Neutral Citation: [2014] IEHC 50

THE HIGH COURT

Record No: 2013/24 EXT

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

Between:

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

AND

KRZYSZTOF HANISZEWSKI

Respondent

Judgment of Mr Justice Edwards delivered on the 24th day of January 2014.

Introduction:
The respondent is the subject of a European arrest warrant dated the 29th June, 2009, on foot of which the Republic of Poland seeks his surrender for the purpose of executing a single sentence of two years and six months imprisonment imposed upon him by the Circuit Court in Zielona Góra on the 10th November, 2005, which sentence was upheld by the Appeals Court of Poznań on the 18th April, 2006, some years ago in respect of the 29 offences particularised in Part E of the warrant. The warrant was endorsed for execution in this jurisdiction on the 22nd January, 2013, and it was duly executed on the 12th April, 2013. The respondent was arrested by Sergeant Gerard Newton on that date, and he was brought before the High Court later on the same day pursuant to s.13 of the European Arrest Warrant Act 2003 (hereinafter "the Act of 2003"). In the course of the s.13 hearing a notional date was fixed for the purposes of s.16 of the Act of 2003 and the respondent was remanded on bail to the date fixed. Thereafter the matter was adjourned from time to time, ultimately coming before the Court for the purposes of a surrender hearing.

The respondent does not consent to his surrender to Poland. Accordingly, this Court is now being asked by the applicant to make an order pursuant to s.16 of the Act of 2003 directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him.

The matters in controversy
Based upon points of objection filed on behalf of the respondent and actually pursued at the hearing, it can be stated in summary that there are three main controversies that require to be resolved by the Court.

First, the respondent contends that the issuance of the European arrest warrant the subject matter of these proceedings was procured as a result of the applicant interceding with the issuing judicial authority, which intercession it is said was not part of his function or role as the Irish Central Authority, and *ultra vires* his statutory powers . In the circumstances it is contended that the warrant has not been duly issued and that the Court should refuse to surrender the respondent on that account.

Secondly, it is contended that the Court cannot be satisfied that the sentence of imprisonment is immediately enforceable, and that the Court should refuse to surrender the respondent on that account.

Thirdly, in circumstances where one of the requirements of s. 10 of the European Arrest Warrant Act, 2003, as it applies in this case, is that the Court must be satisfied that the respondent fled from the issuing state, it is contended that the Court cannot be satisfied as to the respondent's flight.

Before addressing each of these controversies individually, it is necessary to address those aspects of the case that are uncontroversial, but in respect of which the Court must nevertheless be satisfied.

Uncontroversial Issues
The Court has received an affidavit of Sergeant Newton sworn on the 7th October, 2013 testifying as to his arrest of the respondent and as to the questions he asked of the respondent to establish the respondent's identity. When these are compared with the information in Part A of the warrant they can be seen to correspond. On that basis Sergeant Newton was satisfied to express the opinion in para. 10 of his affidavit that the person named on the warrant was the same person as the person he had arrested. In addition, counsel for the respondent has confirmed that no issue arises either as to the arrest or identity.

The Court has also received and has scrutinised a true copy of the European arrest warrant in this case. Further, the Court has taken the opportunity to inspect the original European arrest warrant which is on the Court's file and which bears this Court's endorsement.

I am satisfied following my consideration of these matters that:

(a) The European arrest warrant was endorsed for execution in this State in accordance with s. 13 of the Act of 2003;

(b) The warrant was duly executed;

(c) The person who has been brought before the Court is the person in respect of whom the European arrest warrant was issued;

(d) The warrant as endorsed is in the correct form;

(e) The warrant is a conviction type warrant and the respondent is wanted in Poland for the purposes of executing, and being required to serve, the entirety of a two year and six month sentence of imprisonment, imposed upon him in respect of the twenty nine offences particularised in Part E of the warrant.

(f) The underlying domestic decision on which the warrant is based is a judgment of the Circuit Court in Zielona Góra on the 10th November, 2005, upheld by the Appeals Court of Poznań on the 18th April, 2006.

(g) A description of the circumstances in which the 29 offences were committed is set out in Part E of the warrant. They involve 29 separate instances of illegally supplying heroin for reward. Each of the 29 instances is broadly similar but involving different dates, different purchasers, different quantities and different amounts of money or goods received. However, different penalties apply to different charges depending on what provisions of the relevant Polish Statute and the Polish Penal Code they have been charged under.

