authority to make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. The executing judicial authority should request of the issuing member state all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained;

(l) an assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhuman or degrading treatment is something which the executing state cannot disregard and the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the member states on which the European arrest warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 3 ECHR or article 4 of the Charter; and

(m) it is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member state.'

12. In the submissions filed on his behalf, dated 17 January 2022, Mr Celik relied upon certain parts of the contents of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') report of 2 October 2018 on its periodic visit to Croatia between 14 and 22 March 2017 (CPT/Inf (2018) 44) ('the CPT report') to submit that he has discharged the heavy onus of establishing reasonable or substantial grounds for believing that he would be exposed to a real risk of imprisonment in conditions of inhuman or degrading treatment or punishment if surrendered to Croatia.

13. In particular, Mr Celik submitted that the CPT report provides evidence (at paragraph 34) that the personal space available to detainees in Osijek County Prison and Zagreb County Prison in Croatia had fallen below 3m2 of floor surface in multi-occupancy accommodation

within those prisons, giving rise to a strong presumption of a violation of article 3 of the Convention and shifting the burden of proof onto the issuing state to rebut that presumption by demonstrating the presence, cumulatively, of the necessary ameliorating factors.

14. Mr Celik submitted that, in addition to the lack of personal space available to detainees, the CPT report also provides evidence of lack of sufficient health-care staff within certain prisons (at paragraph 44); lack of certain basic medical equipment within certain prisons (at paragraph 45); and of allegations of physical ill-treatment, excessive use of force, unjustified resort to means of restraint, and the use of security measures for punitive reasons (at paragraphs 26 to 28).

15. Assuming, without deciding, that the CPT report may amount to objective, reliable, specific and properly updated evidence on detention conditions in Croatia that demonstrates systemic or generalised deficiencies, it became necessary to determine whether, in the specific circumstances of this case, there are substantial grounds to believe that, following the surrender of Mr Celik to Croatia, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 3 of the Convention and Article 4 of the Charter (judgment of 12 December 2019, *Aranyosi and Căldăru*, Cases C-404/15 and C-659/15 PPU, EU:C:2016:198 ('Aranyosi') (at paragraph 94).

16. To enable the court to make a specific and precise assessment of whether such substantial grounds exist, the court requested the issuing judicial authority to provide the necessary supplementary information on the conditions in which it is envisaged that Mr Celik will be detained if surrendered to Croatia.

17. By letter dated 20 January 2022, the High Court, through the Minister as the Central Authority in the State, requested the issuing judicial authority to identify the prison in which Mr Celik will be detained; the general conditions of detention there, including whether overcrowding is an issue; whether Mr Celik will have a minimum individual space of 3m2 available to him for the entirety of his detention; and, if not, what mitigating factors will render his detention compliant with the requirements of Article 3 of the Convention.

18. The issuing judicial authority replied on 2 February 2022, stating that Mr Celik will be detained in the prison in Osijek and enclosing a short report, dated 31 January 2022, from the Directorate for the Prison System of the Croatian Ministry of Justice, describing various aspects of the conditions in that prison.

19. By letters dated 30 March and 9 May 2022, the High Court, through the Minister as the Central Authority in the State, requested the issuing judicial authority to provide it with an assurance that personal space of at least 3m2 will be available to Mr Celik during his detention or, if unable to provide that assurance, to identify the factors capable of adequately compensating for that lack of personal space to rebut the strong presumption

of a violation of Article 3 of the Convention that would then arise. The issuing judicial authority responded to those requests by letters dated 11 April and 6 June 2022.

20. In the material part of its letter of 19 April 2022, the issuing judicial authority replied as follows:

'The Republic of Croatia is committed to the protection of rights guaranteed in the [Convention] and in particular to the protection of all persons, including prisoners, from torture or inhumane (sic) or degrading treatment or punishment. For these reasons, all prisoners staying in cells with more than one prisoner are provided a minimum individual space of 4m2 for the entirety of their detention.

However, given that the convicted person shall serve his prison sentence in the Prison at Osijek, where there is a continuous influx of new prisoners assigned to pre-trial detention, it is possible that some prisoners will not be provided minimum individual space of the named 4m2 for the entirety of their detention.

Even if such a situation arises, the prisoners are provide other mitigating factors compensating for a lack of individual space, thus guaranteeing that such lack of individual space will be of shorter duration and to the smallest possible extent during their term of imprisonment, that during this time the prisoners shall be guaranteed free movement the cell, participation in physical and other activities outside the cell and that the physical conditions of the stay will be appropriate at all times (access to natural light and air, heating, meeting basic hygiene requirements, private toilet use etc).

These circumstances shall ensure that the rights of the prisoners are protected at all times and that the prisoners shall not be subject to inhumane or degrading treatment during their imprisonment.'

