

# THE HIGH COURT

[2024] IEHC 618

[2023 No. 169 EXT]

## IN THE MATTER OF AN APPLICATION UNDER S. 16 OF THE EUROPEAN ARREST WARRANT ACT 2003, AS AMENDED.

**BETWEEN**

**MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**MARIUSZ ZAJAC**

**RESPONDENT**

**JUDGMENT delivered on 23 day of October 2024 by Hon. Mr Justice Patrick McGrath**

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 9 July 2022 (“the EAW”). This EAW was issued by Marek Tusinski, a Judge of the Regional Court in Czestochowa, as the issuing judicial authority.
2. The EAW is a conviction warrant and seeks the surrender of the respondent in order to serve a sentence of imprisonment of three years, of which two years, 4 months and 24 days remain to be served.
3. The issuing State has certified that the offences to which the warrant relates are contrary to Article 194 paragraph 1 letter e of the Criminal Code, with application of Article 396 paragraph 10 of the Criminal Procedure Code.

4. The respondent was arrested on 5 January 2024 on foot of a Schengen Information System II alert and brought before the High Court on the 6 January 2024. The EAW was produced before the High Court on the 10 January 2024.
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 2003 Act”), 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. The respondent objects to surrender on the following grounds:-
  - (i) There is a real risk he will be exposed to inhuman and degrading treatment whilst imprisoned in the requesting state and surrender is precluded by reason of s. 37 of the 2003 Act.
  - (ii) Correspondence is not established, and surrender is precluded by reasons of s.38 of the 2003 Act.
  - (iii) His surrender is precluded by reason of undue interference with his family rights under Article 8 of the European Convention on Human Rights [‘ECHR’].
  - (iv) Surrender is precluded under s.45 of the 2003 Act.

### **Correspondence**

9. As set out within section (e) of the EAW, tick-box certification was not engaged, and as such, correspondence must be proven. The Respondent objects to his surrender on the basis that there is an absence of correspondence between the offences for which his surrender is sought and offences under Irish Law.
10. Section 5 of the 2003 Act provides:-

*‘For the purposes of this Act, an offence specified in a European Arrest Warrant corresponds to an offence under the law of the state, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State’.*

11. The relevant principles for showing correspondence are now well established. In assessing correspondence, the question is whether the acts or omissions that constitute the offence in the requesting state would, if carried out in this jurisdiction, amount to a criminal offence – *Minister for Justice v Dolny* [2009] IESC 48.
12. It is submitted by the Applicant that the first offence of assault and extortion corresponds with a range of domestic offences including:-
  - Blackmail, extortion and demanding money with menaces contrary to s17 of the Criminal Justice (Public Order) Act 1994 (as amended).
  - Assault contrary to s2 of the Non-fatal Offences Against the Persons Act 1997.
  - Assault causing harm contrary to s3 of the Non-fatal Offences Against the Persons Act 1997.
  - Threats to kill or cause serious harm contrary to s5 of the Non-fatal Offences Against the Persons Act 1997.
13. Further, it is submitted that the second offence corresponds with s.72 of the Criminal Justice Act 2006 which makes it an offence to “*participate in or contribute to*” any activity, whether or not that activity is an offence, which intentionally or recklessly enhances the ability of a criminal organisation or any of its members to commit or facilitates the commission of a serious offence.
14. The Respondent does not concede that correspondence is established. He submits that while the first three offences listed within the warrant would involve physical threats or assaults and would constitute offences under domestic law, the warrant is silent in regard to the specific acts committed by the Respondent.

15. It is submitted by the Respondent that for criminal liability to be established as a joint enterprise he is required to have actively participated or encouraged such actions.
16. I do not agree with the submission of the Respondent. In the warrant itself, it is said that the Respondent '*jointly and in cooperation with others in an organised criminal group with premediated intent*' committed these offences. If he were charged in this jurisdiction with a similar type of offence on a joint enterprise basis, as here alleged, then he could be equally liable for the offences which resulted from the carrying out of the joint enterprise. Correspondence is therefore made out in relation to these offences.
17. Correspondence for the second offence is with an offence under s.72 of the Criminal Justice Act, 2006. This makes it an offence to '*participate in or contribute to*' and activity, whether or not that activity is an offence, which intentionally or recklessly enhances the ability of the criminal organisation or any of its members to commit or facilitates the commission on a serious offence, It is clear from the description of the second offence alleged that this criminalises participation in an organised criminal gang for the purpose of committing serious offences and this corresponds with s.72 of the 2006 Act.

