

THE HIGH COURT

[2022] IEHC 419

[2009 No. 295 EXT.]

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND

G Aidis Brunins

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 20th day of June, 2022

1. By 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 5th October, 2009 ("the EAW"). The EAW was issued by Judge Viktors Trusels of Jekabpils District Court as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of 1 year and 11 months' imprisonment, all of which remains to be served. The sentence was imposed in respect of assault-type offences involving the use of a knife and injuries to the neck of one victim and a serious stabbing to the stomach of another victim.
3. The EAW was endorsed by the High Court on 11th November, 2009 and the respondent was arrested and brought before the High Court on 19th November, 2018 on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. 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 surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of 4 months' imprisonment.
7. At Part E of the EAW, it is indicated that it relates to 2 offences, those being described as intentional serious bodily injury and hooliganism. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between an offence to which the EAW relates and an offence under the law of the State where the offence referred to in the EAW is an offence to which Article 2.2. of the European 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 carries a maximum penalty in the issuing state of at least 3 years' imprisonment. In this instance the issuing judicial authority has certified that the offence of intentional serious bodily injury referred to in the EAW is an offence to which Article 2.2. of the Framework Decision applies, and same is punishable by a maximum penalty of at least 3 years' imprisonment and has indicated the

appropriate box for "*grievous bodily injury*". There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same. In any event, I am satisfied that the necessary correspondence between that offence and an offence under the law of the State could be established, namely the offence of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997. As regards the offence of hooliganism referred to in the EAW, I am satisfied that correspondence between same and an offence under the law of this State can be established, namely a breach of the peace contrary to common law and/or the offence of threatening, abusive or insulting behaviour in a public place contrary to s. 6 of the Criminal Justice (Public Order) Act, 1994 and/or, given that the behaviour in question resulted in bodily injuries to the victim, assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997. At hearing it was conceded that there is no issue in respect of correspondence.

- 8.** At Part D of the EAW, it is indicated that the section of the EAW in respect of decisions rendered *in absentia* is not applicable to this case.
- 9.** The respondent swore an affidavit dated 4th December, 2018 in which he accepts that in August 2004 he received, in respect of 2 assault-type offences committed by him in March 2004, a combined sentence of 4 years and 6 months' imprisonment with an additional 2 years and 6 months' imprisonment suspended on conditions. He avers that he was released from custody in 2006. He accepts that he breached the terms of his suspended sentence by being in breach of curfew and that on 8th August, 2008, 1 year and 11 days of the suspended sentence was activated. He avers that he was permitted to leave court on that day in order to organise his affairs but was to return to prison after 10 days and that he did not so return. Instead, in mid-August 2008 he travelled to Ireland to join his partner who was already working in the State. He avers that he commenced work in Ireland. He avers that due to illness he has been unable to work since November 2012 and was granted disability allowance. He avers that he was diagnosed with advanced cirrhosis of the liver, probably as a result of hepatitis C and has a device fitted to perform the functions of his liver. He also avers that he suffers from type 2 diabetes. He opines that, if surrendered, he will not receive the necessary treatment that he requires and his life will be in danger. He avers that in November 2011, his partner was diagnosed with breast cancer. He avers that he and his partner rely upon each other for care and support. He expresses fear that his partner's health will deteriorate if he is surrendered. Medical reports confirming the respondent's medical condition were handed into the Court.
- 10.** The respondent accepts that he was sentenced to 4 years and 6 months' imprisonment with an additional 2 years and 6 months' imprisonment suspended upon conditions. The respondent accepts that he breached the terms of his suspended sentence and that 1 year and 11 days of the suspended sentence was activated. He accepts he was afforded 10 days to get his affairs in order and to then return to prison but instead he left Latvia and came to Ireland. In such circumstances, it is clear that the respondent made a deliberate decision to flee Latvia in the knowledge that he was required to serve a sentence. He does not aver that any of the legal

process was carried out without his knowledge. I am satisfied that the defence rights of the respondent were respected in Latvia.

- 11.** An affidavit of Ms. Charlene Comerford, dated 12th February, 2019, exhibits a report from Professor Frank Murray confirming the plaintiff's medical condition.
- 12.** The affidavit of the respondent was furnished to the issuing judicial authority and by reply dated 18th February, 2019, the prison administration authorities in Latvia set out the relevant statutory provisions in relation to the healthcare of persons detained in Latvia and that healthcare of such persons is arranged and assured in accordance with the said provisions. This indicates that primary and secondary healthcare is provided by physicians at the place of imprisonment, but in cases of acute disease or advanced chronic disease, based on medical indications, healthcare is also provided by physicians in medical institutions outside the place of imprisonment and the cost of same is met by the state. The reply goes on to indicate that out-patient care provided in the medicine unit of the place of imprisonment and in-patient care is provided in the Latvian Prison Hospital. Medical institutions in a place of imprisonment are required to use medical technologies in the medical treatment of patients in compliance with the laws and regulations governing the approval of medical technologies used in medical treatment. The letter concludes:-

"The above referred means that in case when Gaidis Brunins is moved to places of imprisonment in Latvia, then, if needed, a prison physician registered in the Register of Medical Practitioners will decide on arrangements for his health care, and Gaidis Brunins will undergo medical examination and medical treatment based on the technologies approved in Latvia, as well as such medicinal products will be prescribed and used which are registered in the Medicinal Product Register of Latvia."

