THE HIGH COURT
AN ARD-CHÚIRT

[2024 No. 155 EXT]
[2024] IEHC 584

IN THE MATTER OF AN APPLICATION UNDER S. 16(2) OF THE EUROPEAN ARREST WARRANT ACT 2003, AS AMENDED.

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

ULDIS ANTONS

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 8th October 2024

Introduction

1. The Minister for Justice ('the Minister') applies under s. 16(2) of the European Arrest Warrant Act 2003, as amended ('the Act of 2003'), for an order directing the surrender of Uldis Antons to the Republic of Latvia, pursuant to a European Arrest Warrant issued by the Prosecutor General's Office of the Republic of Latvia, as the issuing judicial authority in that Member State, on 29 January 2024 ('the EAW').

Background

2. The EAW seeks the surrender of Mr Antons to serve a sentence of 2 years imprisonment imposed on him by Riga City Vidzeme Suburb Court on 14 October 2021 for an offence of fraud, suspended on condition that he undergo two years' probationary supervision, which suspension was lifted by decision of 9 May 2022 for failure to register with the State Probation Service and failure to inform the State Probation Service of his whereabouts.

3. The issuing judicial authority invokes Article 2(2) of Council Framework Decision on the European Arrest Warrant (2002/584/JHA) ('the EAW Framework Decision') by ticking the box beside the offence of fraud at paragraph (e)1 of the EAW.

4. Mr Antons was arrested and brought before the court (Keane J.) on 10 July 2024 on foot of an alert ('the SIS II alert') issued on 13 February 2024 under the second generation of the Schengen Information System, now governed by Regulation (EU) 2018/1862, as

amended ('the SIS II Regulation'). The EAW was produced to the court (McGrath J) when Mr Antons came before it again on 15 July 2024. Under s. 14(4) of the Act of 2003, the court fixed 24 July 2024 as the date for the hearing of the s. 16(2) surrender application. On that date, the hearing date was adjourned once more to 8 August 2024.

5. I am satisfied, and Mr Antons expressly accepts, that, as the person before the court, he is the person in respect of whom the SIS II alert and EAW were issued.

6. By letter dated 25 July 2024, the Department of Justice wrote to the issuing judicial authority on behalf of the High Court to request the provision of certain specified additional information ('the first request'). The issuing authority provided additional information in response to that request by letter erroneously dated 30 July 2023 ('the first reply'). I am satisfied that the reference to the year 2023 was an obvious and innocuous typographical error, as it is plain that the letter was sent on 30 July 2024.

7. Points of Objection (described as a Notice of Objection) were filed on Mr Antons's behalf on 23 August 2024, along with written legal submissions. Written legal submissions on behalf of the Minister were filed on 30 August 2024.

8. On 2 September 2024 and without the leave of the court to do so at that late stage, Mr Antons swore and filed an affidavit in support of his opposition to the application for his surrender.

9. I heard the application on 4 September 2024. With some reluctance and without intending to set any precedent in that regard, I allowed Mr Antons to rely on the contents of that affidavit at the hearing. On the basis of the evidence and information before me and, having heard the arguments of both sides, I decided to seek further information from the issuing judicial authority, and I adjourned the hearing for that purpose. By letter dated 9 September 2024, the Department of Justice wrote on behalf of the High Court to the issuing judicial authority once more to seek that information ('the second request'). The Riga City Court replied by letter dated 10 September 2024, with enclosures, received under cover of a letter dated 18 September 2024 from the issuing judicial authority, which also contained additional information that had been requested ('the second reply').

10. The hearing of the application then resumed, and concluded, before me on 2 October 2024.

The issues

11. In his points of objection, Mr Antons puts the Minister on strict proof of the matters that it is necessary to establish to obtain an order for surrender under s. 16(2) of the Act of 2003.

