

THE HIGH COURT

RECORD NUMBER 2019/308 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

HELMUTS LAIPNIEKS

RESPONDENT

Judgment of Mr. Justice Paul Burns delivered on the 8th day of October, 2020

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Latvia ("Latvia") pursuant to a European arrest warrant dated 7th May, 2018 ("the EAW") issued by the Prosecutor General's Office of the Republic of Latvia ("the Prosecutor General's Office"). The surrender of the respondent is sought in order to prosecute him for four offences of fraud.
2. The warrant was endorsed by the High Court on 18th September, 2019 and the respondent was arrested and brought before the High Court on 6th December, 2019.
3. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. No issue was taken in this regard.
4. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The offences in respect of which the surrender of the respondent is sought carry a maximum penalty of between 1 year and 3 years' imprisonment.
6. The offences in respect of which the surrender of the respondent is sought are set out at part E of the EAW as follows:-

"(1) Within the time period between 11 September 2015 and October 2016 H.Laipnieks with purpose to commit fraud, abusing the trust of M.Graudiņš and misinforming him about his real intentions, offered to invest money into the stock exchange funds for gaining profit. M.Graudiņš agreed to the offer of H.Laipnieks and within the time period between 11 September 2015 and October 2016 gave to H.Laipnieks the money for total amount 14500 EUR. H.Laipnieks spent the money given by M.Graudiņš for his own needs.

In the result of illegal actions of H.Laipnieks to M.Graudiņš was caused the pecuniary damage for amount of 14500 EUR ...;

(2) On 26 May 2016 H.Laipnieks by phone got into touch with N.Odumiņš, presenting himself with name Elvis, and with the purpose to commit fraud, abusing the trust of N.Odumiņš and misinforming him about his real intentions, offered to lend the money 6000 EUR, but explained that such a service will cost 150 EUR. N.Odumiņš

agreed to the offer of H.Laipnieks and on 26 May 2016 transferred 150 EUR to the bank account notified by H.Laipnieks. H.Laipnieks failed to adhere with the conditions of the orally entered agreement and spent money paid by N.Odumiņš for his own needs.

In the result of illegal actions of H.Laipnieks to N.Odumiņš was caused the pecuniary damage for amount of 150 EUR, namely, on a small scale.;...

- (3) *On 31 March 2016 H.Laipnieks by phone got into touch with I.Dumpe (Ms), presenting himself with name Mārcis Graudiņš, and with the purpose to commit fraud, abusing the trust of I.Dumpe and misinforming her about his real intentions, offered to lend the money 1000 EUR, but explained that such service will cost 95 EUR. I.Dumpe agreed to the offer of H.Laipnieks and on 31 March 2016 transferred 95 EUR to the bank account notified by H.Laipnieks. H.Laipnieks spent money paid by I.Dumpe for his own needs. In the result of illegal actions of H.Laipnieks to I.Dumpe was caused the pecuniary damage for amount of 95 EUR, namely on a small scale;...*
- (4) *Within the time period between middle of December 2016 and 26 January 2017 H.Laipnieks with purpose to commit fraud, abusing the trust of T.Kuļalka and misinforming him about his real intentions, offered to provide assistance in relation with money transfer so that he could buy the mobile phone Apple Iphone 7, as well as offered to invest money into the stock exchange funds for gaining the profit. T.Kuļalka agreed to the offer of H.Laipnieks and within the time period between middle of December 2016 and 26 January 2017 gave and transferred to H.Laipnieks money for total amount 1458 EUR. H.Laipnieks spent the money given by T.Kuļalka for his own needs. The result of illegal actions by H.Laipnieks to T.Kuļalka was caused the pecuniary damage for amount of 1458 EUR."*

7. The respondent delivered a notice of points of objection to surrender, undated, which can be summarised as follows:-
- (a) the EAW was not issued by a competent issuing judicial authority within the meaning of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States ("the Framework Decision");
 - (b) there was no correspondence between offence number 3 in the EAW and an offence under the law of the State;
 - (c) surrender was prohibited by s. 37 of the Act of 2003 as it would violate the respondent's right to a fair trial under article 6 of the European Convention on Human Rights ("the ECHR") as proceedings had been finalised in the issuing state in relation to offence number 1 in the EAW; and

- (d) the EAW did not contain sufficient detail as to the time and place of each offence as required by s. 11(1A)(f) of the Act of 2003.

