

THE HIGH COURT

RECORD NUMBER 2020/12 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

LADISLAV ŠEVČÍK

RESPONDENT

Judgment of Mr. Justice Paul Burns delivered on the 11th day of November, 2020

1. In this application, the applicant seeks an order for the surrender of the respondent to the Czech Republic pursuant to a European arrest warrant dated 12th August, 2019 ("the EAW"). The EAW was issued by Judge Adrian Matúš of the District Court in Karlovy Vary as the issuing judicial authority. The EAW seeks the surrender of the respondent to serve a sentence of 2 years' imprisonment, imposed upon him on 10th January, 2019 in respect of drug trafficking offences and an offence of failing to enter prison to serve a sentence, of which the full 2 years remains to be served.
2. The EAW was endorsed by the High Court on 20th January, 2020 and the respondent was arrested and brought before the High Court on 10th March, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. No issue was raised in this respect.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), have been met. The respondent is sought to serve a term of imprisonment of 2 years.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
6. I am satisfied that the requirements of s. 45 of the Act of 2003 have been met and no issue was raised in this respect.
7. The respondent delivered points of objection dated 14th May, 2020 which may be summarised as follows:-
 - (a) surrender is prohibited by reason of s. 38 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), due to a lack of correspondence between any offence under Irish law and the offence set out at part (e)2 of the EAW, i.e. failing to enter prison to serve a sentence; and
 - (b) surrender is prohibited by reason of s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR") and in particular would be in breach of the respondent's fair trial rights under article 6 ECHR, as he had not been afforded the services of a lawyer in respect of his trial.

8. The respondent swore an affidavit herein dated 12th May, 2020 in which he averred that he had been convicted of the offences referred to in the EAW but that although he attended the trial of the matter, he was not represented by a solicitor as he was unable to afford one and was not informed of any right to have a legal representative appointed to act for him in the event that he could not afford same.
9. The Court sought additional information from the issuing judicial authority as to whether the sentence of two years which the respondent was required to serve was made up of two separate sentences or was a cumulative sentence. The request for additional information, dated 19th June, 2020, was worded as follows:-

"2.d. is the sentence of 2 years a combined sentence for the two sets of offences or did he receive separate sentences for the drugs offence and the obstruction offence which cumulatively total 2 years? If there were two separate sentences, what was the sentence for each offence?"

In its letter of reply dated 1st July, 2020, the issuing judicial authority stated that the court had imposed on the respondent a cumulative sentence of 2 years' imprisonment, in respect of both offences set out in the EAW. It further indicated that in such circumstances, it is not possible to apportion the punishment imposed in respect of each offence. It was accepted by both parties that in line with the reasoning of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Ferenca* [2008] IESC 52, [2008] 4 IR 480, in such circumstances it would not be possible to order the surrender of the respondent in respect of one offence but not the other. Thus, unless correspondence could be shown to exist between both of the offences in the EAW and offences under Irish law, surrender would have to be refused.

Correspondence

10. The EAW refers to two offences. The first of these offences consists of five separate instances of the unlawful sale or supply of drugs, viz. methamphetamine, in 2017, treated as one offence under the law of the Czech Republic. In respect of this offence, the issuing judicial authority certified at part (e) of the EAW that the offence was one to which article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), applied and was punishable by a custodial sentence or detention order of a maximum of at least 3 years' imprisonment. The appropriate box was ticked to indicate the offence was an offence of "illicit trafficking in narcotic drugs and psychotropic substances". 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 3 years. In this instance, the issuing judicial authority has certified that offence I is an offence to which article 2(2) applies and has indicated same by ticking the box 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.

