

THE HIGH COURT

2022 [IEHC] 464

[2022 No. 57 EXT.]

BETWEEN

MINISTER FOR JUSTICE

APPLICANT

AND

DANIEL DANILA

RESPONDENT

JUDGMENT of Ms. Justice Eileen Creedon delivered on the 25th day of July 2022

1. By this application, the applicant seeks an order for the surrender of the respondent to Romania pursuant to a European Arrest Warrant dated the 11th of November 2020 ("the EAW"). The EAW was issued by Judge Zota Marcel from the Saveni Court of Law in the County of Botosani Romania, as the issuing judicial authority.
2. The Respondent was convicted by the Saveni Court of Law, Botosani County in Romania on the 26 November 2019 and the decision became final on the 23rd of December 2019, no appeal having been lodged. The EAW seeks the surrender of the respondent in order to enforce a sentence of 1 year and 4 months imprisonment imposed upon the respondent on the 23rd day of December 2019, of which the entirety of 1 year 4 months remains to be served.
3. The respondent was arrested on the 9th of March 2022, on foot of a Schengen Information System II alert, and brought before the High Court on the same date. The EAW was produced to the High Court on the 21st of March 2022.
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. The Respondent was convicted by the Saveni Court of Law, Botosani County in Romania on the 26 November 2019 of two road traffic offences, namely driving a vehicle without a driving licence and driving a non-registered vehicle contrary to Articles 335(1) and 334(1) of the Romanian Criminal Code which offences occurred on the 10th February 2017.
8. I am satisfied that correspondence can be established between the offences referred to in the European Arrest Warrant ("EAW") and offences under the law of the State, that is offences contrary to s.139(3)(a) and s.139(1)(bb) of the Finance Act 1992 (Driving a non- registered

vehicle) and s. 38(1) and s.38(2) of the Road Traffic Act 1961 (Driving without a Driving Licence).

9. Part D of the EAW indicates that the respondent did not appear in person at the hearing which resulted in the decision which is sought to be enforced and the issuing judicial authority has indicated that it relies on the following points as outlined in the Table in Article 4A of the Framework Decision transposed by s. 45 of the Act of 2003 being points 3.1(a), 3.2 and 3.4.

10. The sole ground of objection maintained by the respondent is that the surrender of the respondent ought to be refused pursuant to s.45 of the European Arrest Warrant Act 2003 as amended as Part D as proffered does not meet the requirements of s.16(1) (c) and/or s. 45 of the Act of 2003.

11. The Respondent swore an affidavit dated the 4th of April 2022 in which he averred inter alia that:

"I say that I am aware of the incident, that my wife and I compensated the owner of the fence, that I was never arrested for the offence and I was never questioned by the police. I was not aware of any court hearing. I did not appoint a lawyer to represent me nor did I waive my right to a lawyer. The first I heard of these proceedings was when my local postman in Stefanesti, which is my home village, contacted my mother-in-law to make me aware of important post towards the end of 2019. I had my relatives engage a lawyer to see if anything could be done to appeal the decision, but I was told nothing could be done."

12. The Respondent submits that Part D (3.4) sets out that he will be handed the enforceable decision, that he will "informed expressly related to his right to the case rejudgment or an appeal" with new evidence being re-examined which can lead to the cancellation of the initial decision. He submits that it is unclear what "rejudgment" means and whether he has a right to a retrial. He submits that further confusion arises towards the end of Part D 3.4 where it states that the Respondent "will be informed related to the time for which he can request the rejudgment of the case of promotion of a new appeal." The Respondent submits that this casts further doubt on whether he is entitled to a retrial or a right to appeal.

13. On the face of the European Arrest Warrant at Part D the following is confirmed: That the Respondent was not present during the trial at the end of which the decision was rendered. At paragraph 3.1(a) it is confirmed that the person was personally served, so he was informed about the date and place of the trial as a result of which the decision was rendered, and he was informed that a decision would be rendered if he was not present in court. It is confirmed further that the respondent had during the trial a lawyer appointed ex officio. Paragraph 3.2 is ticked and confirms that the convict submitted a request for judging the case again on 16.01.2020 by a lawyer appointed by him the file no. 63/297/2020 being registered by the Criminal Sentence no. 110/11.05.2020 final by the Criminal File no. 494/16.06.2020 of the Appeal Court of Suceava and the request was rejected by the court. Paragraph 3.4 confirms that the person was not personally handed the decision but: the decision will be handed personally immediately after delivery and the moment he is handed the decision, the person will be

informed expressly related to his right to the case rejudgment or an appeal, within which he has the right to be present, allowing that the case, including new evidences to be re-examined and can lead to the cancellation of the initial decision and that the person will be informed related to the time for which he can request the rejudgment of the case of promotion of a new appeal, which is 10 days.

14. The applicant refers the court to the following factual matrix. The offences occurred on the 10th of February 2017. The Respondent avers that he left Romania and came to Ireland in May 2017. He confirms that with the exception of returning to Romania for a short visit in July 2018, he has resided in Ireland since then. He further avers that he lived in Denmark and Germany although it is not confirmed whether this occurred between February and May 2017 or in some other period. The applicant also points to the fact that on the face of the European Arrest Warrant it states that "During the investigations made at the time, Danila Mariana, the wife of the offender, Daniel Danila came to the police station and declared that she was the owner of the vehicle involved in the traffic accident". It is also confirmed on the face of the EAW that she confirmed that she was the driver on the date of the offences.

