

THE HIGH COURT

[2021] IEHC 10
[2020 No. 325 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

JOHN RICHARD MCDONAGH

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 12th day of January, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 10th July, 2020 ("the EAW"), issued by District Judge George Conner of Belfast Magistrates' Court as the issuing judicial authority. The EAW is based on six local warrants of arrest issued on 10th July, 2020.
2. The EAW was endorsed by the High Court on 9th November, 2020 and the respondent was arrested and brought before the High Court on 7th December, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 or 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 referred to in the EAW carry the following maximum penalties in the issuing state:-
 - (a) burglary: 14 years' imprisonment; and
 - (b) theft: 10 years' imprisonment.
6. I am satisfied that the offences referred to in the EAW correspond to offences under the law of the State, being burglary contrary to s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and theft contrary to s. 4 of that act. Correspondence was not contested.
7. The surrender of the respondent is sought in order to prosecute him in respect of six offences, the circumstances of which are set out at part E of the EAW.
8. The respondent delivered an undated notice of objection to surrender, which can be summarised as follows:-
 - (i) the EAW does not contain sufficient particulars to comply with s. 11 of the Act of 2003;

- (ii) surrender is precluded by s. 37 of the Act of 2003 due to the departure of the UK from the European Union ("the EU"); and
 - (iii) surrender is precluded by s. 37 of the Act of 2003 as it would be in breach of the respondent's right to a private and family life under article 8 of the European Convention on Human Rights ("the ECHR"), due to delay and his family circumstances.
9. The respondent swore an affidavit dated 11th December, 2020 in which he denied the charges in the EAW, indicated that his correct name is simply Richard McDonagh and averred that he has lived in Dundalk virtually all his life. He averred that, other than two periods in custody, he has lived openly in Dundalk for the last six years with his wife and three daughters, one of whom is still a minor.
10. On behalf of the respondent it was submitted that the Act of 2003 required the EAW to set out the maximum penalty in terms of both trial on indictment and summary trial, and, as only the maximum offence for trial on indictment was set out, the warrant was defective. I find no basis for this submission. The issuing judicial authority is obliged to set out the maximum penalty provided for at law for any offence in respect of which surrender is sought, presumably to indicate that the requirement of minimum gravity has been met and perhaps also to show that s. 38(1)(b) of the Act of 2003 has been properly invoked. The issuing judicial authority has indicated the respective maximum penalties and I dismiss the respondent's objection in that regard.
11. It was also submitted on behalf of the respondent that the circumstances of the offences and, in particular, the extent of the respondent's alleged involvement in same had not been sufficiently set out in the EAW. I am satisfied that the EAW does contain sufficient details as regards the alleged offences and the respondent's alleged involvement in same. The dates, locations and circumstances of each offence are set out at part E of the EAW and it is clear that the respondent is alleged to have been involved in a joint enterprise to carry out the said offences. I dismiss the respondent's objection in that regard.
12. As regards the submission that surrender was precluded by virtue of s. 37 of the Act of 2003 due to delay and unwarranted interference with the respondent's family rights under article 8 ECHR, I am satisfied that there has been no unconscionable or culpable delay established such as could justify refusal of surrender, whether treated as an individual objection to surrender or taken cumulatively with any other objection. The offences in question are alleged to have been committed in 2014 and 2015. The EAW was issued on 10th July, 2020 and the respondent was arrested on 7th December, 2020. The respondent has not established any exceptional personal or family circumstances such as could justify refusal of surrender. I dismiss the respondent's objections as regards delay and his family rights.
13. Counsel for the respondent submitted that due to the departure of the UK from the EU and the imminent end of the transition provisions in respect thereof on 31st December, 2020, this Court could no longer extend to the UK the mutual trust and confidence that

exists between member states of the EU. He submitted that the UK would not be bound by the European Charter of Fundamental Rights ("the Charter") and will be free in the future to depart from the obligations imposed upon states by the Charter and/or the ECHR. It was submitted that in such circumstances there was a real risk that the fundamental rights of the respondent would not be respected and surrender should be refused.