#### **Section 45**

18. The warrant initially did not include any information on the presence of the Respondent at the trial or any information as to whether he was represented in the course of the various hearings. At paragraph 3 of his affidavit filed on the 15 of November 2023, however, the Applicant referred to the fact that he '*left Poland ... notwithstanding the proceedings entered against me*'.
19. In response to a s.20 request sent to the issuing judicial authority, dated the 24 November 2023, a completed Section D of the EAW was provided, in which it was inter alia indicated that:-
- a. The Respondent was summoned personally on 30 June 2003 and was thereby informed of the scheduled date and place of the trial which resulted in the

decision and was informed a decision may be handed down if he does not appear at trial;.

- b. Being aware of the scheduled trial, he had given a mandate to a legal counsellor who was either appointed by the person concerned or by the State, to defend him at the trial, and was indeed defended by that counsellor at the trial; and
- c. The Judgment was not served personally on him, but his defence counsel was present at the pronouncement of judgement with information about available means of challenge and no appeal was filed.

20. In light of the above information from the issuing judicial authority, it is clear that there has been compliance with the requirements of the Framework Decision and no issue arises under s.45 of the Warrant such as to operate as a bar to surrender.

### **Prison Conditions**

21. Flowing from inter alia the principles of mutual recognition and trust that underlie the operation of the Framework Decision, there is a default presumption that a requesting state will act in good faith and respect the requested persons fundamental rights. Whilst that presumption can be rebutted, this will not be done lightly and where, as here, there is a claim that there is a real and substantial risk of inhuman or degrading treatment, the burden rests on the person making such as assertion to adduce cogent evidence capable of showing such substantial grounds.

22. It is submitted by the Respondent that imprisonment in the requesting state would subject him to conditions and/or treatment which would breach his Article 3 ECHR/ Article 40.3.1 constitutional rights, and surrender is therefore prohibited by s.37 of the 2003 Act.

23. In his affidavit of the 15 of November 2023, the Respondent refers to his health difficulties and treatment he has received for cancer of the kidney. He says that he is concerned for his health if surrendered as, having served sentences in Poland from September 2001 to April 2002, in Herby State Prison and Czeszowowa Prison, both prisons were severely overcrowded, the cells were infested with bugs and the sanitation facilities were very poor and inadequate.

24. In *Minister for Justice v Rettinger* [2010] IESC 45, the Supreme Court accepted that prison conditions in the requesting state could give rise to a refusal to surrender under s.37 of the 2003 Act but stressed that where such an objection is raised:

*'the burden rests upon the [respondent] to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention'*

25. A summary of the principles which have emerged from the case law in this regard was provided by Burns J in *Minister for Justice v Angel* [2020] IEHC 699 where the court said as follows:

*'(a) the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and trust;*

*(b) a refusal to execute a European arrest warrant is intended to be an exception;*

*(c) one of the exceptions arises when there is a real or substantial risk of inhuman or degrading treatment contrary to Article 3 ECHR or Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter');*

*(d) the prohibition on surrender where there is a real or substantial risk of inhuman or degrading treatment is mandatory. The objectives of the Framework Decision cannot defeat an established risk of ill-treatment;*

*(e) the burden rests upon a respondent to adduce evidence capable of proving that there are substantial / reasonable grounds for believing that if he or she were returned to the requesting country, he or she will be exposed to a real risk of being subjected to treatment contrary to article 3 ECHR;*

*(f) the threshold which a respondent must meet in order to prevent extradition is not a low one. There is a default presumption that the requesting country will act in good faith and will respect the requested person's fundamental rights;*

*(g) in examining whether there is a real risk, the Court should consider all of the material before it and if necessary, material obtained of its own motion;*

*(h) the Court may attach importance to reports of independent international human rights organisations or reports from government sources;*

*(i) the relevant time to consider the conditions in the requesting state is at the time of the hearing;*

