

## THE HIGH COURT

2008 217 EXT

## IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003

## AS AMENDED

## BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

MARTYNAS ŽIGELIS

RESPONDENT

## JUDGMENT of Mr. Justice Edwards delivered on the 17th day of January 2012

## Introduction

The respondent is the subject of a European arrest warrant issued by the Republic of Lithuania on the 18th of August, 2008 on foot of which he is wanted to serve a sentence of four months imprisonment imposed upon him by a Court in Lithuania on the 2nd of December 2005 for the theft of a mobile phone. The warrant was subsequently endorsed for execution by the High Court in this jurisdiction and on the 14th of December 2010 the respondent was arrested by Garda David Hanrahan at Naas, Co Kildare and was brought before the High Court in the normal way pursuant to s. 13 of the European Arrest Warrant Act, 2003, as amended (hereinafter referred to as "the Act of 2003"). The Court fixed a date for the purposes of s. 16 of the Act of 2003 and remanded him on bail to that date. Thereafter he was further remanded from time to time on continuing bail until he came before the Court on the 16th of February, 2011.

On the 16th of February, 2011 the respondent consented to his surrender to the issuing state. On that basis this Court (Irvine J) made an Order pursuant to s. 15 of the Act of 2003 directing him to be surrendered to such person as is duly authorised by the issuing state to receive him, and as is usual, he was then remanded in custody pending the making of arrangements for his transfer. Immediately following the making of this Order the applicant applied to this honourable Court for a further Order pursuant to s. 18(3) of the Act of 2003 to postpone the surrender of the respondent until such time as the respondent had completed serving a sentence imposed upon him by a Court in this jurisdiction which he was then serving. The domestic sentence in question was a nine month sentence that commenced on the 23rd of January, 2011. The Court duly made an Order pursuant to s. 18(3) aforesaid postponing the respondent's surrender until the date on which he was no longer required to serve any part of that term of imprisonment. He was released from prison on the 17th of August, 2011.

On the 17th of August, 2011 counsel for the applicant appeared before the Honourable Ms Justice Dunne, at a vacation sitting of the High Court, and indicated to the Court that the Lithuanian authorities were seeking the court's agreement to a new proposed surrender date, namely the 19th of August, 2011. Counsel informed the Court that it was, however, the view of the applicant that Article 26 of the Framework Decision (Council Framework Decision of 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA)) obliges the issuing state to give credit to the respondent for all periods of detention arising from the execution of the European arrest warrant. As the respondent had spent more time in custody awaiting surrender than he would be required to serve in Lithuania the applicant was of the view that the Lithuanian sentence was in effect spent.

In support of this view, Ms Justice Dunne was informed by counsel for the applicant on the 17th of August, 2011 that earlier last year, in an ex-tempore ruling in a case of *Minister for Justice Equality and Law Reform v Wall*, I declined to immediately approve of a suggested new date for the surrender of a respondent in broadly similar circumstances and required the Central Authority in that case to ascertain the up to date attitude of the issuing judicial authority. Moreover, when that was done the issuing judicial authority had agreed to withdraw the European arrest warrant in the particular circumstances of the case.

Ms Justice Dunne was further informed that the same issue had also arisen in two earlier cases dealt with by Mr Justice Peart, namely *Minister for Justice, Equality and Law Reform v Rettinger* and *Minister for Justice, Equality and Law Reform v Hooper*. In both cases Mr Justice Peart was said to have dealt with the matter by vacating, on his own initiative, his earlier order for surrender and striking out the proceedings.

Ms. Justice Dunne was informed that in the circumstances both parties were respectively asking her not to immediately approve of the suggested new surrender date of the 19th of August, 2011, but rather to further postpone the surrender of the respondent until such time as the up to date attitude of the Lithuanian authorities could be ascertained. Ms Justice Dunne was further asked to admit Mr Žigelis to bail pending the making of the suggested enquiries.

Ms. Justice Dunne acceded to these requests and, admitting the respondent to bail on agreed terms, adjourned the matter to my vacation list on the 26th of September, 2011.

When the matter came on before me on the 26th of September, 2011 events had overtaken the issue that had given rise to the further postponement and adjournment. In addition to coming before the Court pursuant to Ms Justice Dunne's Order, the respondent was now also before the Court on foot of a further European arrest warrant dated the 19th of August, 2011 issued by a judicial authority in Lithuania seeking the surrender of the respondent in respect of a new matter. That warrant had been endorsed by the High Court on the 7th of September, 2011 and the respondent had recently been arrested in execution of that further warrant and was before the Court on the 26th of September for the purposes of an s.13 hearing. In such circumstances the respondent could not

at that point be surrendered, either immediately or in early course, (unless he was consenting, which he was not) as the proceedings in this jurisdiction in respect of the second warrant would have to take their course. In any event, notwithstanding that the 19th of August date had not been approved, the Lithuanian authorities had not yet suggested any new date on which the respondent might be surrendered in respect of the first warrant for the approval of this Court.