The warrant indicates that counts 1 and 2 are charged under article 59.3 of the Law on Drug Abuse Prevention of the 29th July, 2005, in connection with article 12 of the Penal Code and article 65 § 1 of the Penal Code in connection with article 91 § 1 of the Penal Code. A potential penalty of up to two years imprisonment applied in the case of those offences. Counts 3 to 23 inclusive are charged under article 59.1 of the Law on Drug Abuse Prevention of the 29th July, 2005, in connection with article 12 of the Penal Code and article 65 § 1 of the Penal Code in connection with article 91 § 1 of the Penal Code. A potential penalty of up to ten years imprisonment applied in the case of those offences. Finally, counts 24 to 29 inclusive were charged under article 58.1 of the Law on Drug Abuse Prevention of the 29th July, 2005, in connection with article 12 of the Penal Code in connection with article 91 § 1 of the Penal Code. A potential penalty of up to three years imprisonment applied in the case of those offences.

(h) In the case of offence nos. 1 and 2, the Court has been invited to find correspondence with the offence in Irish law of possession of a controlled drug for the purposes of sale or supply contrary to s. 15 of the Misuse of Drugs Act, 1977, and I so find.

(i) In respect of offences 3 to 23 inclusive, and also offences 24 to 29 inclusive the issuing judicial authority has invoked para.2 of art.2 of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, (2002/584/J.H.A.) O.J. L190/1 18.7.2002 (hereinafter referred to as "the Framework Decision") by the ticking of a box in Part E.I of the warrant, namely that relating to "illicit trafficking in narcotic drugs and psychotropic substances". Accordingly, subject to the Court being satisfied that the invocation of para. 2 of article 2 is valid (*i.e.* that the minimum gravity threshold is met, and that there is no basis for believing that there has been some gross or manifest error), it need not concern itself with correspondence;

(j) The minimum gravity threshold in a case in which para. 2 of article 2 of the Framework Decision is relied upon is that which now finds transposition into Irish domestic law within s. 38(1)(b) of the Act of 2003, as amended, namely that under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years. In circumstances where offences 3 to 23 inclusive carried a potential penalty of up to ten years imprisonment, and offences 24 to 29 inclusive carried a potential penalty of up to three years imprisonment, the minimum gravity threshold is met;

(k) There is no reason, upon a consideration of the underlying facts as set out above, to believe that the ticking of the box relating to "illicit trafficking in narcotic drugs and psychotropic substances" was in error;

(l) In so far as offences 1 and 2 are concerned, the threshold for the purposes of minimum gravity is that set out in s. 38(1)(a)(ii) of the Act of 2003, namely that a sentence of at least four months should have been imposed. In circumstances where a two year sentence was imposed minimum gravity is met.

(m) No issue as to trial *in absentia* arises in the circumstances of this case.

(n) There are no circumstances that would cause the Court to refuse to surrender the respondent under s.21A, s.22, s.23 or s.24 of the Act of 2003, as amended.

In addition, the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No. 3) Order 2004 (S.I. No. 206 of 2004) (hereinafter referred to as "the Designation Order of 2004"), and duly notes that by a combination of s.3(1) of the Act of 2003, and article 2 of, and the schedule to, the Designation Order of 2004, "Poland" (or more correctly the Republic of Poland) is designated for the purposes of the Act of 2003 as being a state that has under its national law given effect to the Council Framework Decision 2002/584/J.H.A. of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, O.J. L190/1 18.7.2002.

Alleged *Ultra Vires* Action by the Applicant
Before detailing the nature of the applicant's complaint under this heading it is necessary to set out the background to it.

Although the European arrest warrant presently before the Court bears a date of the 29th June, 2009, it was not received in this State until the 5th December, 2012. The applicant, in his capacity as Central Authority, scrutinised the warrant in the immediate aftermath of its receipt and concluded that in a number of respects it did not comply with the form set out in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA (hereinafter "the amended Framework Decision") as is required by s. 11 of the Act of 2003.

In the circumstances the applicant decided not to present the warrant in the form in which it had been received on the 5th December, 2012 to this Court for endorsement. Rather, on the following day, the 6th December, 2012, the applicant wrote to the issuing judicial authority and advised it that:

> " … difficulties may arise in Court hearings in relation to the completion of certain sections of the warrant. In particular section D of the warrant is incomplete. In order to proceed, you are required to submit a fresh version of the warrant to include the updated version of Section D as per the recent amendments to the Framework Decision. Please also ensure that section D is filled out in full.
>
> Your **urgent** attention to this matter would he appreciated."

