

THE HIGH COURT

[2021] IEHC 460
[2020 No. 209 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

JONATHAN COLLOPY

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 22nd day of June, 2021

1. In this application the applicant seeks an order for the surrender of the respondent to the Republic of Bulgaria ("Bulgaria") pursuant to a European arrest warrant dated 2nd October, 2018 ("the EAW"). The EAW was issued by Hristina Lyutskanova Apostolova, Prosecutor of the Regional Prosecutor's Office in Nessebar ("the Prosecutor General's Office"), as the issuing authority. The EAW seeks the surrender of the respondent to enforce a sentence of one year and six months' imprisonment, all of which remains to be served.
2. The EAW was endorsed by the High Court on 8th September, 2020 and the respondent was arrested and brought before the High Court on 5th November, 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 Prosecutor General's Office is a competent issuing authority for the purposes of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), and the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"). The Prosecutor General's Office is legally guaranteed independence from the executive. The final decision upholding and imposing the penalty was taken by an appeal court on 27th March, 2017 and the EAW was issued on 2nd October, 2018. As this is a conviction warrant, the issue of a judicial determination on proportionality is inherent in the penalty imposed. In line with the reasoning of the Court of Justice of the European Union ("the CJEU") in ZB (Case C-627/19), in such circumstances no further judicial input is required to render the issuing of the EAW by the Prosecutor General's Office in conformity with the Framework Decision. I am satisfied that the surrender of the respondent is not precluded by ss. 21A, 22, 23 or 24 of the Act of 2003.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
6. The sentence was imposed in respect of a drink-driving offence committed on 23rd May, 2016. By additional information dated 16th August, 2019, further details of the offence are provided, confirming that the blood sample was taken approximately 41 minutes from the time of driving on a public road and the concentration was "2.28 promille/%0 - gram

per litre". By way of additional information dated 12th October, 2019, it is confirmed that the concentration can also be expressed as "241 mg of alcohol per 100 millilitres of blood". I am satisfied that correspondence can be established between the offence referred to in the EAW and the offence under the law of the State of drink-driving contrary to s. 4 of the Road Traffic Act, 2010. Correspondence was conceded on behalf of the respondent at hearing.

7. The respondent did not personally appear at the trial resulting in the sentence, but he was aware of same and was legally represented at both the initial hearing and at an appeal brought by the respondent. I am satisfied that the requirements of s. 45 of the Act of 2003 have been met. I am satisfied that the respondent's defence rights were respected and were not breached. No point was pursued by the respondent in respect of s. 45 of the Act of 2003.
8. The respondent swore an affidavit dated 23rd November, 2020, in which he avers that he was stopped and arrested on 23rd May, 2016 in Bulgaria for a drink-driving offence. He subsequently received correspondence concerning same in the post in Limerick. His sister-in-law, who is Bulgarian, hired a lawyer to represent him in the proceedings. On 3rd June, 2019, while in transit from Brazil, he was arrested on foot of the EAW. He was released pending determination of the EAW application before the French court and he returned to Ireland. On 27th November, 2019, the French court refused to order surrender due to a failure by the Bulgarian authorities to provide additional information. He outlines his family circumstances and that he suffers from a medical problem as regards his back. He further avers that he was previously imprisoned in Bulgaria in 2013 and prison conditions were very poor.
9. The solicitor for the respondent, Mr. Adrian Frawley, swore an affidavit dated 1st February, 2021 exhibiting, *inter alia*, documentation in relation to the respondent's health. By way of supplemental affidavit dated 5th February, 2021, Mr. Frawley exhibited a report from a Bulgarian Lawyer, Mr. Borislav Petkov, together with other supporting documentation regarding prison conditions in Bulgaria. He also exhibited a report from another Bulgarian Lawyer, Ms. Detelina Kostadinova, whom he had contacted some time earlier.
10. The report from Mr. Petkov confirms the independence of the Prosecutor General's Office and that it would not have carried out a proportionality test prior to issue of the EAW as this is a case where sentence has been passed by a court. There is no appeal regarding the issue of the EAW. Whether the Prosecutor General's Office meets the requirements to be regarded as an issuing authority under the Framework Decision is not expressly disputed. As regards prison conditions, the report indicates that overcrowding has been an issue for years and, despite improvements, it is still a problem. The report refers to the pilot decision of the European Court of Human Rights ("the ECtHR") in *Neshkov and Others v. Bulgaria* [2015] ECHR 77 in which the ECtHR indicated steps to be taken by Bulgaria to render prisons compliant with the European Convention on Human Rights ("the ECHR"). Mr. Petkov reports that many of the recommended steps have not been put

