

THE HIGH COURT

[2022] IEHC 287
[2021 No. 344 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

TIBOR TOMES

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 22nd day of February, 2022

1. By this application, the applicant seeks an order for the surrender of the respondent to the Czech Republic pursuant to a European Arrest Warrant dated the 20th of June 2016 ("the EAW"). The EAW was issued by Mgr./President of the Senate Jin Fikar, sitting at Pilsen City District Court, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to sentence him in respect of alleged robbery-type offences.
3. The respondent was arrested on the 9th of December 2021, on foot of a Schengen Information System II alert, and brought before the High Court on the 10th of December 2021. The EAW was produced to the High Court on 21st of December 2021.
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. Each of the offences in respect of which surrender of the respondent is sought to be sentenced carries a maximum penalty in excess of twelve months' imprisonment.
7. The respondent objects to surrender on the following grounds as stated in his amended notice of objection dated the 17th of February 2022:
 - The respondent does not consent to his surrender to the issuing State pursuant to the European Arrest Warrant herein. The respondent hereby awaits proof of all matters that are necessary in order to succeed in his application for an order for the respondent's surrender to the issuing State pursuant to the European Arrest Warrant Act, 2003 (as amended) and/or the Framework Decision.
 - The proposed surrender of the respondent is not in compliance with Section 5 and Section 38(1)(a) of the European Arrest Warrant Act, 2003 (as amended). The invocation of Article 2(2) of the Framework Decision by the ticking of the box for "illicit trafficking in narcotic drugs and psychotropic substances."

- Further, the surrender of the respondent is prohibited by Section 37 of the European Arrest Warrant Act, 2003, as amended. To surrender the respondent would breach his right to family life that is guaranteed by Bunreacht na hÉireann and Article 8 of the European Convention on Human Rights. The respondent's surrender, in light of the particular familial circumstances and the fact the respondent was a juvenile at the time of the offending contained in the warrant, would be an unjust and disproportionate interference in his family life.

8. Is surrender prohibited by Section 38 of the Act of 2003?

Part E of the EAW states that it relates to one criminal offence consisting of three deeds described as follows:

"The sentenced Tibor Tomes together with other sentenced (the judgement of the district court in Karviná from April 29, 2009. file number 3Tm 19/2009

- 1) On November 18th, 2008 at about 6.40pm in Karviná – Nové Město in Komenského street opposite block no 986, together and after previous arrangement with another minor person with the intention to obtain his money and things, first they addressed the passing by tipsy Ladislav Hanzel, born February 8th 1961 under the pretext of asking for a cigarette, and after the damaged saying he did not have one, they suddenly pushed him from the back, he fell down, they knelt on him and took a black, leatherette backpack and pulled a black leather wallet from his trouser pocket and his personal documents and cash of 600,- CZK and ran away, by which they caused damage to Ladislav Hanzel in the amount of 1,134,-CZK, and he suffered minor injuries - scratches on his head, which weren't medically treated.

The sentenced Tibor Tomes alone, the judgement of the district court in Karviná from January 29, 2009. file number 10Tm 61/2008

- 2) On August 27, 2008 at about 9.00pm in Karviná - Nove Město, district Karviná, Osvobozeni street block no. 1768 together with two minor persons with the intention to seize his possessions, approached Vojtech Szajk, pretending help with opening the door, he pushed him, and when lying on the ground he kicked him, checked his clothes and stole from his pockets leather wallet with 800,- CZK, mobile phone LG with credit for 640,- CZK and personal documents, by which he caused entire damage of 1,735,- CZK.
- 3) On August 29th, 2008 at about 3.30 am in Karviná - Nove Město, district Karviná, in Ruská street in front of house no 1773 together with another person he approached Zdeněk Navalsky, asking him for a cigarette with the intention to seize his possessions, he threw him on the lawn in front of the entrance, kicking him all around his body, he grasped his plastic bag, checked all his pockets and stole his ID, credit card, mobile phone Nokia 1600, mobile phone Nokia N95 with accessories and thus caused the damage of 13,244,-CZK."

9. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between the offences to which the EAW relates and offences under the law of the State where the offences referred to in the EAW are offences to which Article 2.2 of the Framework Decision applies and carry a maximum penalty in the issuing state of at least three years' imprisonment. In this instance, the issuing judicial authority has certified in the translated version that the offences referred to in the EAW are offences to which Article 2.2 of the Framework Decision applies, that same are punishable by a maximum penalty of at least three years' imprisonment and has indicated the appropriate box for "organised or armed robbery" and "illegal trafficking in narcotics and psychotropic substances". There is a manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same.
10. In that regard, the Court sought further clarification and was advised by the issuing judicial authority in a letter dated the 20th of January 2022 as follows:
- "In section e) of the European Arrest Warrant, the box "illegal trafficking in narcotics and psychotropic substances" is ticked and the box "organised or armed robbery" is underlined only in the translation of the European Arrest Warrant, not in the original. We sincerely apologize for the error that occurred during translation. Correctly, none of the criminal offenses listed in section e) I should be marked with a tick or underline. The convicted person committed a crime of robbery, as stated in the text in section e)."
11. When a Court faces a manifest error or ambiguity such manifest error of ambiguity means that the applicant has to establish correspondence with offences in this jurisdiction, in accordance with section 38 of the Act of 2003. In *M .v. Michalczewski* [2021] IEHC 506, Burns J. noted:
- "[13] I am satisfied that the description of the circumstances of the offence set out in the EAW and additional information indicates that the respondent was acting as part of a conspiracy and, therefore, the issuing judicial authority was entitled to regard the offence as being "organised". However, it is not clear from the description given in the EAW that the offence involved the use of any arms or that it involved any violence or threat of violence so as to constitute robbery. In so far as there might be thought to be an ambiguity about the certification in the EAW, it should be borne in mind that the effect of any manifest error or ambiguity in such certification merely means that the applicant has to establish correspondence in accordance with s. 38(1)(a) of the Act of 2003. I am satisfied that such correspondence can be established between the offence to which the EAW relates and an offence under the law of this State, viz. the common law offence of attempted burglary contrary to s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and/or criminal damage contrary to s. 2 of the Criminal Damage Act, 1991."*
12. I am satisfied that any pre-existing ambiguity in the matter has now be rectified. In this case the error does not lie with the issuing judicial authority but rather with the errors in

translation wholly explained as such by the issuing judicial authority. I am satisfied in this case that correspondence in the circumstances must be established and can be established between the offences referred to in the EAW and offences under the law of this State, viz. Robbery contrary to s. 14 of the Theft and Fraud Offences Act 2001, and Assault contrary to s. 2 or 3 of the Non-Fatal Offences Against the Person Act 1997.

13. Is surrender prohibited by Section 45 of the Act?

Part F of the EAW states:

“By the judgement of the district court in Karvina from January 29, 2009, file number 10 Tm 61/2008, in force on February 24, 2010 amended by judgment of the regional court in Ostrava, from April 22, 2009, file number 4 Tmo 43/2009 the sentenced person was given term of imprisonment of one year and four months suspended with the probation period of one year and six months.

By the judgement of the district court in Karvina from April 29, 2009, file number 3 Tm 19/2009, in force May 20, 2009, the sentenced person was given term of imprisonment of one year and ten months suspended with the probation period of two years and six months. *(because a summary penal measures were imposed, the judgment of the district court in Karvina from January 29, 2009, file number 10 Tm 61/2008, was cancelled together with judgement of the regional court in Ostrava, from April 22,2009, file number 4 Tmo 43/2009).*

By resolution of the regional court in Karviná from December 20, 2010 File number 3 Tm 19/2009 - 934 it was decided the suspended sentence will be executed.

Tibor Tomes started imprisonment on September 13, 2012. By the decision of the district court Pilsen -City from October 9, 2012 file number 3 PP178/2012 the sentenced Tomes was released on parole with the five-year probation period and supervision was imposed.

The sentenced did not meet the supervision conditions. That is why public meeting was repeatedly ordered regarding the decision on the execution of the remaining imprisonment period (641 days). However, the summons were not possible to deliver. The sentenced was searched for using central registers and the police but unsuccessfully. In this situation, there is a justified concern that the sentenced is hiding to avoid [sic] punishment.

The district court Pilsen-City the matter of file number 3 PP 178/2012 will decide on the execution of the remaining imprisonment period, from which the sentenced was released on parole.”

