

THE HIGH COURT

[2022] IEHC 58
[2020 No. 400 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ADAM JAN SZADKOWSKI
RESPONDENT

(No. 1)

JUDGMENT of Mr. Justice Paul Burns delivered on the 31st day of January, 2022

1. In this application the applicant seeks an order for the surrender of the respondent to the Republic of Poland ("Poland") pursuant to a European arrest warrant dated 2nd July, 2020 ("the EAW"). The EAW was issued by Judge Aleksandra Soltysinska, of the District Court in Krakow, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce 2 sentences, being a sentence of one-year imprisonment in case reference number II K 1660/07/K of which 9 months and 21 days remain to be served and a sentence of 6 months' imprisonment in case reference number II K 10/06/K, of which 5 months and 29 days remains to be served.
3. The EAW was endorsed by the High Court on 21st December, 2020 and the respondent was arrested and brought before the High Court on 10th March, 2021 on foot of same.
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. I am satisfied that the minimum gravity of requirements of the Act of 2003 have been met. Each sentence in respect of which surrender is sought is in excess of 4 months' imprisonment.
7. At part E of the EAW, a description of the circumstances in which the offences were committed is set out. I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of this State. As regards case reference number II K 1660/07/K, this relates to 2 offences committed on 1st September, 2007 which correspond with the offences in this State of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and criminal damage contrary to s. 2 of the Criminal Damage Act, 1991, respectively. Case reference number II K 10/06/K relates to 3 offences committed on 1st November, 2005 which correspond to offences

under the law of this State of criminal damage contrary to s. 2 of the Criminal Damage Act 1991.

8. Part D of the EAW indicates that the respondent appeared in person at each of the trials resulting in the respective decisions.
9. By additional information dated 21st December, 2020, it is indicated that there was a typing error in the description of the offences to which case reference number II K 10/06/K relates insofar as it appeared to be alleged that the respondent was acting in conspiracy with Adam Szadkowski [i.e. the respondent] whereas it should read "*with Łukasz Cofura*".
10. The respondent objects to surrender on the following grounds:-
 - (1) Surrender is precluded in respect of the judgment dated 16th February, 2006, case reference number II K 10/06/K, as the period for enforcement of same has expired;
 - (2) Surrender is precluded by reason of s. 37 of the Act of 2003 due to the lapse of time between the date of the judgments to be enforced and the issuing of the EAW;
 - (3) Surrender is precluded by reason of s.37 of the Act of 2003 as it would constitute a violation of the respondent's right to a private and family life; and
 - (4) Surrender is precluded as the respondent has applied for a pardon in Poland.

Expiry Period for Enforcement

11. By additional information dated 6th April, 2021, the issuing judicial authority confirms that the respondent's surrender is still being sought. It explains that, due to a suspension in the limitation period, the judgment in respect of case reference number II K 10/06/K remains enforceable until after 19th June, 2031.
12. The respondent swore a supplemental affidavit dated 4th May, 2021 averring that neither he nor his Polish lawyer were aware that one of the judgments the subject matter of the EAW had been extended for a further 10 years. He avers that he was not informed of the intention of the State to extend the time for this judgment and did not have an opportunity to address the court in relation thereto. He avers that his Polish lawyer did not lodge a pardon application in respect of case reference number II K 10/06/K as he had advised him that the judgment expired after 15 years and was no longer enforceable.
13. The respondent's solicitor, Mr. Edward King, swore a further affidavit dated 4th May, 2021 in which he exhibits the opinion of Professor Stefanski which questions the legality of the suspension of the limitation period.
14. While the respondent may take issue with how the limitation period was suspended in Poland, this Court has been informed by the issuing judicial authority that the judgment is enforceable. On the basis of the mutual trust and confidence which underpins the European arrest warrant system, I accept that the judgment in respect of case reference

number II K 10/06/K remains enforceable. I dismiss the respondent's objection to surrender based upon an alleged expiry of the limitation period for enforcement.

