THE HIGH COURT

[RECORD NO. 2016 46 EXT]

BETWEEN

MINISTER FOR JUSTICE AND EQUAILTY

APPLICANT

AND
PIOTR EDWARD RYDZEWSKI

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 20th day of December, 2018

1. This is an application for the surrender of the respondent to the Republic of Poland ("Poland") pursuant to a European Arrest Warrant ("EAW") dated 15th February, 2011 to serve a two year sentence of imprisonment imposed upon him on the 7th July 1997. This sentence was initially suspended a hearing on the 21st December, 2000 but was reactivated on the 15th November, 2001. The sentence was imposed in respect of an assault type offence.

2. At the hearing, counsel for the respondent raised three core arguments; an issue with the description of offences which failed to expressly identify the defendant, a statute of limitations point and a personal rights claim under Article 8 European Convention on Human Right arising primarily from the delay issue from first receiving sentence to the execution of the warrant.

3. Before dealing with those matters, I will deal with the uncontested issues:

A member State that has given effect to the Framework Decision

4. I am satisfied that the Minister for Foreign Affairs has designated the Republic of Poland as a Member State for the purposes of the European Arrest Warrant Act of 2003, as amended ("The Act of 2003").

Section 16(1) of the Act

5. 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 has been endorsed in accordance with s. 13 for execution,

c) the EAW states, where appropriate, the matters required by s. 45,

d) The High Court is not required, under ss. 21A, 22, 23 or 24 of the Act of 2003 as amended, to refuse surrender,

e) The surrender is not prohibited by Part 3 of the Act of 2003.

Identity

6. I am satisfied on the basis of the evidence of Garda Malachy Dunne, member of An Garda Síochána, and the details set out in the EAW, that the respondent, Piotr Edward Rydzewski, who appears before me, is the person in respect of whom the EAW has issued.

Endorsement

7. I am satisfied that the EAW has been endorsed in accordance with s. 13 for execution in this jurisdiction.

Sections 21A, 22, 23 and 24 of the Act of 2003

8. Having scrutinised the documentation before me I am satisfied that I am not required to refuse the respondent's surrender under the above provisions of the Act of 2003.

Part 3 of the Act of 2003

9. Subject to further consideration of s. 37, s. 38 and s. 45 of the Act of 2003 and having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

Contested matters

Section 38 of the Act of 2003

10. Section 38 of the Act of 2003 provides for two situations in which surrender may be ordered for specific offences. If the offence is an offence set out in para. 2 Article 2 of the 2002 Framework Decision then, provided the requirements of minimum gravity in terms of available sentencing powers have been met, there is no requirement to find correspondence for the offence for which the person is requested with an offence in this jurisdiction. If the offence does not come within that list, correspondence and a different requirement of minimum gravity must be shown. Section 5 of the Act of 2003 states that for the purposes of the Act, an offence specified in an EAW corresponds to an offence under the law of the State "where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the EAW is issued, constitute an offence under the law of the State".

11. The issuing judicial authority has not opted for the box ticked offence and has given a full description of the offences in E2. Correspondence must be demonstrated. The factual description of the offence is as follows:

> *"On 2nd April 1997, in Kradnik, lubelskie voivodship, acting in complicity, in public, with no reason, showing crass ignorance of the rules of public order, they took part in a battery of Mariusz Wojcicszyn, by beating him with their hands and kicking his head and all over his body, and putting him at direct danger of serious health disorder. As the result of the battery he suffered from the following body injuries: breaking a Ist right tooth of the upper jaw, breaking a Ist left tooth of the upper jaw, breaking a IInd left upper, tooth, a left and right eye bruises, contused wound of the lower and upper lip, and numerous bruises of both shoulder-blade area and of lumbar area, and consequently violation of functioning of body organs for the period exceeding 7 days."*

12. The above description makes clear that the offence being described is one of assault. This is an offence contrary to s. 2 of the Non-Fatal Offences Against the Person, Act, 1997 and s. 3 of the said Act (assault causing harm). Given the information provided it is also arguably the case that this is an offence of recklessly or intentionally causing serious harm contrary to s. 4 of the said Act, but I do not have to determine that issue.

13. The central issue raised by the respondent that the description given was not specific enough to comply with the requirements of s. 11 (1A)(f) of the Act of 2003 as amended. Counsel submitted that the particulars did not name the respondent or did not name others he was in complicity with.