21. In the material part of its letter dated 6 June 2022, the issuing judicial authority expanded as follows:

'The sentenced persons referred to Prison in Osijek for serving their final custodial sentence are prisoners to whom the remainder of the sentence is less than 3 years, the prisoners prior to the finality of the judgment, the prisoners convicted several times for criminal offences, those convicted in pending criminal proceedings, security high-risk convicted persons who are sentenced to pre-trial detention for the suspicion of criminal offence commission, and persons who are sentenced to imprisonment in petty offence proceedings. The spatial capacity of prisoners rooms ranges from 6.43m2 to 36.77m2. As a rule, a prisoner is usually put in a multiple-occupancy cell. Prisoners, for whom it is presumed that they would negatively affect each other, may be put in together in multiple-occupancy cell. Due to the continuous increased number of prisoners referred to the Prison in Osijek, we cannot know in advance in which room the convicted person will be placed; thus we cannot state with certainty how many prisoners will be put in a prisoner's cell at the

moment of surrender of the convicted Darion Celik to the Republic of Croatia. Care is taken to reduce the number of prisoners in each cell to the level set by legal norms as soon as possible, in accordance with the organizational capacities of the prison.

Every prisoner is provided separate bedclothes. The prisoners are allowed everyday walks in an open space in accordance with the daily schedule of the Prison in Osijek for two hours a day. Each room in which prisoners are accommodated is provided day light and artificial light allowing prisoners to read and work without any sight hindrance; there are also sanitary facilities meeting their physiological needs and the prisoners have access to drinking water. In the first floor of the building at the prisoners' department, there is a room adjusted to the needs of the persons with disabilities and equipped so that the persons with disabilities can perform their daily activities in accordance to their health condition. The prisoners must clean and keep tidy on daily basis the area in which they abide. Due to reduced spatial capacity, the prisoners take their regular meals in their rooms, where there are a table and chairs. The prisoners can watch TV in their rooms, there is a cooker for preparing hot drinks, and each prisoner has his own bedclothes, a cabinet for personal things.

The prisoners are served three meals a day according to nutritional standards for planning daily meals for prisoners. The prisoners who work are served an additional warm or cold meal. (The Ordinance on accommodation and diet standards Official Gazette 92/02). If needed, other groceries can be purchased in a prison shop.

The persons serving their custodial sentences in Osijek are provided medical treatment and other measures and activities related to health care in the prison infirmary. The prisoners are provided health care by a general practitioner, a psychiatrist and nurses. If needed, the prisoners for whom the medical care cannot be provided in the infirmary are then referred for medical treatment to a specific medical institution or to the prison hospital.'

22. Having considered the additional information provided I cannot accept that there are substantial grounds to believe that Mr Celik will be exposed to a real risk of inhuman or degrading treatment or punishment by virtue of the general conditions of confinement that exist in the Osijek Prison where he will be detained. I have reached that conclusion for the following reasons.

23. First, on the question of the personal space available to Mr Celik in a cell in the prison there, the information available suggests that all prisoners staying in cells with more than one prisoner are provided a minimum individual space of 4m2 for the entirety of their detention, subject only to the possibility that, because of the continuous influx of new prisoners assigned to pre-trial detention, some prisoners will not be provided minimum individual space of the named 4m2 for the entirety of their detention.

24. Second, even if such a situation should arise, the court has an assurance from the issuing judicial authority that prisoners are provided with mitigating factors that include: a guarantee that the availability of personal space of less that 4m2 will be of shorter (sic) duration and to the smallest extent possible during their term of imprisonment; and a guarantee that they will be afforded free movement outside the cell, participation in physical and other activities outside the cell, and appropriate physical conditions in the cell, including access to natural light and air, heating, the provision of facilities to meet basic hygiene requirements, including private toilet use, and so on. Further, there is nothing to suggest that the Prison at Osijek is not an appropriate detention facility, or that there will be any other aggravating factors of the conditions of detention there.

25. There is a default presumption that the issuing state will act in good faith and will respect the requested person's fundamental rights. The threshold necessary to rebut that presumption is not a low one. The burden rests on the requested person to adduce evidence capable of proving that there are substantial/reasonable grounds for believing that if he is returned to the requesting country, he will be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. While I may attach importance to reports from independent human rights organisations, such as the Council of Europe Committee on the Prevention of Torture, the specific prison conditions I must consider are those in which the requested person will be held and which prevail at the time of the hearing.