12. In addition, Mr Antons raises the following specific objections to this surrender.

13. First, Mr Antons submits that the information provided in the EAW lacks the degree of specificity necessary to meet the mandatory requirements of s. 11 of the Act of 2003 and

of Article 8 of the EAW Framework Decision, and thus fails the test of lawfulness, so that his surrender must be refused on that basis ('the s. 11 objection'). More particularly, Mr Antons contends that the EAW fails to provide sufficient information about the time and place of the offence committed, as required under s. 11(1A)(f), and fails to provide sufficient information about the penalties of which the sentence imposed on Mr Antons for that offence consists, as required under s. 11(1A)(g)(iii). As an adjunct to this argument, Mr Antons submits that the information provided is so deficient as to require the refusal of the surrender request on the territoriality principle embodied in s. 44 of the Act of 2003, since the offence may have been committed in a place other than the issuing state and the acts of which the offence consists would not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State

14. Second, Mr Antons submits that, although this was a case in which the urgent or provisional arrest procedure under s. 14 of the Act of 2003 was employed, so that he was arrested without warrant as a person named in a SIS alert and brought before this Court, to which the EAW was produced once it had been transmitted to the State, the Minister was nonetheless obliged to apply to the court under s. 13 of the Act for authorisation to arrest Mr Antons (who had already been arrested and remanded under s.14 of the Act), on the basis that this is what a properly literal construction of s. 13(1) of the Act requires ('the s. 13 objection').

15. Third, Mr Antons submits that his surrender is prohibited under s. 37 of the Act of 2003, as in breach of his rights under Article 7 of the European Convention on Human Rights ('the ECHR'), which forbids the ex post facto criminalisation or punishment of any conduct, in circumstances where the offence at issue is alleged to have occurred over various dates in April and May 2015, contrary to an identified law stated to have been amended on 12 February 2004, 13 December 2007, 8 July 2011, 13 December 2012, 17 December 2020 and 7 April 2022, with effect from 4 May 2022 ('the s. 37 objection')

16. And fourth, Mr Antons submits that the information requested by the court in its first request to the issuing judicial authority concerning the circumstances in which the suspension of the sentence of 2 years' imprisonment imposed on him was lifted at a hearing at which he did not appear in person was not provided in the manner requested (in the form of a further completed paragraph (d) of the form of warrant annexed to the EAW Framework Decision), so that the warrant fails the test of lawfulness on that basis also and, further, that surrender should be refused as the court cannot then be satisfied that the refusal of surrender is not required under s. 45 of the Act of 2003 concerning persons convicted in absentia ('the s. 45 objection'). In that context, in the affidavit that he swore just prior to the hearing, Mr Antons deposes that he was not aware of the conditions upon which the sentence imposed on him on 14 October 2021 had been suspended and that he believes that a requirement to undergo two years' probationary supervision and to register with the probation service for that purpose was inconsistent with his residence in Ireland at that time. He goes on to aver that he didn't receive any appointment or other correspondence from the probation service nor any indication of any

proposed hearing to lift the suspension and that at all material times he was resident in Ireland.

17. I will deal with each of those specific objections in turn.

The s. 11 objection

18. Mr Anton's submission that the information provided about the time of the offence is insufficient to meet the requirements of s. 11(1A)(f) of the Act of 2003, is plainly misconceived. It relies on the statement at paragraph (e) of the EAW that, 'at a place and time which were not clearly identified during the pre-trial criminal investigation but no later than until 26 April 2015', Mr Antons illegally agreed with other persons to defraud an identified company by entering into contracts to lease mobile phones, intending to resell those phones rather than to make the leasing payments on them. But the offence is one of fraud, not one of conspiracy. The submission simply ignores the fact that the EAW goes on to recite that 32 different phone leasing contracts were fraudulently entered into on various identified dates between 26 April and 31 May 2015. While not strictly relevant where Article 2(2) of the EAW Framework Decision has been invoked, it is interesting to note that such an agreement to defraud, whether tacit or express, would be sufficient to establish a joint enterprise or common design to commit such fraud, if the acts comprising the fraud were carried out within the State, rendering each of the parties to that agreement fully liable for those acts. But it is the carrying out of the acts of fraud and not the agreement to carry them out that constitutes the offence.

19. Mr Antons' submission that the EAW contains insufficient information to permit the court to be satisfied that the offence specified was not committed in a place other than the issuing state and that Mr Anton's surrender should not be refused under s. 44 of the Act of 2003 is similarly misconceived in that paragraph (e) of the warrant plainly identifies the address of the premises in Riga Latvia where the fraudulent leasing contracts were entered into.

20. Mr Antons also submits that the EAW contains insufficient information about the penalties of which the sentence imposed on him for that offence consists, as required under s. 11(1A)(g)(iii) of the Act of 2003. For the reasons I give below in addressing Mr Anton's fourth ground of objection, I do not accept that submission.