Only point (a) was pursued at the hearing.

8. The respondent swore an affidavit, dated 21st January, 2020, in which he averred that in respect of offence number (1) in the EAW, he was detained and questioned by police in Latvia over a 48-hour period subsequent to which he was served with official papers from the Latvian authorities confirming that the investigation and prosecution was closed. In respect of offences (2) and (3) in the EAW, he stated that he had been employed by another person to make telemarketing calls to offer small loans and that he had absolutely no fraudulent intent in carrying out these actions. He averred that he was not represented by a lawyer at the investigation stage of any of the offences and was concerned that he would remain unrepresented if surrendered to Latvia. As regards the issuing of the EAW, he indicated that he was awaiting a report from a Latvian lawyer.
9. An affidavit was sworn on behalf of the respondent by Jelena Kvjatkovska, a Latvian lawyer, dated 30th June, 2020, in which she exhibited her report dated 29th June, 2020. Her report may be summarised as follows:-
- (a) *that the prosecutors of the General Prosecutor's Office are presumed to be entirely independent from the Ministry of Justice in Latvia and the executive in general. There are both statutory rules and an institutional framework capable of guaranteeing that prosecutors are not exposed, when adopting the decision to issue a European arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive;*
 - (b) that the necessity and proportionality of the decision of the Prosecutor General's Office to issue a European arrest warrant is not subject to an appeal before a court in Latvia;
 - (c) that there is no possibility to seek judicial review of the necessity and proportionality of the decision of the Prosecutor General's Office to issue a European arrest warrant;
 - (d) that the criminal procedure in Latvia does not provide for any other mechanism whereby an application to challenge the necessity and proportionality of the decision to issue a European arrest warrant can be challenged before a judge; and
 - (e) that a European arrest warrant is not automatically issued in Latvia where there is an existing national arrest warrant and the accused is found to be outside of the Latvian jurisdiction, since the decision to issue a European arrest warrant is subject to the assessment of the Prosecutor General's Office.
10. On behalf of the respondent, it was submitted that on the basis of the respondent's expert report, there was an absence of effective judicial protection as regards the issuing

of the EAW and in particular as regards the proportionality of the issuing of same by the Prosecutor General's Office.

11. By letter dated 14th July, 2020, the Court sought additional information from the Prosecutor General's Office as regards:-
 - (a) what judicial oversight is in place to ensure that the proportionality of the issuing of a European arrest warrant can be judicially considered, and
 - (b) whether there was any process whereby the issue of a European arrest warrant can be appealed to a judge or by other means challenged or subjected to judicial review either prior to, or subsequent to, the surrender of the respondent.

By reply dated 14th July, 2020, the Prosecutor General's Office stated that the legal framework in Latvia for the issuing and appeal of a European arrest warrant completely corresponded to the legal framework of Sweden which was recognised as providing effective judicial protection by the Court of Justice of the European Union ("the CJEU") in XD (Case C-627/19 PPU) (2019). The reply indicated that the person who was being requested on the basis of a European arrest warrant had a right to appeal the decision to place him in pre-trial custody, without any time limit, both before and after the issue of the warrant and/or the arrest of the person, and if the decision to place him in pre-trial custody is revoked, the European arrest warrant automatically loses its force. Any court of higher instance reviewing an appeal against the decision of a placement of a person in pre-trial custody shall also assess the proportionality of the issuing of the European arrest warrant. It was pointed out that in XD, the CJEU held:-

"... even in case when it is not possible to separately appeal against the prosecutor's decision to issue a EAW, the conditions for its issue, including the proportionality thereof, may be examined in court in the issuing Member State prior to or simultaneously with the issuance thereof in deciding whether to issue an arrest warrant on the basis of which shall be issued the relevant EAW or after its issuance."