In the circumstances, this Court made a further Order staying the surrender of the respondent on foot of the warrant of the 18th of August 2008 until the conclusion in this jurisdiction of the proceedings relating to the new warrant i.e. the warrant dated 19th of August, 2011. The respondent was admitted to bail pending the s.16 hearing in relation to the new warrant, and the Court continued the bail granted to the respondent by Ms Justice Dunne on the 17th of August, 2011 in respect of the first warrant.

The Court was also informed that, since the matter was before Ms Justice Dunne on the 17th of August last, the applicant had raised the circumstances of the respondent with the Lithuanian authorities, and correspondence had been received from the issuing judicial authority, i.e. the Vice Minister for Justice of Lithuania, communicating the view of Ukmerge District Local Court (the court that imposed the sentence for the offence to which the first warrant relates) that time spent by the respondent in prison in Ireland should not be deducted from the Lithuanian sentence as it relates only to a domestic sentence and does not arise from the execution of a European arrest warrant. It was further indicated that in the circumstances "the Ministry of Justice of the Republic of Lithuania does not withdraw the EAW issued in respect of Martynas Žigelis".

It seems to this Court that the Lithuanian authorities are perfectly within their rights to take the stance that they have taken. The relevant provision is, as has been stated earlier, Article 26 of the Framework Decision. That provision states:

- "1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.
2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender."

It is clear from sub-article (1) of Article 26, in particular, that it is a matter for the issuing member state to deduct all periods of detention arising from the execution of a European arrest warrant. The role of the executing judicial authority or the central authority in the executing member state is confined, per sub-article 2 of Article 26, to transmitting relevant information to the issuing member state. It is a matter for the relevant authorities within the issuing member state to interpret and give effect to Article 26(1). Article 26(1) is certainly open to the interpretation that the Lithuanian authorities are placing on it. Arguably, it may also be open to the interpretation that respondent puts on it. It is not for this Court to adjudicate on who is correct. The issue is one for the respondent to raise before the Courts of the issuing state upon his surrender.

It is true that earlier last year in a case of *Minister for Justice Equality and Law Reform v Wall*, I deferred approval of a suggested new date for the surrender of the respondent in that case and requested the Central Authority to ascertain the up to date attitude of the issuing judicial authority. I did so for two reasons. First, it was intended to fulfil the obligation created by sub-paragraph 2 of article 26 of ensuring that all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant was transmitted to the issuing judicial authority. While that provision requires that to be done "at the time of surrender" I took the view that where the matter was before the Court to approve a suggested surrender date it was sufficiently close in point of time to the actual handing over the respondent to come within the spirit of Article 26(2). Secondly, the situation in the *Wall* case was absolutely clear cut, much more so than in the present case. The only detention of Wall had been in connection with the European arrest warrant proceedings. He was not detained on any domestic matter, either on remand or for the purpose of serving any sentence. Accordingly, his entitlement, upon being surrendered, to receive credit for time served here in connection with the execution of the European arrest warrant, while not strictly speaking a matter for this Court, was crystal clear and beyond any doubt. What were, however, of concern to this Court were the costs associated with effecting a physical surrender in circumstances where, in the event of the respondent being so surrendered, he would on a "revolving door" basis have to be immediately released by a Court in the issuing state on his arrival. In that regard, Article 30 of the Framework Decision provides:

- "1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.
2. All other expenses shall be borne by the issuing Member State."

It seemed to this Court that it was in the interests of neither State to have to pointlessly incur those costs, and that the proper, but also the pragmatic, thing to do before approving any suggested surrender date was to appraise the issuing judicial authority of the circumstances with regard to time served in detention in Ireland and to ascertain whether, in the light of that information, they were still insisting upon the respondent's surrender. As it was anticipated they would, they in fact withdrew the warrant. However, if they had indicated that they still wished to have the respondent surrendered this Court would have had no option but to approve a surrender date and Mr Wall would have had to be surrendered.

The Court is not familiar with the particular circumstances of the two earlier cases dealt with by Mr Justice Peart, namely *Minister for Justice, Equality and Law Reform v Rettinger* and *Minister for Justice, Equality and Law Reform v Hooper*. In so far as the Court is aware, the rulings in those cases were made ex tempore and no transcript or note of what my learned colleague said is available. In the circumstances I am not in a position to comment on what occurred in those cases.

However, in so far as the present case is concerned, three things are clear. First, the position with respect to what credit the respondent in the present case is entitled to for time spent in detention in Ireland is far less certain than it was in the *Wall* case. In the respondent's case there is a complete overlap between the time he spent in custody on foot of the Order remanding him in custody following the making of the s.15 Order (which arguably but by no means conclusively could be said to arise from the execution of the European arrest warrant), with time spent in custody for the purpose of serving a domestic sentence. Secondly, and as previously stated, how Article 26 is to be interpreted having regard to the particular circumstances of this case is a matter for the courts of the issuing state, rather than this Court. It is not appropriate for me to express any view on it, other than to acknowledge that both of the interpretations contended for are stateable. Thirdly, it is the absolute entitlement of the issuing State to insist on this Court's surrender Order being carried into effect in due course. That said, the approval of any new surrender date must await the conclusion of the proceedings in this jurisdiction in respect of the second European arrest warrant.