*(j) ...*

*(k) a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to the refusal to execute a European arrest warrant. Whenever the existence of such a risk is identified, it is then necessary for the executing judicial authority to make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk;*

*(l) an assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhumane degrading treatment is something which the executing state cannot disregard and the executing judicial authority, in view of the mutual trust which must exist between the members states on which the European arrest warrant is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 3 ECHR or article 4 of the Charter; and*

*(m) It is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member state'*

26. The Respondent here relies on (i) his own experience of prison in Poland nearly two decades ago and (ii) reports from the Committee for the Prevention of Torture ['CPT'] in relation to space in prisons in Poland. The Respondent submits that it is notable that the CPT has stated that the official standard in Poland is 3m<sup>2</sup> living space per prisoner, despite the recommendation that Poland raise the minimum living space per prisoner to 4m<sup>2</sup>. He refers to the decision of the High Court in *Minister for Justice v Tache* [2019] IEHC 68 where it was stated that a strong presumption of violation of rights due to unacceptable levels of overcrowding arises where space for an individual falls below

3m<sup>2</sup> living space. In the present case the official standard of 3m<sup>2</sup> per person does not fall below the minimum where a presumption of unacceptable overcrowding arises but there has been a failure by Poland to meet the minimum space recommended by the CPT.

27. Having considered the material submitted by the Respondent and submissions thereon, a further s.20 request dated 9 February 2024 was sent to the issuing judicial authority in regard to these concerns, as well as seeking information regarding where it was *likely* that the Respondent would be held if returned to the issuing state.
28. A response was received dated 1 March 2024 from Poland. In that response it was indicated that it is impossible to say precisely where the Respondent will serve his custodial sentence, though he will likely be held initially in the closest remand prison to his place of surrender. From there the penitentiary board will send him to the appropriate prison facility for his serving of the prison sentence. If he has a family in the Republic of Poland, most probably he will be placed in the prison facility located nearest to the place of residence of his family. Alternatively, if the convicted person is placed in a different location, he can file a request for transfer to another prison facility.
29. Assurances were given regarding the respondent being housed in a cell not less than 3m<sup>2</sup> and that upon surrender and placement into a remand prison he would be interviewed in regard to his state of health and undergo a health examination. Assurances were given that he would be provided with specialist medical treatment if required, with him receiving assistance from the prison healthcare service if the penal institution had the appropriate facilities or, alternatively, he may be granted a prison leave if a medical treatment or surgery has to take place outside the prison.
30. Assurances have now been received from the issuing judicial authority in relation to the specific issues raised by the Respondent in relation to prison conditions in Poland and his fear that, if surrendered, there is a real risk that he would be subjected to inhuman and degrading treatment.
31. Having considered these assurances I am satisfied that the Respondent has failed to establish a real risk that he will be exposed to inhuman and / or degrading treatment in



the prisons of the Requesting State generally or on the two specific grounds which he advanced, being a risk that he would be detained in overcrowded conditions and / or that there would be inadequate medical care and treatment whilst he was detained such would amount to inhuman and degrading treatment

32. . I therefore dismiss this ground of objection.

### **Article 6 & 8 – Family Rights & Delay**

33. The respondent objects to his surrender on the grounds that his surrender would lead to a breach of his and his children’s family rights under Article 8 of the European Charter of Human Rights, on the grounds that there is an egregious delay in the present case so as to make the surrender of the respondent disproportionate.

34. The Respondent refers to the following:-

- (i) He has resided in Ireland since 2005, having left Poland with the knowledge and consent of the authorities – here he is referring to an application before the District Court in Czestochowa seeking the return of his passport and lifting of a prohibition on his leaving Poland, and has in most of that time been in gainful employment and not come to the adverse attention of the Gardai.
- (ii) He is a family man and is married with two children, who reside with him in the State.
- (iii) He is the main carer for his wife who was in an accident and is as a result disabled and unable to care for herself.
- (iv) His son has been diagnosed with dyslexia and has learning difficulties.
- (v) He has his own medical issues as referred to already above.

