

## THE HIGH COURT

2008 218 EXT

Between:

The Minister for Justice, Equality and Law Reform

Applicant

And

Jaroslaw Stanzak

Respondent

**Judgment of Mr Justice Michael Peart delivered on the 26th day of February 2010:**

The surrender of the respondent is sought on foot of a European arrest warrant dated 23rd of July 2008, which was endorsed for execution here on the 3rd December 2008. The respondent was duly arrested on foot of this warrant on 9th June 2009 and was, as required by s. 13 of the European Arrest Warrant Act 2003, as amended, brought before the court from where he has been remanded from time to time pending the hearing of this application for his surrender.

No issue is raised as to the identity of the respondent, and I am satisfied in any event from the affidavit of D/Sgt Molloy, who arrested him on 9th June 2009, that the person before the court is the person named in the warrant.

The respondents surrender is sought so that he can serve the balance of a single sentence of two years and six months imprisonment which was imposed upon him on 23rd April, 2001, by a court in Poland. The balance of the sentence remaining is a period of two years and twenty four days, according to the details contained in the warrant.

That single sentence was imposed on that date in respect of 10 separate offences, each of which are set forth in the warrant.

Offences numbered two, four, seven and nine are offences which have been marked by the issuing judicial authority as being offences within the list of categories of offence set forth in Article 2.2 of the Framework Decision and accordingly are ones in respect of which double criminality or correspondence is not required to be verified. They have been marked as offences of racketeering and extortion. For the sake of completion I should just say that these offences were marked as such in the Polish version of the European arrest warrant, but, through a mistake, that marking was not replicated in the English translation of the warrant. However additional information has made it clear that these offences are intended to be marked for the purpose of Article 2. 2 of the Framework Decision.

Offences numbered one, three, five, six and eight in the warrant are offences in respect of which double criminality/correspondence must be established. They are all similar offences and I am satisfied that they correspond to offences contrary to s. 112 of the Road Traffic Act, 1961, as amended, namely the unlawful taking of a motor vehicle. Some of these offences are uncompleted and would correspond to an attempt to commit such an offence. No issue is raised on behalf of the respondent in relation to the corresponding offence which has been identified in respect of these offences.

Offence number 10 in the warrant is one in respect of which correspondence must be established, and it is in relation to a corresponding of offence for this particular offence that an issue has arisen. I will come to that issue shortly, but it is a fact that yes the court is not satisfied that offence number 10 has a corresponding of offence in this jurisdiction, then, because a single composite sentence has been imposed in respect of all 10 offences by the court in Poland, and because it is not possible to identify any period of that sentence which is applicable only to offence number 10, then this court is not in a position to order surrender of the respondent, according to the principles in this regard which emanate from the decision of the Supreme Court in *Minister for Justice Equality and Law Reform v. Ferenca*, unreported, Supreme Court,.....

Minimum gravity is satisfied by the length of sentence which has been imposed in respect of these offences.

There is no reason to refuse to order his surrender under the provisions of sections 21A, 22, 23 or 24 of the Act, and, subject to reaching a conclusion in relation to the issue raised in relation to the offence number 10, I am satisfied that there is no reason why the surrender of the respondent is prohibited by any provision of Part III of the Act or the Framework Decision.

**Offence number 10 - correspondence:**

This offence is stated in the warrant to have taken place "*during the period from November 8 until November 18, 2000*" and the injured party is named as Alojzy Zawislak.

It is relevant to refer to the fact that in the description of offences 8 and 9 this person is named also as the injured party. The date for offences 8 and 9 suggest that they are linked to the events related to offence number 10, since offence number 8 occurred on "November 8, 2000", and offence number 9 is described as occurring "during the period from November 8 until November 17, 2000".

These three offences are set out as follows:

*"VII. On November 8, 2000, in Olsztyn at Zolnierska Street, using a breaker key, he broke into a Volkswagen Passat car registration number ONZ 4115 and next he took that vehicle representing the value of PLN 12, 000 for the purpose of appropriation to the detriment of Alojzy Zawislak*

*IX. During the period from November 8, until November 17, 2000 in Olsztyn, for the purpose of obtaining material benefit he demanded from Alojzy Zawislak the amount of PLN 5000 in exchange for return of the stolen car Volkswagen Passat, registration number ONZ 4115.*

X. During the period from November 8 until November 18, 2000 in Olsztyn, at the caller [should read 'cellar' by reference to the Polish version of the warrant] of the flat at Turkowskiego Street he was hiding a document on the form of the identity card number AB 7462515 issued in the name of Alojzy Zawislak, that he had no right to dispose."

Reading these three offences together it is reasonable to summarise them by saying that on the 8th November 2000 the respondent broke into Volkswagen Passat car registration number ONZ 4115 belonging to Alojzy Zawislak, and stole it, and that between that date and the 17th November 2000 he demanded from Alojzy Zawislak the sum of PLN 5000 for the return of that car, and that during the same period he concealed or hid in the cellar of a flat at Turkowskiego Street an identity card in the name of Alojzy Zawislak, which did not belong to him ("had no right to dispose").

