

THE HIGH COURT

[2019 No. 268 EXT]

BETWEEN

MINISTER FOR JUSTICE & EQUALITY

APPLICANT

AND

ZSOLT SIKLOSI

RESPONDENT

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

1. By this application the applicant seeks an order for the surrender of the respondent to Hungary pursuant to a European arrest warrant dated 27th July, 2017 ("the EAW"). The EAW was issued by the Tatabánya Court of Appeal, as issuing judicial authority ("IJA").
2. The EAW was endorsed by the High Court on 4th November, 2019. The respondent was arrested and brought before this Court on 21st January, 2020. The application opened before this Court on 4th February, 2020, on which date the Court directed that a request for further information under s. 20 of the European Arrest Warrant Act 2003 (as amended) (hereinafter "the Act of 2003") should be made of the IJA. There had also been earlier requests for additional information made of the IJA, prior to the hearing of the application.
3. At the opening of the application, I was satisfied that the person before the Court is the person in respect of whom the EAW has been issued i.e. Zsolt Siklosi, and no objection was raised as to the identity of the person before the Court.
4. I was further satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise on this application, and that the surrender of the respondent is not prohibited for any of the reasons set forth in any of those sections.
5. This is the second application advanced by the applicant in respect of this respondent, and in respect of the same offences. The first application was refused by Donnelly J. in a judgment handed down on 19th May, 2015, in *Minister for Justice & Equality v. A.B.* [2015] IEHC 338. The reason for the refusal of the application on that occasion was, in summary, that the court formed the view that the surrender of the respondent was no longer required for the enforcement of the sentence of imprisonment, but instead for the purpose of prosecution. The court formed this impression from correspondence between the central authority here and the IJA in the course of which the IJA stated that the respondent had made representations in Hungary regarding the possibility of a retrial, and the IJA confirmed that a review of the case has been ordered. However, the IJA also stated that execution of the EAW was still required for the purpose of "conducting criminal prosecution". Donnelly J. concluded that this had the effect of altering the purpose for which the warrant issued i.e. it was originally submitted as a conviction warrant, but by reason of the impending retrial it became, in effect, an application for the surrender of the respondent for the purposes of a prosecution. Donnelly J. held that in those circumstances, the application had to be refused because the warrant in that case had been endorsed for one purpose, and the surrender of the respondent was then being

sought for another. This background gives rise to one of the grounds of objection on the part of the respondent on this application, which I will address presently.

6. At paragraph B of the EAW, it is stated that the decision on which it is based is an enforceable judgment of the Encsi Municipal Court, as court of first instance, of 10th October, 2006 and the Borsod-Abaúj Zemplén Court, as court of second instance, of 19th April, 2007. Following a request for additional information, it was confirmed by the IJA that the latter comprised the decision of an appellate court and was, for the purposes of EU Council Framework decision of 13 June 2002 on the European arrest warrant (as amended), the "trial resulting in the decision" for the purposes of this application.
7. At paragraph C of the EAW, it is stated that the respondent received a custodial sentence of one year of imprisonment in respect of the offences to which the EAW relates, and that eleven months of that sentence remain to be served. Moreover, it is apparent from the EAW that each of the offences for which his surrender is sought is punishable by imprisonment or detention in Hungary for a maximum period of not less than twelve months. Accordingly, minimum gravity is established for the purposes of this application.
8. At paragraph D of the EAW, it is stated that the respondent appeared in person at the trial resulting in the decision. Following a request for further information, it was clarified that this statement related only to the first instance decision. As regards the decision of the appellate court of 19th April, 2007, the IJA confirmed by way of additional information provided under cover of a letter dated 5th June, 2019 that the respondent was duly summoned to the appeal hearing and was also warned that a decision could be handed down in his absence if he did not appear at the proceedings. In another letter providing further information, dated 11th March, 2020, the IJA again confirmed that the respondent was duly summoned, and also added that the respondent was represented at the appeal hearing by a defence counsel whom he himself appointed.
9. At paragraph E of the EAW, it is stated that it relates to four offences. A detailed description of the offences is provided. It is clear that the offences concerned arise out of a domestic incident involving the alleged assault by the respondent on his spouse and his mother in law, false imprisonment and causing damage to property. It was not disputed at the hearing of this application that the actions of the respondent, as described in the EAW, would if committed in this jurisdiction constitute offences. Those actions include:
 - (1) Striking his former spouse on the face on several occasions, pushing her onto a bed and kicking her legs and nose. As a result, she suffered injuries to her nose as well as haematomas on the inner sides of both knees, the outer side of her right thigh, the front side of the left leg and bruising around her left ear.
 - (2) Striking his mother in law by throwing a bag at her. She sustained a haematoma on the outer side of her right thigh.
 - (3) Locking his wife and daughter in a room to prevent them from leaving their flat.