35. Exhibited to the affidavit of the Respondent dated the 15 of November 2023 is a report in relation to his son, dated the 7 of December 2018, which was prepared when the child was 9 years old. It was prepared by Ms Brenda Hughes of the National Educational Psychological Service. Ms Hughes concludes that the Respondent’s son was at that time struggling with learning in school and showing marked weaknesses in literacy skills particularly. His Full IQ Scale was in the very low range of ability. His social and

personal skills were, however, excellent and he was described as a happy popular boy who liked coming to school. Actions were agreed with his parents and school to assist his learning and it was recommended his parents consider Speech and Language Therapy and assist with, for example, reading and maths in the home.

36. The Respondents wife, Ms Agnieszka Zajac, filed an affidavit dated the 5 December 2023. She refers to suffering from some gastrointestinal problems, including dyspepsia, which have necessitated attendance at the Gastroenterology Department of Tallaght Hospital and a letter from the Gastroenterology Department is exhibited detailing same. She also referred to a workplace accident she suffered whilst pushing a trolley in a hotel in 2013 and as a result of which she has developed lower back pain. She had two surgical interventions in 2023 but has not been able to return to work since the accident. She is currently in receipt of an invalidity pension. She states that, as a result of such pain, her husband and daughter help as she is unable to move for long periods without pain. A report is exhibited from Dr Hu, dated 20 October 2023, which states that she had then responded well to fairly recent interventions (namely left lumbar root blocks) but the effect of these injections does not last indefinitely. Repeat of the same is required every 6 – 12 months and she remains on pain medication. He concludes:

*‘She has not been able to work since the injury. She has had to curb her lifestyle significantly, suffers from poor sleep and a significant reduction in her activity. She is not able to do the things she used to enjoy doing. As it has been more than 10 years since the injury, there is no scope for complete reduction and minimal scope for significant reduction’.*

37. The Respondent also refers to the fact that these offences date from over twenty years ago and says that he left Poland with the knowledge and consent of the authorities and indeed applied to the Polish authorities for the return of his passport and the lifting of a condition to stay in Poland and this condition was lifted.
38. Insofar as the issue of delay is concerned, a request was sent to the Polish authorities seeking any comment or explanation for the passage of time in this case. By letter dated the 7 of August 2024, having noted that surrender here is sought on foot of and EAW of 2007 updated in on 8 July 2022, the following question was asked:

*'The requested person was arrested on foot of the SIS alert PL000000073000500001 on 25 September 2023. The requested person is currently on bail awaiting determination of this matter.*

*In order to further consider the case, THE HIGH COURT RESPECTFULLY REQUESTS the following further additional information from the issuing Judicial authority within three weeks of today's date:*

*The warrant in these proceedings was first issued in 2007. Can you account for delay in the execution of this warrant?'*

39. In a response of that same day, the IJA said:

*'The Regional Court in Czestochowa (Poland) II Criminal Division informs that on 07 August 2024 the current version of the European Arrest Warrant applied to Mariusza Zajac born on 20 February 1976 was entered into the SIS II system. In addition, the version entered into the search system is also attached to this letter.*

*The delay in entering the data resulted from the large number of cases in which the District Court in Czestochowa updated the data and the need to prepare their translation.*

*We apologise for any inconvenience caused'.*

40. It is common case that most, if not all, extradition cases by their very nature involve an element of infringement of the right to family life. It is well settled that member states should execute any warrant on the basis of mutual recognition and that it is only in a truly exceptional case that Article 8 rights outweigh the requirement to surrender, on foot of an otherwise lawful EAW.

41. In *Minister for Justice v Ostrowski* [2012] IESC 57 the Supreme Court made it clear that to be successful in cases such as the present, a family/ private rights objection to surrender, the circumstances must be shown to be well outside the norm, that is truly exceptional and, in the words of s.37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention. Again in *Minister for Justice v Verstaras* [2020] IESC 12, that Court said that, when considering such objections to surrender, there must be cogent evidence to rebut the presumption in s4A of the Act, the circumstances must be shown to be well outside the

norm, that is truly exceptional and, in the words of s.37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention.

