

# THE HIGH COURT

[2022] IEHC 383  
[2021 No. 319 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**MIGUEL ÂNGELO ALVES DE SOUSA**

**RESPONDENT**

**JUDGMENT of Ms. Justice Caroline Biggs delivered on the 2<sup>nd</sup> day of March, 2022**

1. By this application, the applicant seeks an order for the surrender of the respondent to the Portuguese Republic pursuant to a European Arrest Warrant dated the 2<sup>nd</sup> of January 2020 ("the EAW"). The EAW was issued by Dr. Cristina Calado, Judge of the District Court of Faro, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of imprisonment of 2 years and 10 months, imposed upon the respondent on the 7<sup>th</sup> of May 2015.
3. The respondent was arrested on 7<sup>th</sup> of November 2021, on foot of a Schengen Information System II alert, and brought before the High Court on that day. The EAW was produced to the High Court on 16<sup>th</sup> of December 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. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.

7. Part (e) of the European arrest warrant states that the warrant relates to 1 offence. The offence is described as the crime of aggravated theft.

8. It is necessary to show correspondence in relation to the offences listed in the European arrest warrant with offences in this jurisdiction. In *Minister for Justice v. Dolny* [2009] IESC 48, the Supreme Court emphasized that when considering correspondence, the question should be asked in general terms as to whether the conduct set out in the warrant is contrary to the criminal law of the State. Denham J., as she then was, outlined at para. 38 therein;-

*"[38] In addressing the issue of correspondence it is necessary to consider the particularson 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."*

The Court is satisfied that the offences listed at part (e) of the EAW correspond with the following offence if committed within this jurisdiction; Burglary, contrary to s. 12 Criminal Justice (Theft and Fraud) Offences Act, 2001.

9. At Part D of the EAW, it is indicated that the respondent appeared at the hearing which resulted in the decision which is sought to be enforced. Mr. De Sousa denied the fact that he was present at the hearing and this denial was raised with the issuing judicial authority by this Court in a letter dated the 6<sup>th</sup> of December 2021. That letter stated as follows:

“I refer to the European Arrest Warrant Ref. No: 324/13.7GDPTM transmitted by you in respect of Miguel Angelo Alves De Sousa and issued by the Judicial Court of the District of Faro on the 02-01-2020. Mr. De Sousa Mr. De Sousa has been arrested in Ireland and his case was last before the High Court on the 3rd December 2021.

Mr. De Sousa objects to his surrender on grounds that he was not present at any hearing or sentencing date relating to Case No. 324/13.7GDPTM.

The High Court requests that the following information be provided;

1. Please clarify if Mr. De Sousa was present at the hearing of the case Ref No: 32413.7GDPTM and if he was present on the 07.04.2015 when the sentence with executive force was imposed.
2. Please clarify if there was any alteration in the sentence between the date of the sentence with executive force on the 07.04.2015 and the 07.05.2015 when the sentence became final.
3. Please provide any further information/observations in light of the statement of Mr.De Sousa that he was not present for any hearing or sentencing date in relation to this case."

**10.** This led to an answer provided on the 7<sup>th</sup> of December 2021. The issuing judicial authority did reply, but their reply related to a different EAW. As a consequence, a further Section 20 was issued on the 22<sup>nd</sup> December 2021 in the following terms:

"1. Re: Ref. No. 422/13.7GDPTM- European arrest warrant issued on the 03/09/2019

The High Court requests that the following information be provided;

2. Re: European arrest warrant- Case No. 324/13.7GDPTM ISSUED ON 02/01/2020

The High Court requests that the following information be provided:

- A. Please clarify if Mr. De Sousa was present at the hearing of the case Ref No: 324/13.7GDPTM and if he was present on the 07.04.2015 when the sentence with executive force was imposed.
- B. Please clarify if there was any alteration in the sentence between the date of the sentence with executive force on the 07.04.2015 and the 07.05.2015 when the

sentence became final."

11. A response was received dated 17<sup>th</sup> January 2022 which stated as follows:

"By order of the Honourable Judge please be informed that in the scope of the present proceedings, the defendant Miguel Ângelo Alves de Sousa, was present on 23-03-2015, date that the trial hearing was held, and on the 07-04-2015, date when the sentence was read, so he is aware of the crime of aggravated theft provided for and punished by articles 203, paragraph 1 and 204, paragraph 2, sub-paragraph e) and 202, sub-paragraphs d) and e), all from the Penal Code, for which he was sentenced to a penalty of 2 years and 10 months imprisonment, the same being suspended for the same period of time.

The suspended sentence in its exercise was subsequently revoked by order issued on 26/05/2017, because the defendant did not comply with the reintegration plan to which he was subjected, as a condition for the said suspension, and it was determined that he would serve the sentence for the period of 2 years and 10 months of effective imprisonment."

12. While this additional information confirmed that the sentence was revoked due to a failure to comply with the terms of suspension a further Section 20 request was then sent on the 1<sup>st</sup> of Feb 2022 seeking further information in relation to the activation process. This Section 20 request was not answered. The questions were then repeated and a further and final Section 20 was sent on the 14<sup>th</sup> of February 2022 which stated:

"I. Re: European arrest warrant- Case No. 324/13.7GDPTM don 02/01/2020

The High Court requests that the following information be provided:

- A. Was Mr. De Sousa present at the revocation hearing on 26th May 2017?
- B. Was Mr. De Sousa notified and informed that he was entitled to attend the revocation hearing on the 26th May 2017?