14. This Court sought further information in relation to the history of these matters and was advised by way of letter dated the 20th of January 2022 of the following:

“[...] 2. The convicted person is wanted for breach of the prescribed supervision. As the convicted person was released from serving his sentence only conditionally, the

court must now decide that either the convicted person proved himself during the probationary period (i.e. that the convicted person will not continue to serve his sentence) or that the convicted person shall serve the rest or part of the remaining sentence.

[...] 4. The convicted person was informed of the court hearing on 20.12.2010 at the District Court in Karvina and personally attended this court hearing. At this trial, the convicted person waived the right to file a complaint against the court's decision (decision of 20.12.2010, ref. No Tm 19/2009-934) by which it was decided that he would serve his sentence in prison.

5. Under Czech law, a person convicted in criminal proceedings may be sentenced to a suspended sentence with a set probationary period. If the convicted person violates the conditions set by the court during the probationary period (for example commits another criminal offense), the court decides in a public hearing that the convicted person shall serve their sentence of imprisonment in prison. In this case, the District Court in Karvina ruled on 20.12.2010 that the convicted person would serve his sentence because he has violated the conditions set by the court. During the court hearing, the convicted offender waived the right to file a complaint against the decision of the District Court in Karvina of 20.12.2010."

15. The chronology of events, in relation to the domestic proceedings is as follows:

- (i) On case reference 4 Tmo 43/09 the respondent received a 1 year and 6 months suspended sentence on the 29.1.09 and amended on the 22.4.09.
- (ii) On case reference 3 Tm19/09 the respondent received a 1 year and 10 months suspended sentence on the 29.4.09, a consequence of this order was that the orders of the 29.1.09 and the 22.4.09 on case reference 4 Tmo 43/09 were cancelled.
- (iii) On case reference 3 Tm19/09 -934 the above sentence of 1 year and 10 months was activated.
- (iv) The respondent served time in prison on foot of this sentence from the 13.9.12 to the 9.10.12.
- (v) On case reference 3 PP178/2021 the Respondent was released from this sentence on parole and probation supervision, on the 9.10.2012. The respondent was present during the court hearing on that date was fully aware of the terms of suspension
- (vi) The respondent did not comply with the terms of supervision and EAW was issued for his arrest in order that the District Court of Pilsen City in the matter of file 3 PP/198/12 will decide on the whether to execute the remainder of the term of imprisonment.

16. In light of the foregoing, this court is satisfied that surrender is sought pursuant to section 10(c) of the 2003 Act:
- “10. — Where a judicial authority in an issuing state issues a relevant arrest warrant in respect of a person:
- (c) who has been convicted of, but not yet sentenced in respect of, an offence in that state to which the relevant arrest warrant relates that person shall, subject to and in accordance with the provisions of this Act, be arrested and surrendered to the issuing state.”
17. This Court is satisfied that from the additional information and the EAW that in relation to 3 PP178/2021 the respondent was released from this sentence on parole and probation supervision, on the 9th October 2012. The respondent was present during the court hearing on that date and was fully aware of the terms of suspension. This fact was conceded in oral submission by Counsel for the respondent on the date of the oral hearing of this matter, the 2nd of February 2022.
18. In the Court’s view no issue arises pursuant to Section 45 of the 2003 Act.
- 19. Is surrender prohibited by Section 37 of the Act of 2003?**
The respondent swore an affidavit dated the 3rd of February 2022 in which he stated that he lived with his partner, Radka Demterova, and their two children in Thurles, County Tipperary. He stated his son, Franco, is 6 years old and is attending Scoil Angela, Ursuline Primary School, Liberty Square, Thurles. Franco suffers from autism. His daughter, Layla May, is 19 months' old. He stated he is currently unemployed and the family is in receipt of social welfare of €400 per week. He states that his reason for not working is that his son Franco requires full time attention and his states that he spends every day looking after his needs. He previously worked at Callan Bacon Meat Factory, Westcourt, Cornyeal, Callan, Co. Kilkenny. He states that at the time of the offences in the EAW he was 16 years of age. He arrived in Ireland on the 25th March 2014. He states that his son Franco is due to undergo an assessment in relation to his autism next month and he is trying to get confirmation of who will carry out the assessment. He states that if he is surrendered on foot of the European arrest warrant before the Court his partner will struggle to provide the necessary attention for Franco’s complex needs on her own. No medical report was furnished to the Court in relation to his son’s condition.
20. Whilst lapse of time is not, on its own, a recognised a ground for refusal of surrender, delay is a recognised factor weighing into a court’s cumulative s. 37 analysis as to whether Article 8 ECHR or other alleged breaches of rights might ground a refusal to surrender, as set out by O’Donnell J. in *Minister for Justice and Equality -v- J.A.T. No. 2* [2016] IESC 17 at paras 9 to 11;-