42. In *Minister for Justice v D.E.* [2021] IECA 118, having comprehensively reviewed the earlier authorities, Donnelly J re-emphasised that exceptionality is not the test in itself but instead the phrase ‘exceptional’ in the case law is a description of the rare cases in which an Article 8 analysis will be appropriate such that an order for surrender might be refused pursuant to s.37 for incompatibility with the Convention or the Constitution.
43. The Respondent submits that, in accordance with the principles set out in the case law above, the facts in the current case reach the high standard of exceptionality such as to engage his Article 8 rights. He chiefly relies upon his status as main carer for his wife, his younger child’s learning difficulties, and his support of his older child who is a student.
44. It is further submitted that, as in the case of *Minister for Justice v Palonka* [2022] IESC 6, where a lengthy unexplained delay occurs in seeking surrender this may create exceptional circumstance within the case. With regard to the delay present within this case, the applicant does not claim that the delay in and of itself is a ground for refusal of surrender, rather it should be considered as one factor when assessing the Respondent’s family circumstances.
45. The Minister submits that the Respondent fails to meet the high threshold of “extraordinary circumstances” which would permit this Court to refuse surrender.

### **Decision on Article 6 and 8**

46. I have considered all of the documentation filed on behalf of the Respondent in this case. I have also considered the unexplained, or at best less than satisfactorily explained, delay of over twenty years.
47. There is a strong public interest in the surrender of persons accused or convicted of criminal offences to countries with which this State has extradition or surrender

agreements. It is well settled that delay in itself cannot ever operate as a bar to surrender. A person can have no legitimate expectation that he or she will avoid surrender under extradition or surrender arrangements because of the passage of time arising from a lack of resources or inefficiency on the part of the requesting state – Owens J in *Minister for Justice v TN* [2019] IEHC 674.

48. Disruption, indeed significant disruption, of family and private life is the norm where surrender is ordered, and this cannot ordinarily justify a refusal to surrender on foot of an otherwise lawful request. Where however, the evidence shows a real, exceptional and oppressive disruption to family life in the most extreme and exceptional circumstances, delay may enable the growth of circumstances where a new situation has emerged that engages Article 8 of the European Convention. The ultimate question in a case such as this is whether this is one of those truly exceptional cases (though of course exceptionality is not the test) where, due to the emergence of particular family or personal circumstances in the time since the alleged offences, Article 8 of the Convention is engaged, and it would be disproportionate to order surrender in the particular circumstances of this case.
49. There is no doubt that there has been a significant delay on the part of the Polish authorities in this case. There would also seem to be no real satisfactory explanation for such delay.
50. This is a case where, in the twenty intervening years, the Respondent has established a family life in this country. He has also seemingly lived a productive life as a family man and has not in that time come to the attention of the Irish police. He himself has some health difficulties but I do not consider there to be any established risk that he will not receive appropriate care and treatment for these difficulties if in custody in Poland.
51. He does provide a considerable degree of assistance for his wife and his son, who has learning difficulties. He also provides support for his daughter in college. It is clear that there will be significant disruption to his family were he to be surrendered to Poland. It is also clear that the arrangements in their family will have to be altered if he is surrendered. His wife will lose his support upon which she relies to some extent as a

result in particular of the injury she suffered to her back. His wife, and their adult daughter, will also carry greater responsibility to assist his son who has learning difficulties.

52. Conscious of the difficulties surrender might cause to this particular family and respondent, the question is whether this is one of those truly exceptional cases where, due to the emergence of this particular family and these personal circumstances in the time since the alleged offences, Article 8 of the Convention is engaged, and it would be disproportionate to order surrender in the particular circumstances of this case.

53. There has been considerable and largely unexplained delay in this case and, in that period of time the family and personal circumstances of the respondent have significantly altered. I do not however consider, as was the case in for example *JAT (No.2)* or *Palonka*, a s.16 order for surrender would result in such exceptional and oppressive disruption to family life, that this is one of those rare cases where there exist extreme and exceptional circumstances such that surrender would be disproportionate in the particular circumstances of this case. Although there will be significant disruption to the Respondent's family as a result of his surrender and although the Respondent does provide considerable assistance to his wife and children, this disruption is not so exceptional as to outweigh the obligation of this state to surrender the Respondent to Poland.

