

THE HIGH COURT

Record Number: 2008 No. 141 Ext.

Between:

Minister for Justice, Equality and Law Reform

Applicant

And

Adam Walas

Respondent

Judgment of Mr Justice Michael Peart delivered on the 19th day of March 2009:

The surrender of the respondent is sought by a judicial authority in Poland on foot of a European arrest warrant which issued there on the 11th June 2007. That warrant was endorsed by the High Court for execution here by order dated 31st July 2008, and the respondent was arrested on foot of same on the 12th January 2009, and, as required, was brought before the High Court immediately thereafter.

His surrender is sought so that he can be prosecuted in Poland for an alleged offence the details of which are set forth in the warrant, and which is described therein as an offence "against economic relations" contrary to Article 306 of the Polish Penal Code. An issue as to correspondence has been raised and I will in due course set forth what is alleged against the respondent in that regard.

The Polish offence satisfies the minimum gravity requirement as it carries a maximum penalty in Poland of three years imprisonment.

I am satisfied that the respondent is the person in respect of whom this European arrest warrant has been issued. No issue to the contrary has been raised.

I am satisfied also that there is no reason to refuse to order surrender under ss. 21A, 22, 23 or 24 of the European Arrest Warrant Act, 2003, as amended ("the Act"), and, subject to addressing the issues raised in Points of Objection filed, that his surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

Points of Objections:

1. The respondent is not within the classes of persons referred to in s. 10 of the Act.

This issue has not been substantively argued at the hearing before me. There is no factual basis put forward for this point of objection. The respondent has filed an affidavit in which he states that he left Poland in April 2005 which is after the date of the alleged offence. He states that about one year prior to his departure from Poland he was stopped at a checkpoint in Poland and queried about the car he was driving, but that he was unaware of any irregularities regarding the chassis number of the car. He states also that after he had left Poland a policeman called to his parents' house, and that his parents gave his contact details in Ireland, but that no contact was made with him.

Section 10 (a) and (b) of the Act clearly cover the respondent as he is a person

"(a) against whom that state intends to bring proceedings for an offence to which the European arrest warrant relates, or

(b) who is the subject of proceedings in that state for an offence to which the European arrest warrant relates...."

2. Delay:

There is no proper basis put forward for this ground of objection. The offence is alleged to have been committed between 20th July 2002 and 27th August 2004. The respondent has stated in his affidavit that he left Poland in April 2005, and has lived here since that time. The only basis put forward is that his contact details were provided to the Polish police in 2006, and that no contact was made with him thereafter prior to his arrest on foot of this warrant. It is not suggested in any way that he is prejudiced by the delay such as it has been. This ground must fail.

3. Correspondence:

The offence for which the respondent's surrender is sought is an offence in respect of which correspondence to an Irish offence must be established. The facts of the alleged offence as set forth in the warrant are described as follows:

"In the period from 20th July 2002 to 27th August 2004, at an unidentified place, acting with an intent taken in advance, he removed the body identification number of a Volkswagen Golf car by cutting it out from the body of the car, and putting in a piece of metal sheet instead with body identification number 1793159297 of a Volkswagen Golf car with Reg. No KO 3906 which he bought on 20th July 2002, i.e. of an offence under Art. 306 of the Penal

Code”.

Further information from the Polish judicial authority has stated that Art. 306 of the Polish Penal Code provides:

"Whoever removes, counterfeits or alters identification signs, date of manufacture or the expiry date of a product or device, is liable to a penalty of imprisonment of up to 3 years".

Other additional information provided by the judicial authority in Poland has stated that the reference to "body identification number" contained in the description of the offence in the warrant means "chassis number" and goes on to state that the two phrases are used interchangeably in Poland.

Emily Farrell BL for the applicant herein has suggested that if the respondent did in this State what he is alleged to have done for the purpose of the offence for which his surrender is sought, he would be guilty of an offence under s. 139 (1) (f) of the Finance Act, 1992 which provides:

"139. – (1) It shall be an offence under this subsection for a person in respect of a vehicle in the State –

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) to contravene or fail to comply, whether by act or omission, with any provision of this Chapter or of regulations under section 141."