Arising from the letter of the 6th December, 2012, a further warrant was received in this jurisdiction, also bearing the original date of the 29th June, 2009, accompanied by a letter from the issuing judicial authority dated the 10th December, 2012, stating:

> "Further to our previous correspondence, on behalf of the Circuit Court of Zielona Góra, Crime Division, I enclose a copy of the varied E.A.W, ref. no. II Kop 137/09 in respect of Krzysztof Haniszewski, d.o.b. February 23,1980, along with its English translation - as replacing the documents enclosed with the letter of December 5, 2012, and requesting the surrender of Krzysztof Haniszewski to Poland."

The warrant as varied now contained a completed Section D in the form required by the amended Framework Decision, and certifying that:

> "Krzysztof Haniszewski appeared in person at the trial resulting in the decision."

However, when the applicant considered the varied warrant of the 29th June, 2009, he remained unhappy with other aspects of the form in which it had been presented, and continued to anticipate that there would be problems even if the warrant in its varied form were to be presented to this Court for endorsement. Accordingly, the applicant decided for a second time not to present it to this Court for endorsement. Rather, on the following day, the 7th January, 2013, the applicant wrote yet again to the issuing judicial authority stating:

> "I am to inform you that the warrant is not in order to proceed with and that an amended warrant which addresses the following issues is required:
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> (i) Section c (1) should include the maximum sentences applicable for each of the offences
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> (ii)The offence box of illicit trafficking in narcotic drugs and psychotropic substances has been ticked at section e (I). However, the sentence imposed (2 years and 6 months) for the offences does not satisfy the minimum 3 year sentence requirement. Therefore the information provided at c (1) must satisfy this requirement in order to allow the warrant to proceed."

A response to that letter, dated the 11th January, 2013, was subsequently received by the applicant from the issuing judicial authority, and it was in the following terms:

> "Dear Sir / Madam
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> In reply to your letter of January 7, 2013, on behalf of the Circuit Court of Zielona Góra, Crime Division, I would like to advise you that in our view the E.A.W. ref. no. II Kop 137/09 issued on June 29, 2009, in respect of Krzysztof Haniszewski, and varied - at your request -on December 10, 2012, is formally correct and this court will neither vary nor supplement it.
>
> I would like to point out that the above-mentioned E.A.W. was issued in order to put Mr Haniszewski in jail to serve his 2 years and 6 months' term already imposed on him as punishment for the offences he has been convicted of - and not in order to try him for those offences, covered by the E.A.W.
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> Part C.1. of E.A.W. indicates the upper limit of custodial sentence which may be imposed for the offences.
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> Mr Haniszewski, however, has already been convicted and sentenced - as specified in part C.2. - for the offences covered by the E.A.W. Unless the judgment of November 10, 2005, by the Circuit Court of Zielona Góra, ref. no. II K 186/02 is overturned as a result of some extraordinary appeal measure, there is no possibility to impose on Mr Haniszewski a custodial sentence different from the one indicated in part C.2.
>
> Consequently, it is indicated in the E.A.W. which you question that part C. 1. is not applicable, because the proceedings ended with a judgment - now in force - sentencing Mr Haniszewski to 2 years and 6 months in prison (aggregate sentence) and at the moment no other sentence can be imposed on him for the offences covered by the E.A.W.
>
> Nevertheless, for your information, had Mr Haniszewski not been convicted yet for the offences covered by the E.A.W. ref no II Kop 137/09, the maximum prison sentences for the particular offences would be as follows:
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> - series of offences no. 1. and 2. (part E.2) - under Art. 59.3 of the Drug Abuse Prevention Act of July 29,2005, in connection with Art. 65 $ I of the Penal Code and in connection with Art. 91 § 1 of the Penal Code — 3 years;
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> - series of offences 3.-23. (part E.2) - under Art. 59.1 of the Law on Drug Abuse Prevention of July 29, 2005, in connection with Art. 65 § 1 of the Penal Code and in connection with Art. 91 § 1 of the Penal Code — 15 years;
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> - series of offences 24. - 29. (part E.2) - Art. 58.1 of the Law on Drug Abuse Prevention of July 29, 2005, in connection with Art 91 § 1 of the Penal Code - 4 years and 6 months;
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> - under Art. 85 of the Penal Code and Art. 86 § 1 of the Penal Code, the combined above-mentioned sentences - 15 years.
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> Additionally, your questioning of part E.1. of the warrant seems totally unjustified Part E.1 of E.A.W. concerns offences for which in the issuing state the minimum prison sentence is 3 years - but not offences for which a prison sentence of at least 3 years has been imposed.
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> Given the above, please, be advised that this court is not going to vary or supplement the E.A.W, - as you request in your letter of January 7, 2013.
>
> Yours faithfully.
>
> Dariusz Pawlak, Circuit Judge, President of Crime Division"