- (4) Smashing his wife's mobile phone against a wall.
10. In her decision of 19th May, 2015, Donnelly J. also affirmed that the offences described in the EAW correspond to offences in this jurisdiction. It is quite clear that each of these actions correspond to offences in this jurisdiction and that no objection to surrender could arise under this heading.
 11. Points of objection were delivered just prior to the initial hearing of the application. These points of objection were added to and developed as more information became available in response to requests for information from the IJA. Accordingly, it is more appropriate to address objections to surrender after all requests for information and replies have been addressed.
 12. At the hearing of this application, counsel on behalf of the respondent said that it remains unclear what happened with the application for a retrial which gave rise to the earlier refusal, by Donnelly J., of an application for the surrender of the respondent. He submitted that it appears that the surrender of the respondent is again being sought in respect of a matter for which his surrender has previously been refused.
 13. It was further submitted on behalf of the respondent that if his application for a retrial was refused, then his surrender is prohibited pursuant to s. 45 of the Act of 2003, because it is clear from the EAW that he was tried in *absentia*.
 14. Since there was a lack of clarity as to the outcome of the application for a retrial, and the impact of that decision upon this application, I deferred giving a decision in this matter and directed that an enquiry should be made pursuant to s. 20 of the Act of 2003. In particular, I directed that the IJA should identify the "trial resulting in the decision" within the meaning of Article 4a (1) of the Framework Decision, as interpreted by the Court of Justice of the European Union ("CJEU") in its decision of the case of *Tupikas* (C-270/17 PPU).
 15. In its reply to these enquiries dated 2nd March, 2020, the IJA stated that the trial resulting in the decision is that of the Appellate Court of Borsod-Abaúj Zemplén of 19th April, 2007, and it was also confirmed that the application for a retrial was unsuccessful.
 16. In light of the closure of the courts for a period during the Covid-19 pandemic, I invited written submissions of the parties in relation to this information. The submissions made on behalf of the respondent expanded on the objections already made on his behalf, but also introduced a new ground. That new ground is that it appears from the additional information that the sentence of imprisonment was suspended for a period of two years, when it was initially imposed on the respondent, and was then activated some five or six years later in 2011/2012, on the basis that the respondent had been convicted of another offence, that of failing to pay child support, which is a criminal offence in Hungary, but not in this jurisdiction.

17. The Court was due to hear additional submissions, in relation to the additional information received from the IJA, on 16th June, 2020. However, on this date the Court was informed that the respondent was not in attendance at court, nor was he contactable. Accordingly, on that date I issued a bench warrant for the arrest of the respondent. The respondent was thereafter arrested on 15th September, 2020 and came back before the Court on 14th October, 2020. Prior to the arrest of the respondent, on 27th July, 2020, counsel for the applicant submitted that the Court should seek still further additional information from the IJA following the decision of the Supreme Court in *Minister for Justice & Equality v. Palonka* [2020] IESC 40, delivered on 14th July, 2020, on account of the fact that it became apparent, for the first time, from the latest further information, that the surrender of the respondent is required in order to serve a sentence the suspension of which was brought about by a subsequent in absentia conviction of the respondent.
18. Accordingly, a letter seeking further information was sent on 14th August, 2020. The following questions were asked of the IJA:
- (1) Please confirm that the respondent was aware that the commission of a further offence within the probationary period could lead to an order for the execution of the one year suspended.
 - (2) In respect of the offence of non-support of a child, please provide further information in respect of the hearings in respect of that offence, including but not limited to confirmation of whether or not the respondent was aware of the proceedings, and/or was present and/or was represented by legal counsel during those proceedings. In addition, please provide full details as to how the respondent's defence rights were complied with.
 - (3) In respect of the revocation of the suspended sentence ordered by the Court of Miskolc in its judgment No. 3.B.f.818/2011/17 please provide further information in respect of the hearings, including but not limited to confirmation of whether or not the respondent was aware of proceedings and/or present and/or was represented by legal counsel during those proceedings. In addition, please provide full details as to how the respondent's defence rights were complied with.
19. The IJA responded to this request by letter dated 6th October, 2020. In its response, the IJA states that the respondent was present in person at hearings held on 15th November and 13th December, 2010 in first-instance proceedings of the District Court of Encs for non-support of a child, under reference B.363/2009. He was convicted of the offence by the court on 16th December, 2010. However, he was neither present nor represented in court on that date, but the IJA states that the respondent was summoned and was aware of this court date. Moreover, the IJA states, his attendance on that date was not necessary on that occasion. However, a defence attorney was appointed on his behalf in view of the intended execution of the arrest warrant.
20. The IJA then states that a second-instance decision No. 3.B.f.818/2011/17, of 12th June, 2012, varied the decision (of 16th December, 2010) replacing a fine with a sentence of

