

THE HIGH COURT

[2024] IEHC 517

Record No. 2024 No. 024 EXT

BETWEEN

MINISTER FOR JUSTICE

APPLICANT

AND

PRZEMYSŁAW MAREK LANIECKI

RESPONDENT

JUDGEMENT delivered by Mr Justice Patrick McGrath on the 31st day of July 2024

1. A European arrest warrant [‘EAW’], dated the 4th of November 2021, was issued by a District Judge assigned to the Regional Court in Gdansk, a ‘judicial authority’ within the meaning of s.2 of the European Arrest Warrant Act, 2003 [‘the 2003 Act’].
2. 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.
3. 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.

4. This EAW was issued for the purposes of enforcing a sentence of imprisonment of one year imposed on the Respondent by the District Court in Gydnia on the 9th of October 2003. He was convicted of one offence contrary to Section 286(1) of the Criminal Code of Poland in concurrence with s. 270 CC in conjunction with s.11 (2) CC. At paragraph E. II the circumstances in which the offence was committed are set out as follows:-

'On 20 March 2001, in Gydnia, acting with the view of reaping a financial gain, he brought Polkmotel Spolka Akcyjna with its registered address to disadvantageous disposition of property by presenting a forged certificate to his employment with 'Trans-Express' in Gydnia and his earnings there at a 'T-1' mobile telephone retail outlet and based on that document he received a Nokia 3310 mobile phone, this causing damage in the sum of PLN 1404.66'

5. The offence is a 'ticked box' offence of 'fraud' according to the Polish authorities. It is therefore one of a category of offences that does not require the proof of correspondence with an Irish offence. In any event it is clear from the circumstances of the offence as described in the EAW, that the conduct in question would, if done in this State, have corresponded with an offence of Deception contrary to Section 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.
6. Points of Objection were filed on the Respondents behalf on the 14th of March 2024. At the hearing of the application the Respondent confined his objections to the following:-

- (a) Surrender is prohibited as the underlying sentence in Poland is unenforceable due to its being statute-barred;
- (b) There has been blameworthy and culpable delay on the part of the issuing state such that surrender ought to be refused;
- (c) Surrender is prohibited under s45 of the 2003 Act.

Limitation Period and Enforcement

7. At Paragraph F of the Warrant it was stated that the limitation period for *'punishability of an offence or for enforcement of the imposed sentence concerning criminal offences and fiscal offences'* was suspended as a result of the covid pandemic. At paragraph 8 of the section 20 Request the following clarification on this matter was sought from the issuing state:-

'8. In light of the foregoing, please indicate:

- a. Whether enforcement of the sentence imposed on the Respondent is statute barred;*
- b. What the applicable limitation period for enforcement of the sentence imposed on the Respondent is, in light of Part F of the EAW'*

8. In its response to that question, the issuing judicial authority stated:

'Enforcement of the sentence imposed on the requested person has not become statute-barred, the limitation period available for its enforcement expires on 14/10/2028'

9. In the course of his submissions, however, the Respondent quotes from and seeks to analyse the most recent iteration of what he says is the publicly available Polish Criminal Code, the '*Kodeks Karny*', of the 6th of June 1997 and suggests that, from a reading thereof, the limitation period for the sentence in this warrant is one of 15 years. No affidavit evidence or expert evidence of Polish law has been put before the Court on this issue. In any event the Respondent accepts that, even were he to be correct in his non-expert reading of Polish law, his contention depends on matters such as the date on which the sentence became active and furthermore takes no account of, for example, the emergency legislation under Polish Law dealing with limitation periods due the Covid pandemic. The Respondent maintains that there is a lack of clarity on this issue and that surrender ought to be refused or at the very least a further request for more information in this regard, pursuant to s. 20 of the 2003 Act.
10. There is a clear and unambiguous statement from the issuing state that the limitation period for enforcement of this sentence expires on the 14th of October 2028. In the absence of cogent evidence of such a nature as to give this Court a real cause of concern as to the issuing state's confirmation in this regard this court must, on the basis of the mutual trust and confidence which underpins the European arrest warrant system, rely on the statement from Poland that the enforcement of the sentence is not statute barred.
11. The Respondent is here doing no more than raising a possibility of non-compliance by the issuing state with its own legislation governing the limitation periods for the enforcement of the sentence which is the subject of this EAW. The Respondent has not offered any cogent evidence or information as to give any cause for concern as to the issuing states explicit confirmation that the sentence imposed on him in Poland is

not statute barred. I agree with the submission of the Applicant that it is not the role of this Court in EAW proceedings to provide a mechanism for judicially reviewing the laws and procedures of an Issuing Member State. I further agree that there is no good reason offered in this case for any concern as to the confirmation given in this regard by the issuing state. I therefore dismiss this ground of objection.

