

## THE HIGH COURT

Record Number: 2006 No. 72 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND  
GINTAUTAS PECIUKENAS

RESPONDENT

**Judgment of Mr Justice Michael Peart delivered on the 24th day of November 2006:**

1. The surrender of the respondent is sought by the authorities in Lithuania on foot of a European arrest warrant which issued on the 24th November 2004. It was not received in this State until the 14th June 2006, and was thereafter endorsed for execution by order of the High Court on the 18th July 2006. Thereafter the respondent was duly arrested on the 23rd August 2006 and immediately brought before the High Court where he was remanded to await the hearing of this application for surrender under s. 16 of the European Arrest Warrant Act, 2003 ("the Act"). There is no issue raised as to identification and I am satisfied from the evidence provided that the person before the Court is the person in respect of whom the warrant has been issued.

2. The domestic warrant issued by the District Court in Vilnius on the 20th February 2004 is an "arrest warrant".

30 The offence for which the surrender is sought is one described as fraud, and this offence has been designated on the warrant as one of the offences set forth in Article 2.2 of the Framework Decision as not requiring to have double criminality verified. From the recitation of facts giving rise to the alleged offence it appears to be an allegation of what might be commonly called "VAT fraud". It is alleged to have been committed in 2001.

4. It is an offence which satisfies the minimum gravity requirements under the Act since it is punishable in Lithuania by a sentence of imprisonment of up to eight years.

5. I am satisfied that no undertaking is required under s. 45 of the Act since this is not a case delay with already in the absence of the respondent in Lithuania. I am also satisfied that a refusal of surrender is not required by sections 21A, 22, 23 or 24 of the Act, and also, subject to dealing with the issue of delay which has been raised on the respondent's behalf by Kieran Kelly BL, I am satisfied that surrender of the respondent is not prohibited by Part 3 of the Act or by the Framework Decision.

**Delay**

6. The Points of Objection make the delay point by stating that there has been delay in making application for the indorsement and execution of the warrant, contrary to section 13 of the Act and Article 17 of the Framework Decision. This is based not on the time since the warrant was received in this State but on the basis that the European arrest warrant was issued by the District Court in Vilnius on the 23rd November 2004 – a period of about seventeen months. Lapse of time is raised separately in Point 8 of the Points of Objection, but in a general way by stating that the extradition of the respondent after "such a lapse of time since the commission of the alleged offences and the issue of the European Arrest Warrant would be contrary to the statutory scheme of the European Arrest Warrant Act 2003 and the underlying Framework Decision of 13th June 2002, fail to accord due process, breach principles of fundamental fairness and it would be contrary to justice."

7. No affidavit has been filed by the respondent to give any evidence of how he may have been prejudiced in his capacity to defend the charge by reason of the lapse of time.

8. Kieran Kelly BL has submitted that there is unexplained delay since the date of the alleged offence and since the issue of the European arrest warrant in November 2004, and that this dilatoriness is not in accordance with the requirement of urgency stated in Article 17 of the Framework Decision, signed up to by the Member State of the European Union. He submits that while fraud can be a complex matter to investigate and that this may account for the time between 2001 and the issue of the warrant, it cannot explain the time which passed between date of issue of the warrant issued and the execution of same.

9. The first time to remark about this case is that it is a fraud case said to have been committed in 2001. It is not possible for this court to overlook the nature of that offence and its capacity to absorb considerable time for investigation leading to charge and arrest. Nevertheless the domestic warrant issued in February 2004, and the European arrest warrant some months later in November 2004. There is nothing unreasonable or manifestly culpable in that passage of time, especially in the absence of any evidence from the respondent as to any prejudice arising to him

10. The second period of delay from the date of issue in November 2004 until the endorsement here in July 2006 – a period of one year and eight months – is not explained. In the context of extradition generally this is itself not a delay of exceptional length. I appreciate that the Framework Decision states that these matters are to be handled on an urgent basis, but this Court is entitled to have regard to the fact that the respondent came to this country after he was aware of these offences alleged against him, and that there was an arrest warrant issued shortly thereafter. In all probability, he was no longer available in Lithuania for arrest on foot of that warrant, and in the absence of any affidavit or evidence from the respondent whatsoever to the contrary, it is only fair to allow for the fact that it would of necessity require some time for the location of the respondent in this State before the warrant is sent over for execution.

11. As to the terms of Article 17 of the Framework Decision, I am of the view that the expression of urgency therein set forth is something which each Member State must aspire to observe in the arrangements put in place in each Member State in order to give effect to the Framework Decision. Certain time limits are contained in the Act here, for example, and the procedures of the Court under rules made require that matters are dealt with expeditiously as far as practicable. However, without setting the conclusions out in detail, the judgments of the Supreme Court in Dundon make clear that these limits and the expression of urgency are not matters which give rise to individual rights and a reason for the release of the respondent and refusal of surrender. A persistent breach of the requirements of the Framework Decision may give rise to consequences for the survival of the European arrest warrant scheme at an institutional level, but it cannot be said that such a situation may arise at the instance of an individual respondent, but rather at European Council level.

12. In any event, no prejudice of any kind has been asserted, and there is simply a general plea that to surrender him in circumstances where urgency has not been adhered to, and after such period of time, would breach his rights to due process, fundamental fairness and would be contrary to justice. This Court has no evidence of any prejudice and the length of time involved is

way short of sufficient for any prejudice to be implied, even if (and I am not to be taken as expressing any conclusion in this regard) under the most recent decisions of the Supreme Court the concept of implied or presumed prejudice can be said to still exist in relation to offences other than this involving sexual offences. I am satisfied that the respondent's surrender is not prohibited by Part 3 of the Act or the Framework Decision.

13. I therefore make the order sought pursuant to s. 16(1) of the Act for the surrender of the respondent to such person in the requesting state as is authorised to receive him, and commit him to prison as required pending the necessary arrangements being put in place.