

**THE HIGH COURT**

[2021] IEHC 289  
[2021 No. 52 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**GHEORGHE PATRICHE**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 20th day of April, 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 10th September, 2020 ("the EAW"). The EAW was issued by Judge Mgr. Vít Sochovský, of the District Court in Kladno, as the issuing judicial authority. The EAW seeks the surrender of the respondent in order to prosecute him in respect of three alleged fraud-type offences involving ATM machines. The respondent was arrested on foot of a Schengen Information System II alert ("the SIS alert") on 15th March, 2021, and brought before the High Court on the 16th of March, 2021. The EAW was produced to the High Court on 26th March, 2021.
2. 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 the surrender of the respondent is not prohibited for any of the reasons set forth in any of those sections.
3. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The maximum penalty for each of the offences in respect of which the surrender of the respondent is sought is eight years' imprisonment.
4. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between an offence referred to in the EAW and an offence under the law of the State where the offence in the EAW is one to which article 2.2 of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), applies and which is punishable in the issuing state by a maximum penalty of at least three years' imprisonment. In this instance, the issuing judicial authority has certified that each of the offences is an offence to which article 2.2 of the Framework Decision applies, that the maximum penalty in respect of each offence is eight years' imprisonment and has ticked the appropriate boxes for "*fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests*", "*fraudulent practices*" and "*forgery of means of payment*". No issue was taken in respect of the aforesaid certification. No issue was taken in respect of correspondence.
5. The respondent had a single objection to surrender, namely that he was not the person being sought by the issuing state. He swore an affidavit in which he avers that he only ever travelled through the Czech Republic and did not carry out any of the alleged

thefts/frauds, thus he could not be the person to whom the EAW relates. He also averred there was no picture, fingerprints or biometric information accompanying the EAW.

6. In the hearing following the arrest of the respondent on foot of the SIS alert, evidence was given that the respondent had accepted that the photo accompanying the SIS alert was indeed, a photograph of him. He stated that he did not know what the SIS alert related to. At the respondent's bail hearing, evidence was given of a number of convictions of the respondent in the United Kingdom ("the UK") under the name of Adrian Craciun. It was alleged that Adrian Craciun and the respondent were one and the same person, and that was the person before the Court. The respondent accepted that he had convictions in the UK and that he had resided at some of the locations where the alleged convictions were said to have been recorded but maintained that his convictions in the UK were under the name of Gheorghe Patriche. The evidence from the Garda witness was that the UK police had reported no recorded offences against a person named Gheorghe Patriche but that the photograph of the respondent matched that of a Mr. Adrian Craciun. Evidence was also given in the course of the bail hearing of a conviction in this State involving attempting to remove a cash trapping device from an ATM machine.
7. At hearing, it was conceded on behalf of the respondent that the name of the person whose surrender is sought is a person with his name and his date of birth and that the other details set out in part A of the EAW concerning information regarding the identity of the requested person are accurate as regards the respondent. The SIS alert on foot of which he was arrested was accompanied by a photograph and the respondent accepts that such photograph is, indeed, a photograph of him.
8. From the above, it seems clear that the respondent's real complaint is not that he is not the person being sought in the EAW but, rather, that he is not the person who carried out the alleged offences and, therefore, should not be the subject of a European arrest warrant.
9. The question for this Court is whether the respondent is the person to whom the EAW refers and is the person who is being sought on foot of the said EAW. Bearing in mind the standard of proof to be applied as referred to in *Minister for Justice and Law Reform v. McGrath* [2005] IEHC 116; [2006] 1 I.R. 321, I am satisfied that the respondent is, indeed, the person to whom the EAW refers and the person who is being sought thereunder. It may be that, as regards the commission of the alleged offences, this is a case of mistaken identity, but that is a matter for defence to be raised in the issuing state.
10. I am satisfied that surrender of the respondent is not precluded by part 3 of the Act of 2003 or by any other provision of that Act.
11. I dismiss the respondent's objections to surrender.
12. It follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Czech Republic.