THE HIGH COURT

[2025] IEHC 69

BETWEEN **Record No 2024 EXT 219**

MINISTER FOR JUSTICE

APPLICANT

v.

CERBAN DUMITRI (AKA DUMITRI CERBAN)

RESPONDENT

JUDGMENT of Mr. Justice Patrick McGrath delivered on the 7 February 2025

1. In this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom on foot of one Trade and Co-Operation Agreement warrant ('TCAW'), dated the 29 October 2024.

2. At paragraph (b) of the TCAW there is reference to the domestic warrant, namely a warrant of arrest issued at Isleworth Crown Court following the Respondent's failure to answer bail in respect of his trial for 10 offences in respect of which he was convicted in his absence at Isleworth Crown Court on the 11 May 2021. On that same date he was sentenced to 16 years imprisonment in respect of each offence, all sentences to run concurrently.

3. The Warrant was endorsed on the 30 October 2024 and the Respondent arrested on the 1 November 2024. He has been remanded in custody pending the outcome of these proceedings.

4. I am satisfied that the person before the court, the respondent, is the person in respect of whom this TCAW was issued. No issue is taken in relation to identity.

5. The minimum gravity requirement under the European Arrest Warrant Act 2003 (as amended) ['the 2003 Act'] is met.

6. I am satisfied that none of the matters referred to in sections 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the 2003 Act"), 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.

7. The TCAW was issued by Senior District Judge Paul Goldspring, an issuing judicial authority within the meaning of the 2003 Act and the Trade and Co-Operation Agreement.

8. The Respondent had attended all court hearings except for the trial date. As indicated in Part (d) of the TCAW, he had been informed by the Court on the 2 September 2020 that failure to attend could mean that the trial might proceed in his absence. On the date of trial he was represented by his own lawyer, who confirmed to the Court that the Respondent was aware of the trial date and of his obligation to attend.

9. I am therefore satisfied that there has been compliance with the requirements of Section 45 of the 2003 Act and, although the Respondent did not appear in person at his trial and sentence, there has been no breach of defence rights within the meaning of the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union.

10. The conduct underlying the offences of which the Respondent was convicted is set out in paragraph (e) of the Warrant. The Respondent, together with three named co-defendants, were members of a gang of men who orally, vaginally and anally raped a woman on the 12 August 2017. These four men had met the complainant in a night club in West London and having forced her into a car, took her to an address in Northolt whether the Respondent orally raped her and the three co-defendants, with his assistance, orally, anally and vaginally raped her. The Respondent was convicted of ten offences contrary to Section 1(1) of the Sexual Offences Act, 203 which were one offence where he had penetrated the complainant's mouth with his penis and nine

counts where he had assisted, aided and abetted, the other three men to orally, anally and vaginally rape the complainant.

CORRESPONDENCE

11. The TCAW is a Warrant issued in accordance with Article LAW.SURR.112 of the Trade and Co-Operation Agreement. It is therefore necessary to demonstrate correspondence in accordance with s. 38 of the 2003 Act.

12. Section 5 of the 2003 Act provides:-

> *'For the purposes of this Act, an offence specified in a European Arrest Warrant corresponds to an offence under the law of the state, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State'.*

13. The relevant principles for showing correspondence are now well established. In assessing correspondence, the question is whether the acts or omissions that constitute the offence in the requesting state would, if carried out in this jurisdiction, amount to a criminal offence – *Minister for Justice v Dolny* [2009] IESC 48

14. No issue is raised in relation to correspondence. I am in any event satisfied that the conduct described in part (e) of the TCAW corresponds with offences contrary to Irish Law. The corresponding offences include:

    a. Rape contrary to Section 4 of the Criminal Law Rape (Amendment) Act, 1990; and
    b. Rape contrary to Section 2 of the Criminal Law (Rape) Act, 1981

GROUNDS OF OBJECTION

15. The Respondent submits that, if surrendered to the United Kingdom, there is a real risk that, having regard to prison conditions in that state, that he would suffer inhuman and

degrading treatment and/or that his right to privacy and bodily integrity would be breached. It is therefore submitted that his surrender in relation to these offences is prohibited by Section 37 of the European Arrest Warrant Act, 2003 as amended as it it would be contrary to his constitutional rights and the States obligations under the ECHR.

Breach of Articles 3 of European Convention on Human Rights

16. Following on from the Judgment of the CJEU in *Alchaster,* the principles of mutual trust and confidence that underlie the operation of the Framework Decision and the consideration of applications from member states of the European Union, do not apply to the consideration of TCAWs received from the United Kingdom under the Trade and Cooperation Agreement.