14. The fact that the details in Part E of the EAW do not expressly name the respondent is of no consequence. It is clear that the EAW applies to him. It is clear that he is being sought for the sentence that was imposed upon him. It is also clear that the contents of Part E relate to him and his participation. It is not necessary to name those with whom he acted in complicity. That would be a matter for trial or indeed it may not even be possible to identify those who took part. What is clear from the details is that he was not acting alone in this offence but was acting in complicity with others. That is an indication of the degree of his involvement. It is also clear that the degree of involvement is set out by the statement that "they" were involved in the battery. This was a joint assault in which he was a participant.

15. The rationale behind the requirement to require particulars of the offending behaviour has been identified in a number of cases by the Supreme Court and the High Court. It is so that the High Court, as executing judicial authority has enough information to carry out its functions. It is also required because the requested person is entitled to know why he has been arrested and also to be able to challenge his surrender. The information available is sufficient to satisfy all those criteria.

16. I am satisfied that there is correspondence. The sentence imposed is in excess of that required under the minimum gravity provisions. Therefore, his surrender is not prohibited by s. 38 of the Act of 2003.

Section 45
17. The EAW contains an old form part D. The issuing judicial authority stated that part D was "not applicable". That is usually an indication that he was present at his trial. Quite correctly however, the central authority sought information in accordance with the new type of part D required pursuant to the amendment of the 2002 Framework Decision on the execution of European arrest warrants but the 2009 Framework Decision. The additional information provided by the issuing judicial authority on foot of a request by the central authority, indicated "Yes, the person appeared in person at the trial resulting in the decision."

18. The respondent raised a point that he was not present when the sentence was reactivated and he also submitted that there was some confusion in the EAW as to why the sentence was reactivated. Counsel for the respondent argued that this confusion was based on the fact that two conflicting reasons were given for the reactivation, namely that the respondent failed to pay a fine; the commission of a subsequent offence. The respondent swore an affidavit in which he exhibited copies of two judgments from Poland which he says demonstrates this contradiction. He engaged a lawyer in Poland to seek to overturn this EAW but that application has been unsuccessful.

19. He exhibited a decision of a Local Court in Krasnik which states that the penalty was to be executed because he failed to pay the fine. This decision was given apparently in the refusal of an application to discontinue the executive proceedings against the respondent regarding the penalty of 2 years imprisonment. It refers to the ruling of 21 November 2001 that it was to be executed because of the failure to pay the fine. The District Court in Lublin by its decision dated 27 March 2018 rejected the application by the respondent to annul the EAW. In doing so it stated that the local court ruled on 21 November 2001 that the penalty be executed because of another conviction ruled on 21 December 2000.

20. The central authority wrote seeking clarification in respect of this issue. The issuing judicial authority replied on 7th September 2018 that the initial sentence had been conditionally stayed for the period of probation for 4 years. The performance of the penalty was ordered on the 21st November 2001. The issuing judicial authority then state that the decision to execute the penalty "occurred by virtue of article 75 paragraph 1 the Penal Code. The sentenced during the period of probation violated the legal order in flagrant way, by committing a consecutive prohibited act under article 158 paragraph 1 the penal Code. For this act he was sentenced with legal force by the judgment of Regional Court of Krasnik with the date 21st December 2000 in the case II K 517/00"

21. That statement of the issuing judicial authority is perfectly clear and sets out the true position. It has not been challenged by the respondent. As stated above, he has lawyers in Poland who are actively seeking to overturn this EAW and they have not challenged this statement. I am quite satisfied that there is no lack of clarity in respect of the reason why his sentence was reactivated.

22. On the basis of the decisions in *Minister for Justice & Equality -v- Lipinski* [2018] IESC 8 and *Openbaar Ministerie v. Ardic* (Case C-571/17), I am satisfied that the respondent's attendance was not required in circumstances where this was the enforcement of the earlier sentence which had been suspended on certain conditions which he broke by committing a later offence. Given his presence at the earlier trial which resulted in the sentence in respect of which this EAW was issued, I am satisfied that the requirements of s. 45 of the Act of 2003 have been satisfied.

Statute of Limitations
23. Counsel for the respondent in the points of objection and at the oral hearing raised an issue with the length of time between the issuing of the EAW and the arrest which mean that the respondent's extradition is prohibited under a statute of limitations. It was asserted that because 15 years have passed since the date of sentence it could not be enforced.

