

THE HIGH COURT

RECORD NUMBER 2019/43 EXT

BETWEEN

MINISTER FOR JUSTICE EQUALITY, AND LAW REFORM

APPLICANT

AND

BOGDAN PYZOWSKI

RESPONDENT

Judgment of Mr. Justice Paul Burns delivered on 22nd May 2020.

1. By this Application the Applicant seeks an order for the surrender of the Respondent to Poland pursuant to a European Arrest Warrant dated 12 April 2017 issued by Jaroslav Sabic, Regional Court Judge, as the issuing judicial authority.
2. The Warrant was endorsed by the High Court on 8 April 2019 and the Respondent was arrested and brought before this court on 24 April 2020.
3. I am satisfied that the person before the court is the person in respect of whom the Warrant was issued. This was not put in issue by the Respondent.
4. I am further satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act 2003, as amended, arise and that the surrender of the Respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the European Arrest Warrant indicates the matters required by s. 45 of the European Arrest Warrant Act 2003, as amended.
6. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act 2003, as amended, are met. The term of imprisonment in respect of which the Respondent's surrender is sought amounts to 3 years, 4 months and 21 days.
7. The Respondent filed Points of Objection to his surrender which at hearing was argued as a single objection that pursuant to section 37 of the European Arrest Warrant Act 2003, as amended, his surrender is prohibited as it would be incompatible with the State's obligations under the European Convention on Human Rights and/or would constitute a contravention of his personal rights guaranteed under the Irish Constitution, and in particular would constitute an impermissible contravention or interference with his right to fair procedures. He claimed that his fair trial rights would be impermissibly interfered with by reason of what he alleges is an egregious and culpable delay on the part of the Polish authorities in seeking his surrender.
8. The factual background to this matter is noteworthy. The European Arrest Warrant before the Court is what is sometimes referred to as a 'conviction warrant'. The Respondent is not sought for the purpose of being tried in respect of an alleged criminal offence but rather his surrender is sought for the purpose of serving a sentence, or the remainder of a sentence, already imposed upon him in respect of offences of which he has already been convicted. His surrender is sought to serve a cumulative sentence of three years,

four months and 21 days imprisonment in respect of 10 offences of breaking into motor vehicles and removing items from same or attempting to do so. The offences in question are said to have been committed in 2001.

9. It is accepted by the parties that the Respondent was previously surrendered by Order of this Court to the Polish authorities in 2011 on foot of a European Arrest Warrant dated 10 May 2010 in respect of 15 offences. That European Arrest Warrant was a 'mixed warrant' in respect of matters where the Respondent was sought for trial purposes and also in respect of matters where the Respondent was sought to serve a sentence or the remainder of a sentence. The 10 offences which comprise the subject matter of the current European Arrest Warrant were included in that earlier warrant as matters in respect of which the Respondent was sought for prosecution. It is common case that following his surrender pursuant to the earlier warrant the Respondent underwent prosecution and trial for the said 10 offences and having been found guilty in respect of same received a custodial sentence of 3 years and 6 months imprisonment, reduced to a period of 3 years, 4 months and 21 days when a period of earlier detention in respect of same was taken into account. The Respondent attended at the earlier trial dates in respect of the said prosecution but did not attend personally for latter dates in respect of same and instead gave a mandate to a legal counsellor to appear on his behalf. He was convicted and sentenced on 8 March 2013. His defence counsel appealed the verdict which was upheld on 3 April 2014. The Respondent failed to turn up to serve his sentence and the current European Arrest Warrant was issued on 12 April 2017. He was arrested on foot of the current warrant on 24 April 2020 when stopped at a routine checkpoint by members of An Garda Síochana who were not specifically searching for the Respondent. In an Affidavit sworn by the Respondent's solicitor on 30 April 2020, in respect of an application for bail, it was stated that the Respondent had resided in Ireland for approximately 15 years, had been returned to Poland on foot of an European Arrest Warrant in 2011 and that he had returned to Ireland in 2013.
10. The Respondent submitted that as the offences took place in 2001 there has been an egregious and culpable delay on the part of Poland in the prosecution of these matters. He referred to the decision of the European Court of Human Rights in the case of *Dec and others v Poland*, Application 70562/10, delivered on 10 July 2018. That concerned Applications brought on behalf of a number of persons against Poland in respect of an alleged breach of Article 6 of the Convention due to excessive delay in proceedings in their cases and Article 13 due to lack of, or insufficient, redress granted by the Polish national courts in respect of same. In those Applications, the Polish Government acknowledged a violation of Articles 6 and 13 and offered compensation in respect thereof which was agreed to by the Applicants and the matters were dealt with by the European Court of Human Rights as friendly settlements and were struck out pursuant to Article 39 of the Convention. The Respondent received a sum of compensation of PLN 18,000 (approximately €4000). It was submitted that this amounted to an acknowledgement of a breach of the Respondent's Convention rights and that a surrender under the current warrant would be a further breach of those rights and in particular his Article 6 fair procedure rights.

