

THE HIGH COURT

[2023] IEHC 756

[2023 No. 11 EXT.]

[2023 No. 38 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

TRAIAN SAVA

RESPONDENT

Judgment of Mr. Justice Kerida Naidoo delivered on the 29th day of November, 2023.

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Romania pursuant to a European Arrest Warrant dated 22nd February 2023 ("the EAW"). The EAW was issued by a named judge, as the Issuing Judicial Authority ("the IJA").
2. This is a case in which five warrants were issued in respect of the respondent by the issuing State. Warrants 1, 2, 3 and 5 were issued by the same judicial authority and each supersedes the last. Warrant 4 was issued by a different judicial authority. Surrender is now sought in respect of warrant 5 only (2023 No. 38) dated 22nd February 2023.
3. The EAW seeks the surrender of the respondent in order to enforce a sentence of 2 years and 10 months imprisonment imposed upon the respondent on 19th January 2023, that became final on 15th February 2023, of which the entirety remains to be served.
4. The issuing State has certified the relevant provisions of Romanian law applicable to the offences to which the warrant relates.
5. The EAW was endorsed by the High Court on the 13th March 2023 and the respondent was arrested and brought before the High Court on the same date.
6. 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.
7. 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.
8. 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.
9. In this instance, the Issuing Judicial Authority has certified that the offences referred to in the EAW are offences to which Article 2.2 of the Framework Decision applies, that same

are punishable by a maximum penalty of at least three years imprisonment and has indicated the appropriate box for "fraud". There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this court in looking beyond same.

Background

10. The history of the proceedings is that warrant 1 was issued on 24th of August 2022. Additional information was sought, in response to which that warrant was withdrawn and warrant 2 dated 12 October 2022 which issued. A further request for additional information was made that resulted in warrant 2 being withdrawn and warrant 3 being issued. The offences to which the respondent was sought, and the sentences to which they related, were identical in each of those three warrants. Those warrants were all issued by the Intorsura Bazaului Court.
11. Warrant 3 sought surrender for an aggregate sentence described in the warrant as number 42. Having imposed sentence in that case the court amalgamated it with three other sentences: two 1-year sentences in number 85 and a sentence of 6 months in number 539. The sentences in case 85 had were suspended. The information provided explained how the final tariff was calculated, which resulted in a sentence of 2 years and 8 months imprisonment.
12. The respondent was present at the trial resulting in the decision in case 85 but was not present in case 539. The IJA has, however, indicted the respondent will have a full right of retrial or appeal, to include revocation of the suspended sentences.
13. On 23rd February 2023 warrant 3 was withdrawn. A further warrant (warrant 4) dated 18 January 2023, was issued by Oltenia Court. It related to a sentence of 1 year and 4 months imprisonment. The offences to which warrant 4 relates are the same offences that are the subject matter of sentence 85 in warrant 3.
14. On 22nd February 2023 warrant 5 was issued by Satu Mare Court. The enforceable judgement on which that warrant is based is sentence number 98 of 19th January 2023. The respondent was not present at the trial resulting in the decision, but the EAW indicates that he will be personally served with the judgement and will be informed that he has a right of appeal or retrial in compliance with section D.3.4 of the warrant.
15. In arriving at the final sentence, the Satu Mare court amalgamated sentence number 98 with sentences 42, 85 and 539. The IJA set out how the final sentence of 2 years 10 months imprisonment was calculated.
16. A request for additional information was sent to the Oltenia Court dated 27th July 2023 pointing out that there were to live warrants involving the same sentences. It was replied to by correspondence dated 10th August 2023, in which the Oltenia court agreed that sentence 248 is no longer live and indicted it would therefore withdraw warrant 4.
17. The only warrant now before the court is therefore warrant 5, which seeks surrender for the offences dealt with in all previous warrants.

Section 45

18. The respondent objected to surrender under section 45 of the Act of 2003.
19. Part D of the EAW indicates that the respondent did not appear in person at the hearing which resulted in the decision that is sought to be enforced. At Part D of the warrant the IJA has indicated the following:

"the person was not personally served with the judgment, but:

- *the person will be personally served with the judgment without delay after the surrender; and*
 - *at the time the judgment is delivered, the person will be expressly informed of the right to a retrial or an appeal, in which he or she has the right to be present and which allows the factual situation in the case, including fresh evidence, to be re-examined and which may lead to the original judgment being quashed; and*
 - *the person will be informed of the time-limit within which he or she must request a retrial or appeal, which is ... days."*
20. In relation to case 38 the respondent says surrender should be refused because although the IJA has indicated that the respondent will have a full right of appeal or retrial, it does not indicate that he will have a right of retrial or appeal in relation to the five sentences that were amalgamated into the sentence in respect of which surrender is sought.
21. Section 45 of the Act of 2003 requires that if a respondent was not present at the trial resulting in the decision upon which the warrant is based the warrant must specify the basis by which the requirements of section 45 are satisfied. In this instance the IJA has indicated that it is relying on Part D 3.4.
22. It is in my view clear from the information provided that if surrendered the right of appeal that the respondent will enjoy encompasses all aspects of the case in respect of which sentence was imposed. That necessarily includes the basis upon which the sentence was calculated. Furthermore, the respondent appeared in person at the hearings in case 85 and could have appealed it. He did not appear at the hearing in case 539, but in warrant 3 the IJA relied on Part D 3.4, guaranteeing a right of appeal to him.
23. I am therefore satisfied that the respondent will be entitled to advance any argument or evidence necessary to challenge the conviction and sentence for which his surrender is sought.
24. I am satisfied that surrender of the respondent is not prohibited by section 45 of the Act of 2003 in case 38.

