



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

Minister for Justice and Equality v Palonka

On appeal from: [2019] IEHC 803 and [2021] IEHC 840

Headline

The Supreme Court today allowed the appeal of Mr Palonka, refusing surrender to Polish authorities on the basis of the 23-year delay between the initial offence in 1999 and the execution of the relevant European Arrest Warrant. When taken together with a range of other circumstances, the Court viewed this delay as inordinate and exceptional.

Justices

Mr. Justice John MacMenamin; Ms. Justice Elizabeth Dunne; Mr. Justice Peter Charleton; Ms. Justice Marie Baker; Mr. Justice Gerard Hogan. Judgment by Mr. Justice Peter Charleton, concurring judgment of Mr. Justice Gerard Hogan.

Background to the Appeal

Mr. Palonka's surrender to Poland was requested under the European Arrest Warrant procedure. Two offences were relevant to this request, both relating to the importation of cannabis. He was first convicted in July 1999, and was sentenced to 10 months' imprisonment, although this was stayed. He was convicted for a separate offence in 2003 and a prison sentence was imposed. This was the subject of an appeal in 2004; Mr. Palonka was not present for the hearing of this appeal but he was represented. Authorisation for this representation has since been disputed. In 2006, the suspended sentence for the 1999 offence was lifted, thus becoming a jail sentence of 10 months. Mr. Palonka was not present nor represented at the hearing at which the sentence became active; communications had been sent to an address in Poland but these had not been collected. Mr. Palonka had moved to Ireland in 2005.

Surrender was sought from Ireland to Poland in November 2012 in respect of the 2003 offence, but this was rejected in separate proceedings. Subsequently, in 2019, the Polish authorities sought surrender on the older 1999 offence. This later request was the subject of this appeal.

The High Court had ordered that the second EAW be enforced. This was appealed and came before the Supreme Court where the Court found that the facts were insufficiently clear to make a decision on the legal issues. The case was reverted to the High Court to make the appropriate enquiries. Burns J. in the High Court requested further information from the Polish authorities. The case came back before the Supreme Court to determine the legal issues. The appeal centred on three main issues: whether on the facts of this case there had been an abuse of process given the delay in seeking surrender; whether surrender may be ordered in respect of the *in absentia* activation of a suspended sentence; and, finally, whether by reason of procedural delay, Mr. Palonka's right to a family life under Article 8 of the European Convention on Human Rights had been engaged.

Judgment

The Supreme Court allowed the appeal and refused surrender to Poland.

Reasons for the Judgment

Delivering the principal judgment of the Court, Charleton J. holds that the issue in relation to Mr. Palonka's lack of representation at the 2006 hearing, at which the suspended sentence was lifted, was not relevant in relation to the validity of the EAW on foot of the 1999 arrest. It is found that, as Mr. Palonka had been represented at the appeal hearing for the 2003 offence and had pleaded guilty at first instance to the commission of said offence, he had not been unrepresented at the crucial hearing. The fair trial rights of the appellant were upheld even if the definition of a trial includes the appellate hearing and the hearing for the lifting of any suspended sentence; Mr. Palonka's rights would be deemed vindicated. **[8]-[15]**

The delay between the conviction for the offence and the issuing of the EAW is deemed unexplained by the Court. The foundation of the EAW regime is accepted as being that of mutual trust and confidence between states. The need for the simplicity of operation of the mechanism is highlighted, and it is further held that submissions based on constitutional rights or European Convention rights would only give rise to refusal of surrender in rare cases, citing *Minister for Justice and Equality v JAT (No 2)* [2016] IESC 17 as such an instance. **[16]-[22]**

Charleton J. proceeds to consider what may be regarded as a sufficient infringement of fundamental rights to warrant refusal of surrender, recognised by the CJEU in *Aranyosi and Caldaru C-404/15* and *C-659/15 PPU* as requiring exceptional circumstances. In examining the adequacy of infringement of family rights, the UK Supreme Court decision in *FK v Polish Judicial Authority* [2012] UKSC 25 are noted as examples of judicial recognition of the fact that surrender could be refused in this context. However, a balancing approach does not arise between the interests of family rights and the seriousness of the offence. Instead, the primary obligation of the courts is to surrender on foot of an EAW where a minimum standard of seriousness is met. **[23]-[30]**

On the facts of the case, it is held that the delay constituted an oppressive disruption to family life. While delay does not create rights on its own, it may enable circumstances where a new situation can emerge that engages Article 8 rights in an exceptional way. The absence of information as to why the EAW considered by the Court was on foot of the 1999 offence following the failure of the initial EAW for the 2003 offence, as well as the delay and the establishment of life in Ireland by Mr. Palonka, pointed to exceptional circumstance justifying the refusal of surrender. **[31]-[32]**

In his concurring judgment, Hogan J. agrees with Charleton J. that surrender should be refused in the present case. In reaching this view, Hogan J. accepts that the EAW system is built on the principles of full faith and credit and mutual trust but notes that these principles may be limited 'in exceptional circumstances.' **[1-2]** Hogan J. considers that the facts in the present case are exceptional insofar as the delay of 23 years between conviction and surrender, viewed objectively, is inordinate and the Polish authorities have failed to excuse this delay. Hogan J. also pointed to what he regarded as a series of errors, confusion and repeated EAW applications: this taken in combination with the inordinate delay persuaded him that the present case was an exceptional one justifying the refusal to order the surrender. **[16]**

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

23 rd November 2020	Oral submissions made before the Court
[2021] IEHC 840	High Court judgment, Burns J
[2020] IESC 40	Supreme Court judgment
[2020] IESCDT 54	Supreme Court Determination granting leave
[2019] IEHC 803	Judgment of the High Court, Binchy J