- C. In respect of notification, what address was provided for Mr. de Sousa and who provided same?
  - D. What was the legal basis for the revocation of the suspended sentence by order on the 26<sup>th</sup> May 2017?
  - E. Was there any alteration between date of sentence 7/4/15 and date of sentence with executive force 7/5/15?
  - F. Please provide information on the reason why the suspended sentence was revoked by order dated 26<sup>th</sup> May 2017.
  - G. How did Mr. De Sousa fail to comply with the reintegration plan to which he was subjected?
  - H. Did the Court vary or alter the nature or the level of the sentence initially imposed by the order of the 16<sup>th</sup> May 2017?
  - I. Was Mr. De Sousa notified of the reintegration plan?
  - J. When was he notified of the reintegration plan?
  - K. Did the Court that activated the sentence have the power to vary or alter the level of the sentence imposed?"
- 13.** A response was received dated 18<sup>th</sup> February 2022 which stated as follows:  
"By order of the Honourable Judge and as requested, and in the scope of the present proceedings, referring to the defendant Miguel Angelo Alves de Sousa, please be informed of the following:

- a) The order revoking the suspension of the enforcement of the prison sentence was issued on 26/05/2017 but there was no hearing on that date;
- b) A date had been set (on 03/03/2017), for the hearing of the defendant on the reasons for the non-compliance with the conditions set for the suspension of the enforcement of the prison sentence, which was not held, because it was not possible to notify the defendant at the addresses he had provided to the proceedings. Given that it was not possible to notify the defendant for that hearing, his defender was notified to comment on the possibility of revoking that suspension;
- c) Personal service on the defendant was requested at the address he himself had provided for the purpose of notifications and to all the other addresses in the proceedings;
- d) The legal basis for the revocation of the suspension of the enforcement of the prison sentence is article 56 of the Penal Code;
- e) There was no alteration between the date when the sentence was read (on 07/04/2015) and the date of the sentence becoming final (07/05/2015);
- f) The suspended sentence was revoked because the defendant failed to comply with the social reintegration plan, which consisted of treating drug addiction, obtaining and maintaining work as a source of sustenance and accepting norms and a sense of social

responsibility, and strict compliance with judicial decisions;

The defendant did not comply with the plan because he revealed, from the beginning of the monitoring by the General Directorate of Reintegration and Prison Services (DGRSP), personal, family and professional instability, with several changes of address, telephone contacts and employers, and from July 2016 he no longer went to or contacted the technicians or services, not responding to any summons, either by personal or postal contact and since December 2015 he also did not attend the Technical Teams for Specialised Treatment (ETET) consultations.

g) No, the Court did not change or increase the prison sentence originally imposed; the Court only ordered that the prison sentence no longer be suspended and that the defendant has to effectively serve it;

h) and j) The defendant was notified of the Social Reintegration Plan on 07/12/2015, by simple mail at the address that he himself had provided for notification purposes;

k) Yes, the Court that ordered the defendant to serve the prison sentence effectively had the power to do so.

For better clarification, please find attached a copy of articles 54 and 56 of the Penal Code, on social reintegration and revocation of suspension of the prison sentence:

**Article 54 - Social Reintegration Plan**

1. The social reintegration plan shall contain the objectives of reintegration to be achieved by the offender, the activities to be carried out, the respective stages and the support and supervision measures to be adopted by the social

reintegration services.

2. The social reintegration plan shall be made known to the offender and, whenever possible, his or her prior agreement shall be obtained.
3. The Court may impose the duties and rules of conduct referred to in articles 51 and 52, as well as other obligations of interest to the offender's reintegration plan and to the improvement of his or her sense of social responsibility, namely:
  - a) Respond to summons from the responsible magistrate responsible for the enforcement and the social reintegration technician;
  - b) Receive visits from the probation officer and communicate to him or place at his disposal information and documents proving his means of subsistence;
  - c) Inform the probation officer about changes of residence and employment, as well as about any displacement exceeding 8 days and the date of the foreseeable return;
  - d) Obtain prior authorization from the magistrate responsible for the enforcement of the sentence to go abroad.
4. In the cases provided for in paragraph 4 of the previous article, the probation regime must particularly aim at preventing re-offending and, for this purpose, it must always include the technical monitoring of the offender that is deemed necessary, namely through attendance at reintegration programmes for child and youth sex offenders.

#### **Article 56 – Revocation of Suspension**

1. Suspension of the enforcement of the prison sentence shall be revoked



whenever, during its term, the convicted person:

- (a) Grossly or repeatedly breaches the imposed duties or rules of conduct or the social reintegration plan; or
- (b) Commits a crime for which he or she will be convicted, and reveals that the purposes for which the suspension was granted could not be achieved thereby.

2. Revocation shall determine the fulfillment of the prison sentence established in the sentence, without the convicted person being able to demand the return of any benefits he or she has provided.”

**14.** In light of this information, the court finds that the respondent was present for both the trial and the sentence dates in the original set of proceedings. His previously suspended sentence was activated due to his failure to comply with the conditions of suspension. It is clear from the additional information that the court that activated the sentence did not have the right to alter or vary the sentence on the basis of its statutory powers, under Article 56 (above). In any case, the failure on the part of the authorities to notify the respondent of the activation date was entirely his own fault as he failed to comply with clear obligations under the supervision order including providing an address. In the circumstances, this Court is satisfied that the respondent’s rights under Section 45 of the Act of 2003 have been fully adhered to.

**15.** I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.

**16.** It, therefore, follows that this Court will make an order pursuant to s. 16(2) of the Act of 2003 for the surrender of the respondent to the Portuguese Republic.