

THE HIGH COURT

Record Number: 2006 No. 40 Ext

BETWEEN

ATTORNEY GENERAL

APPLICANT

AND

LUDMILLA BORISNOVA PRATKUNAS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 28th day of November 2007

1. The Russian Federation has sought the extradition of the respondent, who is an Estonian national, by Request dated 21st March 2006. An earlier Request dated 29th January 2004 had been sent but it is the later Request on foot of which the present application is proceeding. I am satisfied that this Request was duly transmitted pursuant to the provisions of s. 23 of the Extradition Act, 1965 as amended ("the Act"), and that it has been supported by the various documents and material referred to in s. 25 of the Act. I am also satisfied that the person who is before the Court is the person whose extradition has been requested, and no issue to the contrary has been raised.

2. Part II of the Act was applied to Russian Federation by Statutory Instrument 474/2000.

3. As required by s. 26 of the Act, the Minister for Justice, Equality and Law Reform has by Certificate dated 13th April 2006 certified that he received the Request dated 21st March 2006 on the 31st March 2006.

4. On the 25th April 2006 a Warrant of Arrest was issued by this Court, and on the following day the respondent was duly arrested on foot of same and brought before the Court as required by s. 26(5) of the Act. She was remanded from time to time thereafter, on bail, pending the hearing of the application for her extradition.

5. Section 29 (1) of the Act, as amended, sets out a number of matters about which this Court must be satisfied before it may grant the order of extradition sought. That section provides as follows:

"29.—(1) Where a person is before the High Court under section 26 or 27 and the Court is satisfied that—

- (a) the extradition of that person has been duly requested, and
- (b) this Part applies in relation to the requesting country, and
- (c) extradition of the person claimed is not prohibited by this Part or by the relevant extradition provisions, and
- (d) the documents required to support a request for extradition under section 25 have been produced,

the Court shall make an order committing that person to a prison (or, if he is not more than twenty-one years of age, to a remand institution) there to await the order of the Minister for his extradition."

6. No objection or issue has been raised by the respondent in relation to the documents which support this application, or the other matters referred to in this sub-section, and I am satisfied that the provisions of that section have been complied with.

7. I am also satisfied that the offence of fraud which is alleged to have been committed by the respondent and for which her extradition is sought so that she can be prosecuted and the full details of which are set forth in the documents supporting the Request for extradition is an offence which corresponds to at least one offence in this State according to the criteria for assessing correspondence provided by s. 10 of the Act, as amended, namely that the acts alleged against the respondent would, if committed in this State on the date on which the Request for extradition is made, constitute an offence, and that the offence in question is punishable in both this State and the requesting state "by imprisonment for a maximum period of at least one year or a more severe penalty..."

8. There is no need to set out the details of the offence alleged against the respondent, but I can say without any doubt, and no issue is raised in that regard by the respondent, that if what has been alleged against the respondent was to have been done by her here on the date of the Request it would give rise to an offence of theft under s. 4(1) of the Criminal Justice (Theft and Fraud offences) Act, 2001 and to an offence of making a gain or causing loss by deception under s. 6 of the same Act. Each offence would satisfy the minimum gravity requirement to which I have referred, and it is clear that this is satisfied also under the Criminal Code of the Russian Federation.

9. Subject to addressing the issues which have been raised by the respondent, I am satisfied that all the requirements of the Act have been complied with and that the extradition of the respondent must be ordered.

10. The issues being raised appear firstly in an affidavit which was sworn by the applicant on the 29th September 2006. Put briefly, she states in that affidavit that in October 2000 she was arrested by the Russian police and that she was seriously assaulted and threatened by them at that time, and that she fears because of this that if extradited she will be subjected to inhuman and degrading treatment in breach of her constitutional rights. She also fears that she will not receive a fair trial in Russia due to her belief that corruption is rife there and that there are serious defects in the criminal justice system, and because certain documentation was taken from her house while she was under arrest, and are no longer available to her for her defence. I should at this stage refer to the fact that in her first affidavit she stated that the arrest which occurred in October 2000 was in relation to the offences which are the subject of this warrant. When instructions were taken from the Russian authorities in relation to that affidavit, information was provided to the effect that this arrest related to something entirely unrelated to these offences. In fact the date of that arrest pre-dated some of the dates referred to in the warrant and on which some of the transactions are alleged to have taken place. The arrest took place in relation to what is described as an administrative offence on the ground that she had lived at an address in the Russian Federation without registering her presence there within three days.