While the content of the letter of the 11th January, 2013, indicates a failure on the part of the issuing judicial authority to understand or appreciate the nature of the problem that had been perceived to exist (correctly) by the applicant, and the tone of the reply speaks for itself (and is perhaps explicable as having been provoked by the somewhat peremptory terms of the applicant's letter of the 7th January, 2013), the situation at the end of the day was that the information originally missing was in fact provided, and that enabled the applicant to present the varied warrant of the 29th June, 2009, accompanied by the additional information contained in the letter of the 11th January, 2013, before this Court, and to ask the Court to endorse the warrant in those circumstances. That occurred on the 22nd January, 2013, and this Court, reading the varied warrant of the 29th June, 2009, and the additional information of the 11th January, 2013, together as though it were one document, endorsed the warrant for execution in this jurisdiction in accordance with s. 13 of the Act of 2003.

Counsel for the respondent complains that the applicant exceeded his statutory authority in the course of his correspondence with the issuing judicial authority and specifically that he acted *ultra vires* his powers in requesting the issuing judicial authority to amend or vary an incoming warrant. It was submitted that there is no legal basis upon which a request can be made by or on behalf of the Minister to amend or vary a warrant, and that in those circumstances the request for surrender should be refused altogether.

Developing this submission further, counsel for the respondent submitted that the applicant's obligations following upon the receipt of a European arrest warrant are prescribed by s.13(1) of the Act of 2003. That requires the Central Authority

> "as soon as may be after it receives a European arrest warrant transmitted to it in accordance with s. 12, to apply, or cause an application to be made, to the High Court for the endorsement by it of the European arrest warrant, or a true copy thereof, for execution of the European arrest warrant concerned."

Counsel for the respondent submits that s. 13 is in mandatory terms and that the applicant has no discretion in the matter either with respect to whether it would place an incoming warrant before the High Court at all, or as to when it should do so. It was submitted that it was no part of the function of the Central Authority to advise the issuing state or the issuing judicial authority on proofs.

Moreover, while counsel acknowledged that the Central Authority has power under s. 20(2) of the Act of 2003 to require the issuing judicial authority, or the issuing state, as may be appropriate, to provide it with such additional documentation or information as it may specify, within such period as it may specify, where the applicant is of the opinion that the documentation or information provided to it under the Act is not sufficient to enable it or the High Court to perform functions under the Act, that power only subsists in respect of proceedings that have actually commenced. In any European arrest warrant case proceedings only commence at the point that an incoming warrant is endorsed by the High Court. Moreover, it was submitted, the power in question merely entitles the Central Authority to seek additional information, not to demand amendments to or a variation in the terms or format of an incoming warrant. In counsel's submission s. 20(2) creates no power or jurisdiction whereby the applicant may call upon an issuing state or issuing judicial authority to amend or otherwise vary an incoming European arrest warrant, as appears to have happened in the present case.

The Court is asked, in the circumstances, to invoke its inherent jurisdiction to prevent an order for surrender being made in the circumstances.

In reply, counsel for the applicant has submitted that the applicant did not exceed his authority; that in fact he behaved entirely reasonably in not putting before the Court a warrant that contained manifest defects and that was as a matter of strong probability destined to be rejected on that account, without first affording the issuing judicial authority to address the issues that had been identified. In that regard, reliance was placed on certain remarks of Murray C.J., (as he then was) giving judgment for the Supreme Court (*ex- tempore*) in the case of *Minister for Justice, Equality and Law Reform v Maksim Rodnov* (Unreported, *ex- tempore*, Supreme Court, , Murray C.J., 1st June, 2006). The *Rodnov* case had concerned a contention that a European arrest warrant was bad on its face because it omitted certain words at the commencement of the form of a European arrest warrant as contained in the Annex to the Framework Decision. The High Court had concluded that the purpose and intent of the warrant was clear notwithstanding the absence of the formal words in question and that it was not affected in its substance or effect by the omission of those words, and the Supreme Court agreed. In the course of giving judgment, Murray C.J added:

> "In those circumstances it seems to me clear that the appeal should be dismissed. I would add that there is nonetheless a duty on the applicant in these proceedings to examine requests for surrender and all documents which may be associated with a request in order to ensure that they are complete and correct. It would be wholly unsatisfactory if such an obligation on an applicant was disregarded on the basis that the Court could be asked to look for further information pursuant to s. 20 of the Act. That is not the purpose of s. 20 outlined in the judgment which I gave in the *Altaravicius* case (Supreme Court, unreported. 5th April. 2006). The duty of the applicant includes an examination of documents relied upon so as to ascertain that they are written in terms which are clear and understandable. Some or all of the documents in question may be translations of originals from other languages and may have been prepared by a person for whom English is not a first language. Consequently they may contain phraseology or expressions which are ungrammatical or idiosyncratic.
>
> Adopting a common sense of (*sic*) approach a Court may be in a position to determine the true or essential meaning of the text concerned. However where language is used which, even when reading the document as a whole, is not at all meaningful or clear there is a risk that the application may fail especially if the deficiency concerns an essential matter. Also it is the duty of the applicant to examine the requests in the manner which I have indicated so as to avoid unnecessary and time-consuming litigation arising from ambiguous or unclear language. I am reassured to note the counsel for the State has stated that the State will in future take serious steps to ensure that all documentation is complete and clear before it is relied upon for the purpose of seeking to endorse a European Arrest Warrant."

Decision

The Court has carefully considered the submissions on both sides and is not disposed to uphold this objection. In doing so, I have had particular regard to the role or function of a Central Authority in the European arrest warrant system both as envisaged under the Framework Decision and as specifically provided for under the Act of 2003. Under the European arrest warrant system decisions on rendition are a matter for the relevant judicial authorities, both issuing and executing. The executive has no role in that regard, unlike in traditional extradition. There is a judicial authority that issues the warrant, and a judicial authority that executes the warrant. Participating member states have an optional entitlement under the Framework Decision to establish a Central Authority to facilitate that process. Not all countries have availed of this option and accordingly not all countries have a Central Authority. However, Ireland has opted to establish a Central Authority and in this country the designated Central Authority is the applicant Minister.

The Minister's role is entirely facilitative, but that does not mean that he is merely a post box. In terms of incoming warrants, his function is to receive such a warrant, place it before the High Court for endorsement, and if it is endorsed maintain carriage of any subsequent court proceedings before the High Court acting as the executing judicial authority. Moreover, in his facilitative role the Minister will act as the conduit for communications between the issuing and the executing judicial authority, liaising where necessary with his counterpart in the other state if that state also has a Central Authority. In addition, as s. 20(2) makes clear, where the applicant is of the opinion that the documentation or information provided to him under the Act is not sufficient to enable him or the High Court to perform its functions under the Act, he may require the issuing judicial authority, or the issuing state, as may be appropriate, to provide such additional documentation or information as he may specify, within such period as he may specify.

The Court does not agree that the s. 20(2) power only extends to a situation where proceedings have actually commenced, *i.e.*, where a warrant has actually been endorsed. Both the Central Authority and the High Court have functions to perform before a decision to endorse is taken. The decision whether to endorse a warrant or not is of course entirely a matter for the Court, but it is both appropriate and to be expected that the High Court would be facilitated in its consideration of that issue by receiving advice or submissions from the Central Authority. Moreover, it is entirely reasonable that the Central Authority, being mindful, as it must be, that court time is a precious resource, should scrutinise incoming warrants to ensure that they are fit, in terms of fulfilling formal requirements, to be placed before the Court for endorsement. If there is something about an incoming warrant that leads the Central Authority to believe that the Court may not be prepared to endorse it in the form in which it has been presented, and it is a matter that is perhaps capable of being remedied, it is entirely appropriate and proper in this Court's view that the Central Authority should draw the problem to the attention of the issuing judicial authority, and forbear in presenting the warrant for endorsement until a response has been received from the issuing judicial authority. The Central Authority's function, in this Court's view, is to facilitate "the process", and that may involve offering appropriate advice to either the issuing or the executing judicial authority; not with the intention of "advising proofs" in order to secure a particular result, as counsel for the respondent sought to pejoratively characterise it, but for the purpose of ensuring that this Court's valuable time is not wasted considering applications that are doomed to failure unless a particular defect is addressed. Moreover, to offer advice is not in any sense to seek to usurp the function of either the issuing judicial authority or the executing judicial authority. It is entirely appropriate that a facilitator should do so in this Court's judgment, if it may smooth the process. At the end of the day, of course, it is a matter for the relevant judicial authority as to whether or not it wishes to act on advice proffered in good faith by the Central Authority.