14. In fairness to counsel for the respondent, he accepted that this Court could not engage in speculation as to what the UK may or may not do in terms of the protection of fundamental rights at the end of the transition period or thereafter. He also conceded that he was not relying upon any precise information or evidence concerning how the respondent's particular fundamental rights were at risk of being breached. He accepted that the respondent's concerns would not crystallise until a future date and were dependent upon matters which may or may not occur.
15. The Court was referred to *RO (C-327/18 PPU)* (2018) which involved a reference from the High Court to the Court of Justice of the European Union ("the CJEU") seeking a preliminary ruling (following the UK serving notice of its intention to withdraw from the EU) as to whether the uncertainty of the extent to which a national of a member state would, in practice, be able to enjoy rights under the EU treaties, the Charter or relevant legislation if surrendered to the UK on foot of a European arrest warrant, required a member state to refuse surrender to the UK. The CJEU determined that mere notification by a member state of its intention to withdraw from the EU in accordance with article 50 of the Treaty on the European Union ("the TEU") cannot be regarded, as such, as constituting an exceptional circumstance, within the meaning of the case law capable of justifying a refusal to execute a European arrest warrant issued by that member state. The CJEU went on to state at para. 49:-

"However, it remains the task of the executing judicial authority to examine, after carrying out a specific and precise assessment of the particular case, whether there are substantial grounds for believing that, after withdrawal from the European Union of the issuing Member State, the person who is the subject of that arrest warrant is at risk of being deprived of his fundamental rights and the rights derived, in essence, from Articles 26 to 28 of the Framework Decision..."

The CJEU noted that the UK is a party to the ECHR and had incorporated its provisions into its national law and that after the withdrawal of a member state, a presumption can still be made that the former member state would apply the substantive content of the rights derived from the Framework Decision if the national law of the former state incorporated the substantive content of those rights and in particular, if the former member state continued to participate in international conventions such as the European Convention on Extradition and the ECHR after withdrawal from the EU. The CJEU emphasised at para. 61 of its judgment that only if there is concrete evidence to the contrary could the judicial authorities of a member state refuse to execute a European arrest warrant.

16. The essential question before the Court is whether the Court is satisfied that the respondent has demonstrated the existence of a real risk that following his surrender to the UK, he will be subjected to treatment contrary to his fundamental rights under the ECHR, the Charter or the Constitution. On the case before me, the respondent has failed to adduce any evidence capable of establishing the existence of any reasonable grounds for believing that if surrendered to the UK, his fundamental rights are likely to be breached. I therefore dismiss the respondent's objections to his surrender based on the UK's departure from the EU.
17. I am satisfied that the surrender of the respondent is not prohibited by part 3 of the Act of 2003.
18. I note the terms of the EU-UK Trade and Cooperation Agreement 2020, in particular Title VII of part three of same, and the domestic legislative provisions introduced on foot thereof, viz. the European Arrest Warrant Act 2003 (Designated Member States) (Amendment) Order 2020 (S.I. No. 719 of 2020) and the European Arrest Warrant (Application to Third Countries) (United Kingdom) Order 2020 (S.I. No. 720 of 2020). I note that as a result of the European Arrest Warrant Act 2003 (Designated Member States) (Amendment) Order 2020, the UK is designated for the purposes of the Act of 2003, provided the European arrest warrant was issued by a judicial authority in the UK and that the person in respect of whom the warrant was issued was arrested before 11:00 p.m. on 31st December, 2020 for the purposes of the execution of that warrant. In this instance, the EAW was issued by District Judge Conner of Belfast Magistrates' Court, a judicial authority, and the respondent was arrested on foot thereof on 7th December, 2020. Thus, the necessary conditions for the continued application of the Act of 2003 to these proceedings have been satisfied.
19. 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 the UK.