"Delay and Lapse of Time

[9] The fact that the crimes alleged here date back to 1997 is more properly to be considered in the context of lapse of time rather than delay. There is, as I

understand it, no suggestion that the United Kingdom authorities ought to have detected the alleged crime any earlier. In any event, such an allegation is one which a court should be extremely slow to entertain. The relative antiquity of the offences, however, is relevant in considering those elements of delay in the issuance of the first warrant, and more importantly, the second warrant, and its execution in this jurisdiction. I do think that these delays are factors in the Court's assessment, but, regrettable and worthy of criticism as they are, in my view they fall far short, by themselves, of establishing any abuse of process or grounds for refusal of surrender. Nor do they do so when taken in conjunction with the fact that a second warrant was issued.

Article 8

[10] It seems clear that the respondent is in a very difficult health situation, although the Court might expect a more detailed expert report. Again, however, this matter must not be tested against some generalised consideration of personal sympathy, but rather as to whether the circumstances are such which render it unjust to surrender the respondent. It will almost always be the case that considerations such as these, which undoubtedly evoke some sympathy, would never, in themselves, be remotely a ground for refusing surrender any more than they would be a ground for prohibiting a trial in this jurisdiction. The respondent, however, is also the primary, and effectively the sole caregiver for his son, who in turn is in a situation where that care is particularly important. For the reasons set out in the judgment of the Chief Justice, it seems clear that he will undoubtedly suffer very severely if the appellant is surrendered for trial. He is not a person against whom there is any accusation of wrongdoing. The impact on the appellant's son is, for me, an important consideration. While the appellant's son is not a child, he is, in my view, a member of the appellant's family for the purposes both of Article 8 of the ECHR and the Constitution. Nevertheless, I agree with the learned trial judge in this case that these considerations would, themselves, not be enough to establish a ground for refusing surrender if the first warrant had been in a proper form and these matters, which were present at that time, had been the sole ground for resisting surrender. I do not, however, agree that the fact that neither the respondent's health issues nor his son's condition has deteriorated in the intervening time means that this consideration is now irrelevant. It seems to me to be relevant that this is a second application, and moreover, that there has been avoidable delay on the part of the authorities in both jurisdictions in the preparation, submission, and execution of the second warrant, even though the evidence of the respondent's circumstances, and those of his son, had been adduced in the first European Arrest Warrant proceedings. These factors - repeat application, lapse of time, delay, impact on the appellant's son, and knowledge on the part of the requesting and executing authorities of those factors - when weighed cumulatively, are powerful. Even then, and without undervaluing the offences alleged here, it is open to doubt that these matters would be sufficient to

prevent surrender for very serious crimes of violence. This illustrates that the decision in this case is exceptional, and even then close to the margin.

[11] In any future case, where all or any of the above factors may be relied on, it would not, in my view, be necessary to carry out any elaborate factual analysis or weighing of matters unless it is clear that the facts come at least close to a case which can be said to be truly exceptional in its features. Even in such cases, which must be rare, it is important that the considerations raised are scrutinised rigorously."

21. The Supreme Court set out the test which must be applied where an application for surrender is opposed on the grounds of Article 8 of the ECHR. In *Minister for Justice and Equality v Vestartas* [2020] IESC 12, 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."

MacMenamin J. went on to state at para 94:

"[94] The contrast with the exceptional facts in J.A.T. is plain. 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."

22. In *The Minister for Justice and Equality -v- Smits* [2021] IESC 27, the Supreme Court noted at para. 62;-

"[62] Dealing with the issue of the elapse of time, McMenamin J. noted indications that the trial judge might have thought this could in itself suffice to defeat an EAW

application, by reference to the decision of this Court in Finnegan. However, the decision in Finnegan had clearly been limited to the unusual facts of that case. Delay could not alter the public interest considerations unless it reached a point where it was so lengthy and unexplained as to amount to an abuse of process, or to raise other constitutional or ECHR issues. On the facts in Vestartas, delay was a matter of legitimate concern but was to be viewed against the background of private and family circumstances that fell very far short of those in J.A.T. (No.2)."