Section 141 provides that regulations may be made, inter alia, in order to require that "specified particulars shall be marked on a vehicle and shall be accessible and legible".

Ms. Farrell has referred to S.I. No. 318 of 1992 – Vehicle Registration and Taxation Regulations, 1992 – and in particular to Article 12 thereof.

Article 12 provides:

"12. The frame number and engine number in the case of a motor-cycle, and the chassis number in the case of all other vehicles, shall be exhibited permanently in a legible form and in an accessible position on a vehicle."

Ms. Farrell submits that the facts alleged in the warrant against the respondent are that he removed the chassis number from the car he was driving and replaced it with the chassis number of another vehicle, and that accordingly if he did that in this State he would offend against the requirement in Article 12 above by not exhibiting "the" chassis number of the vehicle in the manner provided. She submits that the requirement to exhibit "the" chassis number of the vehicle means that it must be the correct chassis number, and not just any chassis number belonging to another vehicle.

Kieran Kelly BL for the respondent submits that Article 21 of these regulations is also relevant when looking at correspondence. That Article provides:

"21. Where, as respects any class of persons, the Commissioners so allow and subject to any conditions which they may think fit to impose, compliance, in whole or in part, with any of these Regulations shall not be required".

He submits that there is nothing in the warrant to indicate that the respondent would not be a person belonging to a class of persons referred to in Article 21, and that it cannot therefore be presumed that he would commit an offence under s. 139 of the Finance Act, 1992 if he did here what he is alleged to have done in the warrant.

In my view correspondence is established with the offence put forward for correspondence in this State, and that the exception provided for in Article 21 is not relevant to that issue. I am satisfied that if the respondent did in this State what he is alleged to have done in the warrant he would commit the offence referred to. The fact that there may be a defence open to him in this State if he was to establish that he is a person not required to comply with that requirement in Article 12, he could of course mount that defence. But that does not mean that there is no corresponding offence in this State in respect of the offence alleged against him in the warrant.

4 . Section 11 – lack of sufficient information in the warrant:

Finally, the respondent submits that the Court cannot from the particulars contained in the warrant be satisfied that there is sufficient information contained in the warrant as to where the alleged offence took place. He refers to the fact that in the warrant the issuing judicial authority has specifically stated that the offence took place in "an unidentified place". It is not clear accordingly, in Mr Kelly's submission, that this offence is alleged to have been committed in Poland, rather than perhaps outside that territory. In such circumstances it is submitted that surrender is prohibited under Part III of the Act since s. 44 thereof provides:

"44.—A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed

in a place other than the State, constitute an offence under the law of the State.”

Clearly if the offence was not committed in Poland, the offence created by s. 139(1) of the Finance Act, 1992 by reference to Article 12 of the Regulations would not be an offence for which surrender could be ordered. But it is not stated in the warrant that this offence was committed outside Poland or that it is alleged that this is the position. Additional information provided by the issuing judicial authority in a letter dated 27th May 2008 states in this regard there is no information available which indicate that the offence was committed outside Poland. That is not being alleged. In my view this Court is entitled to take the view, in the absence of anything to the contrary being stated in the warrant, that this offence is alleged to have occurred in Poland. It is not a case that comes within s. 44 of the Act, even though the warrant does not state specifically that the offence occurred in Poland. The respondent makes no averment that the offence occurred in another country. In fact he states that he recalls being questioned about this car when stopped at a checkpoint in Poland.

I am satisfied that the information contained in the warrant is sufficient for the purpose of s. 11 of the Act and that his surrender is not prohibited by the provisions of s. 44 of the Act.

Accordingly I will make an order for his surrender to Poland on foot of this warrant and for his committal to prison pending the implementation of that order for surrender.