

THE HIGH COURT

[2021] IEHC 210
[2020 No. 205 EXT]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ZDENEK KALEJA

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 18th day of March, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to the Czech Republic pursuant to a European arrest warrant dated 21st September, 2018 (“the EAW”), issued by Judge Miroslav Vajgant, of the District Court in Tachov, as the issuing judicial authority. The surrender of the respondent is sought for the purpose of enforcing a sentence of 12 months’ imprisonment imposed on 9th September, 2018 in respect of a driving offence committed on 7th August, 2018.
2. The EAW was endorsed by the High Court on 2nd November, 2020 and the respondent was arrested and brought before this Court on 10th February, 2021.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. 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 and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 are met. The sentence in question is in excess of 4 months’ imprisonment.
6. Section 38(1) of the Act of 2003 provides:-

“38.-(1) Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—

(a) the offence corresponds to an offence under the law of the State, and—

(i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or

(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,

or

(b) the offence is an offence to which paragraph 2 of Article 2 of the Framework Decision applies, and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than 3 years.”

7. In respect of the concept of correspondence, s. 5 of the Act of 2003 provides:-

"5.– For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State."
8. In *Minister for Justice v. Dolny* [2009] IESC 48, Denham J., as she then was, explained how the Court should approach the issue of correspondence at para. 38 as follows:-

"38. In addressing the issue of correspondence it is necessary to consider the particulars on 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."
9. At part (e) of the EAW, a description is given of the offence. In essence, the offence consisted of driving while disqualified from doing so. Applying the reasoning in *Dolny*, I am satisfied that the offence in respect of which the respondent was sentenced corresponds with an offence under the law of the State, viz. driving without a licence contrary to s. 38 of the Road Traffic Act, 1961. Correspondence was not seriously contested.
10. At parts (e) and (f) of the EAW, other acts and offending by the respondent were referred to in considerable detail. However, I am satisfied on the basis of the additional information furnished under cover of email dated 27th October, 2020, that the reference to such other actions and offences is merely by way of background and that the surrender of the respondent is sought solely to enforce a sentence of 12 months' imprisonment in respect of a single road traffic offence as aforesaid. I am further satisfied that, if surrendered, there is no intention on the part of the issuing state to act in breach of article 27 of the Framework Decision in prosecuting and depriving the respondent of his liberty in respect of any offence other than the single road traffic offence the subject of the EAW.
11. At part (d) of the EAW, it is indicated that the respondent appeared in person at the relevant hearing resulting in the sentence. Thus, no issue arises under s. 45 of the Act of 2003.
12. Counsel on behalf of the respondent submitted there was a real risk that, if surrendered, the respondent would be subjected to inhuman and degrading treatment contrary to

article 3 of the European Convention on Human Rights (“the ECHR”) by virtue of prison conditions in the Czech Republic. The respondent swore an affidavit dated 8th March, 2021, in which he avers that he previously served a sentence in the Czech Republic in Plzeň Prison and Horní Slavkov Prison where the conditions were overcrowded and he spent 23 hours a day in his cell. He also spent time in Kynšperk nad Ohří Prison which was also overcrowded but where he was able to work. He had been sent to those prisons following a sentence from a court in Tachov, the region which the EAW relates to. He states his belief that the Czech Republic has one of the highest infection and death rates for Covid-19. He does not say when he was imprisoned but counsel for the respondent informed the Court that it was in 2016. Counsel for the respondent referred to a report from the Committee for the Prevention of Torture (“the CPT”) published in 2019 which regarded conditions in prisons in the Czech Republic as generally satisfactory although some concerns were raised about the failure to provide personal cell space of at least 4 square metres per inmate. The Court was not referred to any particular portion of the report and it was conceded that the report did not mention any of the prisons referred to by the respondent.

13. It is by now well-established jurisprudence of the Court of Justice of the European Union (“the CJEU”) that where an objection to surrender is raised on the basis of an asserted risk of a breach of article 3 ECHR, that a two-step approach is to be adopted by the court of the executing state. Firstly, the court should have before it information that is objective, reliable, specific and properly updated which demonstrates deficiencies in detention conditions in the issuing state. Only on the basis of such information should the court proceed to a further assessment, specific and precise, as to whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. See *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU), *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783 and *Minister for Justice and Equality v. Petronel Pal* [2020] IEHC 143.
14. The evidence put before the Court fails to reach the threshold required by the first step of the aforesaid two-step approach. The affidavit evidence of the respondent is not objective and His experience of prison in the Czech Republic was almost 5 years ago. The report of the CPT relates to conditions from a number of years ago. The report found prison conditions to be generally satisfactory. The prisons where the respondent is likely to serve his sentence were not mentioned. There was no evidence of a general system in which detainees had less than 3 square metres of personal space which is regarded as the minimum to avoid a presumption of a breach of article 3 ECHR. See *Muršić* (2017) 65 EHRR 1 and *Petronel Pal*. The respondent’s belief as regards Covid-19 was not supported by any evidence put before the Court. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental human rights including the ECHR. The presumption provided for in s. 4A has not been rebutted. I dismiss the respondent’s objections to surrender.

15. I am satisfied that the surrender of the respondent is not precluded by s. 37 or any of the other provisions of part 3 of the Act of 2003 or any other part or provision of that Act.
16. It follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to the Czech Republic.