15. The applicant refers the court to the case of *Minister for Justice and Equality v. Ptak* [2017] IEHC 418 and to page 36-37 of that judgment where it states:

"36. In those circumstances, it can readily be seen that s. 45 of the Act of 2003 places on the Court a requirement to be satisfied that there is a clear designation as to reliance on one of the conditions (but not necessarily only one of them) under which surrender may still be required, even though there has been a trial in absentia. If the condition relied upon is other than the condition regarding personal service of the date and place of the trial information as to how that condition has been satisfied must also be given.

37. The court is satisfied that there is clear designation in this case as to the Respondent's personal service in respect of the summons. That is all that is required. By virtue of the principles of mutual trust and recognition, the Court must accept the designation.

16. The Respondent further referred the court to the case of *Minister for Justice v Zarnescue* [2020] IESC 59 where the Supreme Court confirmed that s. 45 is to be given a purposive interpretation and enunciated eighteen applicable principles and in particular paragraph 90(d) of that judgement which stated the following:

"Section 45 of the Act expressly identifies circumstances in which a person tried in absentia may be returned, primarily where there is evidence of service or where the person was legally represented or where it is shown that a right of retrial in the requesting state is available as of right"

17. The applicant referred the court to the case of *Minister for Justice and Equality v Zdenek Kaleja* [2022] IEHC 145. In that case the respondent was tried in absentia and Part D paragraph 3.4 of the European Arrest Warrant stated that:

"3.4 the person concerned was not personally served with the decision but

(a) the person concerned will be personally served with the decision without delay after the surrender, and

(b) When served with the decision, the person concerned will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

(c) The person concerned will be informed of the time frame within which he or she has to request a retrial or appeal, which will be days. "

18. The time limit was subsequently confirmed to be 8 days and the High Court held that the respondent's objection based on s. 45 of the Act of 2003 must fail in circumstances where an unambiguous guaranteed right to an appeal is available, and the quality of that appeal is consistent with what is required by s,45 of the Act of 2003.

19. The applicant also referred the court to the case of *Minister for Justice and Equality v Svetlana Alehnovits* [2022] IEHC 194. In that case the respondent was not present when the sentence was activated. The issuing Judicial Authority provided the following additional information:

1) Svetlana Alehnovits will be personally served the court order no. 1-15-2535 of the Harju County Court of 24 March 2016 without further delay after surrender.

2) After being served the court order of 24 March 2016, Svetlana Alehnovits will be expressly informed of her right to a retrial or appeal, in which she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined and which may lead to the original decision being reversed.

3) Svetlana Alehnovitis will be informed of the timeframe within which she has to request such a retrial or appeal. Pursuant to subsection 432 (3) of the Code of Criminal Procedure, not later than on the second day following the date of bringing the person into Estonia, the convict offender shall be taken to the Judge in charge of execution of court judgements for interrogation."

20. The time frame was subsequently confirmed to be 15 days and the High Court held that in light of assurances provided in respect of the respondent's right of appeal the court was satisfied that surrender was not prohibited by s. 45 of the Act of 2003.

21. In this case the applicant argues that the issuing State has expressly designated the equivalent of paragraphs 3.1.a and 3.4 of s. 45 of the 2003 Act and that on the basis of the principles of mutual trust and recognition the Court should accept the designation therein.

22. The applicant further argues that the EAW makes it abundantly clear that the respondent if surrendered will be afforded the right to have his case reheard whether by way of retrial or appeal, that he will be entitled to be present thereat, that he will be entitled to re-examine the evidence and/or call new evidence which could lead to the cancellation of his conviction and / or sentence on foot of which his surrender is sought and that he will have 10 days to request such a rehearing of the case.

23. At paragraph 3.1(a) of the EAW it is confirmed that the person was personally served, so he was informed about the date and place of the trial as a result of which the decision was rendered and he was informed that a decision would be rendered if he was not present in court. It is confirmed further that the respondent had during the trial a lawyer appointed ex officio. In that regard the court notes the case of *Minister for Justice and Equality v. Ptak* [2017] IEHC 418 referred to earlier in which it was stated that all that is required is that there be clear designation as to the respondent's personal service in respect of the summons. It stated that by virtue of the principles of mutual trust and recognition, the Court must accept the designation.

24. In addition, having considered the arguments and the case law to include *Minister for Justice v Zarnescue* [2020] IESC 59 and having considered specifically the wording of the EAW at paragraph 3.4, the court is satisfied that as a consequence of what is set out in Part D of the EAW that the respondent has an unambiguous right to have his case reheard by way of retrial or appeal, that he will be entitled to be present thereat, that he will be entitled to have the evidence to include new evidence be re-examined which could lead to the cancellation of the initial decision on foot of which his surrender is sought in this application and that he has 10 days to request such a rehearing.

25. In circumstances where the court is satisfied that the respondent has an unambiguous right to a retrial or an appeal and the quality of that retrial or appeal is consistent with what is required by s. 45 of the Act of 2003 that point of objection is dismissed.

26. 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.

27. It, therefore, follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Romania.