

**THE HIGH COURT**

[2021] IEHC 839  
[2021 No. 305 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**MARTIN KLOVANS**

**RESPONDENT**

**JUDGMENT of Ms. Justice Caroline Biggs delivered on the 17th day of December, 2021**

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Latvia pursuant to a European Arrest Warrant dated the 14th of December 2017 ("the EAW"). The EAW was issued by Arturs Tomings of the Prosecutor General's Office of the Republic of Latvia, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to prosecute him in respect of an alleged robbery-type offence.
3. The respondent was arrested on the 28th of October 2021, on foot of a Schengen Information System II alert, and brought before the High Court. The EAW was produced to the High Court on the 10th of November 2021.
4. I am satisfied that the person before the court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. 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 for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences in respect of which surrender of the respondent is sought carries a maximum penalty in excess of twelve months' imprisonment.
7. I am satisfied that correspondence can be established between the offence referred to in the EAW and offences under the law of this State, that is robbery contrary to Section 14 of the Criminal Justice (Theft and Fraud) Offence Act, 2001.
8. As surrender is sought to prosecute the respondent, no issue arises under s. 45 of the Act of 2003.
9. The respondent objected to surrender claiming his surrender would be in breach of Article 8 of the European Convention of Human Rights ("the ECHR").
10. The respondent's solicitor swore an affidavit dated the 6th of December 2021 stating the following:

- a. Mr. Klovans was born in Latvia and is a Latvian Citizen. Mr. Klovans is a single man whose date of birth is the 23rd of March 1984, making him 37 years of age at the time of the swearing of this affidavit. Mr. Klovans has a brother who for the past 18 years has lived in Co. Longford with his wife and four children. Mr Klovans' mother currently resides in Latvia. She is 84 years of age and in ill-health.
- b. Mr. Klovans arrived in Ireland in and around 2013. Mr. Klovans has worked for all periods where he was permitted to do so and has developed strong ties in this jurisdiction, through both his family and friends. His most recent employment was in foresting with Mid Western Forestry and Mr. Klovans worked there for approximately 18 months, until unfortunately, and regrettably, Mr. Klovans developed serious substance abuse issues which rendered him unable to work.
- c. While in custody, Mr. Klovans has successfully completed a methadone detoxification programme and has been clean of all substances for over two years. Mr Klovans used his time in custody efficiently, completing computer programmes and he engaged in work as a cleaner. Mr Klovans has also achieved enhanced status.
- d. It is submitted to the court that Mr. Klovans has succeeded in overcoming his personal difficulties and now intends to return to the pro-social life he has built in Ireland, where he now considers to be his home, alongside his family, friends, and work.
- e. Should Mr. Klovans' application against his surrender be successful, his brother, Girds Gaharevskaess has organised for him to partake in full-time employment in a dog food factory. Mr. Klovans' brother has been employed in the same dog food factory for the past 13 years. Mr Klovans is welcome to reside at his brother's home in Co. Longford. Mr. Klovans' brother has created strong ties in this jurisdiction over the last 18 years, through work and rearing his family. They have never come to the attention of authorities in this jurisdiction. Mr. Klovans' brother and his wife also have four young children with whom Mr. Klovans has strong connections and a good relationship.
- f. Mr. Klovans' primary ties to this jurisdiction are his family. Mr. Klovans enjoys a small circle of people around him. These include his brother and sister-in-law and their four children, 3 boys and one girl. His brother's family have resided in Co. Longford for over 18 years.
- g. Mr. Klovans firmly submits that if he was to be surrendered back to Latvia, he would suffer undue prejudice. This prejudice stems from the fact that the crime committed can be placed on the relatively low end of the scale. If Mr. Klovans were to be surrendered back to Latvia for crimes of this minor nature, the fundamental changes which would befall on him and the hardship he would suffer upon his surrender are simply not proportionate.