The reply enclosed a letter from the chief physician at Riga East University Hospital dated 15th February, 2019 in which he indicates his agreement with the report of the respondent's consultant, Professor Murray, that the advanced cirrhosis with portal hypertension presents a threat to the life of the respondent and that the respondent requires regular examination and consultations. The chief physician points out that in Latvia it is provided that in cases where the healthcare service required to an imprisoned person are not available in the place of imprisonment or the Latvian Prison Hospital, then they can be received in medical institutions outside the place of imprisonment.

- 13.** Ms. Comerford swore a considerable number of further affidavits indicating that the lawyer in Latvia was applying to the Latvian courts for release of the respondent from the sentence due to illness.
- 14.** A series of affidavits sworn by Ms. Comerford, and by Ms. Alice Heron, Sarah Finnegan and Hana Jendoubi essentially indicated that the matter was under consideration by the courts in Latvia.

- 15.** The respondent's application to stay the execution of the sentence due to his serious illness was rejected by decision dated 12th July, 2021. That decision was appealed to the Zemgale Regional Court but the appeal was unsuccessful.
- 16.** By affidavit dated 26th July, 2021, Ms. Hana Jendoubi exhibits a report from Professor Murray dated 26th July, 2021 in which he states that the respondent requires regular visits to the out-patient department (usually on a 6-monthly basis) with regular ultrasound and blood tests. The respondent is on a waiting list for a gastroscopy. If he develops certain complications, he will require urgent admission to hospital. Professor Murray sets out that the natural history of cirrhosis is that it gradually progresses over time. The 3-monthly mortality rate calculated for Mr. Brunins is about 8%. He estimates that the risk of decompensating over the next year to 18 months is probably in the order of 30 to 50%. Decompensation means developing one of the complications requiring hospitalisation. Professor Murray states that mixing with the prison population is not particularly an issue although it would be important for the respondent to be able to get access to specialist out-patient and emergency care for both routine and emergency management of his cirrhosis. It is noted that unsanitary conditions increase the risk of enteric infections, which means an increased risk of the respondent becoming dehydrated and decompensating, and thus pose a risk to the respondent's life. Professor Murray accepted that the respondent can live in shared accommodation such as dormitory-style cells. As regards his medications, generic substitutes are available and are effective. Exposure to TB and hepatitis C would increase the risks of decompensation. Covid-19 is similarly a risk which leads to decompensation. Professor Murray opines:-

"The risk to Mr Brunins of being in custody include the risks of unsanitary conditions giving rise to infections which may precipitate a sharp and marked deterioration in his liver function and complications of his liver disease, which may be life-threatening. These could be best mitigated by not being imprisoned or if being held in prison, to be held in a prison where he is less at risk of unsanitary conditions, etc."

- 17.** Other medical reports are exhibited in the said affidavit.
- 18.** At hearing it was conceded on behalf of the respondent that on the basis of all of the documentation before the Court, the respondent, if surrendered, would receive the medical treatment he requires but there remain issues as regards unsanitary conditions.
- 19.** Having considered all of the documentation before the Court and the submissions made on behalf of the parties, the Court sought further details from the issuing judicial authority as regards measures that would be taken to deal with the risk posed by unsanitary conditions to the health of the respondent.
- 20.** By additional information dated 12th October, 2021, the issuing judicial authority enclosed a letter from the Latvian Prisons Administration which indicates that the respondent will first be placed in an investigation prison section of the Riga Central Prison (quarantine cell) for up to 14 days and will then be transferred to serve his sentence and that, in determining which institution he will be detained in, regard will be had to the medical, security and prevention of