The Court agrees with counsel for the respondent that the Central Authority is not entitled to instruct or give directions to an issuing judicial authority, as opposed to advising it, as to what it should or should not do. However, while the language of the applicant's correspondence with the issuing judicial authority in the present case may have been somewhat peremptory and infelicitous in that respect, the Court is completely satisfied that he was doing no more than legitimately drawing perceived problems with the form of the warrant to the attention of the issuing judicial authority and suggesting how those problems might be addressed. The Court does not accept that the applicant acted in excess of his authority or that he acted *ultra vires* his powers in any respect.

Moreover, even if it were the case that the applicant had exceeded his authority in terms of what he was entitled to do to facilitate transmission of the warrant and relevant additional information to this Court as executing judicial authority for endorsement, it does not seem to me to impugn, and could not impugn, the validity of the underlying document because the applicant's actions are not the actions of an issuing judicial authority. The principle of mutual recognition requires that the executing judicial authority should recognise the actions and decisions of the issuing judicial authority, even if those actions or decisions were brought about through the intervention of a facilitator who may have exceeded his statutory authority in requesting that particular steps be taken. Once the underlying document, *i.e.,* the warrant, emanated from an appropriately credentialed judicial authority, and there is no reason in this case to believe that the issuing authority is not an appropriate issuing judicial authority, then the Court was entitled, and indeed obliged, to recognise it and act upon it, regardless of whether the Central Authority had crossed a line in terms of what it was entitled to do in making requests or seeking additional information. In summary therefore, I do not consider that the applicant acted inappropriately, but even if he had done so it would not justify me in refusing surrender where what was done was done in good faith and absent any evidence of an attempt to abuse this Court's process.

Immediate enforceability
It was contended on behalf of the respondent that the Court cannot be satisfied that the sentence of imprisonment is immediately enforceable, and that the Court should refuse to surrender the respondent on that account. The basis for this contention is set forth in an affidavit sworn by the respondent in these proceedings in which he states (*inter alia*):

> "4. I say that, on its face, the Warrant states that the enforceable judgment or enforceable judicial decision in respect of the above sentence is one of the 10th November 2005 by the Circuit Court of Zielona Góra and that it was upheld by the Appeals Court of Poznań of the 18th April, 2006.
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> 5. I say that while I do not dispute the fact that a sentence was imposed upon me on the above date, the entire circumstances of the situation are not apparent on the face of the warrant nor indeed from any of the additional information that has been provided in respect of the matter and in particular with respect to what transpired subsequent to the aforementioned dates.
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> 6. In this regard, I say that the upholding of the sentence by the Appeals Court of Poznań on the 18th April, 2006, was not the end of the matter.
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> 7. Thereafter, I say that I made further court applications in respect of the matter. Although not a lawyer, I understand that I made an application to the Circuit Court and this application was refused on or about the 23rd June, 2006. Some days thereafter, I appealed this refusal to the Court of Appeal and as can be seen from the papers that I have in relation to this appeal I petitioned the Court of Appeal to postpone the execution of the penalty or to revoke the appealed decision and to refer the case to the Court of First Instance for hearing. I beg to refer to a copy of a document that I have obtained and dated the 29th June, 2006, and submitted to the Court of Appeal and in the Polish language (together with a translation thereof that has been obtained my solicitor in this jurisdiction) and upon which pinned together and marked with the letters and number "**KH1**" I have signed my name prior to the swearing hereof.
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> 8. In terms of the chronology of what happened thereafter, I say that I was hospitalised at a place the name of which is (in the English translation thereof) the Provisional Specialist Psychiatric Hospital, Independent Public Health Care Institution, in Ciborze in Poland and that I was an in-patient there for the period between the 12th September 2006 and the 31st July, 2007. I say that I came to be hospitalised there immediately after I endeavoured to take my own life in September 2006 and I was hospitalised there for the treatment of mental and nervous disorders and having had a history of depression prior to this time and also in relation to addiction issues. I beg to refer to a copy of an undated document from the aforementioned hospital in the Polish language (together with a translation thereof that has been obtained my solicitor in this jurisdiction) and upon which pinned together and marked with the letters and number "**KH2**" I have signed my name prior to the swearing hereof
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> 9. I say that I do know that my father attended the court on my behalf in relation to this matter on the 13th November 2006 (while I was resident in the hospital) and the judge told me to continue with my therapy and which I did. Thereafter I, personally, was back at the court on the 14th May 2007 (at which time I was still in hospital) and the outcome on that date was that I went back to the hospital and I stayed there until I was in good condition and the date of my discharge from the hospital was the 31st July 2007.I say that I was not represented by a lawyer on either of the foregoing occasions. I say that I am drug-free and have been so for many years now. In terms of the circumstances giving rise to

my discharge from my hospital, while the letter states that I discharged myself, as can be seen from the letter I completed my treatment and was discharged in overall good condition and the recommendations that were made were abstinence and contact with a drug abuse clinic. I say that that before I was released the hospital told me that I could live outside the hospital and in fact I got a job and lived near the hospital.