17. Where objections are raised to surrender to the United Kingdom on the basis that, if surrendered to the United Kingdom on foot of a TCAW, there would be a real risk of a breach of fundamental rights, then the Court must not adopt the two stage test as set out in *Aranyosi & Caldaru,* as such a test only applies because of the system of mutual confidence and trust which applies under the Framework Decision and the United Kingdom is no longer a part of the EU and the Framework Decision.

18. A one step test applies which requires an evaluation, without any reference to the presumption underlying the operation of the Framework Decision, of all the circumstances in the individual case in order to consider whether there are valid reasons for believing that that person would run a real risk to the protection of his or her fundamental rights is surrendered to the United Kingdom. At paragraphs 78 to 80 of *Alchaster,* having distinguished between the one and two step tests, the CJEU described the approach to be adopted:-

> *78. It follows that the executing judicial authority called upon to rule on an arrest warrant issued on the basis of the TCA cannot order the surrender of the requested person if it considers, following a specific and precise examination of that person's situation, that there are valid reasons for believing that that*

person would run a real risk to the protection of his or her fundamental rights if that person were surrendered to the United Kingdom.

79. Therefore, where the person who is the subject of an arrest warrant issued on the basis of the TCA claims before that executing judicial authority that there is a risk of a breach of Article 49(1) of the Charter if that person is surrendered to the United Kingdom, that executing judicial authority cannot, without disregarding the obligation to respect the fundamental rights enshrined in Article 524(2) of that agreement, order that surrender without having specifically determined, following an appropriate examination, within the meaning of paragraph 51 above, whether there are valid reasons to believe that that person is exposed to a real risk of such a breach.

80. For the purposes of that determination, it is necessary, in the first place, to point out that, although the existence of declarations and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of a breach of fundamental rights and freedoms (see, to that effect, judgment of 6 September 2016, Petruhhin, C-182/15, EU:C:2016:630, paragraph 57), the executing judicial authority must, however, take into account the long-standing respect by the United Kingdom for the protection of the fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the ECHR, which is expressly referred to in Article 524(1) of the TCA, and the provisions laid down and implemented in United Kingdom law to ensure respect for the fundamental rights set out in the ECHR (see, by analogy, judgment of 19 September 2018, RO, C-327/18 PPU, EU:C:2018:733, paragraph 52).

19. The principles governing the consideration of such objections would appear largely similar to those which have been applied by the Irish Courts when considering applications for surrender from other third countries with which this State has more traditional extradition arrangements, such as by way of example the United States of America, Canada and Australia. In considering any application from a third country, and objections made to surrender thereto, a Court will proceed on the basis that the third country will act in good faith and furthermore that such a state, with whom Ireland has

after all agreed to enter into an extradition arrangement or treaty, will behave in a manner which will respect and vindicate the rights of the proposed extraditee.

20. Furthermore, although the Court will of course consider any relevant past or historic matters which touch upon any claim that there is a substantial risk that extradition to a third country will expose an extraditee to a risk of harm if now surrendered to that state, any assessment of such a risk must be forward looking and therefore any past matters must be relevant to the assessment of any future risk.

21. In the course of his Judgment in *AG v O'Gara* [2012] IEHC 179, Edwards J referred to *Minister for Justice v Rettinger* [2010] 3 I.R. 783 where the Supreme Court had distilled the principles to be applied when considering objections to surrender on human/fundamental rights grounds in EAW cases. He said that, in so far as the *'Rettinger principles'* apply to cases such as the US extradition case then under consideration, those principles could with 'appropriate modification' be stated as follows:-

> *' - By virtue of the absolute nature of the obligation imposed by Article 3 of the European Convention on Human Rights and Fundamental Freedoms, which provides that 'No one shall he subjected to torture or to inhuman or degrading treatment or punishment', the objectives of the [Washington Treaty] cannot be invoked to defeat an established real risk of ill-treatment contrary to Article 3. (See analagous remarks of Fennelly J. at p.813 in Rettinger re the objectives of the system of surrender pursuant to the Council Framework Decision on the European Arrest Warrant);*
>
> *· - The subject matter of the court's enquiry "is the level of danger to which the person is exposed." (per Fennelly J. at p.814 in Rettinger);*
>
> *· - "it is not necessary to prove that the person will <u>probably</u> suffer inhuman or degrading treatment. It is enough to establish that there is a 'real risk'." (per Fennelly J. at p.814 in Rettinger) "in a rigorous examination." (per Denham J. at p.801 in Rettinger). However, the mere possibility of ill treatment is not sufficient to establish an applicant's case. (per Denham J. at p.801 in Rettinger);*