into effect. He is critical of medical facilities in prisons. In his opinion, the respondent, if surrendered, would be detained with other foreign prisoners in Sofia Prison, in which conditions are similar to other prisons, although it was renovated at the end of 2020. His report references reports from the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT").

11. The report of Ms. Kostadinova also confirms the independence of the Prosecutor General's Office and similarly does not expressly put in issue whether the that office meets the requirements to be regarded as an issuing judicial authority under the Framework Decision. She also is of the view that, if surrendered, the respondent will serve the sentence in Central Sofia Prison. The report sets out a list of cases which went before the ECtHR concerning prison conditions in Bulgaria, although the most recent case appears to be dated 2014. The report takes issue with the notification of the proceedings given to the respondent but acknowledges that he was legally represented.
12. By letter dated 2nd March, 2021, the Bulgarian Ministry of Justice furnished a letter from the General Directorate Enforcement of Sentences dated 25th February, 2021 (inaccurately translated as 7th October, 2020) and enclosed copies of the relevant Bulgarian legislation safeguarding the rights of detainees. The letter from the General Directorate refers to statutory provisions providing that prisoners may not be subjected to torture, cruel or inhuman treatment and that the minimum living area for detainees may not be less than four square metres. It is confirmed that the respondent, if surrendered, will serve the sentence in the prison in Sofia. It is indicated that as of 25th February, 2021, the prison had less than full occupancy on the basis of 4 square metres per detainee. Bedrooms are equipped with a private bathroom and direct access to daylight and natural ventilation. Details of other conditions are set out. There is a hospital on the site of the prison for prisoners. If necessary, prisoners are sent to external medical establishments. As regards violence in prison, all injuries are recorded and the Prosecutor General's Office is notified. Details of measures put in place to deal with the Covid-19 pandemic are set out. It is stated that legislation provides a mechanism for prisoners to seek protection of their rights.
13. In a second supplemental affidavit dated 24th March, 2021, Mr. Frawley exhibits further correspondence from Mr. Petkov and a report from the Bulgarian Helsinki Committee dated March 2021. Mr. Petkov confirms improvements in prison conditions have been made and that overcrowding is not a major problem, but medical care remains unsatisfactory. The report from the Bulgarian Helsinki Committee was specifically commissioned by the respondent and deals with conditions in Sofia Prison. This report confirms that there is no major problem with overcrowding and that each cell has separate sanitary facilities which have been recently renovated. There was an ongoing issue with bedbugs but disinfection did take place both by the authorities and the prisoners themselves. Prisoners indicated that the bedbugs were imported from outside when detainees were brought in from other places of detention. The report is very critical of the prison's medical facilities. Within the prison, there is a medical centre and a hospital. The medical centre is understaffed and under-equipped. The hospital does not

meet domestic legal requirements. There is an issue with bedbugs. However, the committee's report notes that in practice, treatment is not carried out in the prison hospital and its main function is to serve as a place where patients await tests, consultations, accommodation for treatment in civilian hospitals or a decision for suspension of their sentence on medical grounds. Prisoners have the right to state-funded health insurance and, as such, are entitled to receive medical care within the scope of the package of health activities guaranteed by the budget of the National Health Insurance Fund. The report suggests that some foreign nationals who do not have a residence permit cannot be insured due to a lack of an issued personal number which is required to pay health contributions. It is noted that in its report of 2015, the CPT noted a high level of inter-prisoner violence in Sofia Prison.

