



THE COURT OF APPEAL

Neutral Citation: [2024] IECA 265

Record Number: 2024/98

Kennedy J.

Burns J.

MacGrath J.

BETWEEN/

MINISTER FOR JUSTICE

RESPONDENT

-AND-

FILIP BRAZDA

APPELLANT

JUDGMENT of Ms. Justice Tara Burns delivered on the 5th day of November, 2024.

1. This is a certified appeal from the decision of the High Court (Greally J., [2023] IEHC 769) ordering the surrender of the appellant to the Czech Republic, despite his objection, pursuant to s. 16(1) of the European Arrest Warrant Act 2003, as amended ('the 2003 Act'), which transposes into Irish law Council Framework Decision 2002/584/JHA of 13 June 2002 ('the Framework Decision').

Background

2. The Czech Republic sought the surrender of the appellant on foot of a European Arrest Warrant ('the EAW') dated 12 October 2022. His surrender was sought in respect of a 7-month term of imprisonment, which had been imposed upon him by default, arising from his failure to pay a fine.
3. The underlying offence related to driving a motor vehicle when disqualified from driving. Part f) of the EAW recited:-

"The Accused was found guilty and ordered to pay a fine of CZK 70,000 by judgement [...] delivered by the District Court in Louny on 15.6.2020. In case the Accused did not pay the fine, he was imposed a substitute sentence of imprisonment in the length of 7 months. Considering the fact that the Charged failed to pay the fine, the Court ordered him to serve the substitute sentence of imprisonment in the length of 7 months by Judgment [...] delivered on 18.1.2021. The Accused was duly and timely invited to appear before the Court for the public hearing during which the sentence of imprisonment was ordered: he, however, failed to appear there as he had been at large abroad."

4. Part b) of the EAW indicated that an arrest warrant issued in respect of the appellant on 14 January 2022 and referenced that the enforceable judgment was "*still pending*". Part c) of the EAW indicated that the maximum length of a custodial sentence which could be imposed in respect of the offence at issue was 2 years imprisonment.
5. By letter dated 10 May 2023, a request under s. 20 of the 2003 Act was made of the Czech Republic authorities, seeking the following information:-

"Please clarify why the warrant at part (b) references a potential maximum custodial sentence of two years of imprisonment and that

an enforceable judgment is "still pending", whereas at paragraph (f) it indicates that the accused was found guilty and fined and thereafter required to serve seven months imprisonment in default of payment."

6. The District Court in Louny replied in the following terms:-

"In response to your questions, the District Court in Louny states that although a judgment was issued in the case, specifically the judgment of 15 June 2020 [...], was the accused sentenced by this judgment to a financial penalty, and only in the event of his failure to pay this financial penalty was the accused given a substitute sentence of 7 months imprisonment. However, the part of the judgment relating to the alternative custodial sentence is not enforceable for now, because the execution of the alternative custodial sentence of 7 months must be decided by a separate resolution. This resolution, i.e. the resolution of 18 January 2021 [...], was issued at the public hearing to which the accused was summoned in person on 22 December 2020, but he did not appear at that hearing. As the accused subsequently ceased to be a contact for the court and started to avoid the criminal proceedings, he could not be served with this order and thus it could not enter into legal force.

Therefore, the Court considers that it was not possible to include the judgement of 15 June 2020, [...] in part (b) of EAW, as it will only become enforceable in relation to the alternative sentence of imprisonment in conjunction with the resolution of 18 January 2021 [...], ordering the execution of the alternative sentence of 7 months of imprisonment. However, as stated above, that resolution has not entered into legal force yet, as it could not be served on the accused. In relation to the custodial sentence, therefore, the case has not been finally decided yet and the District Court in Louny considers

that, in these circumstances, it is necessary to formally indicate in section (c) the maximum penalty for the offence in question [...] and it is not possible to fill in section (b) under the heading "enforceable judgment"."

7. A further s. 20 request was made of the Czech Republic authorities on 27 June 2023, the reply to which confirmed that the decision of 18 January 2021 ordered execution of the sentence, which had already been imposed on 15 June 2020 if payment of the fine was not made. It was also indicated that the court which ordered execution of the sentence on 18 January 2021 had no discretion to modify or alter the 7-month term of imprisonment imposed, in lieu of payment, on 15 June 2020. The reply also stated:-

"For the sake of completeness, the Court adds that the Criminal Procedure Code of the Czech Republic allows a convicted person to avert the execution of a prison sentence by paying the originally imposed financial penalty [...]."

