

## THE HIGH COURT

2005 No. 11 Ext.

**IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT,  
AND IN THE MATTER OF  
OLEG SALDUGEI**

**Judgment of Mr Justice Michael Peart delivered on the 26th day of July 2005**

1. This is an application for an order under s.16(1) of the EAW Act, as amended, for an order directing that the person named in the European Arrest Warrant issued herein on the 5th April 2005, and transmitted to the Central Authority in this jurisdiction on that date and subsequently endorsed for execution pursuant to the provisions of s. 13(2) of the said Act, be delivered to the person duly authorised in the United Kingdom to receive him.
2. The person named in the warrant is the respondent, therein named as Oleg Saldugei.
3. Following the endorsement of the said warrant for execution, a person believed to be the person named therein was arrested by Sgt Martin O'Neill at the Four Courts, Dublin on the 10th June 2005, and was thereafter brought before the High Court as required by the provisions of s. 13(5) of the said Act, where evidence of arrest was given by the said Martin O'Neill, and the Court, being satisfied on that occasion that the person arrested and before the court was the person named in the warrant, and that the other requirements of s.13 were complied with upon arrest, remanded the respondent in custody and fixed a date for hearing of this application.
4. In due course Points of Objection were filed and delivered on behalf of the respondent, wherein a number of points of objection are raised:
  1. that the delay in the arrest of the respondent from the 6th April 2005 when the warrant was endorsed for execution, until the 10th June 2005 is contrary to the procedure set forth in the 2003 Act, and to the spirit of the said Act;
  2. that there has been non-compliance with s. 18 of the said Act, which enables the Court to postpone in certain circumstances the surrender of the respondent to the requesting state, until, inter alia, charges in this state against the respondent have been proceeded with, and any sentence imposed has been served.
  3. that an affidavit dealing with the arrest of the respondent on the 10th June 2005 was not served on the respondent's solicitors until the day following the date which, it is submitted same was required to be served, by virtue of S.I. 23/2005, and that this "further non-compliance" disadvantages the respondent;
  4. that the applicant is required to prove "the relevant corresponding offences".
5. Not all these points, perhaps understandably, were pressed at the hearing before me, and the main concentration by Patrick McCarthy SC on the respondent's behalf was on the question as to whether on the occasion of the arrest of the respondent, the arresting officer cautioned the respondent before asking him certain questions, put in order to establish to that officer's satisfaction the identity of the person he wished to arrest. I will deal with that shortly. The question of any postponement of surrender under s. 18 of the Act can be dealt with at the conclusion of this judgment in the event that the court is making an order for delivery under s. 16 of the Act.
6. The point relating to the delay from the 6th April 2005 was not pursued, but I would be satisfied in any event that such a short period of time could not possibly constitute a culpable lapse of time, short of some extraordinary and exceptional circumstance which I cannot at the moment imagine. But certainly there is none such in the present case.
7. In relation to the point about the affidavit of arrest not being delivered to the respondent's solicitor until a day after the appropriate date, this point was not pursued, but in any event it seems to be devoid of merit, and it is worth noting that the deponent was present before me for cross-examination at the request of the respondent and was cross-examined, and I shall come to that.
8. In relation to correspondence, the position is that correspondence is to be presumed and does not have to be made out under the 2003 Act procedures in respect of two of the offences, namely murder and false imprisonment (the latter equating to illegal restraint), both being offences "ticked" in Section (f), para I on the warrant.
9. The next offence is one of assault occasioning actual bodily harm, and I am satisfied that the facts outlined in the warrant in this regard would if committed in this State give rise to an offence under s. 3 of the Non-Fatal Offences Against the Person Act, 1997.
10. The remaining offence is one of aggravated burglary and I am satisfied that the facts outlined in the warrant would if committed in this State amount to the offence of aggravated burglary contrary to s. 23B of the Larceny Act, 1916, as inserted by s. 7 of the Criminal Law (Jurisdiction) Act, 1976.
11. I am also satisfied that the minimum gravity requirements under the Act are met in relation to these offences.
12. As I have said the main point of objection arose following the cross examination of Sgt. O'Neill. It is not an objection which appears in the points of objection. It relates to the question as to whether the respondent is properly before the Court and whether he was properly arrested in accordance with law in the circumstances appearing. Sgt O'Neill stated on affidavit and in his oral evidence that on the 10th June 2005 he was in attendance at the Four Courts and had the endorsed warrant in his possession in respect of the respondent. It appears that the respondent was in custody on another matter and was brought to the Four Courts by arrangement. He says that he there met a man who he believed to be Oleg Saldugei. He introduced himself to him by producing to him his official Garda identification card and telling him his name, rank and station. He then asked him "are you Oleg" to which the respondent answered "yes". He then asked him was he "Saldugei" and he again replied "yes". He then asked if he was from Latvia, to which again he replied "yes", and asked him if his date of birth is "11th September 1980" to which the answer was "yes". He then asked him if he lived at the address in England which appears in the warrant, and the respondent replied "yes".
13. Sgt O'Neill then at that point informed the respondent that he had a warrant in his possession for his arrest, and informed him that he was arresting him on foot of the warrant and that he did so at 10.55am on the 10th June 2005. Sgt O'Neill then stated that he cautioned the respondent following that arrest in the usual manner as appears in the affidavit, and that he showed him the

warrant and explained the four offences set out therein and informed the respondent of his various rights upon arrest, namely to be legally represented and to an interpreter and so on. Following this, Sgt O'Neill asked the respondent if he knew what all this was about and he said that he did, and he also asked the respondent to show him his left arm, and that when this was done he observed scarring on that arm as outlined in the warrant.

14. Mr McCarthy submits that the fact that the caution was given to the respondent after arrest rather than before it when questions were being asked in order to establish identity, is not in accordance with appropriate procedure, and that he ought to have issued the caution before he took any further step. Mr McCarthy established in cross-examination of Sgt O'Neill that he had been present in Cloverhill on three occasions when the respondent had been before that court on other offences, and that that was how he knew the respondent. Mr McCarthy makes the point that if Sgt O'Neill already knew him then he did not need to establish his identity for the purpose of arrest and should have cautioned him and then asked questions, no matter how redundant those questions may have been. He also submits that these proceedings are criminal in nature and there must be strict observance with procedures and rules in relation to matters such as caution and arrest. In these circumstances it is submitted that the respondent is not properly before the Court and should be released.

15. In my view there was nothing improper in the manner in which this arrest was carried out. If Sgt O'Neill was aware of the respondent's identity before the 10th June 2005 it can only have been on the basis of what he was told by others. He had not spoken to the respondent himself. It was entirely proper in my view that before arresting the respondent on foot of the warrant he should satisfy himself that the person he was about to arrest was the person named in the warrant. The questions put were for that purpose and I am satisfied that the respondent was properly arrested and brought before the Court after the arrest and that all his rights were explained to him and that all the formalities attendant upon the arrest of a person named in a European Arrest Warrant were observed.

16. Being therefore satisfied in respect of all matters in respect of which I must be satisfied for the purpose of making the order requested under s. 16(1) of the Act, I make the necessary order for the delivery of the respondent to the person authorised in the United Kingdom to receive him, and I will hear any submission relating to an application for postponement under s. 18 of the Act.