

**THE HIGH COURT**

[2021] IEHC 31  
[2017 No. 54 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**ANDRIUS ŠČIUKA**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 18th day of January, 2021**

1. By an application pursuant to the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania ("Lithuania") on foot of a European arrest warrant dated 14th February, 2017 ("the EAW") issued by Judge Aurelija Sadauskaitė of the Klaipėda Regional Court in Lithuania as the issuing judicial authority. The surrender of the respondent is sought in order to enforce a sentence of 7 years' imprisonment, of which, it has been clarified, 2 years, 8 months and 12 days remains to be served.
2. The EAW was endorsed by the High Court on 13th March, 2017. The respondent was arrested and brought before the High Court on 27th June, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued and no issue was taken in respect of this.
4. 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. No issue was taken in respect of those sections.
5. I am satisfied that the minimum gravity requirements as set out in the Act of 2003 are met, as the remainder of the sentence which the respondent is required to serve, if surrendered, is in excess of 4 months' imprisonment.
6. At part E of the EAW, it is indicated that the sentence in question was imposed in respect of two offences: the first offence being an armed robbery carried out by a group of which the respondent was part and the second offence being illegal possession of firearms. Section 38(1)(b) of the Act of 2003 provides for a procedure whereby it is not necessary for the applicant to establish correspondence or double criminality under s. 38(1)(a) of the said Act where the offence is an offence 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"), applies and which carries a maximum penalty of at least 3 years' imprisonment under the law of the issuing state. At part E of the EAW, the issuing state has invoked the procedure provided for at s. 38(1)(b) by certifying that the offences carry a maximum penalty of at least 3 years' imprisonment and has ticked the relevant box for "*organised or armed robbery*", as the relevant offence to which article 2(2) of the Framework Decision applies. By way of additional information dated 31st July, 2020, the issuing judicial authority clarified that it was only relying upon the tick-box offence as regards the first offence in

the EAW. On foot of that information, I am satisfied that there is no longer any manifest error or ambiguity about such certification so as to warrant this Court refusing to accept same. In any event, I am satisfied that, if necessary, correspondence could be established between the first offence in the EAW and the offence in this State of robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. I am satisfied that the second offence in the EAW corresponds to the offence in this State of unlawful possession of a firearm and/or ammunition contrary to s. 2 of the Firearms Act 1925, as amended. Indeed, there are a number of other offences in respect of which correspondence could be established. No issue was taken in respect of correspondence.

7. An undated notice of objection to surrender was filed and can be summarised as follows:-
- (i) surrender is precluded under s. 38 of the Act of 2003 as there are no corresponding offences under the law of this State. Counsel for the respondent indicated at the hearing of this matter that he was not pursuing any point on lack of correspondence;
  - (ii) surrender is precluded as the EAW lacked clarity as regards the sentence to be served and failed to meet the requirements of s. 11 of the Act of 2003;
  - (iii) surrender is precluded as the judgment/sentence was statute-barred and was therefore not immediately enforceable; and
  - (iv) surrender is precluded under s. 37 of the Act of 2003 as it would be incompatible with this State's obligations under articles 1, 3, 5, 6 and 8 of the European Convention on Human Rights ("the ECHR"), having regard to the conditions in Lithuanian prisons and the fact that the respondent has two children.

**Section 11 of the Act of 2003**

8. Counsel for the respondent pointed out that at part C of the EAW, it is stated that the remaining sentence to be served is 2 years, 8 months and 12 days, whereas at part B it is stated that the respondent had not served 2 years, 8 months and 22 days of his sentence. By way of additional information dated the 28th July, 2020, the issuing judicial authority explained how the period of the remainder of the sentence to be served was calculated and confirmed that 2 years, 8 months and 12 days remained. The respondent had served an additional 10 days after the decision to release him on conditions. I am satisfied that any ambiguity in that regard has been clarified.
9. Counsel for the respondent also pointed out that part F of the EAW appears to indicate that the enforcement of the sentence is effectively statute-barred. Part F states:-

