

THE HIGH COURT

2010 182 Ext

Between:

The Minister for Justice, Equality and Law Reform

Applicant

And

Trevor Adrian Davies

Respondent

Judgment of Mr Justice Michael Peart delivered on the 8th day of October 2010:

The surrender of the respondent to the United Kingdom is sought on foot of a European arrest warrant which issued thereon the 26th April 2010. Following its transmission to the Central Authority here, it was duly endorsed for execution by order of the High Court dated 12th May 2010. Thereafter, on the 19th May 2010 the respondent was duly arrested and, as required by section 13 of the European Arrest Warrant Act, 2003, as amended, was immediately brought before the High Court from where he has been remanded from time to time pending the hearing of this application for his surrender.

No issue arises as to his identity, and the Court is satisfied from the affidavit evidence of the arresting Garda officer, Sgt. Seán Fallon that the person whom he arrested and who is before the Court is the person in respect of whom this warrant has been issued.

The respondent is sought by the UK authorities so that he can be prosecuted for a large number of offences all of which have been marked as being within one of the categories of offences contained in Article 2.2 of the Framework Decision (i.e. sexual exploitation of children), and as such, since minimum gravity is satisfied for the purpose of that Article, it is unnecessary for correspondence/double criminality to be established. No issue arises in that regard, and it is unnecessary to set out the details of those alleged offences at all, except perhaps to say at this stage that the offences are alleged to have been committed at various dates between 1971 and 1997.

There is no reason arising under sections 21A, 22, 23 or 24 of the Act of 2003 to refuse to make the order sought.

Subject to addressing the arguments made in support of a single ground of objection, I am satisfied that his surrender is not prohibited by any provision of Part III of the Act of 2003 or the Framework Decision.

The point of objection:

It is essentially a delay objection, but not on the basis that due to the passage of time the respondent will not receive a fair trial. Rather it is suggested that the United Kingdom waited unnecessarily until the respondent had completed serving a seven year sentence here for similar offences before they proceeded to seek his surrender, and that this has therefore meant firstly that he will face trial seven or eight years later than if the authorities had not waited until his sentence here was completed, and secondly, that he has been deprived of what otherwise would have been what the respondent argues a benefit he enjoyed under section 19 (2) of the Act of 2003, namely that if he had been surrendered sooner he could have had his seven year sentence here reduced by the time he spent in custody consequent upon surrender. It is argued that the period spent in custody consequent upon surrender should be interpreted so as to include any sentence of imprisonment which might be imposed in respect of the offences contained in the warrant. It is pleaded in the Points of Objection that *"by contrast, as a result of the authorities in the issuing State not to issue the warrant until his term of imprisonment was due to expire, he is now on remand in custody in this jurisdiction beyond his release date, and is facing effectively a consecutive term of imprisonment if convicted of the charges in the European arrest warrant"*.

John Fitzgerald BL for the respondent has referred to the provisions of s. 19 of the Act of 2003, which provide as follows:

19.—(1) *Where a person to whom an order under section 15 or 16 applies—*

(a) has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State, and

(b) is, at the time of the making of the order, required to serve all or part of that term of imprisonment,

the High Court may, subject to such conditions as it shall specify, direct that the person be surrendered to the issuing state for the purpose of his or her being tried for the offence to which the European arrest warrant concerned relates.

(2) Where a person is surrendered to the issuing state under this section, then any term of imprisonment or part of a term of imprisonment that the person is required to serve in the State shall be reduced by an amount equal to any period of time spent by that person in custody or detention in the issuing state consequent upon his or her being so surrendered, or pending trial." (my emphasis)

If the respondent's submission is correct it would mean that section 19 provides for the possibility in the present case, for example,

for the respondent having been convicted and sentenced to seven years' imprisonment, to be immediately surrendered to the United Kingdom upon a European arrest warrant so that he can be prosecuted for other offences there, and if convicted and sentenced there for those offences, then the seven year sentence in this State must be reduced by any length of time spent in prison in the United Kingdom, since such a period would be one which was "*consequent upon his or her being so surrendered, or pending trial*" as provided for in section 19.

Remy Farrell BL for the applicant submits that even if there be some ambiguity in the manner in which section 19 has been worded, it would be absurd and could not be the case that the Oireachtas considered that in such a case a person such as the respondent might not have to serve a sentence imposed here for a domestic offence simply because his surrender was sought so that he could be prosecuted for different offences in the issuing state.

Conclusions:

The interpretation sought to be put on section 19 of the Act of 2003 would result in a situation nowhere contemplated by any article of the Framework Decision. There is nothing in the latter which even hints at it being contemplated that a person such as the respondent in this case might be absolved from in effect having to serve a sentence of imprisonment for offences committed here, if before he serves that sentence he is surrendered to an issuing state and subsequently convicted and sentenced there for other offences. It is impossible to think of any circumstances in which there could be considered to be an entitlement to such a situation or that justice would require that such a right be available to a person. To read section 19 in such a way would lead to absurdity, and to a situation not contemplated by any provision of the Framework Decision, and a conforming interpretation of section 19 requires that the respondent's submission be rejected. It is quite clear from section 18 of the Act and from the Framework Decision, that where a person such as the respondent has been convicted and sentenced for offences here and is also sought thereafter on foot of a European arrest warrant before that sentence is completed, any order for surrender may be postponed until the sentence is completed. It would run contrary to that provision if by reference to section 19 the respondent could complain as he does in the present case that any sentence in the issuing state post-surrender amounts to a consecutive sentence. It is clearly contemplated under the Framework Decision that a person such as the respondent need not be surrendered until after any sentence in the executing state has been served. In the present case it was perfectly permissible for the authorities to have waited until the sentence here was almost completed before transmitting a warrant for his surrender. They could of course have transmitted a warrant sooner and that could have been processed while the domestic sentence was being served. But on the other hand, it is inevitable that the authorities here would have sought a postponement of any order for surrender until such time as that sentence had been served. In these circumstances, the respondent has suffered no prejudice whatsoever, and the interpretation argued for in relation to section 19 could not be correct.

I will therefore make the order for surrender which is sought on this application.