

THE HIGH COURT

[2021] IEHC 3
[2018 No. 277 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

JANIS KEIČS

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 12th day of January, 2021

1. In this application, the applicant seeks an order for the surrender of the respondent to the Republic of Latvia ("Latvia") pursuant to a European arrest warrant dated 16th June, 2017 ("the EAW"). The EAW was issued by Ms. D. Skudra, Prosecutor General's Office, Riga ("the Prosecutor General's Office"), as the issuing judicial authority. The EAW seeks the surrender of the respondent to be prosecuted for a single theft-type offence.
2. The EAW was endorsed by the High Court on 29th August, 2018 and the respondent was arrested and brought before the High Court on 15th September, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. No issue was raised in this respect.
4. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), have been met. The maximum penalty for the offence in respect of which the surrender of the respondent is sought is 5 years' deprivation of liberty.
5. I am satisfied that the offence referred to in the EAW corresponds with the offence in the State of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and/or the offence of burglary contrary to s. 12 thereof. Correspondence was not put in issue by the respondent.
6. The respondent delivered points of objection dated 29th September, 2020 but at hearing, the respondent only relied upon two grounds of objection to surrender, which may be summarised as follows:-
 - (i) the Prosecutor General's Office was not a competent issuing authority and/or there was not sufficient judicial input into whether the issuing of the EAW was proportionate; and
 - (ii) the EAW was defective and/or the procedures adopted under the Act of 2003 were defective due to a failure to inform the respondent at the time of arrest or shortly thereafter of his right to challenge the issuing of the EAW in the issuing state.

The Issuing Judicial Authority

7. It was submitted on behalf of the respondent that the Latvian Prosecutor General's Office was not a competent issuing judicial authority for the purposes 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"), or the Act of 2003. On behalf of the respondent, it was submitted that there was an absence of effective judicial protection as regards the issuing of the EAW, and in particular as regards the proportionality of the issuing of same by the Prosecutor General's Office. This issue was recently considered by the High Court in *Minister for Justice and Equality v. Laipnieks* [2020] IEHC 517. In that case, the Latvian Prosecutor General's Office furnished additional information to the effect that the legal framework in Latvia for the issue and appeal of a European arrest warrant completely corresponded to the legal framework of Sweden which was recognised as providing effective judicial protection by the Court of Justice of the European Union ("the CJEU") in *XD (Case C-627/19 PPU)* (2019). It was noted by the court that the reply furnished by the Latvian Prosecutor General's Office was a replica of Latvia's response to a questionnaire, issued by Eurojust to all member states in 2019 and revised in March 2020, as regards the CJEU's judgments in relation to the independence of issuing judicial authorities and effective judicial protection. The court considered the judgment of *XD* in detail and noted the CJEU had held as follows at paras. 41-46:-

"[41] Furthermore, where the law of the issuing Member State confers jurisdiction to issue a European arrest warrant on an authority which, while participating in the administration of justice of that Member State, is not itself a court, the decision to issue such an arrest warrant shall be taken, inter alia the proportionate nature of such a decision must be capable of being subject, in that Member State, to a judicial remedy which fully satisfies the requirements of effective judicial protection [judgment of 27 May 2019, OG and PI (Public Prosecutor's Offices of Lübeck and Zwickau), C 508/18 and C 82/19 PPU, EU:C:2019:456, paragraph 75].

[42] Such an appeal against the decision to issue a European arrest warrant for the purpose of criminal proceedings taken by an authority which, while participating in the administration of justice and enjoying the requisite independence from the executive, does not constitute a court, is intended to ensure that judicial review of that decision and of the necessary conditions for issuing the warrant, in particular its proportionality, complies with the requirements of effective judicial protection.

[43] It is therefore for the Member States to ensure that their legal systems effectively guarantee the level of judicial protection required by Framework Decision 2002/584, as interpreted by the case-law of the Court of Justice, by means of the legal remedies which they provide and which may differ from one system to another.

[44] In particular, the introduction of a separate right of appeal against the decision to issue a European arrest warrant taken by a judicial authority other than a court is only one possibility in this respect.

[45] Indeed, Framework Decision 2002/584 does not prevent a Member State from applying its procedural rules with regard to the issuing of a European arrest warrant provided that the objective of that Framework Decision and the requirements

deriving from it (see, to that effect, judgment of 30 May 2013, F, C 168/13 PPU, EU:C:2013:358, paragraph 53).

[46] In the present case, as is clear from the case-file before the Court, the issue of a European arrest warrant for the purpose of criminal proceedings necessarily follows, in the Swedish legal system, from a decision ordering the pre-trial detention of the person concerned, which is issued by a court or tribunal."