*"In this case, when the custodial sentence of 7 years is imposed, a ten-year statute of limitations with regard to execution of a judgement of conviction is established. The statutory time beyond which the judgement of conviction may no longer be executed shall be calculated from the day it becomes effective until the day the execution of the judgment commences. If, after the judgement has become effective, the convicted person attempts to avoid serving the sentence, the*

*calculation of the statutory time shall cease. It shall resume from the day the person arrives of his own free will to serve the sentence or is arrested. However, the judgement may not be executed if 15 years have passed since the day the judgement became effective or, where the convicted person has been given a custodial sentence exceeding 10 years or a life sentence and no new crime has been committed to break off the calculation of the statutory time, 20 years have passed since the day the judgement became effective."*

10. Counsel for the respondent submitted that from the information in the EAW, the original sentence was initially imposed on 31st October, 2002 and amended on 23rd July, 2003. The respondent was released on conditions on 22nd May, 2006. His release was cancelled on 9th July, 2007 and this was upheld on appeal on 3rd August, 2007. It was submitted that as the sentence was imposed on 31st October, 2002 and that, as per part F of the EAW, a 10 year period was allowed for execution of that judgement, the time for enforcement had passed and in any event, the judgment could not be executed if fifteen years have passed since the day judgment became effective.
11. In the additional information dated 28th July, 2020, it was indicated that the surrender of the respondent was still being sought to serve the remainder of the sentence. As regards the statute of limitations, it was stated:-

*"... part 4 of Article 96 of the Criminal Code of the Republic of Lithuania provides for that where the convicted person commits a new criminal act before the expiry of the statute of limitations for execution of a judgement of conviction, the calculation of the statute of limitations shall cease. In this case, calculation of the statute of limitations for execution of the judgement of conviction shall commence from the commission of a new crime or misdemeanor. Taking into the account the fact that there is no data on the possible new criminal offences committed by Andrius Ščiuka, there is no reason to address the issue of the statute of limitations for the execution of the conviction."*

12. While the said additional information made it clear that surrender was still being sought, the explanation relating to the operation of the statute of limitations was far from clear and may have been lost in translation. By further additional information dated 30th November, 2020 the issuing judicial authority clarified that the period for execution of the remainder of the sentence would not expire until 3rd August, 2022.
13. I reject the respondent's objections to surrender based on s. 11 of the Act of 2003 and/or the Lithuanian statute of limitations.

**Section 37 of the Act of 2003**

14. The solicitor for the respondent, Mr. Edmund Burke, swore an affidavit dated 20th July, 2020, in which he averred that he had been instructed by the respondent that during the first two years of his sentence, the respondent was held in a cell of 4m x 3m dimensions which was occupied by 9-10 persons. He averred that the respondent had first been held in Siauliai prison and then transferred to Alytaus prison, which was a working camp where

the conditions were “*a bit better but still very poor*”. The respondent believed that, if surrendered, he would be subjected to inhuman and degrading treatment.

15. From the information before the Court, the respondent was released from prison in Lithuania on 1st June, 2006. The period of detention referred to in the affidavit of Mr. Burke can be no later than June, 2006, and cannot be regarded as up-to-date, cogent or objective. No other evidence was adduced to support this objection. Section 4A of the Act of 2003 provides for a presumption that an issuing state will comply with the requirements of the Framework Decision, which requires respect for the fundamental rights of the requested person. I find that the respondent has failed to meet the evidential threshold that would justify this Court in regarding that presumption as having been rebutted or in setting this Court upon an enquiry into the likely prison conditions which the respondent will face if surrendered. No reports from government sources or international human rights bodies have been adduced by the respondent. No report from a lawyer in Lithuania is relied upon.
16. Similarly, no evidence has been adduced in support of the objection that surrender would be in breach of any of his other ECHR rights as set out in the notice of objection. In particular, there is no evidence before the Court that the respondent’s personal or family circumstances are so exceptional that the Court should refuse surrender.
17. I reject the respondent’s objections to surrender based on s. 37 of the Act of 2003.

**Conclusion**

18. I am satisfied that the surrender of the respondent is not precluded by reason of part 3 of the Act of 2003 or any other provision of that Act.
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 Lithuania.