11. The second offence referred to in the EAW involves the failure of the respondent to enter prison to serve a sentence imposed upon him. At part (e) of the EAW, the circumstances of this offence are set out as follows:-

"II. During the period from 29 November 2017 (4 p.m.) to 4 December 2017 (10 a.m.) when he was detained in Ostrov, he failed to enter the Ostrov prison, district Karlovy Vary, nor elsewhere to start serving unconditional prison sentence in duration of 12 months, which had been imposed on him on the basis of the judgment of the District Court in Karlovy Vary of 12 October 2017, reference No.: 5 T 120/2017, and came into force on 8 November 2017, even though it is proven that he accepted in person as well as signed an order to start serving a prison sentence by 29 November 2017 at the latest, from 8 a.m. to 4 p.m. He acted in such a way in spite of having no severe health reasons, family reasons or social reasons would have prevented him from starting serving a prison sentence."

12. The nature and legal classification of the offence and the applicable statutory provision/code is set out at part (e) of the EAW as follows:-

"II. Section 337

Obstructing the Execution of an Official Decision and Deportation

(1) A person who obstructs or substantially hinders the execution of a decision of a court or another public authority by

(...)

(h) failing to commence serving their prison sentence even upon court challenge without a substantial reason, or they otherwise prevent the commencement of the execution of such punishment without authorisation,

(...)

shall be punishable by a prison sentence of up to two years."

13. By letter dated 19th June, 2020, the Court sought additional information from the issuing judicial authority in respect of the correspondence issue and in particular sought a copy of the order which the respondent obstructed or hindered, as well as a copy of the order signed by the respondent as referred to in the description of the offence. By reply, dated 1st July, 2020, the issuing judicial authority furnished a copy of the order that the respondent start serving a prison sentence of 14th November 2017, as well as a return receipt (proof of service) confirming the order's acceptance by the respondent on 21st November, 2017. It is noted that the order to start serving a prison sentence served upon the respondent contained, *inter alia*, the following warning:-

"III. If you do not start the sentence within the deadline that was provided for you above, your action may be considered a criminal offence of obstructing the

execution of an official decision and deportation under Section 337 Subsection 1 (f) of the Criminal Code, for which a prison sentence of up to 2 years may be imposed."

14. The applicant submitted that correspondence could be established between offence II set out in the EAW and offences under the law of the State, viz. criminal contempt of court and/or perverting the course of justice, both of which are offences at common law. It was submitted that the failure of the respondent to appear at the prison to serve the sentence was an egregious breach of an order of a court exercising criminal jurisdiction so as to amount to a criminal contempt. It was submitted that the categories or circumstances of criminal contempt are not closed. Further, in the alternative it was submitted on behalf of the applicant that, similarly, the categories or circumstances of perverting the course of justice are not closed and a variety of conduct is capable of constituting same provided the course of conduct has a tendency to, and is intended to, pervert the course of justice.
15. On behalf of the respondent, it was submitted that the facts and circumstances set out in the EAW as constituting offence II in the Czech Republic simply could not arise in this jurisdiction as there is no corresponding procedure whereby a person sentenced to a term of imprisonment is ordered to surrender himself at the prison on a future date. It was submitted that in this jurisdiction, a sentence of a term of imprisonment is given effect to by way of a committal warrant directed to third party, usually An Garda Síochána, to lodge the person in the prison, and the governor of the prison is then directed to detain the person in the prison for the period specified in the committal warrant. There is no obligation placed upon the sentenced person to present himself to the prison, nor does he undertake to do so.
16. The parties agreed that there was no corresponding statutory offence at Irish law. Section 7 of the Criminal Justice Act, 1960, merely provides:-

"A member of the Garda Síochána may arrest without warrant a person whom he suspects to be unlawfully at large and may take such person to the place in which he is required in accordance with law to be detained."

Section 13(1) of the Criminal Justice Act, 1984, as amended ("the Act of 1984"), provides:-

"If a person who has been released on bail in criminal proceedings fails to appear before a court in accordance with his recognisance, he shall be guilty of an offence...."