8. Thereupon, another s. 20 request was made of the Czech Republic authorities on 28 July 2023, which asked for the following information:-

"In your reply dated 15 May 2023 it is stated that the resolution of the 18 January 2021 [...] has not yet entered into legal force as it could not be served on the accused. (i) Please provide details of the procedure that will be followed if [the appellant] is surrendered on foot of this [EAW] and whether he will be required to serve the sentence of 7 months imprisonment once the resolution of 18 January 2021 is served on him? (ii) Please indicate what sentence is currently enforceable."

9. The District Court in Louny replied on 2 August 2023 as follows:-

"If [the appellant] was surrendered to the Czech Republic, the court would order a custody session in which it would decide on the convict's custody. At the same time, he would be served with the resolution of 18 January 2021 [...], against which he could appeal within 3 days. If he would file an appeal, the Court of Appeal would decide on it. If this court would reject the appeal, the resolution shall enter into legal force and the convict would therefore serve the sentence of 7 months' imprisonment.

As we have repeatedly stated, the convict [...] was originally sentenced to a financial penalty which he failed to pay. For this reason, District Court in Louny decided to impose a substitute sentence of 7 months' imprisonment (resolution of 18 January 2021 [...]). This decision has not yet entered into legal force. This means that only the judgment of 15 June 2020, [...] which imposed a financial penalty has entered into legal force for now.

As we also stated in our previous reply, the Criminal Procedure Code of the Czech Republic allows a convicted person to avert the execution of a prison sentence by paying the originally imposed financial penalty [...]."

The High Court Decision

10. The High Court determined that, having regard to the EAW and the s. 20 responses received from the issuing authority, the appellant did not come within s. 10(a), (b) or (c) of the 2003 Act because the proceedings, at first instance, concluded with a resolution of the District Court at Louny, on 18 January 2021, which imposed a default sentence of 7 months' imprisonment on the appellant. However, the High Court was of the opinion, applying *Minister for Justice, Equality and Law Reform v. Odstrcilik* [2010] IEHC 315 ('Odstrcilik'), that the appellant did come within s. 10(d)

of the 2003 Act as he was a person on whom a sentence of imprisonment had been imposed. The court was satisfied:-

"that any future court proceedings will be exclusively concerned with serving the Court order and executing the sentence. Accordingly, once the [appellant] is served with the Court Order imposing the seven-month sentence, the sentence becomes immediately enforceable in accordance with Article 8 of the Framework Decision and Section 11(1A)(e) of the 2003 Act."

11. On foot of an application brought by the appellant, which the respondent opposed, the High Court agreed to certify two questions of law as being of exceptional public importance and that it was desirable in the public interest that there should be an appeal to this Court pursuant to s. 16(11) of the 2003 Act, namely:-

"(i) In circumstances where a surrender request is grounded in an order imposing a default sentence of imprisonment and future proceedings are concerned solely with serving the order and executing the sentence, but where a respondent retains an option to pay a fine to avert the sentence, is the request in compliance with section 10 of the [2003 Act] and Article 8(c) of the Framework Decision 2002/584 JHA?

(ii) Does a seven-months' sentence of imprisonment that stands against the requested person in the foregoing circumstances constitute an "enforceable" judgment" of the type and nature required by the [2003 Act], when interpreted in the light of the Framework Decision?"

The Parties Submissions

12. The appellant contended that because the financial penalty is the only currently enforceable sentence, as the custodial sentence is not yet

enforceable until further steps are taken in the legal process in the issuing state, and having regard to the fact that the custodial sentence may never become operative as the option remains open to the appellant to pay the fine originally imposed, the High Court erred in determining that the appellant was a person in respect of whom a sentence of imprisonment has been imposed, as provided for by s. 10(d) of the 2003 Act. It was submitted that a conforming interpretation of s. 10 of the 2003 Act, in light of Articles 1 and 2 of the Framework Decision, and having regard to s. 11(1A)(e) of the 2003 Act, required that the sentence at issue must be currently enforceable and that the High Court erred in determining that the sentence in the instant matter was of such a character. In addition, it was argued that the minimum gravity requirements of the Framework Decision and s. 38 of the 2003 Act were not met, in that if the EAW was for the purpose of executing a custodial sentence, the requirement that the appellant be subject to a 4-month term of imprisonment (all or part of which he was required to serve), was not met; or if the EAW was for the purpose of conducting a criminal prosecution, the only penalty which the District Court in Louny could impose on the appellant after his surrender was 7 months' imprisonment, rather than the minimum gravity of 12 months' imprisonment.

13. The respondent submitted that the appellant came within the provisions of s. 10(d) (as found by the High Court) or s. 10(b) (which was rejected by the High Court) of the 2003 Act, as a default sentence of 7 months' imprisonment had been imposed by judicial order and any future court proceedings would be exclusively concerned with serving this court order and executing the sentence. The respondent submitted that the appellant was simply incorrect to assert that the only valid and legally enforceable penalty that existed against him was a financial penalty. Instead, a sentence of 7 months' imprisonment had been pronounced on the appellant, which had a fixed procedural process to follow to become enforceable.