five months' imprisonment, as well as ordering the enforcement of the sentence of one year's imprisonment in relation to the matters to which this application relates. It is stated that the summons for these proceedings, held on 8th November, 2011, was not collected by the respondent. A bench warrant was issued for the respondent however this was not executed and the prosecutor filed a motion to conduct the hearing in the absence of the respondent. It is stated that a defence attorney was appointed to represent the respondent in the proceedings on 12th June, 2012.

21. The IJA further stated:

"Following the date on which judgement became final the defence attorney of the accused filed a motion for retrial then he submitted an appeal for clemency. Adjudication of the latter is still in progress. In its decision no. Bv314/2020/2 dated on 2 July 2020 and made final on 4 August 2020 the Law Enforcement Unit of the Tatabánya Regional Court established that the enforceability of the sentence of 5 months of imprisonment imposed by decision no. 2.B.363/2009/43 of the Municipal Court of Encs on 13 December 2010 – which was made final on 12 June 2012 by decision no. 3.Bf.818/2011/17 of the Miskolc Regional Court – was impossible."

22. In view of the uncertainty as to what was meant by this last statement, and in particular whether or not it might have any impact upon the request for surrender, I directed that yet another request for information should be made of the IJA. Accordingly, by letter of 16th November, 2020, the central authority here inquired, *inter alia*, what impact, if any, the last mentioned decisions have on the five months sentence of imprisonment imposed on the respondent referred to above, and also, what impact, if any, the same decisions have viz a viz the EAW. The reply, dated 10th December, 2020, was, as regards the five months sentence of imprisonment, contradictory. It states in one place that the respondent is not obliged to serve the sentence, because the limitation period for doing so expired on 3rd June, 2020. However, later on, it is stated that the decision reference number Bv.314/2020/2 does not have any impact or effect on decision number 3.Bf.818/2011/17 of the regional Court of Miskolc, and that everything included therein remains enforceable. However, this Court is not very concerned about the enforceability of the sentence of five months' imprisonment, which is not the subject of the EAW; the Court is only concerned to know that the surrender of the respondent is still sought pursuant to the EAW, and this was unambiguously confirmed.

Objections to Surrender

23. As I mentioned above, as the proceedings progressed, objections to surrender evolved from those set forth in the notice of objection. In any case I will now address all objections, by reference, firstly, to those on which most reliance was placed at hearing, followed by those which, although referred to in the notice of objection, were not pursued in any serious way.

24. It was submitted that surrender is prohibited by Part 3 of the Act of 2003, as amended. Specifically, it is prohibited by ss. 37, 38 and 45 of the Act of 2003. No argument at all was advanced in any meaningful way at least, that surrender is prohibited by s. 37 of the

Act of 2003. The same may be said as regards s. 38. There is not the slightest doubt, in my opinion, that the acts that led to the conviction of the respondent in Hungary would, if committed in this jurisdiction, constitute offences here, and Donnelly J. also arrived at the same conclusion in her decision of 19th May, 2015. As regards s. 45 of the Act of 2003, the IJA has confirmed that the respondent was duly summoned and represented at the trial resulting in the decision by a defence counsel appointed by the respondent himself. Accordingly, no breach of s. 45 of the Act of 2003 arises so far as his conviction on 19th April, 2007 is concerned, which the IJA has stated is the trial resulting in the decision.