10. I say that thereafter, following my discharge from hospital, I stayed in contact with the hospital and indeed I remain in contact with a therapist in the hospital by telephone to the present day.

11. I say that I came to Ireland to live in October 2007 and I have lived in Longford to the present day. In the meantime, however, I did return to Poland for a social visit for 10 days in February 2008. In Ireland, I live with my partner, her four year old son and in respect of whom I stand in *loco parentis*. My partner is also pregnant with our child.

12. I say that I am at a loss to understand how the Polish authorities seek my surrender on foot of a reference to the original Circuit Court case on the 10th November 2005 and the subsequent Court of Appeal reference 18th April, 2006 in circumstances where it is clearly the case that this was not the final outcome of the case having regard to what is set out herein. Indeed, from the court date that my father attended at which a medical report was tendered from the hospital in November 2006 and the court appearance that I attended in person from the hospital in May 2007 as set out herein, it was clearly the case that I was neither taken into custody to serve any sentence nor was I directed to present myself to any prison or detention centre in order that I might be taken into custody to serve any custodial sentence. In this regard, I say that I left hospital on the 31st July 2007.

13. I say that I am advised and I believe that the English translation of the Warrant states that I appeared in person at the trial resulting in the decision and I accept that this is so in the context of the original decision of the Circuit Court of the 10th November, 2005, and the subsequent Court of Appeal decision of the 18th April, 2006. However, I say that I am advised and believe that the Warrant is misleading insofar as the suggestion therein is that the last step in relation to this case was the Court of Appeal upholding the Circuit Court decision on the 18th April, 2006.

Any uncertainty that may have existed in the mind of the Court arising out of this affidavit concerning what occurred before the courts in Poland has since been dispelled by additional information provided in a letter from the Circuit Court of Zielona Góra dated the 25th October, 2013. The letter states:

"In reply to your letter of October 23, 2013, on behalf of the Circuit Court of Zielona Góra, Crime Division. I would like to advise you that in the proceedings ref. no. II K 186/02 on November 10, 2005, the Circuit Court of Zielona Góra passed a judgment which was subsequently appealed against by Krzysztof Haniszewski's attorney.

Mr Haniszewski showed up for the hearing before the Court of Appeal in Poznań on April 11. 2006. However, the hearing was adjourned till April 18, 2006.

On April 18, 2006, the Court of Appeal in Poznań upheld the judgment of November 10, 2005, by the Circuit Court of Zielona G6ra. ref. no. II K 186/02.

On May 18, 2006, the convicted Krzysztof Haniszewski was summonsed to report on June 2, 2006, to the 'Detention Facility" in Lubsko in order to serve the 2 years and 6 months' custodial sentence. The summons was collected by his father, Leon Haniszewski, on May 22, 2006.

On May 10, 2006, Krzysztof Haniszewski filed with this court an application for the adjournment of the punishment. The court held a hearing on June 23, 2006, with Mr Haniszewski present in person, and dismissed his application.

On June 30, 2006, Mr Haniszewski filed with the Court of Appeal in Poznań an appeal against this decision. On July 19, 2006, the court upheld the decision. Mr Haniszewski did not appear before the court although he had been summonsed properly. A copy decision was collected by his father, Leon Haniszewski, on July 26, 2006. On July 24, 2006, the court issued an order for the police to bring Krzysztof Haniszewski to the Detention Facility.

On October 6, 2006, Krzysztof Haniszewski filed with this court another application for the adjournment of the punishment. The court held a hearing on December 13, 2006, and adjourned the enforcement of the 2 years and 6 months' custodial sentence until June 13, 2007, Mr Haniszewski did not show up for the hearing although he had been summonsed properly.

On May 11, 2007, Krzysztof Haniszewski filed with this court yet another application for the adjournment of the punishment. The court held a hearing on June 15, 2007, with Mr Haniszewski present in person, and adjourned the enforcement of the sentence until December 13, 2007.

Because there were no further applications for the adjournment of the enforcement of the sentence and Krzysztof Haniszewski failed to report to the Detention Facility-, the court issued an order for the police to bring him.

In its letter of January 30, 2008, the Police Command in Lubsko informed this court that Mr Haniszewski was not residing at his usual address and that it had been found that he was in hiding, because he knew there was a warrant for him.

