

THE HIGH COURT

[2024] IEHC 644

Record No. 2023 No. 247 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

KRZYSZTOF ARKADIUSZ WILGORZ

RESPONDENT

JUDGEMENT delivered by Hon. Mr. Justice Patrick McGrath on the 29 October 2024

1. A European arrest warrant [‘EAW’], dated the 31 October 2023, was issued by Dobromira Myszakowska, Judge of the District Court. Wroclaw, Poland, who is a ‘judicial authority’ within the meaning of s.2 of the European Arrest Warrant Act, 2003 [‘the 2003 Act’]. The Respondent is sought for surrender for the purposes of serving a custodial sentence originally imposed on him on the 28 of October 2023 (Case Ref: VI K 380/08).
2. The Respondent was arrested on foot of a Schengen II SIS alert on the 13 of December 2023 and was subsequently admitted to bail pending the outcome of these proceedings.

3. The warrant is, so far as is practicable, set out in the form of the Annex to the Framework Decision and I am satisfied the information provided therein satisfies the requirements of s11 of the Act.
4. I am satisfied none of the issues referred to in ss 21A, 22, 23 or 24 of the 2003 Act arise for consideration and surrender is not precluded for any of the reasons set out therein.
5. This EAW was issued for the purposes of enforcing a sentence of imprisonment of 8 months for an offence of Driving whilst he was disqualified by a previous court order, contrary to Article 244 of the Penal Code. Such an offence corresponds with an offence of Driving Whilst Disqualified contrary to Section 38 of the Road Traffic Act, 1961 (as amended).
6. The sentence of 8 months was imposed in Wroclaw District Court on the 28 of October 2008 but was wholly suspended for probationary period of 3 years – case Ref 380/08.
7. On the 17 September 2009, owing to the commission of a similar type of offence during the period of suspension, the said court in Wroclaw activated the sentence and he was ordered to serve the period of 8 months in total (Case Ref: Ko 263/09)
8. No issue arises in relation to Minimum Gravity. The sentence of seven months and twenty-nine days remains to be served in its entirety and there is therefore compliance with the minimum gravity requirement under Section 38(1)(a)(ii) of the 2003 Act.

Grounds of Objection

9. A notice of objection was filed by the Respondent on the 31 of January 2024 and subsequently filed an affidavit on the 7 of February 2024. In his notice of objection the Respondent, after putting the Minister on full proof, raised the following objections:-
 - a) Surrender is prohibited under s.45 of the European Arrest Warrant Act, 2003 [‘the 2003 Act’].

- b) Owing to the conditions in which he might be detained in Poland, his surrender is prohibited under Article 3 of the ECHR, Article 4 of the Charter and Article 38.1.1 of the Constitution.
 - c) His surrender may be prohibited on the basis that to send him to Poland would be incompatible with his rights under Article 8 of the ECHR and Article 41 of the Constitution.
10. In an affidavit filed by the Respondent on the 7 of February 2024, he stated that he had been originally arrested for the offence set out in this EAW in Manchester on the 1 of November 2012. He claimed that he was thereafter surrendered on this EAW to Poland on the 22 January 2013. Upon surrender the time he has spent in custody in the UK was taken into consideration in Poland and thereafter continued to serve this 8 month sentence until released on the 14 of April 2013.
11. A number of s.20 requests were sent to the issuing judicial authority in relation to these proceedings.
12. Firstly, a s.20 request was sent to the IJA on the 8 of February 2024 seeking assurances in relation to prison conditions and furthermore asking for a Part D Table in respect of the offence which triggered the revocation application for the suspended sentence in Case VI K 380/08.
13. A second s.20 request, dated the 15 of February 2024, was forwarded to the IJA enclosing the affidavit of the Respondent and asking the following questions:-
- a. Was the Respondent surrendered from the UK to Poland on the 22 January 2013 for the purpose of enforcing the 8 months sentence imposed by Decision VI K 380/08 – namely the same decision the EAW III Kop 204/23 is based upon;
 - b. Did the Respondent have some or all of the time he spent in custody in the United Kingdom, following his arrest in Manchester on the 1 of November 2012, deducted from the above 8 month sentence in accordance with the requirements of Article 26 of the Framework Decision;