Section 41(1) of the Criminal Justice Act, 1999, as amended ("the Act of 1999"), creates a specific offence of perverting the course of justice in limited circumstances by stating:-

"Without prejudice to any provision made by any other enactment or rule of law, a person-

- (a) *who harms or threatens, menaces or in any other way intimidates or puts in fear another person who is assisting in the investigation by the Garda Síochána of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence, or a member of his or her family,*
- (b) *with the intention thereby of causing the investigation or the course of justice to be obstructed, perverted or interfered with,*
- shall be guilty of an offence."*

It is clear that none of those circumstances cover the factual situation as set out in the description of the acts constituting offence II as set out in the EAW.

17. Article 2.4 of the Framework Decision provides:-

"For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described."

The State has decided to make surrender subject to the condition referred to in article 2.4 of the Framework Decision, as well as s. 5 of the Act of 2003 which deals with correspondence. Section 5 of the act of 2003 provides:

"For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State."

18. In *Minister for Justice, Equality and Law Reform v Dolny* [2009] IESC 48, Denham J., as she then was, stated at para. 38 of her judgment:-

"[38] In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."

19. Both parties referred the Court to the Court of Appeal decision in *Minister for Justice and Equality v. Prieto* [2016] IECA 90. In that case, Mr. Prieto had been arrested and charged

with serious assault and brought into custody before a sheriff's court in Scotland where he was granted bail on certain conditions, including that he appear at the appointed time at every date of which he was given due notice, or at which he was required to appear. He failed to appear at a subsequent hearing date and was charged with an offence contrary to s. 102A of the Criminal Procedure (Scotland) Act, 1995, as amended, which provided that an accused who is subject to criminal proceedings on indictment commits an offence if, without reasonable excuse, he fails to appear at a date of which he has been given due notice, apart from a date he is not required to attend. A European arrest warrant was issued by the Scottish authorities seeking the surrender of Mr. Prieto to face prosecution for, inter alia, an offence contrary to s. 102A of the Criminal Procedure (Scotland) Act, 1995, as amended. The High Court held that there was no correspondence between the Scottish statutory offence set out in the warrant and the Irish offence created by s. 13 of the Act of 1984 but found there to be correspondence between the Scottish statutory offence and the Irish common law offence of criminal contempt of court. The matter was appealed to the Court of Appeal, and the majority of that court found there to be no correspondence between the Scottish statutory offence and the Irish offence of criminal contempt of court but found that there was correspondence with the Irish statutory offence created by s. 13 of the Act of 1984.

20. In *Prieto*, Peart J., in the Court of Appeal, referred to the judgment of Ó'Dálaigh C.J. in *Keegan v. De Burca* [1973] IR 223 at para. 22:-

" [22].... '*Criminal contempt consists in behaviour calculated to prejudice the due course of justice, such as contempt in facie curiae, words written or spoken or acts calculated to prejudice the due course of justice or disobedience to a writ of habeas corpus by the person to whom it is directed – to give but some examples of this class of contempt.*'"

Peart J. went on to state at para. 23:-

"[23] *This contempt jurisdiction serves to uphold public confidence in the administration of justice. It is therefore an important jurisdiction. What will or will not be considered to be a criminal contempt in the face of the court or indeed from outside the court (often referred to as constructive contempt) will vary factually from case to case. But the jurisdiction is sufficiently broad in its scope to encompass any act or omission which the court considers a threat to, or a serious prejudice to, the proper administration of justice or, as it is sometimes put, tending to scandalise the court.*"

21. Peart J. listed examples of criminal contempt such as:-

- (a) baseless and malicious charges of impropriety and misconduct against the court;
- (b) failure of a witness to attend court on foot of a *subpoena ad testificandum*;
- (c) failure to produce a document required under *subpoena duces tecum*;

- (d) *seizing a document in minibus curiae and carrying it away in defiance of the court; and*
- (e) *insulting remarks during a trial.*

Peart J continued:-

"[25] I refer to these examples in order to demonstrate the type of matters that historically have been treated as criminal contempts in the face of the court, so that they can be contrasted with the failure to appear in court in breach of a bail condition. While there is no doubt that factually this represents a failure to honour an obligation to the court, nevertheless in my view it is qualitatively different, and not something that in the same way represents an affront, insult or defiance of the court such that it endangers the administration of justice, or prejudices the public confidence in the administration of justice."

