



THE HIGH COURT

[2022] IEHC 637

[2021 No. 306 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

DAMIAN GRAMS

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 8th day of July, 2022

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 29th of January 2018 (“the EAW”). The EAW was issued by Regional Judge Michał Ziemniewski, as the issuing judicial authority.

2. The EAW seeks the surrender of the respondent in order to enforce a sentence of 1 year and 4 months’ imprisonment imposed upon the respondent on the 1st of February 2017. The full sentence remains to be served.

3. The respondent was arrested on the 28th of October 2021, on foot of a Schengen Information System II alert, and brought before the High Court on that day. The EAW was produced to the High Court on the 10th of November 2021.

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 the 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 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.

7. The details of the offence for which the respondent has been convicted are stated in Part E. The offence is defined as 'burglary', where the facts alleged are that the respondent, along with two others, broke into a florist's shop and caused damage.

8. I am satisfied that correspondence can be established between the offences referred to in the EAW and the offence of burglary contrary to Section 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

9. Part D of the EAW indicates that the respondent did not appear at the trial resulting in the decision, however at Part D.1 (b), the EAW states:

"[T]he person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision may be handed down if he or she does not appear for the trial."

10. The warrant goes on to indicate that the respondent was notified of the court hearing by summons to his last known address, where the summons was deemed delivered by "substitute delivery".

11. A Section 20 request was sent to the issuing state by this Court on the 12th of November 2021, seeking clarification regarding Section D of the warrant and the requirements of Section 45 of the 2003 Act.

12. The Court received a reply to the Section 20 request on the 25th of November 2021, which indicated that the respondent was aware of the court date, as it was delivered to him by registered mail, and it was hand delivered to him.
13. The information contained in the additional information allows this Court to conclude that the respondent was served with the notification of the trial “in person” and therefore the requirements of Section 45 of the 2003 Act, have been complied with.
14. The respondent objected to surrender on the following grounds:
1. The warrant fails to comply with Section 45 of the European Arrest Warrant Act 2003 in circumstances where it does not establish that the respondent was made aware of his trial date. The respondent concedes that in light of the additional information, this ground is no longer sustainable, and he does not seek to rely upon same.
 2. Since the ruling of the CJEU in the case of *Minister for Justice and Equality v. L.M.* (Case C-216/18 PPU) there have been legislative developments in Poland which have caused further damage to the rule of law and to the independence of the judiciary. It cannot now be said that the issuing judicial authority constitutes a judicial authority within the meaning of the Framework Decision on the European Arrest Warrant and within the meaning of the European Arrest Warrant Act, 2003.

15. **Rule of Law**

This matter was adjourned to await further developments in respect of the reference put forward to the CJEU in *Minister for Justice & Equality v. Orłowski; Minister for Justice and Equality v. Lyszkiewicz* [2021] IESC 46. Prior to hearing the reference in respect of *Orłowski*, the CJEU gave judgment in the joined cases of *X and Y* (Cases C-562/21 PPU and C-563/21 PPU) in February 2022. The CJEU made it clear at para. 102 of its judgment therein; -

“[102] ...where the executing judicial authority called upon to decide on the surrender of a person in respect of whom a European arrest warrant has been issued has evidence

of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing Member State, in particular as regards the procedure for the appointment of the members of the judiciary, that authority may refuse to surrender that person:

- *in the context of a European arrest warrant issued for the purposes of executing a custodial sentence or detention order only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by that person relating to the composition of the panel of judges who heard his or her criminal case or to any other circumstance relevant to the assessment of the independence and impartiality of that panel, there has been a breach of that person's fundamental right to a fair trial before an independent and impartial tribunal previously established by law, enshrined in the second paragraph of Article 47 of the Charter, and*
- *in the context of a European arrest warrant issued for the purposes of conducting a criminal prosecution, only if that authority finds that, in the particular circumstances of the case, there are substantial grounds for believing that, having regard inter alia to the information provided by the person concerned relating to his or her personal situation, the nature of the offence for which that person is prosecuted, the factual context surrounding that European arrest warrant or any other circumstance relevant to the assessment of the independence and impartiality of the panel of judges likely to be called upon to hear the proceedings in respect of that person, the latter, if surrendered, runs a real risk of breach of that fundamental right."*

16. It appears from the foregoing that the existence of systemic or generalised deficiencies concerning the independence of the judiciary in the issuing state would not, in and of itself, justify the refusal of surrender on foot of a European arrest warrant in which surrender for the purposes of executing a custodial sentence is sought. Only in cases where the requested person

can point to particular circumstances concerning his conviction or sentence, and can establish that there has been an actual breach of his fundamental rights, may the issuing judicial authority refuse surrender.

17. The Court was informed that following the judgment of the CJEU in *X and Y*, the Supreme Court indicated that it is satisfied that the judgment deals with questions (1) and (2) posed by the Supreme Court in *Orlowski* but has indicated that it will still seek a ruling on question (3).

18. The respondent asked this Court in written submissions (though not pursued in oral submission) to adjourn the matter further pending the CJEU's judgment in relation to the third question in *Orlowski*. I am satisfied that the third question posed by the Supreme Court to the CJEU in *Orlowski* relates to applications in which surrender is sought for the purposes of conducting a criminal prosecution against the requested person and does not relate to applications where surrender is sought for the execution of a custodial sentence. A further adjournment to await the outcome of the CJEU in respect of the third question posed by the Supreme Court in *Orlowski* is refused.

19. 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.

20. 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.