Relevant Legislation

14. Section 10 of the 2003 Act provides:-

"Where a judicial authority in an issuing state issues a relevant arrest warrant in respect of a person—

- (a) against whom that state intends to bring proceedings for an offence to which the relevant arrest warrant relates,*
- (b) who is the subject of proceedings in that state for an offence in that state to which the relevant arrest warrant relates,*
- (c) who has been convicted of, but not yet sentenced in respect of, an offence in that state to which the relevant arrest warrant relates, or*
- (d) on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the relevant arrest warrant relates,*

that person shall, subject to and in accordance with the provisions of this Act, be arrested and surrendered to the issuing state."

15. Section 11(1A) of the 2003 Act provides, *inter alia*:-

"Subject to subsection (2A), a relevant arrest warrant shall specify—

[...]

- (e) that a conviction, sentence, or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of one of the offences to which the relevant arrest warrant relates,*

[...]

(g) [...]

(iii) *where that person has been convicted of the offence specified in the relevant arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists."*

16. Section 38(1) of the 2003 Act provides, in relevant part:-

"Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—

(a) *The offence corresponds to an offence under the law of the State, and—*

(i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or

(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment".

17. Relevant provisions of the Framework Decision relating to the EAW and the surrender procedures between Member States provide:-

"Article 1

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting

a criminal prosecution or executing a custodial sentence or detention order.

[...]

Article 2

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

[...]

Article 8

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

[...]

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

[...]

(f) The penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State”.

Discussion and Determination

18. A similar issue to the one presenting in the instant matter was considered by Peart J. in *Odstrcilik*. In that case, the Czech Republic authorities sought the return of the respondent to serve a sentence which had been imposed upon him in his absence. As is the position in the instant case, pursuant to the law governing criminal procedure in the Czech Republic, the judgment by which the sentence was passed had to be served on the respondent before it became enforceable. Dealing with an objection to the effect that the respondent in that case did not fall within s. 10 of the 2003 Act, as the sentence imposed was not yet enforceable, Peart J. determined that s. 10(b) applied to the respondent as he was a person who remained the subject of proceedings. He stated at pp. 7 and 9 of his judgment:-

"In my view, if one reads section 10 literally [...] it seems to me that the respondent is a person who is still "the subject of proceedings in that state for an offence to which the European arrest warrant relates", i.e. a person within s. 10(b) of the Act. [...] Clearly, where a person has been convicted and sentenced but where some procedural step is still required to be taken before that sentence can be enforced, the convicted person is still the subject of proceedings in the issuing state.

Such an interpretation is clearly within the objectives of Articles 1.1 and 2.1 of the Framework Decision [...]

[...]

Even though the respondent is not yet "required" to serve the sentence in the sense that there is presently in force a lawful judgment in that regard, it is nevertheless the case that the respondent is still required by the issuing state to serve the sentence in the sense that they wish him to do so, and it remains only that he be handed a copy of the court's decision or judgment in that

regard. There is no question of this sentence having been set aside in some way, whether by pardon or otherwise. Clearly if the issuing judicial authority had convicted him and sentenced him, but that sentence was not one which it required him to serve, for whatever reason, then his surrender would be prohibited since there would be no purpose served by his surrender or the issuing of the warrant in the first place. In the present case, the respondent is still required by the issuing judicial authority to serve this sentence following the service of the judgment upon him. The additional information referred to above refers to the proceedings as being "still running". In my view that means in the present case that as provided for in paragraph (b) of s. 10 of the Act of 2003, the respondent is still the subject of proceedings for the purpose of that section, and for the purposes of s. 38 (1)(a)(ii) of the Act of 2003 is a person who is still required by the law of the issuing state to serve the sentence imposed, even if there is some procedural step to be taken in that regard. The present situation whereby the judgment has not been served is insufficient to trigger the prohibition against surrender provided for in that section, and I believe that to so interpret the section is in conformity with a clear objective of the Framework decision, namely that lawfully imposed sentences of imprisonment in excess of four months be executed."

19. Counsel for the appellant sought to distinguish *Odstrcilik* on the grounds that the surrender of the respondent in that case was sought to execute a term of imprisonment which, apart from the argument regarding enforceability, satisfied the minimum gravity requirements, as it was greater than four months. It was argued on behalf of the appellant that the instant case differs from *Odstrcilik* because the 7-month sentence which the appellant is subject to may never become enforceable as the appellant has the option to pay the fine initially imposed upon him which will result in the custodial sentence becoming defunct.