- 22. Peart J. went on to refer to Richardson and Thomas, *Archbold: Criminal Pleading, Evidence and Practice*, 54th Ed. (London, 2005) ("Archbold") to the effect that failing to surrender to custody contrary to the UK Bail Act, 1976 is not contempt of court. He also referred to a number of English authorities supporting the proposition that the offence of absconding whilst on bail had never constituted a contempt of court and that prior to the UK Bail Act, 1976, the only power the court had which was in any way akin to punishment was to estreat the recognizance of the accused and possibly that of his sureties.
- 23. Counsel on behalf of the applicant herein sought to rely on the reasoning of Peart J. in *Prieto* to the effect that the jurisdiction of criminal contempt is sufficiently broad in scope to encompass any act or omission which the Court considers a threat to, or a serious prejudice to, the proper administration of justice or, as it is sometimes put, tending to scandalise the court. Counsel on behalf of the respondent relied upon the reasoning of Peart J. in *Prieto* to the effect that a failure to honour an obligation to the court may not in itself represent an affront, insult or defiance of the court such that it endangers the administration of justice, or prejudices public confidence in the administration of justice.
- 24. I am satisfied that the circumstances which might amount to the offence of criminal contempt of court are not closed or limited to such facts as have been judicially recognised in the past as amounting to such an offence. By its nature, the offence must be sufficiently broad to encompass, where appropriate, activities or circumstances which may not have come before a court in the past. However, I am also satisfied that a court should exercise caution in seeking to criminalise behaviour by reference to what is a broad and somewhat ill-defined offence of criminal contempt and that the jurisdiction to punish for criminal contempt should be exercised sparingly. On the basis of the reasoning of Peart J. in *Prieto*, by which I am bound, a mere failure to honour an obligation to the court is qualitatively different from something which represents an affront, insult or defiance of the court such that it endangers the administration of justice or prejudices public confidence in the administration of justice. It would appear to follow from this that

a mere failure to present oneself at a prison for the purposes of serving a sentence imposed by a court would not in itself amount to a criminal contempt of court unless it is such that it represented an affront, insult or defiance of the court such that it endangers the administration of justice or prejudices public confidence in the administration of justice. I find the description of the acts constituting the offence as set out in the EAW does not contain a sufficient element of affront, insult or defiance of the court such that it endangers the administration of justice or prejudices the public confidence in the administration of justice. I therefore hold that there is no correspondence between offence II as set out in the EAW and the offence of criminal contempt of court in this State.

25. I find some support for the approach I have adopted in *R. v. O'Brien* [2014] UKSC 23 to which counsel for the applicant, quite fairly and rightly, directed the Court. In that case, the common sergeant had made a restraint order against Mr. O'Brien pursuant to s. 41 of the UK Proceeds of Crime Act, 2002 and in disobedience of that order, Mr. O'Brien had fled the UK. In the course of his judgment, Lord Toulson stated at para. 42:-

"[42] The question whether a contempt is a criminal contempt does not depend on the nature of the court to which the contempt was displayed; it depends on the nature of the conduct. To burst into a courtroom and disrupt a civil trial would be a criminal contempt just as much as if the court had been conducting a criminal trial. Conversely, disobedience to a procedural order of a court is not in itself a crime, just because the order was made in the course of criminal proceedings. To hold that a breach of a procedural order made in a criminal court is itself a crime would be to introduce an unjustified and anomalous extension of the criminal law."