54. I therefore dismiss this ground of objection.

### **Statute of Limitations**

40. At Part F of the warrant, it is stated that:

*'Execution of the 3-year custodial sentence becomes time-barred on 8th September 2019, but due to suspension of the enforcement proceedings the limitation period for the sentence execution was interrupted and in conjunction with Article 15zr of the Act of 2nd March 2020 on special solutions related to preventing, counteracting, and combatting COVID-19, other infectious*

*diseases and emergencies caused by them, the limitation period for the sentence execution was extended, at maximum until 1st July 2032.'*

41. The Respondent submitted that, owing to the lack of clarity in Part F of the warrant, the limitation period may have been extended after its expiration. This he said could give rise to a potential breach of his rights under Article 5 and Article 7 ECHR right.
42. The Applicant submits that that the wording of this part of the warrant is clear. The Minister submits that it is clear therefrom that the sentence was due to become time-barred, but there was a suspension of the enforcement proceedings which resulted in the limitation period for the sentence execution being interrupted. Furthermore, because of the legislation passed in March 2020 as a result of the Covid crisis, the limitation period has been extended to the 1 July 2032.
43. A s20 request was issued on the 8 November 2023 seeking clarification on this matter. A response was received dated 24 November 2023, and it was stated therein that the original limitation period was interrupted due to the suspension of the enforcement proceedings ordered by the District Court of Czestochowa on 02.12.2006.
44. Further clarification regarding the effect this order had on the statute of limitations was sought and another s.20 request sent on the 9 February 2024 in this regard. In that further request, information was also sought regarding the effect the 'Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID 19' had on the limitation period.
45. In the response dated 20 February 2024, the issuing judicial authority stated that the 'Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID 19' no longer applied and as such '*The correct limitation period for the execution of the 3-year custodial sentence imposed on Mariusz Zajac will expire on 8th August 2029, taking account of the interruption of the limitation period due to suspension of the sentence execution because of inability to apprehend the convicted person.*' No detail was given on the first question regarding statute of limitations.

46. Yet another Section 20 request was issued on 28 March 2024 stating: -

*'1. Part J of the warrant states that the warrant was initially dated 27 September 2007, but was later updated on 8 July 2022. Please explain the circumstances surrounding the updating of this warrant.*

*2. The Respondent has exhibited two documents in support of his defence to proceedings. The first is a letter dated 3 January 2005 issued by the Chairman of the 14th Criminal Enforcement Division. This letter encloses a decision dated 30 November 2004 issued by District Court Judge Beata Jarosz and it states that the "supervision" and "ban on leaving the country with simultaneous seizure of the passport" are now revoked. In light of the revocation of the ban on the Respondent leaving the country and the return of his passport to him, please explain why it is that the Respondent is being returned to the Issuing State to serve his remaining sentence.'*

47. A response was received on the 7 May 2024 and regarding the first question this was due to the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID 19 and the updating of the statute of limitation. As previously mentioned, this extension no longer applied and was rectified in an updated EAW attached to the response.

48. In regard to the second question, the IJA stated that the judgement in the case of the Respondent became final and enforceable on 07.09.2004. The respondent was summoned to voluntarily present himself to the Remand centre in Czestochowa on 09.12.2004. A decision by the district court in Czestochowa dated 30.11.2004 revoked the condition of police supervision and ban on leaving the state with surrender of passport to police. It is noted in the response that these were conditions which could have remained until the execution of the custodial sentence, though it was deemed to not be necessary by the respective district court.

49. As documented by the affidavit dated 12 June 2024, at present there ongoing legal proceedings in Poland being brought by the Respondent in regard to the legality of the extension of the statute of limitations, though this is a matter of concern for the Polish and not for this Court.



50. It is clear from all the available information that the decision of the District Court of Czestochowa on 02.12.2006. to suspend the enforcement proceedings against the respondent had the effect of also suspending the statute of limitations and as such this case now operates well within the period of limitation. This is clear from the description of Polish law set out in the Respondents own supplementary affidavit While there is a question of the legitimacy of this order, that is not a matter for this court. This ground of objection to surrender is therefore dismissed.

### **Conclusion**

51. For the above reasons I have rejected the grounds of objection made by the Respondent and I therefore propose to make an order for his surrender pursuant to s16 of the 2003 Act.