20. In determining this issue, the dicta of O'Donnell J., as he then was, in *Minister for Justice v. Olsson* [2011] IESC 1, and Fennelly J. in *Dundon v. The Governor of Cloverhill Prison* [2006] 1 IR 518, relating to the interpretation of the 2003 Act, are apposite. In *Olsson*, O'Donnell J, advised that it was necessary to keep the nature of the 2003 Act and its origins in mind when interpreting the Act. He stated at para. 29 of his judgment:-

"29. The origins of the Act of 2003 are also important. The Act is the mechanism by which this State performs its obligations to ensure that the objectives of the Framework Decision, are achieved. As was pointed out by Fennelly J. in Dundon v. Governor of Cloverhill Prison [... at p.] 544:-

"[62 ...] [t]he Act of 2003 as a whole ... should be interpreted 'as far as possible in the light of the wording of the purpose of the framework decision in order to attain the result which it pursues'."

30. Taking this approach to the interpretation of s. 21(A) [of the Act of 2003, as amended ...], the relevant provision of the Framework Decision is that contained in the opening words of article 1(1). This provides that a European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender to another member state of:-

"The... requested person, for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order."
[Original emphasis]

21. The High Court was of the opinion that s. 10(b) of the 2003 Act did not apply to the appellant as the proceedings against him had concluded on 18 January 2021 when the 7-month sentence was imposed. The appellant suggested that the High Court was also of the opinion that the minimum

gravity requirement for a prosecution warrant was not satisfied as a discretion did not arise for a sentence greater than 7 months to be imposed on the appellant if he was surrendered. The judgment of the High Court does not reflect that reasoning.

22. I am of the opinion that the circumstances of this case are covered by s. 10(b) of the 2003 Act and that the appellant falls within this sub-section. As the Czech Republic authorities have indicated, the surrender of the appellant is sought to conclude the prosecution against him in respect of the offence at issue. Procedural steps remain outstanding to give effect to the sentence imposed on 18 January 2021. Accordingly, I disagree with the High Court that the proceedings against the appellant concluded on 18 January 2021, when the sentence was pronounced, as the sentence is not yet operative. While the High Court does not appear to have expressed a view in relation to whether the minimum gravity requirement of 12 months' imprisonment in respect of a prosecution warrant was met, I am of the opinion that the fact that a 7-month term of imprisonment has been imposed, which cannot be altered (except if the appellant chooses to pay the original fine), does not have a significance in terms of the minimum gravity requirements of the offence. The maximum period which the offence at issue is punishable by is 2 years' imprisonment. Minimum gravity for a prosecution warrant is defined by the maximum period of imprisonment that can be ordered in respect of the offence. It is not defined by what is actually imposed having regard to the facts of the case. Accordingly, I am of the view that the minimum gravity requirement for the purpose of a prosecution warrant is satisfied regardless of the fact that the District Court in Louny now has no discretion to increase the 7 months' imprisonment imposed to anything greater.

23. With respect to the High Court's decision that s. 10(d) of the 2003 Act applied to the appellant, I am of the opinion that the District Court order of 18 January 2021 is enforceable as the steps to activate that sentence are

procedural and automatic, on the issuing State's part, with no possibility of a different outcome emerging by any action of the State, having regard to the information provided by the Czech authorities. This is in line with the reasoning of Part J. in *Odstrcilik*. The only possibility of the sentence not becoming enforceable is if the appellant decided to pay the original fine. This is an option which can only be exercised by the appellant. By his choice and action, the sentence imposed and awaiting implementation, can become defunct. However, as of the time of the s. 16 hearing, the sentence imposed on the appellant was enforceable through an inexorable procedural process unless and until the appellant chooses to pay the fine. Therefore, the 7-month default sentence is an enforceable sentence within the meaning of s. 10(d) of the 2003 Act and the Framework Decision.

24. Accordingly, my answers to the certified questions from the High Court are:-

"Yes — In circumstances where a surrender request is grounded in an order imposing a default sentence of imprisonment and future proceedings are concerned solely with serving the order and executing the sentence, but where a respondent retains an option to pay a fine to avert the sentence, the request is in compliance with section 10 of the Act of 2003 and Article 8(c) of the Framework Decision 2002/584 JHA.

Yes — A seven-months' sentence of imprisonment that stands against the requested person in the foregoing circumstances constitutes an "enforceable judgment" of the type and nature required by the European Arrest Warrant Act, 2003, as amended, when interpreted in the light of the Framework Decision."

25. I am further of the opinion that the issues arising in this matter are *acte clair* and a necessity does not arise to make a reference to the Court of Justice of the European Union.

Conclusion

26. I am of the view, for the reasons set out, that the appeal should be dismissed.