24. This point of objection is difficult to understand as the EAW clearly said that the limitation period does not expire until 15th July 2022. It is unsupported by any Polish expert evidence as to the law there. Moreover, the respondent's lawyer in Poland appears to have made an application before the courts in Poland in respect of this contention but the submission was rejected. In light of both the principle of mutual trust and the factual position obtaining in this case, it is entirely without substance to argue this point of objection. I therefore reject this point of objection.

Section 37
25. The respondent raised two issues regarding a breach of his s. 37 rights; firstly concerns relating to the independence of the judicial in Poland created a risk of a serious breach of the rule of law; secondly that the delay from the issuing of the warrant to the execution of the warrant is such that it represents "[a]n impermissible interference with the Respondent's rights to family and private life under Article 8 of the European Convention on Human Rights."

Rule of Law

26. In relation to the first issue, the respondent's extradition is requested on the basis of a conviction warrant. The issue of the independence of the judiciary was and remains an issue in *The Minister for Justice -v- Celmer (No. 6) & anor* [2018] IEHC 687. However, that issue concerns the issue of a fair trial. No factual basis giving rise to a concern about any aspect of a fair trial on his return to Poland should he be surrendered to serve the sentence on which this EAW has issued has been put forward. Furthermore, there was no concerns around the judicial independence at the time the respondent was convicted. Therefore, I am satisfied that on the basis of mutual trust and confidence that if the respondent were to be extradited there is no risk of injustice or a violation of the respondent's fundamental rights.

Article 8
27. The respondent's claim that surrender would breach his right to respect for his family and private life was based upon his particular personal and family circumstances. He said that he has been living and working in Ireland since 2005. He has a son who is 8 years of age. He shares caring responsibility with his son's mother who is his former partner. He submitted that these factors combined with the length of time since the commission of the offence and together with his age at the time of the offence meant that it would be disproportionate to surrender him to Poland.

28. For some considerable time now there has been an acceptance by the courts in this jurisdiction that surrender ought to be prohibited where surrender would amount to an unjustified or disproportionate interference with respect for the personal and family rights of a requested person. The basis of the approach to be taken by the courts has been carefully analysed by the High Court in the cases of *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 and *Minister for Justice and Equality v. R. P.G.* [2013] IEHC 54 in which Edwards J. outlined twenty-two principles on which the court should operate. It is unnecessary to set out those tests in full. What is required is to balance the public interest in surrender against the personal and family interests of the requested person. This must be carried out on a case by case basis.

29. It is important to also note that the Supreme Court has, in the case of *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17 clarified that while exceptionality is not the test, it will only be in a truly exceptional case that extradition will be refused. At the heart of all of these principles is that this is a case specific analysis. The best starting point is to determine what is the public interest in individual cases.

30. In assessing the public interest, O'Donnell J. stated in *Minister for Justice and Equality v. JAT (No. 2)*:-

> *"An important starting point, in my view, is that considerable weight is to be given to the public interest in ensuring that persons charged with offences face trial. There is a constant and weighty interest in surrender under an EAW and extradition under a bilateral or multilateral treaty. People accused of crimes should be brought to trial. That is a fundamental component of the administration of justice in a domestic setting, and the conclusion of an extradition agreement or the binding provisions of the law of the European Union means that there is a corresponding public interest in ensuring that persons accused of crimes, in other member states or in states with whom Ireland has entered into an extradition agreement, are brought to trial also. There is an important and weighty interest in ensuring that Ireland honours its treaty obligations, and if anything, a greater interest and value in ensuring performance of those obligations entailed by membership of the European Union. All agreements are based on broad reciprocity and there is, therefore, a further interest and benefit in securing the return to Ireland for trial of persons accused of crimes, or the return of sentenced offenders. There is also a corresponding public interest in avoiding one country becoming, even involuntarily, a haven for persons seeking to evade trial in other countries."*

31. Although there is a public interest in extradition in every case, the extent of the public interest may vary depending on the factors of each individual case. Factors such as the gravity of the offence or delay may affect the weight to be given to the public interest.

