

THE HIGH COURT

[2017 No. 268 EXT, 2018 No. 213 EXT]

BETWEEN

THE MINISTER FOR JUSTICE & EQUALITY

APPLICANT

AND

PAVOL POZGAY

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 15th day of January, 2020

1. This is a decision on two European arrest warrants concerning the respondent. Each of them was issued by the Slovak Republic. I will address them in the order in which they were received.

First European arrest warrant 4th May, 2017 (“the first EAW”)

2. The issuing judicial authority is named on the first EAW as the District Court of Okresný súd, Bratislava V. Accordingly, this warrant satisfies the requirement of the Framework Decision of 13th June, 2002 (2002/584/JHA) that it should be issued by a judicial authority.
3. No issue was raised as to the identity of the respondent at these proceedings and I am satisfied that the respondent referred to in the first EAW is one and the same as the person before the Court.
4. I am further satisfied that the first EAW was endorsed, on 2nd July, 2018, in accordance with s. 13 of the European Arrest Warrant Act 2003 (as amended) (“the Act of 2003”).
5. The surrender provisions of the Act of 2003 applied to Member States of the European Union that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Framework Decision. By the European Arrest Warrant Act 2003 (Designated Member States) Order 2004 (SI 532 of 2004), the Minister for Foreign Affairs designated the Slovak Republic as a Member State for the purposes of the Act of 2003.
6. No arguments were made that the Court should refuse surrender by reason of ss. 21A, 22, 23 and 24 of the Act of 2003, and there is nothing in the documentation before me that the Court is bound to do so. Accordingly, I am satisfied that the Court is not required to refuse surrender on the basis of any of these sections of the Act of 2003.
7. The first EAW is grounded on an order for arrest of the District Court of Okresný súd of 16th February, 2017. It is therefore a prosecution warrant.
8. At para. (E) of the first EAW, it is stated that it concerns two criminal offences. However, this section of the warrant then proceeds to describe 12 offences in each case alleging that the respondent drove into a filling station, filled his fuel tank and drove away without making payment. Specific dates are provided in each case (between the period commencing 16th March, 2013, and 29th May, 2013) and details are also provided as to volume of fuel taken, the value of the fuel and the address of the filling station, as well as particulars of the vehicle used.

9. These 12 separate occasions of alleged theft are divided into two groups. In the first group there are 7 offences relating to the period between 16th March, 2013, and 29th April, 2013. In the second group there are 5 offences, relating to the period 5th May, 2013, to 29th May, 2013.
10. Particulars of the provisions of the law of Slovakia whereby the alleged actions of the respondent are made criminal offences are provided. At s. 212 of the Criminal Act, it is provided that a person who steals an object from somebody else by taking it and causing "small" damage shall be liable to imprisonment for a period of two years. Section 212(2) then provides that where a person is convicted of an offence under s. 212(1), having been punished for a similar activity in the previous 12 months he commits another offence, that of "*continuous criminal offence of theft*".
11. There can be no doubt but that the acts of which the respondent stands accused, if committed in this jurisdiction, would correspond to an offence in the State namely the offence of making off without payment pursuant to s. 8 of the Theft and Fraud Offences Act 2001, thus, correspondence in respect of all offences – whether considered individually as 12 separate offences, or taken together as two separate groups, is established. Minimum gravity is also established since the offence of stealing carries a penalty of up to two years.
12. Para. (E) is divided into two parts. In the first part the first seven incidents are described and in the second part the subsequent five incidents are described. At the end of each part there appears text stating that at the time of commission of the alleged offences, the respondent had already been sentenced for a similar activity in the last 12 months in that on 27th April, 2013, he stole goods in the amount of €31.08 in a Lidl shop in Bratislava in respect of which he received an on the spot fine. However, it is clear that so far as the first six incidents are concerned, which took place between 16th March, 2013, and 26th April, 2013, he was not at the time that he allegedly committed those offences subject to any penalty for a similar activity. This statement could only relate to the last offence of those set out in the first part of para. (E) i.e. the offence of 29th April, 2013, and all of the offences set out in the second part of para. (E), which are all alleged to have occurred throughout May 2013.
13. The main objection put forward on behalf of the respondent to the first EAW is that it is unclear to how many offences it relates. The EAW states that his surrender is required for two offences but then goes on to particularise 12 incidents, each one of which could constitute a separate offence. It was submitted that a person whose surrender is sought is entitled to know the number of charges that they face upon their surrender, and the potential penalties applicable to those charges.
14. This is clearly correct however, it appears that what has occurred is that for whatever reason the charges have been grouped into two separate batches of incidents, which are then described as two criminal offences.

