

**THE HIGH COURT
AN ARD-CHÚIRT**

[2024] IEHC 375

[2024 No. 021 EXT]

**IN THE MATTER OF AN APPLICATION UNDER S. 16(1) OF THE EUROPEAN ARREST
WARRANT ACT 2003, AS AMENDED.**

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

PRANAS GARBENIS

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 17 June 2024

Introduction

1. The Minister for Justice ('the Minister') applies under s. 16(1) of the European Arrest Warrant Act 2003, as amended ('the Act of 2003') for an order directing the surrender of Pranas Garbenis to the Republic of Lithuania ('Lithuania'), pursuant to a European Arrest Warrant ('the EAW') issued on 25 January 2024 by an identified deputy chief prosecutor in the Lithuanian Prosecutor General's Office, as the issuing judicial authority in that Member State.
2. I am satisfied that the EAW was endorsed by the High Court 1 February 2024 - Mr Garbenis raises no issue on that point. Mr Garbenis was arrested and brought before the court on 6 February 2024 when evidence was given that the person before the court is the person in respect of whom the EAW was issued. Mr Garbenis raises no issue on that evidence and, hence, I am satisfied on that point also.

Background

3. The EAW seeks the surrender of Mr Garbenis to prosecute him for each of two separate offences: first, an offence of sexual intercourse with a female person under the age of 16 years on various dates unknown between November 2021 and May 2022, contrary to Article 151 of Lithuanian Criminal Code; and second, an offence of the sexual exploitation of a female person under the age of 16 years on diverse dates between December 2021 and March 2022, contrary to Article 153 of that Code. Thus, I am satisfied that the provisions of s. 45 of the Act of 2003 (on the surrender of persons tried and convicted in absentia) do not arise in this case. The EAW recites that each of those two offences is

punishable by the imposition of a term of imprisonment of up to 5 years. It follows that I am satisfied that the surrender of Mr Garbenis is not subject to the prohibition on surrender under s. 38(1)(a) of the Act of 2003 in respect of an offence that does not carry a potential punishment of at least 12 months imprisonment. The decision on which the warrant is based is a ruling of the Kaunas District Court of 13 December 2023 to direct the arrest of Mr Garbenis.

4. Points of Objection, dated 19 March 2024, have been filed on behalf of Mr Garbenis.

The issues

5. Mr Garbenis puts the Minister on strict proof of the matters that it is necessary to establish under s. 16(1) of the Act of 2003 and, in particular, that the surrender of Mr Garbenis may not be refused under s. 38(1A) in Part 3 of the Act of 2003 on the ground that one or both of the offences concerned does not correspond to an offence under the law of the State ('the lack of correspondence objection').
6. In addition, Mr Garbenis advances the affirmative objection that the EAW is invalid because the Lithuanian Prosecutor General is not a judicial authority within the meaning of Article 6(1) of Council Framework Decision 2002/584/JHA, as amended, ('the Framework Decision') or s. 2(1) of the Act of 2003, or both, because the necessary safeguards on the objectivity of his or her role or the necessary guarantee of his or her independence from the executive, or both, are not present or because his or her decision to issue an EAW is not susceptible to court proceedings that meet in full the requirements of effective judicial protection ('the issuing judicial authority objection').
7. I will address each of those arguments in turn.

The lack of correspondence objection

8. This objection was not addressed in the written legal submissions filed on behalf of Mr Garbenis, nor was it pressed at the hearing before me. Nonetheless, given the inquisitorial nature of this proceeding and the obligation upon the court under s. 16(1)(d) to be satisfied that surrender is not liable to be refused under s. 38(1A) in Part 3 of the Act of 2003, it is necessary to determine whether each of the two offences specified in the EAW corresponds to an offence under the law of the State. Under s. 5 of the Act of 2003, such correspondence exists where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the relevant EAW was issued, constitute an offence under the law of the State.
9. The first offence is described in the following way in material part at paragraph (e) of the EAW:

'Pranas Garbenis is accused [that] during [a specified period of time] at [a specified location] in [an identified motor vehicle], being aware that M.J., d.o.b. 13 December 2006, [was] under 16 years of age, [with the consent of the victim and without using force] at least five times had sexual intercourse with victim M.J.'

10. The Minister submits, and I accept, that, under the laws of the State, the acts specified would, if committed in the State on the date on which the relevant EAW was issued, constitute the offence of the defilement of a child under 17 years of age, contrary to s. 3(1) of the Criminal Law (Sexual Offences) Act 2006, as amended.

11. The second offence is described in the following way in material part at paragraph (e) of the EAW:

'Pranas Garbenis is accused [that] during [a specified period of time], during telephone conversations with M.J., d.o.b. 13 December 2006, being aware the M.J. [was] under 16 years of age, deliberately in his conversations with the minor M.J. about sexual relations, [used a variety of specified slang terms to invite her to engage in various sexual activities with him, including sexual intercourse].'

