Neutral Citation Number: [2008] IEHC 6

THE HIGH COURT

[2007 No. 168 EXT]

BETWEEN

SERGEJS RIMSA

APPLICANT

AND
THE GOVERNOR OF CLOVERHILL PRISON

RESPONDENT

AND
THE MINISTER FOR JUSTICE, EQUALITY & LAW REFORM

NOTICE PARTY

Judgment of Mr. Justice Hedigan delivered on Friday, 11th January, 2008.

1. In these proceedings the court is inquiring pursuant to Article 40.4.2 of the Constitution into the detention of the applicant under s. 16 of the European Arrest Warrant Act 2003.

2. The applicant is a Latvian national, born on 7th April 1976 in Riga, in the Republic of Latvia. On foot of a European Arrest Warrant issued by the First Instance, Riga Vichema Suburb Court of the Republic of Latvia on 6th September 2007.

3. The applicant was arrested on 22nd October 2007 in Ireland. He was remanded in custody until an order for his extradition was made by Peart J. on 13th December 2007. The court ordered that he should be surrendered to a person duly authorised by the Republic of Latvia to receive him and that he be committed to prison pending the carrying out of this order.

4. He was remanded in custody to Cloverhill prison, pending his surrender to the Latvian authorities. This surrender was stayed, as required by s. 16(3) of the European Arrest Warrant Act 2003, as replaced by Section 76(d) of the Criminal Justice Terrorist Offences Act 2005 for 15 days to permit him to appeal. No such appeal was made. This being so, the order took effect on 28th December 2007.

5. Section 16(5) of the European Arrest Warrant Act 2003 provides:

> "Subject to subs. 6 and Section 18, a person to whom an order for the time being in force under this Section applies, shall be surrendered to the issuing State concerned not later than ten days after:-
>
> (a) The order takes effect in accordance with subs. 3 or;
>
> (b) Such date being a date that falls after the expiration of that period as may be agreed by the Central Authority of the State and the issuing State".

6. In this case the Latvian authorities were notified of the making of this order and the stay of 15 days. This was done by John Davis of the Department of Justice who, in his affidavit sworn herein, sets out the course of events that followed.

7. It is to be noted that he communicated with the persons who were specified in the warrant issued by the Latvian court, ie., Mr. Auzins and U. Brenca.

8. Following an exchange of faxes and e-mails, it became clear that for certain logistical reasons, the Latvian police could not pick up the applicant until 9th January. This date would be two days outside the ten days provided by s. 16(5) of the Act.

9. It was finally agreed between Mr. Davis and the Latvian authorities that the surrender would take place on 9th January 2008, and the respondent relies on s. 16(5)(b) to justify his continuing detention pending his surrender, as per the order of Peart J.

10. The applicant has raised five grounds upon which he relies to challenge his continuing detention:

> 1. The committal warrant directed the detention of the applicant for the 15 days during which there was a stay, and any further period as may be necessary under law. This order for detention could only be valid up to 7th January. After that date his detention was invalid because s. 16(7) of the European Arrest Warrant Act required that, if not surrendered within 25 days he must be released unless detained for another purpose, habeas corpus proceedings were pending or his extradition had been postponed and a later date agreed between the respective jurisdictions. None of these Sections applied with particular reference to the last.
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> The applicant argues that his detention after the 25 days, ie., 7th January, was not necessary and was not therefore covered by the committal warrant. He maintains that his surrender could have been and should have been executed prior to or on 7th January. He notes that in the documentation furnished in the affidavit of John Davis, that the only grounds put forward justifying the postponement of his surrender was the inability of the Latvian authorities to obtain airline tickets for the journey from Riga to Dublin and back. An affidavit of Bill O'Rourke, sworn on 9th January, avers there were seats available.
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> As to this factual situation, I note that the information provided in Mr. O'Rourke's affidavit is not convincing. He was not able to provide any evidence as to the availability on Aer Lingus or Ryan Air flights, and in respect of Baltic Air, he only deals with flights from Ireland to Riga, whereas return flights for two at least from Riga and one, one-way ticket from Dublin to Riga were the tickets required.
>
> It seems reasonable to accept that during the new year holiday season seat availability might well be limited. I do accept this and, therefore, I accept that there were grounds of necessity requiring the arranging of a later date.
>
> Notwithstanding my finding in this regard, I do not think that s. 16(5) makes any requirement of necessity in order to ground an extension, although it is clear the surrender should be effected as soon as possible. I do accept that the Framework Decision may be looked to in order to interpret the national legislation. To that extent paragraph 3 of Article 23 does provide that where the surrender of the requested person is prevented by circumstances beyond the control of any of the Member States, there may be agreement on a new date and the surrender should take place within ten days of the new date. Nonetheless the national legislation does not make such a requirement of necessity.