8. The CJEU noted that prior to ordering pre-trial detention, a court in Sweden will consider the proportionality of such a measure so that the proportionality review that the court carried out in respect of ordering pre-trial detention would also cover the issuing of a European arrest warrant based upon that order for pre-trial detention. It also noted that a person sought on the basis of a European arrest warrant had a right to appeal against the decision ordering his pre-trial detention without any time limit and if the contested decision ordering pre-trial detention was annulled, then the European arrest warrant was automatically invalid. It further noted that any higher court hearing an appeal against the decision ordering pre-trial detention also assesses the proportionality of the issue of the European arrest warrant. The court went on to hold at paras. 52-53:-

"[52] The presence, in the Swedish legal system, of such procedural rules makes it possible to establish that, even in the absence of a separate legal remedy against the Prosecutor's decision to issue a European arrest warrant, its conditions of issue and, in particular, its proportionality may be subject to judicial review in the issuing Member State, before or at the same time as its adoption, but also subsequently.

[53] Such a system therefore meets the requirements of effective judicial protection."

9. In the present case, at part B of the EAW, it is expressly stated that it is based upon an arrest warrant, or judicial decision having the same effect, namely:-

"decision of 28 February 2017 passed by the Riga City Vidzeme Suburb Court, according to which the security measure – notification of the change of place of residence – applied to J. Keičs was modified to the security measure – arrest."

On the basis of the information recently received by the Court in *Laipnieks* and on the basis of the response of Latvia to the recent Eurojust questionnaire, it would appear that the requested person may at any time, prior or subsequent to his surrender, appeal against the decision ordering his pre-trial arrest, and if the contested decision to arrest is revoked, then the European arrest warrant is automatically invalidated. It is clear that any higher court hearing an appeal against the decision ordering pre-trial arrest will also assess the proportionality of the issue of the European arrest warrant. I am satisfied that applying the principles as set out by the CJEU in *XD*, the procedural rules and legal framework which exist in Latvia provide effective judicial protection in respect of the issuance of a European arrest warrant so that the Prosecutor General's Office can be regarded as a competent issuing judicial authority for the purposes of the Framework Decision and the Act of 2003. As regards the submission that there may not have been

sufficient judicial oversight as regards the question of proportionality in issuing the EAW, I note that same was issued within approximately 12 weeks of the issue of the underlying domestic judicial arrest warrant. Furthermore, no information was put before the Court to the effect that the issuing of the domestic arrest warrant was disproportionate or that any relevant material change in circumstances had occurred between the issue of the domestic warrant and the issue of the EAW. I dismiss the respondent's objections in respect of the issuing of the EAW.

Failure to Inform of Rights under the Law of Issuing State

10. It was submitted on behalf of the respondent that there was an obligation on the part of the issuing state to set out in the EAW the rights which the requested person enjoyed as regards challenging the issue of the EAW in the issuing state. It was further submitted that in the absence of the EAW containing such details, the requested person should have been informed of such rights on arrest or shortly thereafter, either by the arresting member of An Garda Síochána or by the Court. Counsel for the respondent conceded that he did not have any European or Irish authority to support his submission but he referred the Court to the High Court decision in *Minister for Justice v. Maguire and Farrell* [2020] IEHC 77. In that case, an objection to surrender was taken on the basis of a failure to inform the requested person of his rights in relation to the European arrest warrant proceedings and, in particular, to furnish the requested person with a letter of rights in European arrest warrant proceedings as provided for by article 22 of Directive 2012/13/EU of the European Parliament and of the Council of 22nd May, 2012 on the Right to Information in Criminal Proceedings ("the Directive"). It was not contended that the requested person had not in fact received their rights under the Directive. Binchy J. dismissed the objections. He noted that the respondents in that case had brought judicial review proceedings based, *inter alia*, on similar submissions and these had been rejected by both the High Court and the Court of Appeal. Binchy J. noted that neither Ireland nor the United Kingdom, the requesting state, had adopted the Directive. He pointed out that the only part of the Directive applicable to European arrest warrant proceedings is article 5. He noted that the Court of Appeal had ruled very clearly that the provisions of the Directive which the respondents were seeking to invoke only have application when a person is arrested, in the ordinary course of proceedings, to face charges in the same member state in which the arrest takes place, as distinct from upon arrest pursuant to a European arrest warrant. Binchy J. rejected the submissions of the respondents.
11. I adopt the reasoning of Binchy J. in *Maguire and Farrell* and I dismiss the respondent's objection based on the Directive. It should be noted that the respondent herein was provided with legal advice and representation following his arrest and has in fact retained the services of a lawyer in Latvia to challenge the issuing of the EAW in Latvia. In such circumstances, it is difficult to see how any defence rights of the respondent have been denied or prejudiced so that surrender should be refused.

Conclusion

12. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
13. I am satisfied that surrender of the respondent is not precluded by reason of part 3 of the Act of 2003.
14. I am satisfied that surrender of the respondent is not precluded for any other reason.
15. Having dismissed the respondent's objections, 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 Latvia.