15. On one interpretation of the first EAW the respondent is facing 12 separate charges, each carrying a separate penalty of up to two years. He may also be facing separate charges in relation to six of the incidents which are alleged to have occurred while he was already sentenced for a similar activity.
16. On another interpretation of the first EAW he is facing just two charges on the basis that through some process unknown to us in this jurisdiction a number of incidents have been grouped together and classified as a single charge. Accordingly, I directed that a letter should be sent to the issuing judicial authority to clarify precisely the number of charges in respect of which the surrender of the respondent is sought, and the penalties applicable to those charges.
17. This letter was sent on 11th November, 2019, and a reply was received on 27th November, 2019. Although not directly addressing the question asked, the issuing judicial authority in its reply makes it clear that the respondent is facing charges in respect of two offences of theft only, involving the twelve incidents described in the EAW, and he is not to be prosecuted for a separate offence of committing an offence having been convicted for a similar offence within the previous 12 months. I am satisfied that this letter removes any doubt as to the number of charges the respondent is facing upon his surrender to Slovakia.
18. Other issues were raised on behalf of the respondent in the notice of objection filed on his behalf in relation to the first EAW, but these were not pursued at the hearing of this application.

The Second European Arrest Warrant (*"the second EAW"*)

19. The second EAW is dated 14th February, 2018. It was endorsed by this Court on 2nd July, 2018. It was also issued by the District Court of Okresný súd. I was satisfied that this EAW related to the same person as the first EAW, and no issue was raised as to the identity of the respondent.
20. The second EAW is a prosecution warrant and is stated to be based upon an arrest warrant issued by the District Court of Dolný Kubín. The surrender of the respondent is required in order to prosecute him for the offence alleged in the second EAW.
21. The offence is that on an unascertained day in May 2013, the respondent stole two licence plates from a motor vehicle parked in a parking area at a Catholic Church in a specified place.
22. In the notice of objection filed on his behalf and dated 29th August, 2019, it was pleaded that there are no offences in the State corresponding to those for which the surrender of the respondent is sought in the second EAW, and further that the surrender of the respondent should be refused as he was not in the Republic of Slovakia on the date of the alleged offence or on the date on which the second EAW states that he was accused of the same i.e. 4th June, 2013.

23. The respondent did not swear an affidavit to verify that he was not in Slovakia at the date of the commission of the alleged offence. Accordingly, I ruled that this objection should be rejected for this reason.
24. The only other objection pursued in relation to the second EAW is that the precise date of the alleged offence is not provided. Para. (E) of the second EAW states:
- “On a precisely unascertained day in May 2013 from 8pm to 10pm from a parking area at the Catholic Church in the village of Sedliacka Dubová he stole two licence plates from the motor vehicle Ford Focus, licence number...”*
25. I rejected this argument. It is not always possible to identify the precise date of an offence, even though in this case particulars of the hours of day between which the offence is alleged to have occurred have been provided.
26. As to correspondence, it is quite clear that the offence corresponds to the offence of theft pursuant of s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. The second EAW also states that the alleged offence carries a maximum penalty of up to two years, and so minimum gravity is established.
27. I am satisfied that such objections as the respondent has made to the second EAW must fail and that the surrender of the respondent is not prohibited for any reason under the Act of 2003. Accordingly, I will make an Order for the surrender of the respondent in connection with the offence described in the second EAW, pursuant to s. 16(1) of the Act of 2003.