I believe that it is reasonable for the purpose of considering correspondence to have regard to the facts as gleaned from these three offences, rather than by looking only at the facts available from offence 10 itself. In other words, I can view the facts for offence 10 as meaning that the identity card belonging to the owner of the stolen car had been removed from the car by the respondent after he had stolen the car, and that he concealed that document in the cellar of the flat referred to.

I should of course refer to the fact that in additional information provided by the issuing judicial authority, the following elaboration is given in relation to offence 10:

*"7. None of these victims specified in the European Arrest Warrant expressed consent for the taking by [the respondent] of their property in the form of a car or hiding the identity documents.*

*8. As concerns the offence marked as number X in section E point 2 it should be pointed out that the feature of "hiding" the identity document assigned to the convict means creating such a situation that the document becomes unavailable to the persons who have the right and want to use it.*

*The knowledge or awareness that the document was earlier stolen or, forged is not one of the features of the offence according to article 276 of the Polish criminal code.*

*Indifferent of that (sic) it should be pointed out that the files of the case indicate that the document hidden by [the respondent] was not forged and the convict did not presume that it was a forged document.*

*The convict took it from one of the cars stolen by him, however - as the court decided - he did not do it with the intention of appropriating it, he only aimed at making finding the indicated document by anyone impossible, as a consequence, on the basis of the Polish the law of the offence of theft of a document could not be assigned to him."*

Emily Farrell BL for the applicant has submitted that in respect of offence number 10, the corresponding offence in this State, as defined by s. 5 of the European Arrest Warrant Act, 2003, as amended is to be found in s. 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 i.e. possession of stolen property. In so far as the additional information excludes the possibility that the respondent was convicted of stealing the identity, Ms. Farrell points to the provisions of s. 18(2) of that Act which provides that for the purpose of that offence "stolen property" includes *"property which has been unlawfully obtained otherwise than by stealing, and cognate words shall be construed accordingly"*. Ms. Farrell submits that if one looks at all the available facts contained in the warrant and the additional information, it is sufficiently clear that although under Polish law the circumstances in which the respondent became possessed of the identity card and concealed it do not amount to theft and appropriation of same, nevertheless this Court should be satisfied that the respondent had obtained it "unlawfully ... otherwise than by stealing". Remy Farrell BL for the respondent on the other hand submits that the additional information which has been provided serves only to create further obstacles to correspondence rather than assist in that regard. He points to the information provided and which makes it clear that *"knowledge or awareness that the document was earlier stolen or forged is not one of the features of the offence"*. That offence under the Polish Code is contrary to Article 276 thereof which according to the additional information provided states:

*"who destroys, damages, makes useless, hides or removes a document that he has no exclusive right to dispose of, shall be liable etc .....".* So it is definitely an offence of "hiding" the identity card from the owner, and not of stealing it.

But in my view, if one takes the context for this offence by reference to the facts contained in the description of offences 8, 9 and 10, it is clear for correspondence purposes that the respondent came into possession of the identity card unlawfully i.e. by removing it from the Volkswagen Passat which he broke into and stole, and which belonged to the same person as owned the identity card. In my view, that is sufficient for correspondence purposes to conclude that he obtained it unlawfully and otherwise than by stealing it. The fact that the offence under s. 18 of the Act is not an offence which includes the "hiding" of the document does not matter, since I can be satisfied that on the facts of the case the respondent would be guilty of "an offence" in this State, according to the provisions of s. 5 of the Act. It does not have to be the same offence, but one which arises from the facts known from the contents of the warrant.

It is helpful to refer to a passage from the judgment of Geoghegan J. in *Myles v. Sreenan* [1994] 4 I.R. 294 where at p. 299 he states the following, with which I respectfully agree:

*"[for the purposes of correspondence] I simply have to read the particulars in the warrant and form a view as to whether they constitute an offence under Irish law. Having applied that exercise, I am absolutely satisfied that there is correspondence in this case. It is quite clear from the dicta of Henchy J. [Hanlon v. Fleming] [1981] I.R. 489 at p. 495] and a mere imperfection in draftsmanship would not be sufficient to defeat the warrant. One must read the warrant as a whole and if on any reasonable interpretation of the particulars as given they are intended to convey a set of facts which would be an offence in Ireland there is sufficient correspondence. I do not find it necessary, therefore, to consider whether, as a matter of perfect draftsmanship, a word such as "dishonestly" ought to have been inserted in para. 2 because I am satisfied that upon reading the whole charge under the heading "alleged offence" it is perfectly obvious that dishonesty is what is alleged....."*

I am satisfied that there is enough of a factual nature contained in the warrant and the additional information to conclude that on those facts the respondent would commit an offence under s. 18 of the Act, as submitted by Ms. Farrell.

Since all the requirements of s. 16 of the Act are fulfilled, I am required to make the order sought for the surrender of the respondent, and I will so order.