21. It follows that I must reject this ground of objection.

The s. 13 objection

22. Mr Antons submits that the obligation upon the Central Authority in the State (i.e. the Minister), under s. 13(1) of the Act of 2003, to apply to the High Court for the endorsement of an EAW for execution as soon as may be after that EAW has been transmitted to it is freestanding and unqualified, so that the obligation arises even where the requested person has already been arrested and brought before the court pursuant to the separate and distinct procedure under s. 14 of the Act.

23. That submission relies on the implicit proposition that s. 13(1) should be given a literal meaning in isolation from the scheme of the Act of 2003 as a whole and regardless of the

extent to which such a literal interpretation would render that provision absurd in the case of an arrest already effected without warrant under s. 14 of the Act.

24. This aspect of the scheme of the Act of 2003 is, in my view, crystal clear.

25. Section 13 sets out the procedure for obtaining the authority of the court to execute a European arrest warrant that has been transmitted to the State. Under s. 13(2), before granting that authority by endorsing the warrant, the court must be satisfied that there has been compliance with the provisions of the Act. The person then arrested under the warrant must be brought before the court and may be remanded in custody or on bail to a hearing date not later than 21 days after that arrest. This is the standard arrest procedure.

26. Section 14 confers a power upon a member of the Garda Síochána to arrest without warrant any person that the member believes, on reasonable grounds, to be a person named in a SIS II alert prior to the transmission to the State of the European Arrest warrant that resulted in that alert. The arrested person must be brought before the court as soon as may, furnished with a copy of the alert, and informed of his or her rights. The arrested person may then be remanded, in custody or on bail, for a period not exceeding 14 days to await the transmission and production to the court of the European arrest warrant that gave rise to the alert, failing which he or she must be released from custody or the terms of his or her bail. Under s. 14(4), where the European Arrest Warrant is then transmitted, the arrested person must be brought back before the court within that 14-day window. The warrant must be produced to the court and a copy must be given to the arrested person. Then, if satisfied that the provisions of the Act have been complied with, the court may remand the arrested person in custody or on bail to a hearing date within the period of 21 days following. That is the provisional, or urgent, arrest procedure.

27. It would be plainly absurd to require an application to be made to the court under both s. 13(2) and s. 14(4) of the Act of 2003 in the same proceedings. That would require the court to decide whether to authorise the arrest of a person already lawfully arrested.

28. Section 5(1) of the Interpretation Act 2005 provides that, in construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) that on a literal interpretation would be absurd or would fail to reflect the plain intention of the Oireachtas, the provision shall be given a construction that reflects the plain intention of the Oireachtas where that intention can be ascertained from the Act as a whole.

29. For completeness, I should say that I do not accept that the provisions of ss. 13 and 14 of the Act 2003, which deal with two alternative procedural routes to a surrender hearing under s. 16 of the Act, are provisions that relate to the imposition of a penal or other sanction. They do not engage the principle against doubtful penalisation. Mr Antons argues that his surrender is unlawful because, having been brought before the court under s. 14(4) of the Act as a person lawfully arrested without warrant, the Minister was nonetheless required, on a literal interpretation of s. 13(1) of the Act, to next make an

application to the court for a warrant to arrest him. That is not an argument against doubtful penalisation.

30. An application under s. 13(1) of the Act of 2003 for the indorsement of a warrant that could not then be executed under s. 13(3) of the Act without effecting an arrest upon an arrest would be a purely procedural matter devoid of any practical effect or consequence. As the Supreme Court made clear in the pre-2005 case of DPP (Ivers) v Murphy [1999] 1 IR 98, the principle of doubtful penalisation does not apply to purely procedural matters. I do not accept that the proviso in s. 5(1) of the Interpretation Act 2005, excluding from the scope of that rule of interpretation any provision that relates to the imposition of a penal or other sanction, can or should be construed to apply more broadly than the principle against doubtful penalisation, which it is plainly designed to reflect.

31. For those reasons, I do not accept the argument that Mr Antons' surrender is unlawful because, having been lawfully arrested without warrant under s. 14 of the Act of 2003, there was nonetheless an obligation upon the Minister under s. 13(1) of the Act to apply to the court for a warrant to arrest him and no such application was made.