- h. Mr. Klovans has expressed his understandable concern that, should he be surrendered back to Latvia, he will have no ties to employment, friends, or family and that he will leave the life he has built in this country behind.
11. In *Minister for Justice & Equality -v- Vestartas* [2020] IESC 12, the Supreme Court stated at para 94 that; -

*"94. The contrast with the exceptional facts in J.A.T. is plain. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s.4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s.37(1), they must be such as would render an order for surrender "incompatible" with the State's obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."*

In *Minister for Justice and Equality -v- DE* [2021] IECA 188, the Court of Appeal stated at para. 67 that; -

*"67. The questions certified by the High Court were as follows: "In the context of proceedings under the European Arrest Warrant Act 2003 as amended, where a respondent objects to surrender on the basis that same is precluded by s. 37 of the said Act as it would be in breach of the respondent's rights under art. 8 ECHR and having particular regard to the provisions of art. 8(2) ECHR:*

- 1. Can personal or family circumstances, in and of themselves, provide a basis upon which surrender might be precluded by s. 37 of the Act of 2003?*
- 2. What is the appropriate test to be applied by the Court in determining whether such an objection is sustained and that surrender should be refused?*
- 3. In so far as exceptionality may be a relevant factor in determining such an objection, what is the appropriate test to be applied by the Court in determining whether the circumstances found to exist are so exceptional as to justify refusal of surrender"*

*For the reasons set out in this judgment, it is appropriate to answer all three questions by repeating the principles set out at para 59 above:*

- (i) In an application for surrender, the court is not carrying out a general proportionality test on the merits of the application. The court should apply the specific terms of the 2003 Act, albeit subject to a careful consideration of whether, if necessary, applying a proportionality test to Article 8 Convention rights, to order surrender would involve a violation of that ECHR right to the extent of being incompatible with the State's obligations under the Convention. (Vestartas).*

- (ii) *Surrender (or extradition) presupposes an impact on the personal or family life of a requested person. Having regard to Article 8(2), surrender (or extradition) carried out pursuant to legislation is in principle an acceptable interference with the right to respect for those rights. (Ostrowski, JAT (No. 2), Vestartas).*
- (iii) *When faced with an Article 8 objection to surrender, the function of the Court is to decide if the surrender is incompatible with the State's obligation under the European Convention on Human Rights. That requires a very high threshold. Any inquiry must bear in mind that s. 10 requires a court to surrender in accordance with the provisions of the 2003 Act and s. 4A of that Act obliges the court to presume that the issuing state has complied and will comply with its fundamental rights obligations. (Vestartas).*
- (iv) *The evidential burden of proving incompatibility lies on the requested person. (Rettinger and Vestartas).*
- (v) *The assessment of the claimed impact of surrender on personal and family rights must be a rigorous one. (Rettinger and JAT (No. 2)).*
- (vi) *The evidence must be cogent and must reach the level of incompatibility (Vestartas).*
- (vii) *Exceptionality is not the test for incompatibility, but it will only be in a truly exceptional case that surrender will be found to be incompatible with the State's obligations under Article 8 of the Convention. (JAT No. 2 and Vestartas).*
- (viii) *For an Article 8 objection to succeed, there must be clear cogent evidence sufficient to rebut the presumption in s. 4A of the 2003 Act. (Vestartas).*
- (ix) *No elaborate factual analysis or weighing of matters is necessary unless it is clear that the facts come close to a case which would be truly exceptional in nature thereby engaging the possibility that surrender may be incompatible with the State's obligations under the Convention. (JAT (No.2)).*
- (x) *The requirement that the circumstances must be shown to render the order for surrender incompatible with the State's obligations under Article 8 necessitates that the incursion into the private and family rights referred to in Article 8(1) is such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself. (Vestartas).*
- (xi) *Where the facts, assessed as set out above, come close to being truly exceptional in nature thereby engaging the possibility that surrender might be incompatible with the State's obligations, the Court will engage in a proportionality test of whether the high public interest in the prevention of disorder and crime (and the protection of the rights of others) is overridden by the personal and family circumstances (taken where appropriate with all the cumulative circumstances) of*

*the requested person. That is a case-specific analysis which will be required in very few cases."*

12. I am satisfied that there is no clear cogent evidence sufficient to rebut the presumption in Section 4A of the 2003 Act. The matters put forward to the court by means of the affidavit of the respondent's solicitor do not go beyond the norm. In the court's view, surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act. The court takes the view that seeking further information by way of a Section 20 request as proposed by the respondent would serve no purpose. The court will dismiss this objection to surrender.
13. It therefore follows that this court will make an order pursuant to Section 16 of the Act of 2003 for the surrender of the respondent to the Republic of Latvia.