26. Counsel for the applicant submitted in the alternative that the acts described as constituting offence II in the EAW amounted to the offence, under Irish law, of perverting the course of justice. The existence of such an offence cannot seriously be disputed. Counsel for the respondent suggested that s. 41 of the Act of 1999 had created a specific offence of perverting the course of justice through certain activities, such as the intimidation of witnesses or jurors, and that this thereby limited the offence of perverting the course of justice to the specific instances set out in that legislative provision. However, that legislative provision is specifically stated to be "*without prejudice to any provision made by any other enactment or rule of law*". Section 41 of the Act of 1999 does not in any way purport to abolish or limit the common law offence of perverting the course of justice.
27. In *Minister for Justice, Equality and Law Reform v. Hill* [2009] IEHC 159, the surrender of Mr. Hill was sought by the UK on foot of a European arrest warrant so that he might be prosecuted for an offence of doing an act tending or intended to pervert the course of public justice contrary to common law. It was alleged that Mr. Hill had posted from Ireland two packages containing DVDs to the foreman of a jury and the presiding judge at the trial of persons relating to bombings carried out in London and that the DVDs in question contained material tending or intended to pervert the course of justice. Peart J.

referred to the definition of the common law offence of perverting the course of justice set out in Archbold at paras. 23-24 of his judgment:-

"[23] It is a common law misdemeanour to pervert the course of justice ...

The offence is committed where a person or persons:

- (a) acts or embarks upon a course of conduct,*
- (b) which has a tendency to, and*
- (c) is intended to pervert,*
- (d) the course of justice...*

[24] A positive act is required. Inaction, for example, failing to respond to a summons, is insufficient to constitute an offence."

28. This definition had also been considered earlier by Peart J. in *Minister for Justice, Equality and Law Reform v. Ward* [2008] IEHC 53 in which the surrender of Mr. Ward was sought by the UK to face prosecution for an offence of perverting the course of justice and an offence of causing death by dangerous driving. As regards the offence of perverting the course of justice, it was alleged that when making his statement in the immediate aftermath of a road traffic accident, Mr. Hill had failed to inform the police that he himself was the owner of the vehicle involved and that he was able to identify the driver who had fled the scene. Peart J. was referred to the aforementioned definition of the offence of perverting the course of justice as set out in Archbold. At para. 28-6 of Archbold, it was stated that deliberate and intentional action taken with a view to frustrating statutory procedures required of the police can amount to the offence of perverting the course of justice. It was submitted on behalf of Mr. Ward that "action" in that paragraph meant a positive act rather than an omission such as failing to provide information. It was submitted on behalf of the Minister that at para. 28-7 of Archbold, it was stated that a person who does an act to assist another to evade lawful arrest with knowledge that the other is wanted by the police as a suspect is guilty of attempting to pervert the course of justice. Peart J. held as follows at para. 31:-

"[31] I am satisfied that the action alleged against the respondent in this regard, namely that he provided a misleading statement by withholding information which he had as to the ownership of the vehicle and the identity of the driver, in circumstances where he had been asked to provide a statement, is to be interpreted as a positive act of concealment of information, so as to come within the ambit of the common law offence of perverting the course of justice. That allegation is to be distinguished from a situation where a person might observe an accident involving a vehicle being driven by someone he knows, and who simply goes home without making contact with the police in order to make himself available as a witness. That is a failure to do something which he could have done, but lacks the necessary positive element which is present in a situation where he is interviewed by the police and in

making a statement fails to give information which he has as to the owner of the vehicle and the identity of the driver. There is in my view a positive act of concealment intended to conceal his own involvement and intended also to impede the police in their task of tracing the driver. There can be no doubt in my mind that if this happened in this State an offence of perverting the course of justice would be committed, if the facts were proved."

