

## THE HIGH COURT

[2011 No. 36 EXT]

## IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 AS AMENDED

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

PATRYK MATYSIK

RESPONDENT

**JUDGMENT of Ms. Justice Donnelly delivered the 17th day of June, 2015**

1. The surrender of the respondent is sought by Poland pursuant to a European Arrest Warrant ("EAW") dated the 9th June, 2010. There are two points at issue in this case. There is a claim that the respondent should not be surrendered because to do so would breach Section 45 of the European Arrest Warrant Act, 2003 as amended ("the Act of 2003"). There is a separate claim that to return him to Poland would breach his fundamental rights under the European Convention on Human Rights ("ECHR") by reason of the delay in the execution of the EAW.

**The background to the EAW**

2. The warrant states that the respondent is being sought for the purpose of executing a custodial sentence. The warrant sets out that the enforceable verdict is the decision of the Regional Court in Glogów of the 7th August, 2006 on the institution of a wanted notice. However, the warrant also refers to a final judgment being the judgment of the Regional Court in Glogów of the 24th September, 2004 (date of becoming final: 20th October, 2004). At part (d) of the EAW, there is a statement that the verdict of the 24th September, 2004 sentenced him to a penalty of one year deprivation of freedom with a conditional stay of execution in a probation period of three years. It says that he was under a probation officer's supervision and he was obliged to repair damages caused by his offence. It records that he did not fulfil the said obligations within one year and he avoided the said supervision as well by leaving his place of residence and not informing the probation officer of his new living place. Therefore, by decision of the 3rd April, 2006, the Regional Court in Glogów ordered the execution of his stayed penalty of one year.

3. The original EAW had issued in accordance with the form in the annex set out in the 2002 Framework Decision (2002/584/JHA) on the EAW. In light of the amendments made to the form of the EAW under the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act, 2012 which implemented the 2009 Framework Decision (2009/299/JHA) on mutual recognition of trial *in absentia*, a request was made to the Polish judicial authority for a completed new section (d) of the warrant. In the new section (d), the Polish judicial authority indicated that the respondent appeared in person at the trial.

4. The EAW was endorsed for execution in this jurisdiction on the 26th January, 2011. He was arrested on that warrant at an earlier stage, was released on bail and failed to turn up at the hearing of his s. 16 surrender application. The subsequent arrest took place on the 3rd October, 2014 and he was remanded in custody until the date of the hearing of this s. 16 surrender application on the 8th May, 2015.

**A Member State that has given effect to the 2002 Framework Decision**

5. The surrender provisions of the Act of 2003 apply to those Member States of the European Union that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Framework Decision of the 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States ("the 2002 Framework Decision"). By the European Arrest Warrant Act 2003 (Designated Member States) (No. 3) Order, 2004 (S.I. 206 of 2004), the Minister for Foreign Affairs has designated Poland (more correctly the Republic of Poland) as a Member State for the purposes of the Act of 2003.

**Section 16(1) of the Act of 2003**

6. Under the provisions of s. 16(1) of the Act of 2003 as amended, the High Court may make an order directing that the person be surrendered to the issuing state provided that:

- a) the High Court is satisfied that the person before it is the person in respect of whom the EAW was issued,
- b) the EAW, or a true copy thereof, has been endorsed in accordance with s. 13 for execution,
- c) the EAW states, where appropriate, the matters required by section 45,
- d) The High Court is not required, under sections 21A, 22, 23 or 24 of the Act of 2003 to refuse surrender,
- e) The surrender of the person is not prohibited by Part 3 of the Act of 2003 as amended.

**Identity**

7. I am quite satisfied on the basis of the affidavit of Sean Fallon, a member of An Garda Síochána, the affidavit of the respondent, and the details set out in the EAW that Patryk Matysik, who appears before me, is the person in respect of whom the EAW has issued.

**Endorsement**

8. I am satisfied, having examined the EAW, that the EAW has been endorsed for execution in accordance with s. 13 of the Act of 2003.

**Sections 21A, 22, 23 and 24**

9. I am quite satisfied having read the warrant, the additional information and all other documentation placed before me, that surrender is not prohibited by any of the above sections of the Act of 2003.