32. In this particular case, the crime for which the respondent was convicted involved a serious form of violence. The issuing judicial authority describes the alleged offence as being one where the respondent, acting in complicity, "took part in a battery of [another] by beating him with their hands and kicking his head and all over his body, and putting him at direct danger of serious health disorder". The fact that the crime was carried out jointly in fact makes the crime even more serious in the circumstances. The victim in the case suffered significant injuries in particular broken teeth. The respondent received a reasonably significant sentence for this conduct of two years imprisonment, although it is noted that the sentence was initially suspended.

33. Serious offences of violence bring with them a particularly high public interest. *O'Donnell J. in Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17 identified a clear distinction between the necessity for extradition in the public interest that may apply in cases involving serious violence as against other types of crime. Therefore, even where extradition may interfere very significantly with personal and family rights, the public interest in extraditing the requested person will be higher where the crime alleged is one of serious violence.

34. In this case, the actual crime was committed on or around the 2nd April, 1997 and there seems to have been a reasonably prompt prosecution in respect of this offence given that the hearing took place on the 7th July, 1997. There was a sentence of two years which was suspended for four years on the 21st November, 2000. The suspended sentence was reactivated on the 21st December, 2001. As a result, there does not appear to be any prosecutorial delay in terms of the initial prosecutions. It is also of significance that the reactivated occurred because the respondent committed a further offence. The respondent in his affidavit has stated that he recalls a court case in 2000 when a friend was accused of assault and he was accused of being a participant in that. He says that he did not believe he was convicted of anything and he believed it was the end of the matter. I find it difficult to accept that he could have been present in a Courtroom accused of an offence but did not understand that he had been convicted.

35. It is implicit within his affidavit that he was not present at the reactivation on in November 2001. He says that he moved to Slovakia in 2001. Indeed, the judgment he has provided to the court says that it was the opinion of the Polish Court that he moved abroad soon after his 2000 conviction became final in June 2001.

36. There is somewhat less by way of explanation as to what occurred between December 2001 and the issuing of the EAW in 2011. It is evident from the additional information that there was a decision to issue a European arrest warrant in 2006. After that EAW was issued, it is stated by the issuing judicial authority that the case was written down into the Schengen information system for a person of 3 years. It is said that search activities were performed but with no result. It then states that by the decision of 8th February 2011enforcement proceedings conducted towards the sentenced were stayed until his capture and placement in confinement. On the 15th February, 2011 a corrected EAW was issued to deal with that date of prescription. It is that later EAW which is sought to be enforced.

37. In this case the respondent does not appear to have been amenable to the Polish authorities at the point of reactivation of his sentence. On his own account he had left for Slovakia in 2001. His vagueness as to when leads me to believe that it is probable that he left as a result of his knowledge of the other conviction and the possibility of reactivation of his original sentence. It is also striking that he has lived abroad from Poland from that time onwards.

38. There is some indication that the Polish authorities were seeking him throughout most of this time. Their diligence may be somewhat questioned however. The internal Polish search for him seems to have taken some time about four and a half years. The reference and reliance upon the Schengen Information System is unclear. In the first place, the Polish authorities cannot solely rely upon that system if they wish to enforce an EAW in Ireland. Ireland is not part of the Schengen Information System. Furthermore, it is not understood why it was only on that system for 3 years.

39. It does seem however that in February 2016, that this present warrant was sent to Ireland when there was information that he was staying in the territory of Ireland at a particular address. That demonstrates that the Polish authorities were still seeking the respondent, even if they were less than diligent in their pursuant of him.

40. In the case of *Minister for Justice v Corry* [2016] IEHC 678, I determined that delay, even culpable delay from an issuing judicial authority, did not reduce the public interest to nothing. It must be determined on the basis of the overall facts of the individual case. In my view, the initial delay to the issue of the EAW in 2006 and then the reissuance of the EAW in 2011 (the present EAW) and subsequent delay in sending it to Ireland, does not reduce the public interest to nothing.

41. I have to measure the extent of that public interest. This is a serious crime of violence and while there has been a delay which on its face appears culpable from lack of diligence, that delay took place against a background of reactivation because of recidivism together with his absence from the territory of Poland. It is also the case that the Polish authorities continued to seek him but did not do so with all due diligence. In those circumstances, the original high public interest in his surrender that exists in relation to this crime of violence has been reduced to a moderately high public interest in his surrender.