23. In *Minister for Justice and Equality -v- D.E.* [2021] IECA 188, the Court of Appeal stated at para. 67;-

"[67] The questions certified by the High Court were as follows: "In the context of proceedings under the European Arrest Warrant Act 2003 as amended, where a respondent objects to surrender on the basis that same is precluded by s. 37 of the said Act as it would be in breach of the respondent's rights under art. 8 ECHR and having particular regard to the provisions of art. 8(2) ECHR:

- 1. Can personal or family circumstances, in and of themselves, provide a basis upon which surrender might be precluded by s. 37 of the Act of 2003?*
- 2. What is the appropriate test to be applied by the Court in determining whether such an objection is sustained and that surrender should be refused?*
- 3. In so far as exceptionality may be a relevant factor in determining such an objection, what is the appropriate test to be applied by the Court in determining whether the circumstances found to exist are so exceptional as to justify refusal of surrender"*

For the reasons set out in this judgment, it is appropriate to answer all three questions by repeating the principles set out at para 59 above:

- (i) In an application for surrender, the court is not carrying out a general proportionality test on the merits of the application. The court should apply the specific terms of the 2003 Act, albeit subject to a careful consideration of whether, if necessary, applying a proportionality test to Article 8 Convention rights, to order surrender would involve a violation of that ECHR right to the extent of being incompatible with the State's obligations under the Convention. (Vestartas).*
- (ii) Surrender (or extradition) presupposes an impact on the personal or family life of a requested person. Having regard to Article 8(2), surrender (or extradition) carried out pursuant to legislation is in principle an acceptable interference with the right to respect for those rights. (Ostrowski, JAT (No. 2), Vestartas).*
- (iii) When faced with an Article 8 objection to surrender, the function of the Court is to decide if the surrender is incompatible with the State's obligation under*

the European Convention on Human Rights. That requires a very high threshold. Any inquiry must bear in mind that s. 10 requires a court to surrender in accordance with the provisions of the 2003 Act and s. 4A of that Act obliges the court to presume that the issuing state has complied and will comply with its fundamental rights obligations. (Vestartas).

- (iv) The evidential burden of proving incompatibility lies on the requested person. (Rettinger and Vestartas).*
- (v) The assessment of the claimed impact of surrender on personal and family rights must be a rigorous one. (Rettinger and JAT (No. 2)).*
- (vi) The evidence must be cogent and must reach the level of incompatibility (Vestartas).*
- (vii) Exceptionality is not the test for incompatibility, but it will only be in a truly exceptional case that surrender will be found to be incompatible with the State's obligations under Article 8 of the Convention. (JAT No. 2 and Vestartas).*
- (viii) For an Article 8 objection to succeed, there must be clear cogent evidence sufficient to rebut the presumption in s. 4A of the 2003 Act. (Vestartas).*
- (ix) No elaborate factual analysis or weighing of matters is necessary unless it is clear that the facts come close to a case which would be truly exceptional in nature thereby engaging the possibility that surrender may be incompatible with the State's obligations under the Convention. (JAT (No.2)).*
- (x) The requirement that the circumstances must be shown to render the order for surrender incompatible with the State's obligations under Article 8 necessitates that the incursion into the private and family rights referred to in Article 8(1) is 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. (Vestartas).*
- (xi) Where the facts, assessed as set out above, come close to being truly exceptional in nature thereby engaging the possibility that surrender might be incompatible with the State's obligations, the Court will engage in a proportionality test of whether the high public interest in the prevention of disorder and crime (and the protection of the rights of others) is overridden by the personal and family circumstances (taken where appropriate with all the cumulative circumstances) of the requested person. That is a case-specific analysis which will be required in very few cases."*

24. The respondent referred the Court to the judgment in *Minister for Justice and Equality v Palonka* [2022] IESC 6 wherein surrender was refused under Section 37, Article 8 grounds. The Court notes the following extracts from the Charleton J.'s judgment;-

