

THE HIGH COURT

**[2023] IEHC 731
[2022 No. 198 EXT.]**

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

PAWEL ZBIGNIEW PIOTROWSKI

RESPONDENT

Judgment of Mr. Justice Kerida Naidoo delivered on the 9th day of May, 2023.

1. By this application, the applicant seeks an order for the surrender of the respondent to The Republic of Poland pursuant to a European Arrest Warrant dated 13th January 2010 ("the EAW"). The EAW was issued by a Regional Judge as the Issuing Judicial Authority.
2. The EAW seeks the surrender of the respondent in order to enforce an aggregate sentence of 1 year and six months imprisonment, in case II K 54/00/N ("case 54"), and an aggregate sentence of 2 years imprisonment, in case II K 1460/00/N ("case 1460"), imposed upon the respondent by a judgment of the Regional Court in Krakow-Nowa Huta, Second Department Criminal Court on 9th May 2000 (II K 54/00/N) and a judgment of the Regional Court in Krakow-Nowa Huta, Second Department Criminal Court dated 30th April 2001 (II K 1460/00/N). The entirety of both sentences remain to be served.
3. The issuing State has certified the provisions of Polish law applicable to the eight offences to which the EAW relates.
4. The respondent was arrested on 24th September 2022, on foot of a Schengen Information System II alert and brought before the High Court on the same date. The EAW was produced to the High Court on 6th October 2022.
5. 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.
6. I am satisfied that none of the matters referred to in section 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.
7. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
8. I am satisfied that no issue arises under section 11 of the Act of 2003.
9. No issue is taken in relation to correspondence.

10. In case 54 I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of this State, namely,
 - a. Two of the offences correspond with the offence of obstruction of a peace officer contrary to section 19 of the Criminal Justice (Public Order) Act, 1994.
 - b. Two of the offences correspond with the offence of engaging in threatening, abusive or insulting behaviour in a public place contrary to section 6 of the Criminal Justice (Public Order) Act, 1994.
 - c. Two of the offences correspond with the offence of making a threat to kill or cause serious harm contrary to section 5 of the Non-Fatal Offences Against the Person Act 1997.
11. In case 1460 I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of this State, namely,
 - d. One of the offences corresponds with the offence of assault of a peace officer contrary to section 19 of the Criminal Justice (Public Order) Act, 1994.
 - e. One of the offences corresponds with the offence of engaging in threatening, abusive or insulting behaviour in a public place contrary to section 6 of the Criminal Justice (Public Order) Act, 1994.

Section 45

12. The respondent says his surrender would be in breach of section 45 of the Act of 2003. He relies on the same argument in case 54 and case 1460. The requirements of Part D.1 and 2 of the warrant were not complied with in the warrant itself. Additional information was therefore sought and provided by letters dated 20th October 2022, 15th December 2022 and 2nd March 2023.

Case 54

13. In case II K 54/00/N the decision on which the warrant is based was delivered on 9th May 2000. It relates to offences committed on 19th September 1999. The sentence became enforceable on 17th May 2000. The respondent was present at the hearing when the verdict was delivered. An aggregate sentence of 1 year and six months imprisonment was imposed. The sentence was effectively suspended. One of the terms of the suspension was that the respondent not re-offend.
14. On 12th November 2001 the entirety of the sentence was activated by the Regional Court in Krakow-Nowa Huta. The reason for the activation was that the respondent committed the offences in case 1460.
15. The court that made the 12th November decision was not entitled to exercise any discretion as to whether or not to activate the sentence. The respondent was not present at that hearing but accepts that it was not a trial resulting in a decision within the meaning of Article 4a of the Framework Decision and for the purposes of the *Ardic* decision (Case C-571/17 PPU).

16. On 13th November 2002 the Regional Court in Krakow-Nowa Huta deferred enforcement of the sentence for 4 months until 13th March 2003. On 10th September 2004 the court ordered a wanted notice to be posted because the respondent did not surrender himself to prison.
17. On 8th March 2010 the Regional Court in Krakow-Nowa Huta made an order that stopped time running for the purpose of the statute of limitations. The effect was that instead of expiring on 17th May 2015, the limitation period will not expire until 17th May 2025. That is the decision in respect of which the respondent says a section 45 issue arises.

1460

18. In case 1460 the decision on which the warrant is based was delivered on 30th April 2001. It relates to offences committed on 14th June 2000. The sentence became enforceable on 8th May 2001. The respondent was present at the hearing. An aggregate sentence of 2 years imprisonment was imposed. It became enforceable on 30th April 2001. He was present for the hearing on 30th April 2001 when the verdict was delivered. On 10th August 2004 the entirety of the sentence was activated by the Regional Court in Krakow-Nowa Huta.
19. As in case 54 on 8th March 2010 the Regional Court in Krakow-Nowa Huta made an order that stopped time running for the purpose of the statute of limitations. The effect was that instead of expiring on 8th May 2016, the limitation period will not expire until 8th May 2026. That is the decision in respect of which the respondent says a section 45 issue arises.
20. The respondent argues that the decision of 8th March 2010 stopping time running on the statute of limitations in both cases is a "trial resulting in a decision" within the meaning of Article 4a of the Framework Decision and for the purposes of the *Ardic* decision. He says the decision changed the nature of the activated sentence because it meant the respondent could be called upon to serve the sentence for a period of 10 years beyond the date when the statute of limitations would have expired at the time the sentences were originally imposed.
21. The sentences in respect of which surrender is sought are custodial sentences of a defined duration. The EAW seeks the surrender of the respondent to serve the entirety of both sentences.
22. The applicant points out that this is a case in which suspended sentences were activated. Hearings of that kind are, as decided in *Ardic*, not trials resulting a decision purposes of Article 4a of the Framework Decision. A decision to activate a suspended sentence is one that transforms a sentence from being one in respect of which the person is at liberty to one in respect of which they will be in custody. The applicant says that if a decision that impacts a respondent's liberty in that way is not a decision for the purposes of the *Ardic* decision, then a hearing that does no more than suspend the running of the time for the statute of limitations cannot be a hearing for the purpose of Article 4a.