- c. Following his surrender from the United Kingdom to Poland on the 22 of January 2013, did the respondent continue serve the sentence imposed in 308/08 until released on the 14 of April 2013 in Poland

14. In its reply dated 28 of February 2024, the IJA stated inter alia:-

- a. He was surrendered from the UK to Poland on 22 January 2013 on the basis of the EAW issued in connection with Case 380/08 but after surrender, he actually served another sentence, namely one of 8 months imposed in Case 472/08 by the District Court in Wroclaw – Fabryczna. After he was released from this sentence, he was summonsed to appear to serve the 8 months in respect of Case 380/08 but failed to answer this summons. He is therefore sought to serve that sentence;
- b. An assurance was given in relation to a guaranteed minimum space of 3m² in detention
- c. A Part D of the EAW with respect to the triggering offence which led to the revocation of the suspension of the sentence in Case 380/08 was sent and this indicated that the Respondent attended in person at that hearing on the 19th of March 2009 at the District Court in Wolow (Case II K 175/09)

15. As the above answers indicated that, though the Respondent had been surrendered by the United Kingdom on an EAW for Case 380/08, he had not served that sentence but rather an entirely different sentence, inquiries were raised relating to the issue of Specialty. A further s20 request issued on the 27 of March 2024 and a reply thereto was received on the 18 of April 2024. Owing to confusion caused by this later reply (in that the IJA appeared to now say that the EAW sent to the UK in 2012 related not to Case 380/08 but rather Case 472/08), yet another letter pursuant to s.20 was sent to the Polish authorities on the 4 of July 2024, seeking clarification as follows:-

- a. Please indicated what case the EAW, on the basis of which the respondent was arrested in 2013, related to: Case 380/08 (as stated in information dated 28 February 2024), Case 472/08 (as stated in information dated 18 April 2024) or both?

16. By letter dated the 11 of July 2024, the IJA then confirmed that the requested person had been surrendered from the United Kingdom in 2013 on an EAW relating to Case 472/08 and not Case 380/08.

17. When the Respondent was being surrendered to Poland by the United Kingdom in 2013, the Polish authorities were specifically asked to consider applying for permission to the United Kingdom to waive specialty in relation to the then Supplemental EAW, namely the EAW concerning the sentence in this case – Case 380/08. The IJA were then asked, in a s.20 request dated the 7 of August 2024, to indicate what, if any action, was taken by the Polish authorities following this notification from the UK in relation to the Supplemental EAW relating to Case 380/08. A reply was received on the 19 of August 2024 and the IJA stated therein that after the surrender of the Respondent in 2013 in relation to the EAW for the offence at Case 472/08

a. *‘...he then commenced serving an 8 month custodial sentence imposed by the aforementioned judgment, whereas at the same time, due to the relatively short sentence, which he finished serving the 17th of April 2013 (due to his conditional early release) the court failed to implement the proper procedure, and did not collect from Krzysstof Arkadiusz Wilgorz the representation indicated by the Central Authority for European Arrest Warrants of the United Kingdom of Great Britain and Northern Ireland dated the 21st of January 2013, expressing his consent to the execution of a custodial sentence imposed on him in the case of the District Court in Wolow under the case file number VI K 380/08. In the absence of the respective representation, the court took no action on its basis, and Krzysstof Arkadiusz Wilgorz left the penitentiary unit without serving the sentence [imposed] in case under the case file number VI K 380/08. Due to the impossibility of establishing the place of the stay of the requested person as well as his current address of residence after leaving the penitentiary unit – local court issued a new European Arrest Warrant the 31st of October 2023 in case under the case file number III Kop 204/23’*

18. Following the receipt of the various assurances and information set out in responses to s.20 requests as outlined above, the Respondent now does not pursue his objection to surrender on the basis of poor prison conditions contrary to Article 3 of the Convention

or his objection on the grounds that there has been a failure to comply with the requirements of s.45 of the 2003 Act. His sole ground of objection now relates to delay and given the above additional information, abuse of process.