25. However, the respondent has also raised an objection arising out of the circumstances by which the suspension of the sentence of imprisonment imposed on him on 19th April, 2007 was revoked, by reason of his conviction, *in absentia*, for an offence which is not an offence in this jurisdiction i.e. failure to pay child maintenance, and in respect of which offence, and the sentence imposed upon him in connection with the same, his surrender was previously sought and refused by Donnelly J. This gives rise to two objections. Firstly, the respondent was not present at the proceedings resulting in this later conviction (more accurately, while he was present on 15th November, 2010 and 13th December, 2010, he was not present on 16th December, 2010 when judgment was delivered), or the subsequent proceedings whereby the suspension of the sentence to which this EAW relates was revoked. It is argued this gives rise to a violation of s. 45 of the Act of 2003, and the fair trial rights of the respondent.
26. I addressed and rejected an identical objection in the case of *Minister for Justice & Equality v. Szamota* [2020] IEHC 606. This is because I concluded that, for the reasons identified by the CJEU in the case of *Samet Ardic* (Case C-571/17 PPU), the Court is not bound to inquire into the circumstances by which a suspension of sentence was revoked. Such proceedings are not “the trial resulting in the decision” for the purpose of Article 4a of the Framework Decision, as implemented here by s. 45 of the Act of 2003. The trial resulting in the decision for the purpose of this application is the decision of the court of Borsod-Abaúj Zemplén of 19th April, 2007, and it is that decision only that is the focus of the Court’s inquiry as regards s. 45 of the Act of 2003. For reasons already set out above, it is clear that there is no doubt that the requirements of s. 45 were fully met as regards that decision.
27. The second objection that is raised under this heading is that the conviction of the respondent that gave rise to the revocation of the suspension of sentence, was in respect of an offence for which his surrender was requested and refused by Donnelly J. previously, because there is no offence of failing to pay child maintenance in this jurisdiction. However, this objection is *nihil ad rem*. The surrender of the respondent is sought in connection with the offences the subject of the EAW only. As decided by the CJEU in *Ardic*, the Court may not inquire into the circumstances giving rise to the revocation of suspension of a term of imprisonment validly imposed. That is a matter exclusively for the authorities in the requesting state. It is immaterial that the matter that triggered the revocation of the suspension of sentence is not an offence here. It may be viewed simply as a violation of the conditions under which the sentence was suspended,

and the Court is not entitled to inquire into those matters. Accordingly, both objections raised by reason of the revocation of the suspension of sentence must fail.

28. It is submitted that the surrender of the respondent would be an abuse of process having regard to the previous refusal of an application for the surrender of the respondent in respect of the same offences. It is well established that a requesting state is entitled to issue a European arrest warrant against the same individual for the same offence following an earlier refusal. However, the objection here arises by reason of the fact that Donnelly J. refused the previous application because she was informed that the respondent was to be retried in Hungary for the offences with which the EAW is concerned, and the respondent was subsequently denied that retrial. On the facts as clarified by the IJA, it is difficult to identify any abuse of process. The respondent, through his legal representatives in Hungary, went through a process in that country whereby he applied for, but was denied, a retrial for the offences. (I pause here to observe that counsel for the respondent informed the Court that the respondent says that a retrial did in fact take place. However, he advanced no evidence at all about this, most particularly about the outcome of the retrial, if it did take place. Accordingly, I can take no account of this information). It follows that the respondent is now required to serve the sentence imposed upon him by the courts in Hungary. It does seem as though Donnelly J. may have been under the impression that a retrial had been ordered, but I think it likely that the message was lost in translation. The decision of Donnelly J. in *A.B.* also refers to a "review of the criminal case" against the respondent, and it seems possible that the IJA may have used the term "review" interchangeably with "retrial", when what was under way was a review of the case in the context of an application for retrial, and not the retrial itself.
29. Even if this involves a degree of surmise, what is beyond doubt is that the respondent made the application that he did in Hungary with legal advice. This application caused Donnelly J. to refuse the application in 2015 because she considered at that point in time the surrender of the respondent was required for a fresh prosecution, and that he was no longer required to serve a sentence. The fact that instead the respondent was at the time applying for a retrial, which was later refused by the courts in Hungary, could hardly amount to an abuse of process on the part of the IJA, whether considered by itself, or, as is also submitted, if taken in conjunction with other matters, to which I refer below.
30. Under the heading of abuse of process, it is also submitted that the IJA failed to provide any information (when advancing the EAW) regarding the previous application for the surrender of the respondent, in respect of the same matters, which was rejected by Donnelly J. This objection must also be rejected. When opening this application, the applicant drew the decision of Donnelly J. to the attention of the Court. In any case, as previously stated, the fact that a previous application has been rejected is no bar to the issue of another application, on the basis of a fresh EAW, if the circumstances giving rise to the initial refusal have changed. In this case the circumstances had changed insofar as the application of the respondent for a retrial was refused by the courts in Hungary, and his surrender was therefore once again required for the purpose of serving a sentence.