### **Part 3 of the Act of 2003 as amended**

10. Part 3 of the Act comprises sections 37 to 46 inclusive. The respondent raised issues under s. 37 and s. 45 in his points of objection. He also raised issues concerning the form of the warrant and general compliance with the provisions of the Act of 2003. In carrying out the role of this Court as executing judicial authority in ensuring that the requirements of the Act of 2003 are fulfilled, I have scrutinised the EAW, additional information, points of objection and verifying affidavits and exhibits. Subject to further consideration of sections 37, 38 and 45, I am quite satisfied on the basis of such scrutiny that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

### **The Provision of Section 38**

11. In this case, the respondent was sentenced for two offences as set out on the warrant. The issuing judicial authority has ticked the box "swindling" in relation to those offences. Those offences are punishable by imprisonment for a maximum penalty of not less than three years. There is nothing on the face of the warrant to suggest that the designation of the offences as swindling is manifestly wrong.

12. In accordance with the provisions of Section 38 (1)(b), his surrender is not prohibited.

### **Section 37 - Delay and Fundamental Rights**

13. The respondent has sworn an affidavit in which he states that he was never notified in respect of the hearing date of the 7th August, 2006 and the 3rd April, 2006. He was never notified of the reactivation of the suspended sentence nor was he brought before the court in relation to a reactivation of his suspended sentence. He said that he never evaded service of documents and he said that at no time did he flee from the Polish judicial authorities.

14. Apart from a complaint about the delay, nothing has been put before the Court in relation to any personal circumstances or family circumstances of the respondent that might mean that it is a disproportionate interference with his Article 8 rights under the European Convention on Human Rights ("ECHR") to surrender him for the purpose of serving this sentence. It was submitted that there was a delay on the part of the Polish judicial authority in seeking his surrender and certain time limits were pointed to. The case of *Minister for Justice and Equality v. Ciecko* (unreported, 18th December, 2013, High Court, Edwards J.) was relied upon to establish that delay was a matter that had to be put in the balance when considering whether there was a pressing public interest in the surrender of a person to another jurisdiction.

15. The only personal right that was referred to on behalf of the respondent was his right to liberty. Without having to decide definitively whether a liberty right comes within the meaning of right to respect for private life within the meaning of Article 8 of the ECHR, I have treated it as such for the purposes of this case. It is accepted that deprivation of liberty is a usual consequence of surrender. The issue in this case is whether the deprivation of liberty would be disproportionate to the necessity for the interference with the right to respect for the right to liberty.

16. The matter of delay (and there has been some delay in this case) is a matter that I have to consider in the context of the pressing social need for his surrender. The Polish authorities searched for him in Poland and could not find him. They received information that he was staying in Ireland. An application was made in Poland for the issue of an EAW in June of 2010. The warrant was received in this jurisdiction in January 2011 and endorsed later that month. He was arrested in October 2014. It is clear that Poland were seeking him during the intervening time. He is wanted for 2 separate offences of swindling for which he received a total sentence of 1 year. The two offences and the combined sentence are not insignificant. In all these circumstances, the pressing social need for the surrender of this respondent has been established. There is nothing on the facts to suggest that there is any disproportionate interference with his private life (including his right to liberty) in this case.

17. I have also considered whether the circumstances in which his sentence was reactivated as set out above, raise a fair trial right in respect of his proposed surrender. It is an egregious breach in the system of justice as applicable to the respondent that is required for surrender to be refused on Article 6 grounds. It was for him to establish by cogent evidence that there are substantial grounds for believing that there is a real risk of an egregious breach of his fair trial rights on his surrender. In the circumstances as set out above, I am satisfied that the respondent has not established that there are substantial grounds for believing that he is at real risk of being subjected to an egregious breach of his fair trial rights were he to be surrendered.

18. I therefore reject his objection to surrender under s. 37 of the Act of 2003.

### **Section 45**

19. Under this heading, counsel for the respondent adopted the points that had been submitted in *Minister for Justice, Equality & Law Reform v. A.P.L.* (17th June, 2015) in which I have delivered judgment also today. Counsel adopted the submissions which had been made in *A.P.L.* and also submitted further points of his own. I considered those points in my judgment in *A.P.L.*. In light of the decision in *A.P.L.* and for the reasons set out therein, I hold that surrender is not prohibited in this case by section 45.

### **Conclusion**

20. In all the circumstances and for the reasons set out above, I am satisfied that in accordance with the provisions of s. 16 (1) of the Act of 2003, I may make an order directing his surrender to such other person as is duly authorised by the Republic of Poland to receive him.