Delay

12. The offence in question was committed by the Respondent on the 20th of March 2001, which is some 23 years ago. His trial took place on the 9th of October 2003 but the EAW only issued on the 4th of November 2023. Given the lengthy passage of time a s.20 request was sent to the Issuing Judicial Authority seeking an explanation for the same. On the 9th of July 2024, a reply was received indicating:-

- a. The enforcement of the sentence had been conditionally suspended on condition that he redress the damage caused by the offence;
- b. He continued to evade this obligation and, due to the same, the Court in Gydnia activated the conditional sentence on the 4th of April 2006;
- c. As he did not report to serve his sentence, a decision was issued suspending enforcement and ordering a search for him with a wanted notice and every 3 months the court instructed the police to provide information on the status of this search;
- d. Once details were obtained from the police in Poland as to his whereabouts on the 28th of April 2021, the EAW issued; and
- e. He was aware of the Judgment; he did not collect any letters and he failed to notify the police of a change of his address despite being told of his obligations so to do

13. I accept that this case does involve a very significant delay on the part of the Polish authorities and furthermore that, as submitted by Mr Laniecki, he is in a *'far different life stage to that which he found himself at the time of the offence contained within the warrant'*

14. The time between the commission of the offence and the trial of the Respondent was not unreasonable. And no blame can be attached to the Irish authorities for the time which passed between the date of the endorsement of the EAW and the arrest of Mr Laniecki and I particularly note in this regard that he was a man with no fixed abode. The Polish authorities have also given some explanation for the delay and it is clear from their answer of the 9th of July 2024 that he failed in his obligation, of which he was made aware, to inform them of his change of address(es).

15. Whilst I have some sympathy for the Respondent arising from this twenty-year delay by the Polish authorities, the case law on delay in the context of EAW proceedings is clear.

16. In *Minister for Justice v Daly* [2023] IEHC 733, Naidoo J stated at paragraph 43:

'Delay is not a ground for refusal of surrender unless accompanied by other factual circumstances falling so far outside the norm as to amount to an abuse of process'

17. At paragraph 54 Naidoo J continued:

'The period of time that the respondent can therefore point to as potentially amounting to delay is the 16 years between the issuing of that warrant and the respondents arrest in 2023. That is itself a long period of time, but delay, even delay

of that magnitude does not necessarily, in and of itself, amount to an abuse of process. In that regard, the applicant points out that in Minister for Justice and Equality v Stapleton the Supreme Court dismissed the delay objection where between 24 and 29 years had passed since the alleged commission of the various fraud offences at issue. Similarly, in Minister for Justice and Equality v Stanislaw Potocki, a decision of Creedon J, surrender was ordered at a point in time when the offence was 26 years old and there had been an almost 20 year delay between the activation of the custodial sentence in 2001 and the date of arrest in 2021'

18. Whilst the Respondent refers to the long period of time between the passing of the sentence and the issuing of the EAW in this case he has not pointed to any factual circumstances or consequences resulting therefrom, such for example a breach of his rights under Article 8 of the Convention or otherwise such as to permit delay to be relied upon, taken together with other circumstances, as a ground for refusal under s37 of the 2003 Act or an abuse of process.
19. The circumstances in this case are not, for example, like those which arose for consideration in *Minister for Justice v Palonka* [2022] IESC 6. In that case Charleton J. set out the complex procedural history of the case. Recognising the principles of mutual trust and the simplified and effective regime for surrender envisaged under the Framework Decision and the 2003 Act, the court nonetheless held that this was one of those exceptional cases where surrender should be refused. In the course of reaching this conclusion, Charleton J stated:
- '[25] Given the requirement of exceptional circumstances, an analysis of the unique concurrence of the factors of family life, the extreme delay to an unprecedented*

degree and the trial judge being unable to find direct facts as to the emergence of a warrant on an earlier and 23 year old offence only on the failure of the first EAW to come into play

[26] Firstly, since 2005, a period of 17 years, Mr Palonka has lived in Ireland and during that time has established himself in a family relationship with progeny. In ordinary course, extradition causes hardship, just as facing criminal charge does domestically or imprisonment does. That is as nothing in comparison to the entitlement of a country to preserve its peace through its criminal justice system and without which human nature could be predicted to flourish to its most negative aspect’.

.....

‘[31] This is not a case of potential infringement of fundamental rights. Rather, what is involved is a real, exceptional and oppressive disruption to family life in the most extreme and exceptional circumstances. Of itself, that would not justify a refusal to surrender as delay does not create rights, but delay may enable the growth of circumstances where a new situation has emerged that engages Article 8 of the European Convention in a genuinely exceptional way as set in the context of the individual procedural circumstances of the case’

20. This is not a case where unexplained or, as here, partially explained lengthy delay can be considered in support of e.g. an Article 8 family or private rights breach. It is not a case where any delay has therefore enabled the growth of circumstances such as to engage Article 8 of the ECHR.