31. Counsel for the respondent submitted that the fact that the offence occurred more than fifteen years ago, taken together with the other factors referred to above all constitute an abuse of process. While no authorities at all were opened to me on this issue, the main authority, as far as I am aware is *Minister for Justice & Equality v. J.A.T. No. 2* [2016] IESC 17. This of course is a decision of the Supreme Court in which an application for surrender was refused, where, unlike here, an abuse of process had been identified in the High Court, and that coupled with delay (which is a factor here), and the fact that the application was being advanced on foot of a second EAW (also a factor here) and the very extreme effect which the court concluded the surrender would have on the respondent and his dependent son in that case, all led the Supreme Court to refuse the application. But it was very clear that it was the combination of all of those factors that led to that refusal.
32. It was submitted that the content of the EAW is insufficient and does not comply with s. 11 of the Act of 2003. The only grounds relied upon in support of this objection were that the surrender of the respondent should be refused because numerous forms D were submitted in response to various requests for information made pursuant to s. 20 of the Act of 2003. However, this ground of objection must also be rejected because, regardless as to the route by which the information was obtained, the fact remains, as I have already determined above, that it is clear that the requirements of s. 45 of the Act of 2003 have been met.
33. The respondent also relies on the decision of the Supreme Court in *Minister for Justice & Equality v. Herman* [2015] IESC 49, as authority for the proposition that the Court should dismiss the application on the grounds of lack of clarity in the EAW, as evidenced by the multiple requests for further information. It is true that the number of requests for further information made in this case is, to put it mildly, far from ideal, as each one led to the need for another. Be that as it may, there is now absolute clarity as to all the matters necessary to conclude this application. That is very different to the circumstances giving rise to the decision of the Supreme Court in *Herman*, wherein at paras. 30 and 31 Denham C.J. said:
- “30. It was submitted that the additional information came within the term ‘variance’ in s.45C(b). However, I am not satisfied that such is the situation here. The position now is that instead of being sought for sentencing under Warrant No. 3 the appellant is now sought to be arrested and prosecuted. Further, the effect on Warrant No. 1 is that he may have to serve a different sentence on Warrant No. 1 to that set out in the warrant itself.
31. In all the circumstances this is not ‘a variance’. This is, in fact, entirely contradictory. There is a fundamental change from the purpose for which surrender was sought in the original warrant.”
34. While there may be some similarities between what occurred in *Herman* and the application before Donnelly J. in 2015, when the application before the court on that occasion was refused for just that reason i.e. a change in the purpose for which surrender

was sought in the original warrant, that is no longer the case and there is absolute certainty as to the purpose for which the surrender of the respondent is required i.e. to serve the sentence of imprisonment imposed upon him on 19th April, 2007.

35. The points of objection filed on behalf of the respondent also claim that the surrender of the respondent would be contrary to the Charter of Fundamental Rights of the European Union. Surrender was also objected to on the grounds that there has been an erosion of civil rights in Hungary such as to dis-apply the general principle of mutual trust and confidence which the Court is normally obliged to apply in such applications. The only evidence advanced in relation to these matters was a very short affidavit from the respondent's lawyer in Hungary, that falls so far short of addressing the proofs required to establish such matters, that it does not require to be considered. In any case, these arguments were not pursued in any significant way at the hearing of the application.
36. In the interests of completeness, there is one other matter which I should mention. The solicitor for the respondent, Mr. Tony Hughes, swore an affidavit on 9th November, 2020 in which he averred that, apart from representing the respondent in these proceedings, and the earlier proceedings which resulted in the refusal of the application by Donnelly J., he also represented the respondent in connection with a further application for his surrender, which was granted, for the purpose of prosecuting the respondent in connection with an alleged offence of abuse of a minor. Mr. Hughes avers that, following upon his surrender, the respondent was questioned by police for 50 minutes, released, and informed that he could return to Ireland. While it was not made entirely clear to me why this was mentioned, I presume it was in the context of the abuse of process argument, or at least in support of that argument. If true, the matters averred to might be evidence of an abuse of process on that occasion, although I make no finding in this respect. That would require the Court to go down another avenue of inquiry which is not necessary for the purpose of this application. Those matters are quite clearly entirely separate from the offences the subject of the EAW, and, even assuming their accuracy as presented, could not operate so as to prevent the surrender of the respondent for the purpose of serving a sentence imposed upon him.
37. In conclusion, I am satisfied that all the requirements of the Act of 2003 have been met so far as this application is concerned and that all of the objections raised in opposition to the application must be rejected, and I will make an order for the surrender of the respondent pursuant to s. 16 of the Act of 2003.