"[19]One of the questions reverted to the High Court by this Court was as to the motivation or cause of apparently waiting until the failure of the request for surrender on the 2003 offence before the Polish authorities then sought a second extradition on the 1999 offence. This was analysed by Burns J who felt that that on enquiry "no simple or straightforward answer has been provided in respect of this question" by the Polish authorities. Burns J noted the significant lapse of time as between the requests for the second 2003 offence, which resulted in the first EAW, and the second EAW which related to the 1999 offence. As Burns J held: "There undoubtedly was a significant lapse of time between the 2006 activation of the sentence in respect of the July 1999 offence and the issue of the EAW in respect of same." He summarised the documentation as indicating a breakdown of communications as opposed to any deliberate scheme:

- a. After the suspended sentence was activated on 16th January, 2006, an order issued on 17th February, 2006 against the respondent to report to the penal institution in Hrubieszów. When he did not appear, a warrant for compulsory appearance issued and an additional search was initiated. As he could not be located, enforcement proceedings were suspended by the Regional Court in Hrubieszów on 17th July, 2006. A wanted notice issued on 18th July, 2006.*
- b. The Regional Court in Hrubieszów requested the District Prosecutor's Office in Zamość to issue a European arrest warrant against the respondent. By letter dated 21st September, 2006, the District Prosecutor in Zamość refused to apply for a European arrest warrant, stating that the case files did not provide information about the place the respondent was staying at and that there was no evidence that the wanted person was staying abroad.*
- c. The District Court in Poznań had issued a European arrest warrant (III Kop 31/06) seeking surrender of the respondent on 6th March, 2006 ("the 2006 warrant"). This warrant was never executed. The 2006 warrant was sent to Ireland but, by letter dated 17th October, 2012, the Irish authorities asked the issuing judicial authority to provide an amended warrant incorporating the changes to the form of the warrant brought about by European Council Framework Decision 2009/299/JHA. The Polish authorities sent a fresh warrant which issued on 6th November, 2012 ("the 2012 warrant"). In the 2012 warrant, it was indicated that the respondent may be residing in the Netherlands.*
- d. After the decision of the District Prosecutor in Zamość to refuse to issue a European arrest warrant (see point b. above), the respondent was still being sought by way of wanted notice. In 2012, the Regional Court in Hrubieszów started requesting documents that were necessary to apply for a European arrest warrant. At the same time, the County Police Headquarters in Hrubieszów were trying to establish where the respondent was staying. The Regional Court in Hrubieszów was advised that the respondent was being sought on the basis of the European arrest warrant issued by the District Court in Poznań on 6th March, 2006 reference III Kop 31/06.*

- e. *On 12th October, 2012, Police Headquarters in Hrubieszów received information via Interpol that the respondent was staying in Ireland at apartment 19 Preston Mills, Drogheda. Having received this information, the Regional Court in Hrubieszów decided not to issue a European arrest warrant in respect of the convicted person because on the same day, the Court was advised that a European arrest warrant had already been issued in respect of the respondent by the District Court in Poznań. The reason given for the Regional Court in Hrubieszów not issuing or seeking to issue a European arrest warrant in respect of the sentence activated by order of 16th January, 2006 is that if the respondent was surrendered on foot of the 2006 warrant, issued by the District Court in Poznań, it would be possible to execute that activated sentence if the Respondent consented to it, which is provided for in Polish law.*
- f. *On 26th March, 2018, the Regional Court in Hrubieszów received a copy of the 2006 warrant but was not aware of, and did not have a copy of, the 2012 warrant.*
- g. *The Regional Court in Hrubieszów indicates that it was not aware of the arrest of the respondent in Ireland until it was informed by letter dated 27th March, 2018 by the Regional Police that the respondent had been arrested and detained on foot of a European arrest warrant, had lodged an appeal against his surrender and that the extradition procedure had been withheld (in fact, surrender of the respondent on foot of the 2012 EAW was ordered by the High Court but subsequently refused by the Court of Appeal on 18th May, 2015). The Regional Court in Hrubieszów indicates that it was not aware that the respondent's detention in Ireland was on foot of the 2012 EAW (presumably, as opposed to the 2006 warrant).*
- h. *The police were responsible for all searches for the respondent. In the course of the police investigations, it was established that the respondent was probably in the Netherlands and then in Ireland. The Respondent was arrested in Ireland on foot of the 2012 EAW on 28th December, 2013 but the Regional Court in Hrubieszów indicates it was not aware of this fact until 27th March, 2018.*
- i. *On 15th June, 2018, the Regional Police applied to the Regional Court in Hrubieszów for the issue of an European arrest warrant in respect of the sentence activated by order dated 16th January, 2006. The procedure meant requesting information from relevant institutions and sending necessary documents concerning the convicted person. Waiting for the said documents appears to have taken a long time. Not until all the information and documents were collected did the Regional Court in Hrubieszów file a request with the District Court in Zamość to issue the EAW, which issued on 23rd January, 2019.*
- j. *In Poland, the police are responsible for making enquiries as to the whereabouts of wanted persons. A list of wanted persons in connection with European arrest warrants is not publicly available in Poland. In order to find out whether a European arrest warrant has been issued against a particular person, a search is performed, presumably by an authorised person such as a police officer, on the National*