11. Initially the Respondent appeared to be relying on the delay from 2001 to 2017 when the current European arrest warrant was issued. In the course of submissions before this court it was conceded on behalf of the Respondent that he was no longer seeking to rely upon the delay prior to the date of sentencing and he was in fact relying upon the delay between the date of sentence (8/3/13) or the date of the verdict on appeal (3/4/14) and the date of issue of the European Arrest Warrant (12/4/17) this being a period of 3 to 4 years.
12. It was submitted that the Respondent did not have to show any prejudice caused by the delay and that the delay in itself was so egregious as to constitute a breach of his Article 6 rights.
13. The Applicant submitted that the period prior to the Respondent's surrender in 2011 on foot of the earlier European Arrest Warrant could not be relied upon by the Respondent as that was effectively *res judicata*. While the Respondent did not accept that the principle of *res judicata* applied, he in fact limited his claim of delay to the period from the date of sentence/appeal. The Applicant submitted that in the circumstances the period of 3 to 4 years could not possibly be regarded as egregious or due to any culpable delay on the part of the Polish authorities. It was emphasised that the Respondent could not point to any prejudice suffered by him as a result of that period of delay (if delay was the correct description to use). It was further emphasised that the period in question and any issue of delay arising in respect of same was due to the fact that the Respondent had fled Poland and come to Ireland in full knowledge of the proceedings and sentence which had been handed down.
14. Neither party filed written submissions and, with the exception of the short decision of the European Court of Human Rights striking out the proceedings in the Applications of *Dec and Others v Poland* (already referred to), no authorities were opened to the Court. This is not a criticism of the parties or their representatives and indeed the Court is grateful to Counsel for the efficient and concise manner in which the matter was argued.
15. In these Proceedings the Court is concerned with the European Arrest Warrant before it dated 12 April 2017. This relates to a sentence handed down in 2013 and upheld on appeal in 2014. In the opinion of the court the period of 3 to 4 years cannot be regarded as of and in itself so egregious as to constitute a violation of the Respondent's right to fair procedures. Different considerations apply in relation to delay prior to a trial and delay in the carrying out or serving of a sentence. It is difficult to see what fair procedure rights are infringed or interfered with in circumstances where the Respondent participated in his trial but absented himself for the verdict, had an appeal which was unsuccessful and absconded from the relevant jurisdiction rendering himself unavailable to serve the sentence handed down. Indeed the Respondent was unable to point to any particular prejudice. The Respondent himself must bear a large degree of responsibility for any delay that has occurred between the handing down of sentence and the issue of the European Arrest Warrant in circumstances where he left Poland in full knowledge of the proceedings and remained out of Poland.

16. Taking all of the circumstances into account I am satisfied that the surrender of the Respondent is not incompatible with the State's obligations under the Convention or the Protocols to the Convention or the Irish Constitution and I dismiss the Respondent's sole objection.
17. I am satisfied that the surrender of the respondent is not prohibited by s.37 or any of the other provisions of Part 3 of the European Arrest Warrant Act 2003, as amended.
18. Having dismissed the objection of the Respondent to this Application, it follows that this court will make an order, pursuant to section 16 of the European Arrest Warrant Act 2003, as amended, for the surrender of the Respondent to Poland.