12. It is noted that the reply furnished by the Latvian Prosecutor General's Office was a replica of Latvia's response to a questionnaire, issued by Eurojust to all member states in 2019 and revised in March 2020, as regards the CJEU's judgments in relation to the independence of issuing judicial authorities and effective judicial protection. It was submitted on behalf of the respondent that the generic nature of the reply was not adequate. The Court considers this criticism unwarranted in circumstances where the issues raised were by their nature of general purport and thus, required a general reply.
13. In XD, the CJEU held as follows at para. 41-46:-

"Furthermore, where the law of the issuing Member State confers jurisdiction to issue a European arrest warrant on an authority which, while participating in the administration of justice of that Member State, is not itself a court, the decision to

issue such an arrest warrant shall be taken, inter alia the proportionate nature of such a decision must be capable of being subject, in that Member State, to a judicial remedy which fully satisfies the requirements of effective judicial protection [judgment of 27 May 2019, OG and PI (Public Prosecutor's Offices of Lübeck and Zwickau), C 508/18 and C 82/19 PPU, EU:C:2019:456, paragraph 75].

Such an appeal against the decision to issue a European arrest warrant for the purpose of criminal proceedings taken by an authority which, while participating in the administration of justice and enjoying the requisite independence from the executive, does not constitute a court, is intended to ensure that judicial review of that decision and of the necessary conditions for issuing the warrant, in particular its proportionality, complies with the requirements of effective judicial protection.

It is therefore for the Member States to ensure that their legal systems effectively guarantee the level of judicial protection required by Framework Decision 2002/584, as interpreted by the case-law of the Court of Justice, by means of the legal remedies which they provide and which may differ from one system to another.

In particular, the introduction of a separate right of appeal against the decision to issue a European arrest warrant taken by a judicial authority other than a court is only one possibility in this respect.

Indeed, Framework Decision 2002/584 does not prevent a Member State from applying its procedural rules with regard to the issuing of a European arrest warrant provided that the objective of that Framework Decision and the requirements deriving from it (see, to that effect, judgment of 30 May 2013, F, C 168/13 PPU, EU:C:2013:358, paragraph 53).

In the present case, as is clear from the case-file before the Court, the issue of a European arrest warrant for the purpose of criminal proceedings necessarily follows, in the Swedish legal system, from a decision ordering the pre-trial detention of the person concerned, which is issued by a court or tribunal."

14. The CJEU noted that prior to ordering pre-trial detention, a court in Sweden will consider the proportionality of such a measure so that the proportionality review that the court carried out in respect of ordering pre-trial detention would also cover the issuing of a European arrest warrant based upon that order for pre-trial detention. It also noted that a person sought on the basis of a European arrest warrant had a right to appeal against the decision ordering his pre-trial detention without any time limit and if the contested decision ordering pre-trial detention was annulled, then the European arrest warrant was automatically invalidated. It further noted that any higher court hearing an appeal against the decision ordering pre-trial detention also assesses the proportionality of the issue of the European arrest warrant. The court went on to hold at paras. 52-53:-

“The presence, in the Swedish legal system, of such procedural rules makes it possible to establish that, even in the absence of a separate legal remedy against the Prosecutor’s decision to issue a European arrest warrant, its conditions of issue and, in particular, its proportionality may be subject to judicial review in the issuing Member State, before or at the same time as its adoption, but also subsequently.

Such a system therefore meets the requirements of effective judicial protection.”