11. The information supplied in this regard in the form of a report from an official who has inspected the relevant records discloses that when arrested in this regard a "personal search" was carried out

12. Another issue raised in legal submissions is that her surrender is being sought in respect of a criminal offence which did not exist at the time of its alleged commission. I want to deal with that issue first and quite briefly. It is clear from the documentation provided by the Russian authorities that the offence for which the respondent is sought is alleged to have been committed during the year 2000. The charge brought against her is one of fraud said to be contrary to Articles 158 and 159 of the Criminal Code "as amended by Federal Law No. 162 –FZ dd. 8 December 2003". It is urged upon the Court that given that this law was passed on a date later than the dates of the alleged offences, it constitutes an impermissible retrospective application of the criminal law to the respondent. I reject this submission. It is clear that this amendment went only to the potential penalty which could be applied upon conviction, and it is clear also that, if anything, the amendment is in ease of the respondent since the new law appears to set a less severe penalty for the offence. In any event there is no affidavit from any legal expert in Russia about this matter, but the respondent has not established that her extradition would constitute a breach of her constitutional rights which would warrant this Court refusing to order her extradition to the requesting state. The onus of proof is on the respondent in this regard and she has not discharged it.

13. The principal ground of objection is based on the treatment which she says was meted out to her on the occasion on which she was arrested in October 2000 in respect of the administrative offence. The requesting state has rejected completely the veracity of her allegations in this regard, and has provided copies of reports prepared at the time of her arrest and search on that occasion. These reports show clearly that she was searched by a female and not in the presence of any males as she has alleged. The report of the search is clearly made by a female, and the Court is entitled to make that assumption by reference to the name appearing on the report. There is also on the form a statement by the respondent on that occasion that no complaint was made by her at the time of the arrest and search about anything which may have happened to her. Counsel on her behalf has submitted that this Court ought not to have any regard to these documents because they are not 'evidence' in the strict legal sense of that word, since they have not been exhibited by the relevant person in the requesting state in any affidavit. With regard to the provisions of s. 37 of the Act the point is made that while this section permits documents sent in support of an application to be admissible without proof, these documents are not provided as documents to support the application, since such documents are confined to those referred to in s. 25 of the Act which specifies particular documents which are required to support a Request for extradition.

14. On this point I am not satisfied that s. 37 operates so as to prevent this Court from having regard to these reports where they are provided by the requesting authority in order to deal with allegations made by the respondent following the Request having been made. It is by now trite law to state that extradition proceedings are 'sui generis' in nature, and that there are not adversarial proceedings where the very strict applications of the laws of evidence must be adhered to, such as in a criminal trial. Counsel has submitted that where the onus of proof is on the respondent to stand up her allegations of mistreatment, it is impossible to meet the rejection of her allegations unless the countervailing facts are sworn to so that the deponent can be cross-examined and the evidence tested in the usual way. However, there is no reality in that situation arising in this situation. Perhaps some official in the applicant's office could have exhibited these documents as being documents which have been received from the requesting state, but there would be absolutely no value in cross-examining that deponent since he or she is not the author of the documents in question. The only satisfactory cross-examination from the respondent's point of view would be of the author of the reports themselves who would have to travel from the requesting state in order to be available for such cross-examination. I am satisfied that even if such a person was compellable as a witness, it is wholly outside the accepted procedures for extradition proceedings that such would be required.

15. In this case the respondent has sworn that certain things were done to her in October 2000. That is a bare assertion by her. There is no corroboration of these assertions by somebody, such as for example a close family member whom she might have told about it. There is absolutely nothing to support or corroborate in any way what she has stated. I do not find the respondent's statement in her affidavit to be credible given the nature of the offence for which she was arrested on that occasion. These are simply unsubstantiated assertions by the respondent which are not sufficient to enable her to establish as a matter of probability that this occurred. It seems utterly unlikely that such treatment could possibly have been meted out to her in a situation where the offence for which she had been arrested was an administrative offence of failing to register her presence in the town with the local authorities as required.

16. However, I am also of the view that even if she is correct in what she says happened in October 2000, and I do not accept that she is, I am of the opinion that this single incident in October 2000 is sufficient for this Court to conclude as a matter of probability that the same treatment is likely to occur again in 2007 or 2008 upon her extradition back to the Russian Federation. Certain country of origin information has been downloaded and provided by the respondent which shows in some respects a less than satisfactory situation among, *inter alios*, the Russian police, but such general information cannot be sufficient to satisfy this Court as a matter of probability, either that what she says happened in October 2000 or that it could happen again upon her extradition back to that country. In this regard I am conscious of the statement by the Chief Justice in *Attorney General v. Skripakova*, unreported, Supreme Court, 24th April 2006 where he emphasised the need for substantial grounds to exist before extradition could be refused. And that such grounds need to be founded upon "evidence of a sufficient nature". That case was also an application under Part II of the 1965 Act, albeit to the Republic of Latvia prior to that country's accession to the European Union.

17. For these reasons I am satisfied that the applicant has satisfied all the requirements of the Act so as to require the Court to make the order sought, and I so order.