Section 37 – Abuse of Process, double jeopardy and breach of fundamental rights

25. The respondent objects to surrender on the basis of a composite argument that encompasses abuse of process, delay and section 37 of the Act of 2003. His argument is that surrender would constitute a breach of the respondent's rights under the Constitution

and the European Convention on Human Rights, including his family rights, his right to a fair trial and the right to liberty.

26. The respondent's abuse of process argument is based on the number of warrants issued and the fact that the respondent was convicted in absentia in respect of certain offences at the time when he was in custody in Ireland on foot of an EAW issued by the same IJA.
27. There is no impediment under the Framework Decision or the Act of 2003 to the issuing of more than one EAW. In this instance warrants 2 and 3 were issued in response to requests for additional information. That is a relatively common practice in some jurisdictions, and it does not, in and of itself, amount to an abuse of process.
28. The fact that the respondent was convicted in absentia for certain offences after an EAW had been issued in respect of other offences does not amount to an abuse of process in the circumstances of this case, although it could lead to surrender being refused if the requirements of section 45 of the Act of 2003 were not met in relation to those offences. For the reasons given earlier I am satisfied that there is no bar to surrender under section 45 of the Act because the respondent will be entitled to a full appeal and retrial.
29. The respondent contends that the issuing of warrant 5 amounts to an abuse of process because it deals with the same sentences to which warrant 4 relates. He says that the IJA allowed one warrant to proceed to hearing and responded to a further section 20 request in the knowledge that a further sentence had already imposed that captured the same offences. The judicial authority which issued warrant 4 is a different authority to that which issued warrant 5. By information dated 23 March 2023, the Satu Mare Court said it was unaware of sentence 85 imposed by Oltenita Court and, more fundamentally, warrant 4 has now been withdrawn.
30. The fact that different judicial authorities in an issuing state act independently of one another results in more than one warrant being issued seeking surrender for the same sentence does not necessarily amount to an abuse of process. In the context of abuse of process O'Donnell J. (as he then was) in *Minister for Justice and Equality v J.A.T. (No.2)* [2016] IESC 17 commented that, "... *the idea that a duty of care is owed to subjects of a warrant might give rise to deflection of attention from the warrant to the efficiency of the requesting or executing authorities. It is important that courts should be astute to detect and prevent improper or mala fide conduct, but it is equally important that a valuable jurisdiction is not diluted by allowing the legal test to spread into negligence and to become the familiar search for something that can be described as careless*".
31. It is well established that surrender should be refused on grounds of abuse of process only where a case involves exceptional circumstances that, although exceptionality is not the test. In my view the fact that two warrants were issued by two different judicial authorities for the same sentence does not, in the circumstances of this case, amount to an abuse of process because each was clearly acting independently of the other and the withdrawal of warrant 4 has resolved any potential conflict, or uncertainty about the respondent's position if surrendered, that might have arisen.

32. In his notice of objection the respondent also objected to surrender on grounds of double jeopardy. He says that surrender of the respondent is sought by two different judicial authorities to enforce two sentences for the same offences. He says that is prohibited by section 41 of the act of 2003.
33. There is some dispute between the parties as to whether, strictly speaking, that amounts double jeopardy. In my view the resolution of that issue is not the point on which the argument turns because any double jeopardy issue has been addressed by the withdrawal of warrant 4.
34. The respondent also objected on grounds of interference with personal and family rights. That argument is grounded by the contents of the respondent grounding affidavit and the affidavit sworn in the context of his bail application. In summary the respondent says that he supports his family and two children by working for a car valeting company. He says that his family is happy in Ireland and that they aspire to live here following the finalisation of the EAW proceedings.
35. It is for the respondent to persuade the court that his surrender would result in a breach of his fundamental rights. It is well established that only where a case involves exceptional circumstances that surrender should be refused on section 37 grounds. Having considered the respondent's submissions and the contents of his affidavit, I am satisfied that the grounds relied on by him, either in isolation or when taken together, are not so truly exceptional or egregious as to provide a basis for refusal of surrender.
36. 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.
37. 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 the Republic of Romania in respect of EAW 5 dated 22nd February 2023.