42. The delay is also however a fact which goes to the consideration of his own position. It is important to note and take into account that he has been here for some considerable time, has roots here and has family here. At the hearing the respondent submitted that he shares responsibility for the care of his child with the child's mother. The law establishes that the public interest in extradition must be balanced against the many variables that can arise in the requested person's family and private life. While the best interests of the child must be a primary consideration, it may be outweighed by countervailing interests. *In Minister for Justice and Equality -v- R.P.G.* [2013] IEHC 54, Edwards J. clarified that, in respect of principle twenty in T.E., the role of the court was to give due regard to the best interests of the child in the balancing exercise that was to be conducted and that point twenty did not indicate a specific weight that had to be attached to the best interests of the child. In *R. P.G.* at para. 170, Edwards J. stated:

> *"It would clearly be in the best interests of these children that their father should remain in their lives, particularly at this stage in their development, and that he should not be surrendered and this is a consideration to which significant weight must be attached on the private interest side of the scales. However, that non-surrender would be in the children's best interests cannot be regarded as dispositive of the matter. The countervailing public interest considerations must [be] weighed against all private interest considerations including the best interests of the children."*

43. In the earlier case of *Minister for Justice and Equality v. Ostrowski* [2013] 4 I.R. 206, the Supreme Court at p. 244 acknowledged that some level of interference with rights under Article 8 ECHR is inherent in extradition systems and is not per se disproportionate:

> *"It is an exercise in obviousness to state that any extradition process is most likely to result in arrest, probably or at least possibly in detention, and on a successful application, in one's forced expulsion from the State. Therefore, such consequences, apart from degree, are unavoidable, being those which are inherent in the regime itself and without which the process could not be implemented."*

44. In *Ostrowski*, the appropriateness of balancing the individual's fact-specific claims against the general public interest in securing extradition is summarised cogently at p. 246:

> *"In summary, where resistance is offered by virtue of a Convention or Constitution right, the court must conduct a fact-specific enquiry into all relevant matters so that a fair balance can be struck between the rights of the public and those of the person in question. Such an exercise is not governed by any predetermined approach or by pre-set formula: it is for the trial judge to decide how to proceed. Once all of the circumstances are properly considered, the end result should accurately reflect the exercise. As part of the process, each of the competing interests must be measured. If appropriately conducted, the interests of the public, underpinned as they are by weighty considerations such as freedom and security, will virtually always merit a value of significance whereas those attaching to an individual will be more variable. The greater the impact to the person, the greater the weight."*

45. The decision of the Supreme Court in *J.A.T No. 2* provides an overview of the significance of the private family rights of individual family members in extradition cases involving minor children. Denham C.J. indicated at para. 80 of her judgment that if the surrender of a person is incompatible with a State's Convention obligations, that such a person shall not be surrendered. Although she referenced s. 37 of the Act of 2003, this also applies to an extradition under the Act of 1965.

> *"Reflecting the Framework Decision, s. 37 of the Act of 2003, provides that a person shall not be surrendered under this Act if his or her surrender would be incompatible with the State's obligations under the Convention, or the Protocols to the Convention, or would be a contravention of any provision of the Constitution, with an exception which is not relevant to this case."*

46. In every extradition request for a parent of a young child, it is undoubtedly the case that it would be better for both parent and child if no extradition would take place. It is generally in the best interest of children that they remain with the parents or with a single parent if being raised by a single parent. It can be readily accepted that in every case where a parent is separated from her or his child this will be particularly wrenching for both parties. In this particular case, I am satisfied that the public interest outweighs the personal interests of the respondent's right to family life. I am satisfied that the child will remain with his mother and therefore remains in parental care. It is furthermore not the case that the respondent could necessarily have had a legitimate expectation in the legal sense that he would not be pursued. No lawyer would have advised him of that without knowing the basis for the withdrawal of the endorsement.

47. In my view there is nothing of particular significance in his personal or family circumstances that would make it disproportionate to

surrender him. There are no particularly injurious or oppressive circumstances in this case. Overall therefore the facts of this case do not reach the position whereby it can be said that it would be disproportionate to surrender him to serve the sentence imposed upon him for this offence of personal violence. The public interest clearly outweighs his private and family interests and I conclude that there is a pressing social need to order his surrender in respect of this European arrest warrant. I therefore reject this point of objection.

Conclusion

48. Having considered but rejected all the respondent's points of objection, I am satisfied that there is no reason to prohibit the surrender of this respondent to the issuing state under this European Arrest Warrant. I therefore may make an Order for the surrender of this respondent to such person as is duly authorised by the Republic of Poland to receive him.