14. The Court sought further information as to whether the respondent would be treated as a health-insured person, and by reply dated 15th April, 2021, the Bulgarian authorities confirmed that health insurance contributions are paid for all detainees from the moment of their detention and that they acquire the status of health-insured persons with continuous health insurance rights. The contributions are paid by the Bulgarian state. The letter also confirms that the respondent's foreign citizenship will not prevent him being treated as a health-insured person and that he will be provided with equal access to medical care. I note that the issue of a medical assessment upon surrender was not directly addressed. Similarly, the issuing judicial authority failed to specifically address the issue of what steps had been taken since 2015 to deal with inter-prisoner violence. While it would be preferable to have direct answers on those issues, I do not believe that such failure is necessarily fatal to the application. The Court must evaluate of all the information before it.
15. In a third supplemental affidavit dated 4th May, 2021, Mr. Frawley, solicitor for the respondent, exhibited further correspondence he had received from the Bulgarian Helsinki Committee in respect of the reply from the issuing state. Counsel on behalf of the respondent contended that the reply and assurance concerning the respondent's healthcare was inadequate and unsatisfactory. She submitted that the issuing judicial authority had failed to sufficiently engage with the specific circumstances of this case. Counsel on behalf of the applicant submitted that the reply and assurance given were more than adequate.
16. Having reviewed and evaluated all of the information before the Court, I am not satisfied that there are substantial grounds for believing that, if surrendered, the respondent is at a real risk of being subjected to inhuman or degrading treatment contrary to article 3 ECHR or article 4 of the Charter of Fundamental Right of the European Union by virtue of the likely conditions of his detention. On foot of the additional information furnished by the Bulgarian authorities, I am satisfied that, if surrendered, adequate provision will be made for the respondent's medical needs while in detention. While the hospital at Sofia Prison has been criticised for failing to meet the applicable standards for a fully operational hospital, I note that in practice, treatment is not carried out in the prison hospital and its main function is to serve as a place where patients await tests,

consultations, accommodation for treatment in civilian hospitals or a decision for suspension of their sentence on medical grounds. I am satisfied that adequate access to external medical facilities will be provided and the respondent will be covered by medical insurance. I am satisfied that the respondent will be afforded access to adequate medical care while detained in the issuing state and, in particular, will be covered by the National Health Insurance Fund in respect of treatment. The reservations expressed by the Bulgarian Helsinki Committee as regards the possibility of foreign nationals being provided with health insurance cover appears to be somewhat hypothetical and the committee did not refer to any known case(s) in Bulgarian prisons where European Union citizens had not been covered by the health insurance cover. This is to be contrasted with the specific and clear assurance given by the issuing state that this particular respondent will be covered under the National Health Insurance Fund and that his nationality will not be a barrier to such cover. I am satisfied that the Bulgarian authorities have taken steps to deal with inter-prisoner violence. In particular, incidents of inter-prisoner violence are properly recorded and reported to prosecutors.

17. It should be noted that s. 4A of the Act of 2003 provides for a presumption that Member States will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. On considering all of the evidence before the Court, I am satisfied that the presumption in s. 4A of the Act of 2003 has not been rebutted.
18. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine if surrender of the respondent would be incompatible with the obligations of the State under the ECHR, the protocols thereto, or the Constitution. I am satisfied that surrender would not be incompatible with such obligations.
19. I dismiss the respondent's objection to surrender based on s. 37 of the Act of 2003.
20. I am satisfied that the surrender of the respondent is not precluded by part 3 of the Act of 2003 or any other provision of that Act.
21. Having dismissed the respondent's objection to surrender, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Bulgaria.