Criminal Register, to establish if there were domestic warrants or wanted notices in respect of a person. If a warrant or wanted notice is turned up, an inquiry can then be made for information as to whether a European arrest warrant has been issued by the relevant Court."

The aforementioned chronology lead Mr Justice Charleton to conclude at paras 31 and 32;-

"[31] This is not a case of potential infringement of fundamental rights. Rather, what is involved is a real, exceptional and oppressive disruption to family life in the most extreme and exceptional of circumstances. Of itself, that would not justify a refusal to surrender as delay does not create rights, but delay may enable the growth of circumstances where a new situation has emerged that engages Article 8 of the European Convention in a genuinely exceptional way as set in the context of the individual procedural circumstances of the case. Burns J could not definitively state as to why on the failure of the EAW for the 2003 offence, it was to the 1999 offence, after the exceptional delay described by him, that the authorities looked. While there is no requirement in European law which would support any argument that a requesting state should trawl up and centralise every potential offence for which a person might be requested, it was the answer to that question which this Court saw as central in seeking further information through the High Court.

[32] It follows that the absence of information on that crucial matter brings into focus the 23-year delay involved, the long stasis through failing to revert to the earlier 1999 offence, the presence of the person sought in this jurisdiction since 2005, the establishment of roots and family life in this country, and, while balance is not in issue, this delay underlines the exceptional nature of what has been sought in the context of these cannabis offences. Surrender will therefore be refused."

Similarly, Mr. Justice Hogan concluded at para 11;-

"[11] It is perfectly evident that each stage of the Polish judicial process and police investigations was beset by some degree of delay and confusion. I am perfectly prepared to accept that this unhappy sequence of events was caused by a series of understandable human errors. The net result, however, is that this Court is faced with executing an EAW warrant in respect of a (relatively) minor offence which was committed by Mr. Palonka some 23 years ago when he was just 18 years of age. The confusion of which I have spoken has meant that the Polish authorities did not avail of a number of opportunities to apply for an EAW in respect of this offence prior to making a belated application in this regard in 2019. Had the 6 Polish authorities acted otherwise it would have been entirely possible for them to have sought to have an EAW executed in either 2006 or 2007. Alternatively, one or more EAWs in respect of both the 1999 offence and the 2003 offence could have been processed by the Irish courts at the same time in 2012 and 2013 had the Polish authorities considered such an approach to have been appropriate."

25. In this case, the respondent seems to have deliberately left the Czech Republic in violation of a court order that he was fully aware of, to avoid a prison sentence imposed in 2012. The respondent concedes that there is no objectionable delay in relation to this time frame of 2012 to 2016. There is no suggestion made by the respondent that the Czech authorities were or should have been aware of his whereabouts. Therefore the Czech authorities acted by all accounts with reasonable expedition in the issuance of the warrant. This warrant could not be executed as the whereabouts of the respondent were unknown and the respondent was arrested on foot of an SIS alert in circumstances where Ireland only joined this system in March 2021. The warrant itself is dated the 20th of July 2016. This case can be distinguished from the Palonka case in circumstances where there was no previous opportunity to execute this warrant and there was no culpable delay in issuing it. The respondent is, of course, deserving of sympathy, but his family circumstances are not so beyond the norm as to prohibit surrender. There is, in this Court's view, insufficient evidence to rebut the presumption under s. 4A of the 2003 Act.
26. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.
27. It, therefore, follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the Czech Republic.