26. In the circumstances I have described and given the test I must apply, I am not persuaded that Mr Celik has discharged the burden of adducing evidence capable of establishing that there are substantial or reasonable grounds for believing that, if returned to Croatia, he will be detained in conditions that will expose him to a real risk of being subject to inhuman or degrading treatment or punishment. I reject the ingenious argument put forward on his behalf by Mr Hourigan that, in and of itself, the failure of the issuing judicial authority to provide an unequivocal assurance that Mr Celik will have a minimum individual space of 3m2 available to him for the entirety of his detention gives rise to an ineluctable inference that there are serious grounds to believe that he will be exposed to a real risk of having less than that amount of space. To accept that argument it would be necessary to disregard both the evidential burden that rests on Mr Celik (to establish such grounds by cogent evidence, rather than suggested inference) and the presumption that the issuing judicial authority is acting in good faith in providing the information upon which it relies in asserting that no such grounds exist.

27. Even if I were to conclude that there are reasonable grounds to believe that there is a real risk that the personal space available to Mr Celik will fall below 3m2, I am satisfied that the information before the court is sufficient to rebut the strong presumption that would then arise of a violation of Article 3 of the Convention, as it establishes the existence of each of the factors cumulatively necessary to do so. In that context, I do not accept Mr Hourigan’s argument on behalf of Mr Celik that there is a crucial distinction to be drawn between the reference in the issuing judicial authority’s letter of 19 April 2022 to a guarantee that any lack of personal space will be of ‘shorter duration’ and the

requirement – identified in *Muršić v Croatia* App no 7334/13 (ECtHR, 20 October 2016) (at para. 138) and acknowledged in Angel (at para. 45(j)) – that reductions in the required minimum personal space of 3m2 be 'short', and that only the use of the latter term can establish the existence of the relevant factor. The meaning of the words 'short' and 'shorter' can only ever be properly understood from the context in which each is used. When used in opposition to one another they convey a clear distinction of meaning but, when used in conjunction with - or evident substitution for - one another, they can convey broadly the same meaning. Each is, in that sense, a relative term.

28. For those reasons, I reject this ground of objection.

The first EAW - necessary proofs under s. 16(2) of the Act of 2003

29. On the information and evidence before me, I am duly satisfied that:

(a) the first EAW, including the matters required by s. 45 of the Act of 2003 (which, in this case, do not arise), has been provided to the court,

(b) the person before the court is the person in respect of whom the first EAW issued (upon which no dispute has been raised),

(c) I am not required under s. 21A, 22, 23 or 24 of the Act of 2003 to refuse to surrender Mr Celik under that Act (as none of the matters referred to in those sections arise), and,

(d) the surrender of Mr Celik is not prohibited under any of the provisions of Part 3 of the Act of 2003. I have rejected Mr Celik's argument that his surrender is prohibited under s. 37 of the Act. I am satisfied that the offence in respect of which his surrender is sought corresponds to an offence under the law of the State, specifically, an offence of burglary contrary to s. 12 of the Criminal Law (Theft and Fraud Offences) Act 2001, and that a term of imprisonment of not less than four months (actually, 1 year) has been imposed on him for that offence, all of which remains to be served, so that his surrender is not prohibited under s. 38 of the Act. None of the other matters referred to in Part 3 of the Act arise.

The second EAW - necessary proofs under s. 16(1) of the Act of 2003

30. On the information and evidence before me, I am duly satisfied that:

(a) the person before the court is the person in respect of whom second EAW issued (upon which no dispute has been raised),

(b) the second EAW, or a true copy thereof, has been endorsed in accordance with s. 13 for the execution of that warrant,

(c) the second EAW makes clear that the matters required by s. 45 of the Act of 2003 do not arise as Mr Celik appeared in person at the proceedings that resulted in the sentence or detention order in respect of which it issued,

(d) I am not required under s. 21A, 22, 23 or 24 of the Act of 2003 to refuse to surrender Mr Celik under that Act (as none of the matters referred to in those sections arise), and,

(e) the surrender of Mr Celik is not prohibited under any of the provisions of Part 3 of the Act of 2003. I have rejected Mr Celik's argument that his surrender is prohibited under s. 37 of the Act. I am satisfied that each of the four offences in respect of which his surrender is sought corresponds to an offence under the law of the State, specifically, an offence of burglary contrary to s. 12 of the Criminal Law (Theft and Fraud Offences) Act 2001 in each instance, and that a term of imprisonment of not less than four months (actually, 1 year) has been imposed on him for those offences, the whole of which remains to be served, so that his surrender is not prohibited under s. 38 of the Act. None of the other matters referred to in Part 3 of the Act arise.

Conclusion

31. It follows that, having due regard to the obligation to surrender under s. 10 of the Act of 2003, I will make an order under s. 16(2) of that Act on the first EAW and an order under s. 16(1) of that Act on the second EAW, directing the surrender of Mr Celik to such person as is duly authorised by Croatia to receive him.