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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 20/84545/A01

Delivered: 24/08/2022

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE NETHERLANDS

Requesting State/Respondent

v

MICHA KAT

Requested person/Appellant

Mr Sean Devine BL (instructed by Phoenix Law Solicitors) for the Applicant
Dr Tony McGleenan KC (instructed by Crown Solicitor's Office) for the Respondent

Before: Keegan LCJ and McFarland J

Ex Tempore Judgment

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] We are in a position to provide a judgment in relation to this appeal this afternoon. We are grateful to counsel for the helpful written and oral arguments made to us which we have considered.

[2] This case has proceeded on an expedited basis as a rolled-up hearing. As such we have before us an application for leave to appeal an extradition decision given by His Honour Judge Kerr on 15 July 2022 wherein he ordered the extradition of the requested person, Mr Kat, to the Netherlands on foot of four extradition warrants. The first warrant is a conviction warrant the other three accusation warrants. The first warrant is known as warrant 1 and is dated 6 March 2022. Warrant 2 is the first of the accusation warrants dated 18 December 2020 for which the requested person was arrested on 22 January 2021. Warrant 4, another accusation warrant is dated 9 July 2021 for which the requested person was arrested on 9 July 2021 and accusation warrant 5 is dated 23 July 2021 for which the requested person was arrested on 13 August 2021.

[3] The focus of this appeal has been on the conviction warrant. It relates to a criminal case that took place in the requesting state, the Netherlands and resulted in a sentence of six months' imprisonment confirmed by the appeal courts in the Netherlands on 22 November 2017. We will not, in this court, set out in any great detail on the background to this conviction or, indeed, the background to the accusation warrants because that is set out in detail in the judgment of His Honour Judge Kerr which we adopt.

[4] The conviction is for the offence of threatening crime against life and libel. The three accusation warrants all relate to the dissemination of information in the public domain, which to use Mr Devine's language in his skeleton argument relates to "conspiracy theory" type publication which the requested person engaged in breach of bail conditions imposed on the accusation warrants. The bail conditions were that the requested person was not to disseminate such material. As has been pointed out these bail conditions differ from the bail conditions on the first conviction warrant as the prohibition on dissemination of material was not part of those bail conditions.

[5] The requested person is described as a freelance reporter or journalist. The remainder of the history we adopt from the decision of His Honour Judge Kerr. We take this course as the appeal has distilled into one discrete issue. This is found in the amended Notice of Appeal dated 17 August 2022. There the requested person raises one point for this court to determine regarding conviction warrant 1. In relation to that warrant it is submitted that the requested person has effectively time served in prison and therefore that the warrant should not found his extradition. What this means is that the requested person accepts his extradition on the other three accusation warrants but he disputes that the extradition should also be based upon the first conviction warrant. It follows that the extradition will proceed in any event.

[6] We turn to the factual position in relation to the various warrants on what has happened in previous courts pausing to note that there have been a considerable amount of court hearings over a considerable amount of time in this case. In any event, the factual position has now been clarified as the court orders relating to the conviction warrant and the other warrants and, in particular, the conviction warrant have been provided to us.

[7] From this material we note that the requested person was arrested in relation to this warrant on 4 December 2020 and granted bail on that day. He remained on bail until remanded on 15 July 2022 when the judgment was given by His Honour Judge Kerr. It is plain to see that the requested person was remanded in custody after a lengthy series of hearings regarding breaches of bail terms ordered on foot of the accusation warrants. This resulted in the revocation of bail on those warrants on 27 August 2021. That, it seems to us, is the factual position material to the appeal point now raised.

[8] The argument Mr Devine makes on behalf of the requested person is based on an interpretation of Article 26 of Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

[9] Before looking at the specific terms of Article 26 we reflect on the purpose of this framework decision and the general principles that are contained in Article 1 of Chapter 1 which states:

“1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.”

[10] This principle of comity among Member States and mutual recognition is well known and guides our consideration.

[11] Article 26 is contained in Chapter 3 of the Framework Decision and is entitled ‘Deduction of the period of detention served in the executing Member State.’ The relevant provision reads:

“1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.”

[12] The wording of this article is in mandatory terms. The provision has two core aspects. The first is in relation to the obligation on the issuing Member State and, second, in relation to the obligation to disseminate and transmit information by the executing judicial authority.

[13] Flowing from the governing principles referred to above it is clear to us that it is for the issuing Member State to calculate sentence. This principle has been confirmed in extradition the jurisprudence, including by Lord Lloyd Jones LJ in *Zakrzewski v District Court in Torun* [2012] 1 WLR 2248.

[14] Mr Devine accepts that the Member State will apply convention and international obligations to any consideration and, rightly he accepts that arguments can be made about time served there. However, the requested person would simply prefer us to conduct the exercise. The answer to this request is that we consider it contrary to the terms of Article 26. Therefore, Mr Devine's argument cannot succeed in the way that he has presented it to us. The point can be made and determined in the requesting state.

[15] In any event the factual basis of the requested person's remand does not support Mr Devine's argument as all of the remand time arises from the accusation warrants.

[16] We also observe that the trial judge also looked at this issue through the prism of Article 8 considerations with proportionality in mind. We are particularly struck by the passage of the judge's ruling where he refers to Article 8 which has not been criticised in any respect during the course of this appeal. At page 25 of the judgment the trial judge found as follows:

"The requested person submits that time served in custody should form part of the checklist. Both parties refer to article 6 of the Extradition Act in this regard. The requested person relied on some jurisprudence."

[17] The trial judge decided that the issue should be part of the checklist but it should also be placed in the context of the case as a whole. He said that he considered the context in relation to the time factor includes the following:

- "(a) That the requested state by Article 26 as above have an obligation to assign credit for time in custody;
- (b) That the requested person was granted bail in this case and would have remained on bail but for repeated breaches of his bail resulting in his present custody.
- (c) If returned to face trial and convicted, as were his co-accused, it is likely that he like them would receive a custodial sentence and time served may well be applied in accordance with Article 26 but that, of course, is a matter for the requesting state."

[18] This analysis has not been criticised and so it follows that no case can be sustained in relation to breach of Convention rights before us. In addition, we do not accept the abuse of process argument raised given that the requested person is subject to four warrants and can make his arguments regarding time served on remand in the Dutch courts. In our view this case also differs from the legal authorities relied upon by Mr Devine which do not involve multiple warrants and are founded on different facts.

[19] Accordingly, we do not consider that the trial judge ought to have decided a question differently in this case. We uphold the decision of the trial judge on the basis that we find no merit in any of the arguments raised in this appeal. We, therefore, refuse leave to appeal and we dismiss the appeal. This means that the extradition can proceed as planned this week. We direct that all relevant information must now be transmitted to the requesting state.