crime issues and the quantity of vacancies in institutions. It is indicated that in all places of imprisonment, inmates are provided with a living space not less than 4 square metres per person. All living quarters are equipped with sanitary facilities, demarcated from the rest of the cell or located in a separate room altogether. Natural ventilation and/or artificial ventilation are provided and if natural light in cells is reduced, a sufficient artificial light is provided to compensate for this. Constant water is available for washing and drinking. Heating is provided. Some cells have hot water. Inmates have a bath or shower twice per week. Upon application, the prison administration may allow more frequent showers. Improvements are being made to prison showers. Details are given of the furnishing of cells and bedding. Prisoners are provided with 2 towels which are replaced with clean ones at least every 7 days. Once per month, prisoners are able to hand over their clothes for laundry. Details are given of meals. It is indicated that each prisoner is provided with the opportunity to perform daily personal hygiene procedures not only in the cell but also by showering at least twice in 7 days. It is indicated that all places of imprisonment are provided with healthcare and that in each place of imprisonment, there are developed individual hygiene and anti-epidemic regime plans and instructions. The hygiene and disinfectant regime is strictly observed in all places of imprisonment in accordance with the Epidemiological Safety Law adopted on 11th December, 1997 and the Regulations of the Cabinet of Ministers on 9th June, 2020 as regards Covid-19. All imprisoned persons receive primary healthcare and, if necessary due to some medical indications, also secondary healthcare including examinations by a specialist, medical examinations and treatment. Primary and secondary healthcare are provided pursuant to a request of the medical personnel of the place of imprisonment and pursuant to a personal request of the prisoner. Secondary healthcare is provided both in the medical institutions of the prisons and in medical institutions located outside of prisons. The medical care provided to prisoners practically does not differ from the one provided to the rest of the population in Latvia. The relevant regulatory enactments also allow that in the case of certain medical indications and taking into consideration the wishes of the prisoner, such prisoner may at his own expense and through the assistance of the medical personnel of the relevant place of imprisonment purchase more expensive medication or undergo prescribed scheduled examinations outside of turn (which I take to mean outside of the place in the queue for treatment under the system in prison). It is indicated that prison conditions are regularly assessed by both international institutions and domestic organisations. These organisations can visit any place of imprisonment at any time without prior appointment.

- 21.** The solicitor for the respondent, Ms. Heron, swore a further affidavit dated 11th October, 2021 indicating that the respondent's application for having his sentence quashed in Latvia due to his poor health was listed for 14th October, 2021 and sought an adjournment to await the outcome of same. The adjournment was granted and following a number of further adjournments, the Court was informed that the application in Latvia had been unsuccessful.
- 22.** I am not satisfied that there are substantial grounds for believing that there is a real risk that, if surrendered, the respondent's conditions of detention would amount to inhuman or

degrading treatment in breach of Article 3 of the European Convention on Human Rights ("the ECHR") or in breach of his right to bodily integrity or any other rights under the Constitution.

- 23.** In *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, the Supreme Court considered Article 8 ECHR in the context of European arrest warrant proceedings. MacMenamin J., delivering the judgment of the Court, stated at para. 23:-

"23. Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence. But that guarantee is subject to the proviso that public authorities shall not interfere with the exercise of that right, except such as in accordance with law, and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Article 8(2)). The terms of Article 8(2) are, therefore, sufficiently broad to encompass orders for extradition, or in this case, surrender. But as will be seen, these Article 8 considerations arise within a statutory framework which it is now necessary to consider."

- 24.** As regards delay or lapse of time, MacMenamin J. stated at para. 89:-

"89. Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues. The High Court judgment holds that there had been a significant dilution of the public interest which would ordinarily apply (para. 37). It posed what was characterised there as a modified and weakened public interest in surrender, evidenced by the elapses of time and other factors. Against this, it posed the private and family factors in the case (para. 38). But for the reasons set out above, there was a misapprehension as to the nature of the assessment. This is not a balancing exercise where public and private interests are placed equally on the scales. It is nonetheless necessary to have regard to the circumstances."

- 25.** The threshold to meet in order to avoid surrender due to Article 8 ECHR considerations is a high one. In *Vestartas*, MacMenamin J. stated at para 94:-

"94. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s.4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s.37(1), they must be such as would render an order for surrender 'incompatible' with the State's obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."

- 26.** The Court has sympathy with the respondent in so far as his health has deteriorated since his imprisonment was ordered and given his partner's health issues. The sentence arises out of

offences involving personal violence and the breaching of terms of a suspended sentence. The respondent was at all times aware of the fact that he had to serve a sentence in Latvia and deliberately left that jurisdiction. In terms of the applicant's personal circumstances, I am satisfied that same are not so "*truly exceptional*" as to justify a refusal of surrender. I dismiss the respondent's objections to surrender based upon either delay or his right to a private and family life.

- 27.** Section 4A of the Act of 2003 provides for a presumption 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. The presumption in s. 4A of the Act of 2003 has not been rebutted in this case.
- 28.** Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto or would contravene a provision of the Constitution. I am satisfied that the surrender of the respondent is not incompatible with the State's obligations in that regard and would not contravene any provision of the Constitution.
- 29.** I am satisfied that the surrender of the respondent is not precluded by Part 3 of the Act of 2003 or any part of that Act.
- 30.** Having dismissed the respondent's objections, 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 Latvia.