On February 15, 2008, this court issued a domestic wanted notice for Mr Haniszewski. On June 29, 2009, the E.A.W. was issued."

This Court is completely satisfied on the basis of this information that all appeals and applications for postponements initiated by the respondent were pursued by him to a conclusion, or, alternatively not ultimately proceeded with, but that in any event the sentence the subject matter of the present warrant has been immediately enforceable since the 13th December, 2007 and remains such. The Court is not therefore disposed to uphold the objection based upon alleged lack of immediate enforceability.

Flight

This is a case to which s.10 of the Act of 2003, prior to the amendment effected by s. 6 of the Criminal Justice (Miscellaneous Provisions) Act, 2009, applies. Prior to the relevant amendment s. 10 of the 2003 Act (as substituted by s.71 of the Criminal Justice (Terrorist Offences) Act, 2005) provided (to the extent relevant):

"10.—Where a judicial authority in an issuing state issues a European arrest warrant in respect of a person—

(a) ….

(b) ….

(c) …. or,

(d) on whom a sentence of imprisonment or detention has been imposed in respect of an offence to which the European arrest warrant relates, and who fled from the issuing state before he or she—

(i) commenced serving that sentence, or

(ii) completed serving that sentence,

that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state.".

Accordingly, before this Court could surrender the respondent it would have to be satisfied that the respondent "fled" Poland before commencing, alternatively before completing, the sentence imposed upon him for the offence to which the warrant relates. The respondent contends that he did not flee. The Court interprets the word "fled" in accordance with the Supreme Court in *Minister for Justice, Equality & Law Reform v Tobin [*2008] 4 I.R. 42 as importing more than the word "left" and as connoting an escape from justice.

In *Minister for Justice, Equality & Law Reform v Sliczynski* [2008] IESC 73 (Unreported, Supreme Court, 19th December, 2008). Macken J stated:

> "All of the factors germane to whether a person can be said to have fled must be taken into account. That includes the motivation of the person sought to be returned to the requesting Member State, which is almost inevitably likely to be a subjective motivation. So also the court must take into account other material factors, such as whether the sentence was suspended, and where the suspension of the sentence was subject to terms, whether those terms were known to the convicted person and whether those terms were complied with. It is telling to recall that the appellant admits he was convicted and sentenced on the first three charges in his presence, and has not challenged the content of the letters exhibited in Mr. Doyle's affidavit. He must therefore be understood to have known and appreciated the significance of the terms attaching to the suspension of those sentences.
>
> The court then must determine whether, objectively speaking, bearing in mind all of these factors, it can be reasonably concluded that the appellant "fled" within the meaning of the section. If it were the case that the subjective motivation, as averred to on affidavit, had to be accepted as being conclusive of the question whether a person fled within the meaning of the section, it seems to me that this would always or almost always "trump" any information or material factor presented to the Court and upon which it could be objectively found that a person had fled the requesting state. In the present case, it was a term of the suspension – not denied by the appellant – that he would reside at a particular place, would notify the probation officers or responsible authority of his whereabouts and, in particular, would notify it of any intention to leave Poland. It is axiomatic that if the terms and conditions of a suspended sentence are not met, there is a likelihood of the suspensions being lifted and the sentences having to be served."

This Court will adopt the approach commended by Macken J, and determine, following a consideration of the evidence in the case in its totality, whether, objectively speaking, it can be reasonably concluded that the respondent "fled".

I have carefully considered all of the evidence, including the warrant, the additional information, and the respondent's affidavit including the medical information exhibited therewith. In the Court's view it is clear, notwithstanding the respondent's medical difficulties, that he knew that he was required to serve the sentence the subject matter of the warrant once the numerous appeals and applications for postponement that he had engaged in were exhausted. He had been present in person before the Circuit Court of Zielona Góra on the 15th June, 2007, when the final postponement order lasting only until the 13th December, 2007, was made. The evidence is that the applicant left hospital in July, 2007 during this last period of postponement, and came to Ireland in October, 2007. He clearly did so knowing that once that postponement expired on the 13th December, 2007, he would be expected to serve his sentence. The only inference that can be drawn in this Court's view is that he came to Ireland to evade justice, and he must be regarded as having fled in the *Tobin* sense.

In the circumstances the Court is satisfied as to flight, and rejects the objection based upon s. 10 of the Act of 2003.

Conclusion.
It is appropriate that the respondent should be surrendered in respect of all of the offences covered by the European arrest warrant, and the Court will make an order to that effect under s. 16(1) of the Act of 2003.