15. In the present case, at part B of the EAW, it is expressly stated that the EAW is based upon an arrest warrant, a or judicial decision having the same effect, namely the “*Zemgale District Court decision of 23 April 2018 on applying the arrest to defendant H.Laipnieks*”. The reply from the issuing member state indicates that the requested person may at any time, prior to or subsequent to his surrender, appeal against the decision ordering his pre-trial arrest, and if the contested decision to arrest is revoked, then the EAW is automatically invalidated. The reply also makes clear that any higher court hearing an appeal against the decision ordering pre-trial arrest will also assess the proportionality of the issue of the European arrest warrant. I am satisfied that applying the principles as set out by the CJEU in XD, that the procedural rules and legal framework which exist in Latvia provide effective judicial protection in respect of the issuing of a European arrest warrant so that the Prosecutor General’s Office can be regarded as a competent issuing authority for the purposes of the Framework Decision and the Act of 2003. I dismiss the respondent’s objections in that regard.
16. For the purpose of completeness, noting that same were not pursued at hearing, I will deal briefly with the other points of objection set out in the respondent’s notice. Part E of the EAW sets out details in relation to each of the alleged offences. I consider the details therein to be sufficient for the purposes of s. 11(1A)(f) as regards the time periods specified for each of the offences. As regards the place of commission of each alleged offence, by letter dated 12th August, 2020 the Court requested additional information from the issuing judicial authority, and by reply dated 13th August, 2020, sent by covering letter dated 18th August, 2020, the issuing authority indicated that as regards each offence, same was completed by the withdrawal of money from an ATM at a location in Latvia, the precise location being set out in respect of each offence.
17. As regards any issue of correspondence, at part E of the EAW it is certified that the offences referred to therein fall within article 2(2) of the Framework Decision and the relevant box is ticked for “fraud”. By virtue of s. 38 of the Act of 2003, it is not necessary for the applicant to show correspondence between an offence in the EAW and an offence under Irish law where the offence in the EAW is an offence to which article 2(2) of the Framework Decision applies, and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years. In this instance, the issuing judicial authority has certified that offences number 1 and 4 are offences to which article 2(2) applies, and has indicated same by ticking the relevant boxes at part E of the EAW as aforesaid. There is nothing in the EAW that gives rise to any ambiguity or perceived manifest error, such as would justify this Court in looking

behind the certification in the EAW. As regards offences number 2 and 3, I am satisfied on reading the EAW that correspondence clearly exists in respect of those offences, and indeed all of the offences set out in the EAW, with the offence under Irish law of making a gain or causing a loss by deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

18. As regards offence number 1 in the EAW, the respondent has adduced no evidence to support his contention that the proceedings in respect of that alleged offence have already been finalised. In his affidavit, he states that he was served with official papers confirming that the investigation and prosecution was closed. He has not adduced any such papers in the course of this hearing and says they are no longer available to him. Despite retaining the services of a lawyer in Latvia to advise in respect of matters pertaining to this application for surrender, the lawyer does not appear to have been asked to look into this aspect of matters or to express any view to the Court in respect of same. The matter was not pursued at hearing. Acting on the basis of the mutual trust and confidence which underpins the extradition procedures set out in the Framework Decision, I see no grounds for refusing the surrender of the respondent on the basis of a bare assertion on his part which was not followed up at hearing.

19. In relation to the respondent's concerns that if surrendered he would not be able to avail of legal representation, this similarly was not addressed by the respondent's Latvian legal expert and was again left at the level of bare assertion. In fairness to counsel for the respondent, it was not pursued at hearing. Pursuant to s. 4A of the Act of 2003:-

"It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown."

In *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, the Supreme Court explained how that provision concerns the duties and obligations of an issuing state regarding the manner in which it will deal with the person, both if surrendered and after surrender has taken place. If there is cogent evidence of non-compliance, then issues may arise which an Irish court might have to address. However, a mere assertion of non-compliance, or the possibility of non-compliance, will not be sufficient to dislodge the presumption. Again, on the basis of the mutual trust and confidence which underpins the extradition procedures set out in the Framework Decision, I see no grounds for refusing the surrender of the respondent on the basis of a bare assertion on his part which was not followed up at hearing.

20. I am satisfied that the surrender of the respondent is not prohibited under part 3 of the Act of 2003.

21. Having dismissed the respondent's objections, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Latvia.