· - A court should consider all the material before it, and if necessary material obtained of its own motion, (per Denham J. at p.800 in Rettinger);

· - Although a respondent bears no legal burden of proof as such, a respondent nonetheless bears an evidential burden of adducing cogent "evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention." (per Denham J. at p.800 in Rettinger);

· - "It is open to a requesting State to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from an applicant as to conditions in the prisons of a requesting State with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the applicant were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention. On the other hand, the requesting State may present evidence which would, or would not, dispel the view of the court." (per Denham J. at p.801 in Rettinger);

· - "The court should examine the foreseeable consequences of sending a person to the requesting State." (per Denham J. at p.801 in Rettinger). In other words the Court must be forward looking in its approach;

· - "The court may attach importance to reports of independent international human rights organisations." (per Denham J. at p.801 in Rettinger)'

22. In the course of considering an objection to surrender to the USA made on the grounds of a risk of inhuman and degrading treatment, in the subsequent case of *AG v Martin Wall* [2022] IECA 42, Donnelly J explained the approach to be adopted in similar terms:-

'18. The principles on which a court in this jurisdiction must act in cases of surrender under the 2003 Act were authoritatively set out by the Supreme Court in Rettinger and have become known as the Rettinger principles. In a case where a requested person claims that he will be at real risk of being subjected to inhuman and degrading treatment on extradition, the burden is on him to adduce evidence that there are substantial/reasonable grounds for so

believing that if he is returned, he will be exposed to a real risk of being subjected to such prohibited treatment. The Rettinger principles, themselves a reflection of principles in the leading European Court of Human Rights ("ECtHR") case of Saadi v. Italy (App. No. 37201/06) (2009) 49 EHRR 30 apply to extradition requests as well as to EAWs. This was most recently stated by the Supreme Court in the case of Attorney General v. Davis where, having considered whether there was a difference between the Rettinger principles and those gleaned from Saadi v. Italy, McKechnie J. said:

"Accordingly, it is the… Rettinger…principles, as subsequently explained and adapted in Attorney General v. O'Gara…and Attorney General v Marques [2015] IEHC 798…in relation to extradition to the U.S, which form the applicable test in an [A]rticle 3 situation: the question, as stated, is whether the evidence establishes that there is a real risk that, if surrendered and extradited, the proposed extraditee will be subjected to torture or inhuman or degrading treatment. This test applies where the objection raised is based on what is prohibited by that provision, […] As one can never be definite regarding future events, the aim of the exercise is to measure risk. This requires a fact-specific inquiry conducted in part against known facts and in part against future events. The matters for consideration will inevitably be particular to the person concerned and may range over an extensive area; likewise in relation to the prison conditions, and perhaps even in respect of the legal and judicial regimes of his intended destination. The exercise so conducted should and must be as thorough as the facts and circumstances demand."

.19. A point to note is that McKechnie J. referred to the fact that some authorities use "substantial grounds" (the language of Saadi v. Italy) while other authorities use "reasonable grounds" (the language of legislation). He opined that, given the difficulty in obtaining evidence, he preferred the latter although there may be no difference between the two. Of particular significance to the issue in the present case is the fact that McKechnie J. identified the aim of the exercise as being to measure risk: measuring the downstream risks to this appellant is therefore vital

> *.20. The Rettinger principles state that a requesting State may dispel any doubts by evidence, but this does not mean that the burden has shifted. The principles emphasise that a court has to be forward-looking in assessing the foreseeable consequences of sending the person to the requesting State, and that the mere possibility of ill treatment is not sufficient.'*

23. In my opinion the general approach to outlined by Edwards J in *O'Gara* and Donnelly J in *Wall* is, with one modification, compatible with the approach to such matters as outlined by the CJEU in *Alchaster.* That one modification arises from the observations by that Court at paragraph 80 of *Alchaster.* Although the principles of mutual confidence and trust do not apply when considering objections in the context of a TCAW warrant, this Court must nonetheless approach fundamental / human rights objections to surrender to the United Kingdom cognisant of it being a party to the European Convention on Human Rights, its long standing respect for the protection of fundamental rights as set out in that Convention and the provisions in place in UK law to ensure the protection of such rights and freedoms.