29. In the present case, it is submitted on behalf of the respondent that he carried out no positive act so as to come within the parameters of the offence of perverting the course of justice. On behalf of the applicant, it is submitted that there is no closed list of acts which might give rise to the offence and that his failure to enter the prison as required can be seen as a positive act. Counsel for the applicant referred the court to *R v. Kenny* [2013] EWCA Crim 1. In that case, it was alleged that Mr. Kenny had removed or intended to remove from the court's control assets which, pursuant to a restraint order, should have remained restrained and available for confiscation upon the conviction of a third party. Lord Justice Gross, in the Court of Appeal for England and Wales, summarised the state of the law concerning the offence of perverting the course of justice at para. 35 of his judgment as follows:-

"[35] i) There is no closed list of acts which may give rise to the offence;

- ii) That said, any expansion of the offence should only take place incrementally and with caution, reflecting both principles of common law reasoning and the requirements of Art. 7, ECHR;*
- iii) So far as concerns the offence generally, neither authority nor principle supports confining the requisite acts to those giving rise to some other independent criminal wrongdoing;*
- iv) If there is no such limitation generally, then there is no basis for importing such a restriction – as a matter of law – into the elements of the offence where it arises in the context of a breach of a restraint order."*

30. It should be noted that the English Court of Appeal in *Kenny* cited with approval Richardson, *Archbold: Criminal Pleading, Evidence and Practice*, 62nd Ed. (London, 2013) regarding the parameters of the offence of perverting the course of justice. The court did not demur from the statement in Archbold that what was required was a positive act and that inaction, for example failing to respond to a summons, is insufficient to constitute the offence.

31. I am satisfied that while there is no closed list of acts which may give rise to the offence of perverting the course of justice, a positive act is required and mere inaction is insufficient. If, as stated in Archbold, failing to respond to a summons is insufficient to constitute the offence of perverting the course of justice, then can failing to enter into prison or to commence serving a sentence, pursuant to a court order imposing a term of imprisonment, constitute such an offence? I think not. It is with reluctance that I find an

absence of a sufficient positive act or action on the part of the respondent so as to amount to the offence of perverting the course of justice. It is tempting to seek to find correspondence where the conduct of the respondent was clearly unlawful in the issuing state and morally reprehensible on any view, but caution must be exercised in seeking to rely upon a common law offence of relatively ill-defined parameters to fill in what might otherwise be a gap in correspondence, sometimes referred to as the requirement of double-criminality. Furthermore, caution must equally be exercised so as not to inappropriately extend the parameters of the offence of perverting the course of justice so as to negate the requirement that there be some positive act on the part of the accused or in defining what is meant by a positive act in such a manner as to set the requirement at naught. It is not alleged that the respondent did anything other than fail to enter the prison as required. In particular, it is not alleged that the respondent fled the jurisdiction of the Czech Republic in order to avoid entering the prison as required. Among the papers furnished by the issuing judicial authority is a transcript of interrogation of the respondent carried out in Ostrov on 29th March, 2018 in respect of the offences referred to in the EAW and thus, it seems he had remained in the Czech Republic throughout 2017 and into 2018. Indeed, it would appear that at the time of his interrogation on 29th March, 2018, he was serving a prison sentence in Ostrov. In such circumstances, I am not satisfied that correspondence exists between offence II in the EAW and the offence, under Irish law, of perverting the course of justice.

Legal Aid Issue

32. In the points of objection to surrender, it was initially submitted that the fair trial rights of the respondent had not been respected in the proceedings which led to his conviction of the offences referred to in the EAW and the sentence imposed in respect thereof. In particular, the respondent swore an affidavit to the effect that he had not been legally represented and was not informed of any right to have legal representation appointed to act on his behalf in the event that he could not afford same.
33. In its letter dated 19th June, 2020, in addition to seeking a copy of the order for imprisonment and proper service thereof, the Court sought additional information as follows:-
- "2.
- a. *In the Czech Republic, how is a person to know what entitlement, if any, they have to criminal legal aid?*
 - b. *Are the police obliged to inform a suspect of his entitlement, if any, to criminal legal aid, and if so, by what means and at what stage of the investigation or proceedings? Similarly, is a judge, or court official, obliged to inform him of it, and if so, by what means and at what stage of the proceedings?*

c. *In this case, was Ladislav Sevcik informed of his right to legal representation and/or an entitlement to apply for legal aid and, if so, is there any evidence that he was so informed?"*