Section 37 of the Act of 2003

15. Counsel on behalf of the respondent submits that due to the lapse of time and the respondent's personal and family circumstances, surrender is precluded by section 37 of the Act of 2003 as it would amount to a breach of the respondent's right to a private and family life as recognised under Article 8 of the European Convention on Human Rights ("the ECHR").
16. The respondent swore an affidavit dated 23rd March, 2021 averring that the offences occurred in 2005 and 2007 when he was 17 and 20 years of age, respectively. He avers that he spent almost 3 months in prison in 2007 in respect of the offending in question and was thereafter released and came to Ireland, where he has lived ever since. He avers that he has always lived openly in Ireland and has not hidden his identity. He has worked in Ireland since 2007. He avers that he lives with his wife and 4 children, 3 of whom are his own biological children. He also has a daughter from a previous relationship who lives nearby. He avers that all of his biological children were born in Ireland. He avers that his children are now aged 17, 5 and 12 years old, respectively. He avers that an application has been filed on his behalf by a lawyer in Poland seeking a pardon in respect of the matters in the EAW.
17. In his supplemental affidavit dated 4th May, 2021, the respondent avers that he is sole breadwinner for his family. He avers that his wife is in full-time education and one of his children suffers from diabetes and requires constant medical treatment. He avers that if he is surrendered to Poland, his family will have to return to Poland to seek the assistance of family, as in his absence they have no means of financial support. He avers that the medical treatment would not be available in Poland for his son. He avers that his wife would not be able to meet the mortgage repayments.
18. Section 37 of the Act of 2003 provides, *inter alia*, that a person shall not be surrendered if their surrender would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would constitute a contravention of any provision of the Constitution. It is submitted on behalf of the respondent that the respondent's right to a family life under Article 8 ECHR would be breached if his surrender is ordered.
19. In *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, the Supreme Court considered Article 8 ECHR in the context of European arrest warrant proceedings. MacMenamin J., delivering the judgment of the Supreme Court, stated at para. 23:-

"23. Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence. But that guarantee is subject to the proviso that public authorities shall not interfere with the exercise of that right, except such as in accordance with law, and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or

morals, or for the protection of the rights and freedoms of others (Article 8(2)). The terms of Article 8(2) are, therefore, sufficiently broad to encompass orders for extradition, or in this case, surrender. But as will be seen, these Article 8 considerations arise within a statutory framework which it is now necessary to consider."

20. As regards delay or lapse of time, 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."

21. The threshold to meet in order to avoid surrender due to Article 8 ECHR considerations is a high one. In *Vestartas*, MacMenamin J. stated at para 94:-

"94. 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. The Court has some sympathy for the position in which the respondent finds himself. The respondent's surrender will have an adverse impact upon his personal and family life but that is inherent in a system of extradition. In terms of delay and/or the applicant's personal circumstances, I am satisfied that same are not so "truly exceptional" as to justify a refusal of surrender. I dismiss the respondent's objections to surrender based upon either delay or his right to a private and family life.

23. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), unless the contrary is shown. The Framework

Decision incorporates respect for fundamental rights. I am satisfied that the presumption provided for at s. 4A of the Act of 2003 has not been rebutted in this matter.

24. Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court must determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto or would contravene a provision of the Constitution. I am satisfied that surrender would not be incompatible with the obligations of the State and nor would it contravene any provision of the Constitution.

Application for Pardon

25. The respondent's solicitor, Mr. King, swore an affidavit dated 23rd March, 2021 confirming that he had been contacted by a lawyer in Poland in respect of bringing an application for a pardon and exhibits a copy of same. The additional information dated 6th April, 2021, confirms that the respondent had applied for a pardon in respect of case reference number II K 1660/07/K but had not yet submitted an application in respect of case reference number II K 10/06/K. It was also indicated that a further European arrest warrant had been issued in respect of the respondent.

26. By affidavit dated 18th June, 2021, Mr. King avers that following the extension of the limitation period in case reference number II K 10/06K:-

"It appears accordingly that this court order is now enforceable due to the extension of time and accordingly a pardon application has been lodged in respect of this case also."

He exhibits a copy of the application.

27. The Court decided to await the outcome of the applications for pardon. By Affidavit dated 18th November, 2021, the solicitor for the respondent, Mr. King, exhibited correspondence from a lawyer in Poland indicating that the application for a pardon in respect of case reference number II K 1660/07 had been unsuccessful. The Court was subsequently informed that all applications to the Polish authorities had been unsuccessful.

Conclusion

28. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003, or any provision of that Act.
29. Having dismissed the respondent's objections to surrender, it follows that this Court will make an Order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Poland.