24. In support of his submission, the Respondent has filed a number of reports including:-

    a. CPT report of the Council of Europe following their visit to the United Kingdom from the 8 to the 21 June 2021;
    b. Annual Report of the Independent Monitoring Board at Pentonville Prison for year from 1 April 2023 to 31 March 2024; and
    c. Annual Report of the Independent Monitoring Board at HMP Wandsworth for the period from 1 June 2023 to 31 May 2024

25. It is unknown in which particular prison the Respondent will be lodged in the event of his surrender. The Respondent therefore firstly referred to the CPT Report following their visit in 2021 and highlights what was said therein about the risk of inter prisoner violence. Having acknowledged that instances of violent attacks had reduced, in part due to lockdown measures during the Covid Pandemic, the report said that inter prisoner violence remained a *'worrying phenomenon in English prisons'* citing that *'there were still numerous cases of inter prisoner violence as a result of which prisoners sustained serious injuries, in some cases requiring hospitalisation'*.

26. The Respondent then refers to two reports from the recent past on specific prisons in the London area, HMP Pentonville and HMP Wandsworth. The Respondent states that these reports are of particular relevance because, though he does not know where he might be detained if surrendered, it is not unrealistic to believe he might be detained in the London region.

27. Insofar as the Annual Report on HMP Pentonville is concerned, the authors referred to a 20% increase in inter prisoner violence in that period compared to the previous 12 months, the fact that single use cells were typically occupied by two inmates and there was a lack of privacy and cramped conditions which could not be said to be decent or humane. It was noted there had been various infestations in some cells and that blitzes by Rentokill provided temporary respite. There was also a failure on the part of management to deal in a sufficiently serious and timely manner with a rat infestation in the kitchen area.

28. Similar criticisms were made of HMP Wandsworth with the establishment described as dangerously overcrowded and again single cells being occupied by two prisoners. A shortage of resources led to most men being locked in their cells for 22 hours per day and the level of inter prisoner violence was described as far too high.

29. The Respondent submits that he has raised sufficient concerns in relation to the state of prisons in the United Kingdom as to put this court on inquiry as to whether there is a risk that he might be subjected to inhuman or degrading treatment. He submits that, having considered all of the material put before the Court in this regard, inquiries should be made of and assurances sought from the authorities of the United Kingdom on these matters.

30. The main issue of concern raised on behalf of the respondent concerns overcrowding in UK prisons. The respondent also refers to a risk of inter prisoner violence but has not identified any particular reason why he might run a risk of being exposed to such violence.

31. From the CPT report of 2021, it is the position that overcrowding does remain a concern to the Committee. The Committee however did note that at the time of its visit,

overcrowding was less severe and stated that this may have been due to actions taken as a result of the management of prisons during the COVID pandemic. The Committee also referred to the plans of the authorities to significantly invest in the building of more prisons and the increase in prison places (see paragraphs 28 to 32 of Report).

32. In the report the Committee also noted that there were no reports of ill treatment by staff in the male prison estate (para 34) and furthermore referred to a reduction in the overall level of inter prisoner violence (para 35) but recommended that the authorities intensify their efforts to reduce such violence (para 38). The committee also recommended that the recording of such incidents be improved (para 40). There was also a criticism of a general lack of activities in prison though it seems that some of this could have been attributed to COVID.

33. Whilst there is reference to overcrowding there is no suggestion in the reports that there are any instances in the prison system where it has reached such a level as to give rise to a breach of the Convention e.g. there is no suggestion that prisoners will be held in conditions where they have less than 3m squared of space each (a level of space per prisoner seen as effectively a minimum below which there is a presumption of overcrowding of a kind such as to lead to a concern of inhumane and degrading treatment). In addition, there is no doubt that the government of the United Kingdom has extensive plans for the provision of additional prison spaces and funding is to be set aside for the same.

34. Insofar as inter prisoner violence is concerned; the CPT report does raise continuing concerns but does acknowledge improvements in this regard but recommends intensification of efforts in this regard and better reporting of incidents.

35. The Respondent has put before the Court reports in relation to two prisons, HMP Pentonville and HMP Wandsworth. Those reports, which followed on from annual visits carried out as part of the system of domestic oversight of prisons in the United Kingdom, point to failings and difficulties in those two particular institutions. Insofar as overcrowding is concerned, the reports indicate that there is overcrowding in both prisons, the prisons are generally operating significantly above their recommended capacity and that single use cells are frequently occupied by two prisoners. Concerns

are also raised about various infestations in those prisons, which the authorities have made continued efforts – not always successfully - to bring under control.