34. By letter of reply dated 1st July, 2020, the issuing judicial authority set out the relevant provisions of Czech law in respect of legal aid, including the fact that all law enforcement authorities are obligated to instruct the accused of his rights and to provide the accused with full opportunity to exercise his rights, including the right to apply for legal aid. In this particular case, the respondent was serving a prison sentence at the time of initiation of the criminal prosecution in respect of the offences referred to in the EAW and, as he did not choose a defence counsel, the court appointed a defence counsel on his behalf. Prior to interview/interrogation, the respondent was informed of all of his rights, including his entitlement to defence counsel free of charge, and the respondent signed an acknowledgement of same. He was represented by court-appointed counsel up until he finished serving the prison sentence at which stage he was entitled to be further represented by defence counsel of his own choosing and was entitled to legal aid in that regard. The letter of reply included various documents in relation to the proceedings against the respondent and in particular his legal representation.

35. Following receipt of the reply from the issuing judicial authority and the documentation enclosed therewith, written submissions were received on behalf of the respondent but the submissions did not address the legal aid issue. At hearing, counsel on behalf of the respondent did not pursue this issue. 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. Marjasz* [2012] IEHC 233, a case involving, *inter alia*, an objection on the basis that the respondent had no representation and/or there wasn't a sufficient free legal aid scheme in Poland, Edwards J. set out the principles by which the executing state might enquire into the trial procedures of the issuing state at para. 120:-

"[120] Accordingly, having appropriate regard to the implications of the s.4A presumption for the way in which an issuing state / issuing judicial authority is required to conduct itself; the principles of mutual trust and confidence between member states; the further principle that there should be mutual recognition of judicial decisions and actions; and the aforementioned duty of utmost good faith, this Court considers that it is entitled to expect in respect of any conviction which is the subject of a European arrest warrant that the issuing judicial authority would not knowingly seek a respondent's rendition in circumstances where he had not received a fair trial (as judged against widely accepted norms such as those expressed in provisions such as Article 6 of the European Convention on Human Rights, to which instrument all member states operating the European arrest warrant are signatories; alternatively Article 47 of the Charter of Fundamental Rights which is also binding on such member states post the coming into force of

the Lisbon Treaty), and that it is therefore to be presumed that the respondent did in fact receive a fair trial that respected his fundamental rights. Such a presumption is, of course, capable of being rebutted in any particular case but the Court would require to have adduced before it very cogent and compelling evidence tending to rebut that presumption before it would be put upon enquiry and be justified in seeking to look behind the presumption.”

36. The respondent has failed to adduce any cogent or compelling evidence tending to rebut the presumption contained within s. 4A of the Act of 2003 and in particular, other than making a bare assertion, he has failed to adduce any evidence supporting his averment that his right to legal representation and/or legal aid was breached. The reply from the issuing judicial authority and the documentation enclosed therewith demonstrates that not only was he informed of his rights in that regard, but that he had the benefit of a court-appointed lawyer free of charge as required under Czech law and subsequently, when that requirement was no longer operative, he still had a right to choose his own lawyer and apply for legal aid but did not do so. In the circumstances, I dismiss the respondent’s objection based upon his allegation that his fair trial rights were breached by reason of a lack of legal representation and/or legal aid.

Conclusion

37. The Court finds a lack of correspondence between offence II in the EAW and any offence under the law of the State. Surrender in respect of offence II is therefore precluded by virtue of s. 38 of the Act of 2003. As the sentence in respect of which surrender is sought is an aggregate sentence in respect of both of the offences referred to in the EAW, and it is not possible to apportion the punishment imposed in respect of each offence, the Court cannot order surrender in respect of one offence but not the other. It follows that this Court will order refusal of surrender of the respondent.