In any event, in the light of my finding above re availability of airline seats; there appears to have been an existence of such circumstances and, therefore, a necessity to postpone.

2. It is argued that there is no proof the Central Authority of the Latvian Republic agreed to the extension of time. It is questioned as to whether the officials in question, ie., Mr. Auzins, U. Brenca and Edgars Strautmanis were actually the Central Authority. I note that s. 16(5)(b) of the European Arrest Warrant Act provides that any later date to be agreed must be:

> "Agreed by the Central Authority in the State and the issuing State."

Thus, whilst that person in Ireland is the Minister of Justice, Equality & Law Reform, in relation to the issuing State no particular persons are specified. It is clear from the documents exhibited by John Davis that the Latvian State did agree, indeed they requested the change. In any event, it is clear from Exhibit JD5 that Mr. Strautmanis is deputy head of the International Co-Operation Department of the Latvian Criminal Police and this is in fact the Central Authority, as he states in his exhibited e-mail.

3. It is argued that s. 16 does not provide for detention continuing where another later date is agreed pursuant to s. 16(5)(b), because s. 16(7) provides that, if not surrendered in accordance with Sub-Section 5, a person shall be released from custody immediately upon the expiration of the ten days unless habeas corpus proceedings are pending".

It is clear that s. 16(4) provides for detention:

> "Pending his or her surrender in accordance with the order under this Section".

Section 16(5) provides for time limits for surrendering and provides that this shall occur not later than ten days after such further agreed date. The provision in s. 16(7) is for release, upon the expiration of the ten days referred to in subs. 5. It seems clear to me that s. 16(4) detention is therefore authorised up until the expiration of ten days from the later agreed date. There appears to me to be no lacuna in the Act.

4. It is argued that the Framework Decision has direct affect in certain circumstances which are present here. This being so, any agreement for a later date for surrender must, pursuant to Article 23 it is argued, be made between the judicial authorities of the issuing and the executing States and not as provided in the European Arrest Warrant Act by the Central Authority.

11. In the first case, it seems clear to me that whereas the Framework Decision may well be referred to in order to clarify an ambiguity or assist in interpretation, it cannot be held to overrule the national legislation enacted to implement it. Article 34(2)(b) of the Treaty on European Union explicitly states that framework decisions shall not have direct effect. Moreover, in the case opened to me by both sides, *Dundon v. The Governor of Cloverhill Prison* [2006], 1 I.R. 518; Denham J., dealing with the Framework Decision at paragraph 5 stated as follows:

> "Thus, the Council Framework Decision does not have direct effect and is not part of the domestic law of this State. It is binding on the State as to the result to be achieved. It promotes common action by the States of the European Union to advance approximation of the laws in the States on specific issues. It is left to the national authorities to choose the form and method of implementation".

12. Further, at paragraph 72, Fennelly J. stated:

> "These courts are bound to apply provisions of Acts of the Oireachtas. The Framework Decision does not have direct effect. Where a provision of an Act of the Oireachtas conflicts directly with the provision of a framework decision, this court must give preference to the former. To do otherwise would, to cite the language of the *Court of Justice in Criminal Proceedings v. Pupino*, (Case C, 105/03) [2006] QB 83 be contra legem."

13. In this case s. 16(5)(b) explicitly specifies that the agreement on a different date is made by the Central Authority in the State and the issuing State.

14. To hold that the agreement had to be made between the judicial authorities of the two States would be *contra legem*.

15. As to objections taken to the manner in which the various documents are exhibited in the affidavit of John Davis, I reject those. The various exhibits made and Mr. Davis' expression of opinion seem to me to be correctly made.

16. As to the designation of the officials in the Department of Justice by the Minister, in my view the long established *Carltrona* principle is not effected by s. 6(2) of the European Arrest Warrant Act. The fact that this Section empowers the minister to designate persons to perform functions of the Central Authority in the State does not act to set aside the principle, that the duties imposed upon the Minister and the powers given to him are normally exercised under the authority of the Minister by responsible officials of his Department, and that constitutionally the decisions of the officials are the decisions of the Minister. *Carltrona Limited v. The Commissioners of Works* [1943] 2 All E.R. 560.

17. This principle has been endorsed by the Supreme Court in a number of decisions, notably *Tang v. The Minister for Justice* [1996], Supreme Court, 2 ILRM at page 46.

18. For all these reasons, it appears to me that the challenge raised to the detention of the applicant fails, and I hold that he is in lawful custody.