36. Bearing in mind what is said in the general report, it is not wholly unsurprising that there is such overcrowding in certain prisons. As many of the prisons are old, it is again perhaps not unexpected that there might be some of the infestation difficulties described. On the other hand, the reports themselves note that efforts are continuingly been made by the authorities to deal with, for example, the infestations. And, as has been pointed out in the CPT Report, there are plans for the building of more prisons and a significant increase in prison places.

37. Regarding inter prisoner violence; the reports point to an increase in those particular prisons in the period in time under review. In my view these localised reports do not detract from the general comments in the CPT report which show that this is an issue taken seriously by the authorities and there are no reports of violence by staff on prisoners.

38. In the course of delivering Judgement in *Minister for Justice v Keating* [2024] IEHC 515, this Court had to consider an objection to surrender on the grounds of an alleged risk of a breach of Article 3 of the ECHR on the grounds of potential inhuman and degrading treatment if detained in UK prisons. In that case the Respondent similarly relied upon the CPT Report of 2021, together with other reports on difficulties in the UK prison system. The court there rejected the contention that there was a real risk of Mr Keating being exposed to a breach of Article 3. Furthermore, the Court did not consider that the documents provided had established a generalised risk of ill treatment such as to raise issues which might require additional information from the UK authorities. Adopting the two-step approach in *Araynosi & Caldaru* the Court did not consider that the Respondent had raised such concerns as to seek a response from the UK authorities.

39. As noted above, following on from the decision of the CJEU in *Alchaster* this Court must not adopt such a two-step approach in considering such objections to surrender on foot of a TCAW. A one step test applies which requires an evaluation, without any reference to the presumption underlying the operation of the Framework Decision, of

all the circumstances in the individual case in order to consider whether there are valid reasons for believing that that person would run a real risk to the protection of his or her fundamental rights is surrendered to the United Kingdom.

40. The principle of mutual trust and confidence has no application when considering this objection as the UK is not a party to the Framework Decision. In considering the objection to surrender on foot of this TCAW, the Court should however proceed on the basis that the UK will act in good faith and furthermore that such a state, will behave in a manner which will respect and vindicate the rights of the proposed extraditee. The court must also take into account that the UK is a contracting party to the ECHR and has introduced domestic legislation to give effect to its provisions before its Courts.

41. On the facts of this case, applying the test set out in *Alchester* and without any reference to the principles of mutual trust and confidence, I have ultimately come to the same conclusion as that arrived at in *Keating.* Applying the weaker presumption that now arises in relation to TCAWs, I do not consider that the evidence adduced by this Respondent gives rise to concerns that, if surrendered, he will be exposed to inhuman and degrading treatment such as to give rise to a possible breach of Article 3 of the Convention.

42. I have arrived at this conclusion firstly having considered the CPT Report of 2022 (which is a report which deals with prison conditions generally). I do not consider the matters referred to in that report as providing evidence of a generalised risk of ill treatment that would amount to a breach of Article 3 of the Convention. As already observed, insofar as overcrowding is concerned there is no objective evidence to support the contention that overcrowding in UK prisons is at a level that would engage Article 3 of the Convention. There is, for example, no evidence of detainees being held in conditions where they are provided with less than 3m2 or 4m2 per inmate – a figure below which a presumption of overcrowding can arise.

43. Again, there is no evidence of a generalised risk of violence from other prisoners which engages in my view Article 3. And, as previously noted, there is nothing to suggest that this Respondent would be a specific subject of violence.

44. Insofar as the Annual Reports on conditions in two prisons in London (HMP Pentonville and HMP Wandsworth) are concerned, I would make the following observations:-

    a. These are reports for one year from two prisons from a country with a vast number of prisons and there is no evidence to show the Respondent would be detained in either;
    b. Whilst the reports point to issues with overcrowding, they do not suggest that any of the metrics referred to in the various ECHR judgments on this issue, are engaged here – most notably there is no suggestion that any prisoner in these prisons has less than the minimum level of space of 3/4m2;
    c. Although the increase in inter prisoner violence is unwelcome, again there is no suggestion that this is of a level to give rise to issues under Article 3;
    d. There is no evidence that any inmate has taken any case alleging he is being detained in either of those prisons in conditions which breach Article 3 of the Convention.

45. Whilst there are ongoing difficulties in relation to overcrowding and inter prisoner violence generally in the UK prison estate, having considered all of the material submitted by the Respondent and the submissions thereon, I do not consider that he has shown even a generalised risk of ill treatment such that might raise issues under Article 3 of the Convention.

CONCLUSION

46. For the above reasons I have rejected the grounds of objection made by the Respondent and I therefore propose to make an order for his surrender pursuant to s. 16 of the 2003 Act.