19. This is not a case where, as is frequently the position where an Abuse of Process argument is made, there has been a previous application for surrender – see *Nowachowski* [2015] IEHC 849, *JAT (No 2)* [2016] IESC 17, *Bailey (No 2)* [2020] IEHC 528. Nor is it a case where the Respondent can point to some improper motive or mala fides on the part of the Polish authorities. No suggestion is made that, due to the matters of which complaint is made, there has been interference with his rights under Article 8 of the Convention.
20. What has in fact happened here is that, owing to at worst incompetence or lack of diligence on the part of the Polish authorities, they failed to act in relation to this matter back in 2013 when the UK authorities invited them to apply for the waiver of Specialty after the Respondent's surrender in relation to the other case. It seems as if the Respondent would, at that time, have consented to such waiver.
21. The Respondent clearly benefitted from the incompetence or lack of diligence on the part of the Polish authorities as, having served the sentence imposed on Case 472/08, he was released from prison in April 2013 without there having been required to serve this sentence. He now is in effect claiming that the failure of the Polish authorities to take action to have enforced this sentence in 2013 together with the passage of time since that date, gives rise to circumstances which mean that seeking his surrender in Ireland amounts to an abuse of process of this Court.
22. The principles that apply to abuse of process cases in the area of Extradition have been considered in a considerable number of decisions of the Superior Courts.
23. In *Minister for Justice v Angel* [2020] IEHC 699 Burns J, having referred to the earlier comprehensive Judgment of Donnelly in *Campbell (No 2)*, summarised the principles that have emerged from the case law and which apply where a claim of abuse of process is made in extradition cases, as follows:

- a) *‘ there is no bar to bring a fresh application to the Court for surrender*
- b) *there can be circumstances which justify or require the High Court refusing an application for surrender on the basis of abuse of process;*
- c) *a finding of an abuse of process should not be made lightly*
- d) *it is only where the case has exceptional circumstances that an abuse of process will be found (although exceptionality is not the test) and that the abuse of process is that of the High Court in this jurisdiction rather than a concern about an abuse of process to put the requested person on trial;*
- e) *there is broad public interest in bringing things to finality in one set of proceedings;*
- f) *there is a strong public interest in Ireland complying with its international obligations and surrendering individual in accordance with the relevant extradition provisions;*
- g) *a repeat application for surrender is not per se abusive of process. It would only be an abuse of process where to do so is unconscionable in all the circumstances;*
- h) *mala fides or an improper motive is not a necessary precondition for an abuse of process; and*
- i) *the Court should look to the cumulative factors which may make an application for surrender oppressive or unconscionable ‘*

24. Insofar as the Irish Courts may entertain arguments as to abuse of process in limited circumstances, such are essentially confined to whether the surrender proceedings themselves amount to an abuse of the Irish Courts processes rather than a general question as to whether the conduct of which complaint is made is an abuse of process in the issuing state. Furthermore, as made clear by O’Donnell J in *Minister for Justice v JAT (No 2)* [2016] IESC 17, there is a weighty interest in ensuring that this State honours its treaty obligations and, if anything there is an even greater interest in ensuring performance by this State of obligations entailed by membership of the European Union. In this regard he continued:

‘I think it is fair to say that it is only if some quite compelling feature, or combination of features, is present that it would be appropriate to refuse surrender on grounds of due process or interference with rights. It is important

that courts should also rigorously scrutinise the factual basis for any such claims against that background'

25. The Respondent here is aggrieved that he was not required to serve this sentence back in 2013 and is now called upon to serve the same. The sentence imposed was a lawfully imposed sentence and one which should be enforced and which this state, via the mechanism of the Framework Decision, should assist the Polish authorities to enforce. There is in my view no basis for this court finding an abuse of process. The Polish authorities, having located the Respondent in Ireland, have sought to have him surrendered to serve a lawfully imposed sentence which, arguably, they should have required him to serve back in 2013/2014. Their seeking the assistance of this court to enforce that sentence in 2024 does in my view amount to an abuse or misuse of the processes of this court.

26. I therefore dismiss this ground of objection and will make an order for the Respondents surrender under s16 of the European Arrest Warrant Act, 2003.