23. In support of that proposition the applicant relies on *Ardic*, at paragraph 77 of which the Court held as follows:

"In the light of the foregoing, it must therefore be considered that, for the purposes of Article 4a(1) of framework decision 2002/584, the concept of 'decision' referred to therein does not cover a decision relating to the execution or application of a custodial sentence previously imposed, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard."

24. At paragraph 79 of the *Ardic* the Court further held:

"Since the proceedings leading to those revocation decisions were not intended to review the merits of the cases, but only concern the consequences which, from the point of view of the application of the penalty is initially imposed and whose execution had, subsequently, been partially suspended subject to compliance with certain conditions, it was necessary to consider the fact that the convicted person had not complied with those conditions during the probationary period."

25. Applying those principles to the instant case I am satisfied that the decisions to stop time running for the purpose of the statute of limitations did not involve a decision "*the purpose or effect*" of which was "*to modify either the nature or quantum*" of the sentences. The nature of each of the sentences was that they were custodial, and the duration of the sentence remained the same. I am also satisfied that those decisions "*were not intended to review the merits of the case*".
26. I therefore accept the applicant's submission that the hearing on 8th March 2010 was not a hearing within the meaning of the *Ardic* decision.
27. In his affidavit the respondent avers to the state of knowledge of the authorities in the requesting state about his whereabouts. He also sets out his state of knowledge about the offences and says, in effect, that he did not abscond. The finding that the decisions of the 8th March 2010 are not decisions for the purposes of Article 4a of the Framework Decision, is determinative of the section 45 issue. The state of knowledge of the authorities in the requesting State about the respondent's whereabouts during the relevant period and the respondent's own conduct and state of knowledge do not, therefore, arise for consideration because there was no breach of section 45 of the Act of 2003.
28. For the reasons set out above I am satisfied the surrender of the respondent is not precluded by section 45 of the Act 2003.

Section 37 and Article 8 ECHR – Family Rights

29. The respondent objects to surrender under section 37 of the Act of 2003 and Article 8 of the European Convention on Human Rights on account of delay and his personal and family circumstances in Ireland.

30. This objection is grounded on the respondent's affidavit. He says he is 40 years old and that he has lived in Ireland since April 2012 having previously resided in Germany and the UK. He says that he has employment in a recycling company, lives with his wife and two daughters, aged nine and three years, and owns his own home which he and his wife purchased with a mortgage. He says he has established a life in Ireland and that due to the delay in the execution of the warrant, and the failure of the Polish authorities to make contact with him, surrender would put an exceptional burden on his family. He says the delay is exceptional and unexplained. He says, in effect, the Polish authorities knew of his whereabouts.
31. The respondent submits that his personal circumstances coupled with the contended for delay are such that surrender should be refused. In particular he relies on two averments, one from each of his two affidavits to support the submission that if he is surrendered there is a real risk that his family may not be able to keep up mortgage repayments on the family home. In his first affidavit, he says at paragraph 24:
- "I say that my wife will struggle to pay the mortgage and look after children whilst working full-time putting a family situation at significant risk".*
32. In his second affidavit he says at paragraph 6:
- "I say that I live with my wife and two daughters [named] and I say that without my income we will severely struggle to afford to keep up mortgage payments and my family's home will be at risk".*
33. In any case in which extradition is ordered following a period during which the respondent has established family and ties in the executing state, surrender will unavoidably have an adverse impact on them and their family. That cannot generally outweigh the necessity that courts of the Member States of the European Union should comply with their obligations under the European Arrest Warrant regime. Only in exceptional circumstances should surrender be refused on grounds of delay or interference with personal and family rights.
34. Furthermore, while I do not doubt that the respondent's incarceration will cause financial hardship for his family, the evidence before me, set out in its entirety in the above extracts from the respondent's affidavit, falls far short of establishing that it will not be possible to keep up payments on the family home or that the relevant financial institution would succeed in taking possession of what would remain a constitutionally protected dwelling.
35. I have carefully considered the authorities upon which the respondent relies in his written and oral submissions together with the other material before me, including the respondent's affidavits. I am satisfied that none of the factors advanced by the respondent, either individually or collectively, amount to the kind of exceptional circumstances that could act as a bar to surrender.

36. I therefore reject the respondent's argument that his extradition should be refused on the basis that it would contravene section 37 of the Act of 2003 and/or Article 8 ECHR.
37. I am therefore not satisfied that surrender ought to be refused pursuant to section 37 of the Act of 2003.
38. 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.
39. It, therefore, follows that this Court will make an order pursuant to section 16 of the Act of 2003 for the surrender of the respondent to The Republic of Poland.