32. Hence, this objection fails.

The s. 37 objection

33. This objection arose because, having identified the applicable statutory provision governing the offence as 'Section 177 of the Criminal Law, Fraud', and having described the nature and legal classification of that offence, paragraph (e) of the EAW concludes by stating:

> 'With amendments adopted by the Law of 12/02/2004, 13/12/2007, 08/07/2011, 13/12/2012, 17/12/2020 and 07/04/2022, that came into force on 04/05/2022'.

34. In the second request for additional information, the court asked the issuing judicial authority to clarify the relevance or significance of the amendments to the relevant law made by the laws of 17 December 2020 and 7 April 2022, and of the statement that some or all of the amendments to the relevant law came into force on 4 May 2022, having regard to the legal principles "nullum crimen sine lege" and "nulla poena sine lege ".

35. In its second reply, that issuing judicial authority clarified that the amendments to Article 177 of the Criminal Law of the Republic of Latvia dated 17 December 2020 and 7 April 2022 did not apply to the part of that Article relevant to the prosecution and conviction of Mr Antons.

36. Thus, I am satisfied that Mr Antons' surrender would not be incompatible with the State's obligation under Article 7 of the ECHR and that, in consequence, his surrender is not prohibited under s. 37 of the Act of 2003.

37. It follows that I must reject this ground of objection.

The s. 45 objection

38. Mr Antons acknowledges that he was present at his trial when he pleaded guilty to an offence of fraud before Riga City Vidzeme Suburb Court on 14 October 2021, and was sentenced to 2 years imprisonment, suspended on condition that he undergo two years' probationary supervision. It is common case that he did not appear in person when that suspension was lifted by decision of 9 May 2022 for his failure to register with the State Probation Service and his failure to inform the State Probation Service of his whereabouts.

39. Belatedly, Mr Antons swore an affidavit in which he tersely avers that he was not aware of the conditions upon which the sentence imposed on him on 14 October 2021 had been suspended and that he believes that a requirement to undergo two years' probationary supervision and to register with the probation service for that purpose was inconsistent with his residence in Ireland at that time. He goes on to aver that he didn't receive any appointment or other correspondence from the probation service or any indication of any proposed hearing to lift the suspension and that at all material times he was resident in Ireland.

40. On the basis of those rather bare averments, in the second request the court requested the issuing judicial authority to provide details of the specific conditions upon which the sentence was suspended and to confirm that Mr Antons was legally represented at the hearing on 14 October 2021. In addition, the court asked for a translation of both the transcript of the sentence hearing and the order of sentence, if those documents were available.

41. In its second reply, the issuing judicial authority provided the details and documents requested. It transpires that Mr Antons was defended by a qualified advocate at his trial and sentencing. As part of his sentence, he was obliged to register with the State probation service within 10 days of the court judgment. He failed to comply with that requirement; failed to appear at the State Probation Service; and failed to comply with the supervision regulations determined by that service. The State Probation Service repeatedly sent notices to Mr Antons at the address – in Latvia and not in Ireland - that he had provided to the court, requiring him to register and warning him of the consequences of failure to do so but he did not reply. Because of his failure to comply with the obligation stipulated in the relevant provision of the Sentence Execution Code of Latvia, the court decided that he should serve the sentence that had been imposed on him. That was done under another identified provision of the criminal law whereby, if a convicted person upon whom a suspended sentence has been imposed fails without a justified reason to comply with a condition of the suspension, the court can direct that the sentence must be served.

42. The certified translation of the judgment of the Riga City Vidzeme Suburb Court confirms that Mr Antons was represented at his trial and sentencing by a qualified advocate. It goes on to confirm that both his declared place of residence and his actual place of residence were then in Riga, Latvia. The punishment imposed on Mr Antons was a sentence of two years imprisonment with a probation period for 2 years and that 'no

additional punishment – probationary supervision – shall be imposed on Uldis Antons'. At the resumed hearing before me, on 2 October last, counsel sought to argue that Mr Antons had misunderstood this part of the judgment as establishing that he was not to be subject to any probationary supervision whatsoever (rather than any additional punishment of probationary supervision beyond the probation period for 2 years). I am entirely unimpressed by that argument. Mr Antons was legally represented and, hence, in a position to have all of the implications of the judgment and sentence explained to him. The onus was entirely on him in that regard.