21. This ground of objection is not therefore made out.

Trial in Absentia

22. At Part F of the Warrant it is stated that the Respondent was not present at his trial. At

D.1 it is stated:

'the person was summoned in person on 6 October 2003 and hence was notified of the place and date set for the trial which resulted in the pronouncement of the judgement, and was cautioned that the court might issue the judgement even if he/she did not appear at the trial..'

23. The Respondent, at paragraph 6 of his affidavit, does not say that he was not present on the 6th of October 2003 but rather that he was not informed on that date of the hearing date of the 9th of October 2003. He also says that 'in or around that time' he was held on remand in a named detention centre and was not therefore brought before the Court. He says he was not represented at these proceedings and, as he was not made aware of the decision, was unaware of a possible appeal. The issuing state was made aware of these averments of the Respondent and invited, by way of s20 request, to comment thereon. In the s20 Response the Issuing Judicial Authority stated:

'He was summoned in person on 6/10/2003, and in this way he was informed of the scheduled date and place of the trial at which the judgement was pronounced, he was also informed that the court could the judgement also in his absence.... And so: Przemyslaw Laniecki etc....'

24. There is no bar on the surrender of a person on foot of an EAW, even where he or she has been tried *in absentia*. The approach to be taken in such circumstances was recently dealt with in some detail by the Supreme Court in ***Minister for Justice v Zarnescu*** [2020] IESC 59. In the course of her Judgement for the Court, Baker J stated as follows at paragraphs 61 to 65 thereof:-

'[61] Recital 61 of the 2009 Framework Decision provides that the right of an accused person to appear in person at trial is not absolute and in certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right

[62] That recital finds expression in article 4a of the Framework Decision, quoted at para. 17 supra. The waiver must be unequivocal, but it can be implied from conduct. This flows from the decision of the Court of Justice in Melloni (Case C-399/11), EU:C:2013:107, where, at para 49, it said that:

'the accused may waive that right of his own free will, either expressly or tacitly, provided that the waiver is established in an unequivocal manner, is attended by minimum safeguards commensurate to its importance and does not run counter to any public interest. In particular violation of the right to a fair trial has not been established, even where the accused did not appear in person, if he was informed of the date and place of the trial or was defended by a legal counsellor to whom he had given a mandate to do so'

[63] In light of the decision of the court of justice in Dworzecki and the language of the Framework Decision, the requested court may examine the conduct of a requested person with a view to ascertaining whether it has been unequivocally established that he or she was aware of a trial date and the consequence of non-attendance, with a view to ascertaining if an informed choice was made not to attend. This in practical

terms means ascertaining whether the person has knowingly waived his or her rights to be present at the trial

[...]

[65] This means that if the person sought to be returned under an EAW appears in person at the relevant hearing, that person is to be returned. If that person has not appeared in person or through nominated lawyers at the relevant hearing, but the circumstances meet those expressly identified in s.45, equally no impediment exists to return. This case concerns the third possible scenario, where the circumstances of the trial giving rise to the request for return do not fit within those expressed in the exceptions contained in s.45. Return may still be ordered, but only if the court is satisfied having made an appropriate inquiry that the rights of defence of the requested person have been met. As will be apparent then, the analysis of the facts must have as its aim the objective of ascertaining whether the rights of defence are sufficiently protected'

25. In ***Minister for Justice v Wade*** [2023] IEHC 469 Naidoo J, having emphasised that trials in absentia are not prohibited under the EAW regime but that, before ordering surrender in such circumstances '*the executing state must be satisfied that the issuing state has fulfilled at least one of a number of pre-conditions provided for by the Framework Decision and encapsulated by the standard form EAW*', confirmed at para 28 that :-

'Section 45 of the Act of 2003 is satisfied if [...] the requested person has been personally served with notice of the date and place of trial'

26. Here the requesting state, both at Part D of the EAW and in response to a s20 request, has confirmed that Mr Laniecki was notified in person on the 6th of October 2003 of the date and place of his trial and that he could be proceeded against in his absence. The Respondents failure to attend thereafter constituted an unequivocal waiver of his right to appear in person. The defence rights of the Respondent were sufficiently protected in this case. His detention in custody after the date of his trial has no relevance to this question.
27. This is a case where there is demonstrable compliance by the Polish authorities with the requirements set out in Section 45 of the 2003 Act. They have indicated in two separate documents, the EAW itself and the response to the s20 request issued, that Mr Laniecki was summonsed in person, notified of the place and date of trial and specifically told that Judgment might be given against him even if he did not attend at that hearing.
28. This ground of objection is not therefore made out.
29. I therefore propose to make an order pursuant to s 16 of the 2003 Act.