12. The Minister submits, and I accept, that, under the laws of the State, the acts specified would, if committed in the State on the date on which the relevant EAW was issued, constitute the offence of the sexual exploitation of a child, contrary to s. 3(1)(c) of the Criminal Law (Sexual Offences) Act 2017, noting in particular that, under s. 2 of that Act, the 'sexual exploitation' of a child includes, among other things, 'inviting the child to engage or participate in any sexual, indecent or obscene act which, if done, would involve the commission of an offence against the child'.

13. For those reasons, I conclude that the surrender of Mr Garbenis may not be refused for either of the offences for which it is sought on the ground of lack of correspondence under s. 38(1A) of the Act of 2003.

The issuing judicial authority objection

14. In advancing the argument that the Lithuanian Public Prosecutor is not a judicial authority within the meaning of Article 6(1) of Council Framework Decision 2002/584/JHA, as amended, ('the Framework Decision') or s. 2(1) of the Act of 2003, Mr Garbenis relies on the Opinion of Advocate General Campos Sánchez-Bordona in Case C-509/18, Minister for Justice and Equality v PF ('PF'), ECLI:EU:C:2019:338 to the effect that Article 6(1) of the Framework Decision should be interpreted as meaning that the term 'issuing judicial

authority' does not include the institution of an independent public prosecutor such as the Lithuanian Public Prosecutor as such person is not a truly 'judicial authority' comparable to a judge.

15. However, as counsel for Mr Garbenis acknowledges he is aware, in the same case the Grand Chamber of the Court of Justice of the European Union took a different view, concluding that Article 6(1) of the Framework Decision must be interpreted as including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position in that Member State affords him a guarantee of independence from the executive in connection with the issuing of an EAW: Case C-509/18, EU:C:2019:457. That is a decision that is binding on this court.
16. While it is true that, in PF, the Grand Chamber pointed out (at paragraph 56 of the judgment) that it remained for the High Court of Ireland, as the referring court, to satisfy itself that a decision of the Prosecutor General of Lithuania to issue an EAW may be the subject of court proceedings which meet in full the requirements inherent in effective judicial protection, it is also true that in that case the High Court went on to do precisely that (per Binchy J) in its judgment (sub nom) Minister for Justice v Lisauskas [2020] IEHC 121 (at paragraph 39).
17. Finally, the submission was made on behalf of Mr Garbenis that there is no information before the court on the point comparable to that which was provided by the issuing judicial authority to Binchy J in Lisauskas and that, in any event, the position in law or fact might have changed in the intervening period so that this court cannot be satisfied in the way that the court in Lisauskas was about the status of the Lithuanian Prosecutor General as an 'issuing judicial authority'.
18. However, as counsel for the Minister points out, there is compelling, indeed binding, authority against that proposition. In Minister for Justice and Equality v Firantas [2020] IEHC 358, the respondent sought to argue in the High Court (before Donnelly J) that the decision of Binchy J was wrong in law and in fact concerning the availability of an effective appeal against the decision of the Lithuanian Prosecutor General to issue an EAW. Donnelly J rejected that submission (at paragraph 70), concluding that the principle of mutual trust and confidence between Member States means that the information provided by an issuing judicial authority can only be rejected as incorrect on the basis of the most cogent countervailing evidence, which could not be said of the evidence relied upon by

the respondent in that case. Of course, no countervailing evidence whatsoever has been produced in this case.

19. The respondent appealed that decision on the ground that, under the Act of 2003, a fresh determination of the position in fact or law in the issuing state is necessary in every case, by reference to information provided specifically in the context of that case. The Court of Appeal (per Birmingham P; McCarthy and Kennedy JJ concurring) rejected that submission out of hand; *Minister for Justice and Equality v Firantas*, [2021] IECA 75 (at paragraph 18). In reaching that conclusion, Birmingham P observed (at paragraph 16):
- ‘Repetitive requests for the same information would, in my view, be disrespectful of the Lithuanian authorities and would ... call into question their bona fides.’
20. For those reasons, I reject the submission that the Lithuanian Prosecutor General is not an ‘issuing judicial authority’ within the meaning of Article 6(1) of the Framework Decision. Hence, this objection fails.

The necessary proofs under s. 16(1) of the Act of 2003

21. On the evidence before me and based on the conclusions set out above, I am duly satisfied that:

- (a) the person before the court is the person in respect of whom the EAW issued,
- (b) the relevant EAW has been endorsed in accordance with section 13 for execution,
- (c) the offences that are the subject of the relevant EAW have not yet been tried, much less tried in absentia, so that the provisions of s. 45 of the Act of 2003 are not engaged on this application,
- (d) the court is not required under s. 21A, 22, 23 or 24 of the Act of 2003 to refuse the surrender of Mr Garbenis under the Act of 2003, and
- (e) the surrender of Mr Garbenis is not prohibited under any of the provisions of Part 3 of the Act of 2003.

Conclusion

22. It follows that, having due regard to the obligation to surrender under s. 10 of the Act of 2003, I will make an order under s. 16(1) of that Act, directing the surrender of Mr Garbenis to such person as is duly authorised by the Republic of Lithuania to receive him.