43. In material part, the translation of the operative part of the judgment states that the Riga City Vidzeme Suburb Court resolved:

> 'To find Uldis Antons …guilty of committing a criminal offence provided for by Section 177(3) of the Criminal Law and to sentence him to deprivation of liberty for a period of two years….
>
> Pursuant to Section 55 of the Criminal Law, to impose on Uldis Antons…a suspended sentence of deprivation of liberty with a period of probation of two years.'

44. The certified translation of the Court Hearing Report of 14 October 2021 confirms that both Mr Antons and his defence counsel appeared at the hearing remotely. It confirms that the identity data concerning Mr Antons was checked. Mr Antons' defence counsel had no requests. Mr Antons admitted his guilt. After the court gave its judgment, Mr Antons acknowledged that he understood the court's decision.

45. While there is no doubt that Mr Antons attended the hearing remotely and while I am willing to accept that he was in Ireland at that time, there is absolutely nothing to suggest that he did anything to disclose to the trial court that he was then resident in Ireland and was no longer resident in Latvia. On the contrary, the translation of the judgment confirms that both his declared place of residence and his actual place of residence were then in Riga, Latvia, and that neither he nor his defence counsel sought to raise any issue in that regard.

46. It is true that, in its first request, this court asked the issuing judicial authority to provide the reason for the activation on 9 May 2022 of the suspended sentence that had been imposed on 14 October 2021 by the trial court; to confirm whether the requested person had been present at the activation hearing; and to complete a further paragraph (d) of the EAW in respect of that hearing.

47. It is also true that, in its first reply, the issuing judicial authority responded that the decision of 9 May 2022 to activate the suspended sentence already imposed on 14 October 2021 was not the trial which resulted in the decision but dealt only with the enforcement of that sentence. It did not amend the severity of the sentence imposed or otherwise review the merits of the case. It was not therefore part of the trial resulting in

the decision to impose that sentence and so did not attract the requirement to provide the information stipulated in Article 4a of the EAW Framework Decision.

48. In my view, given the information provided by the issuing judicial authority, the position that it has adopted on the applicable law is correct; Case C-571/17 PPU Ardic, ECLI:EU:C:2017:1026.

49. Hence, I am satisfied that the EAW does not fail the test of lawfulness for failing to provide the information stipulated in Article 4a of the EAW Framework Decision in respect of the hearing that occurred when Mr Antons was not present on 9 May 2022, as that was not the trial resulting in the decision to impose a custodial sentence. I am also satisfied that Mr Anton did appear in person at the proceedings that resulted in the sentence that was imposed on him, namely the trial and sentence hearing on 14 October 2021, so that surrender cannot be refused under s. 45 of the Act of 2003.

50. Finally, by reference to all of the information concerning the penalties of which the sentence imposed on Mr Antons comprised that I have endeavoured to summarise in the preceding paragraphs of this judgments, I am satisfied that there has been no failure to provide sufficient information in that regard for the purpose of s. 11(1A)(g)(iii) of the Act of 2003.

51. For those reasons, this ground of objection fails.

The EAW - necessary proofs under s. 16(2) of the Act of 2003

52. On the information and evidence before me, I am duly satisfied that:

(a) the EAW, which does not relate to a conviction in absentia, has been provided to the court,

(b) the person before the court is the person in respect of whom the EAW issued,

(c) I am not required under s. 22, 23 or 24 of the Act of 2003 to refuse to surrender Mr Antons (as none of the matters referred to in those sections of the Act arise), and,

(d) the surrender of Mr Antons is not prohibited under any of the provisions of Part 3 of the Act of 2003. I have rejected Mr Antons's arguments that his surrender is prohibited under s. 37, s. 44 or s. 45 of the Act. I am satisfied that a term of imprisonment of not less than four months (specifically, one of 2 years) was imposed on Mr Antons for the offence concerned, of which the whole of that term remains to be served, so that his surrender is not prohibited under s. 38(1)(a)(ii) of the Act. None of the other matters referred to in Part 3 of the Act arises.

Conclusion

53. It follows that, having due regard to the obligation to surrender under s. 10 of the Act of 2003, I will make an order under s. 16(2) of that Act, directing the surrender of Mr Antons to such person as is duly authorised by the Republic of Latvia to receive him.