THE HIGH COURT

Record No. 2018/105 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 (AS AMENDED)

Between/

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

-and-

MATEUSZ TEJZA

Respondent

JUDGMENT of Mr. Justice Hunt delivered on the 29th day of March, 2019

General

1. Mr. Tejza is the subject of a European Arrest Warrant ("*the warrant*") issued by the President of the District Court in Torun, a judicial authority of the Republic of Poland. The warrant was issued by the Polish Authority on 26 February 2018 and Mr. Tejza was subsequently arrested and brought before the High Court pursuant to the terms of section 13 of the 2003 Act. He subsequently delivered a Notice of Objection to his surrender. The section 16 hearing took place on 6 December 2018 and 1 February 2019. Further information was sought and received from the issuing authority between the two hearing dates.

2. During the section 16 hearing, the points of substantial dispute were related firstly, to whether surrender was barred by reason of the provisions of sections 45 and 11 of the 2003 Act and secondly, to whether the offence of June 2010 corresponded with an offence under domestic Irish law. Apart from these two issues, I am otherwise satisfied that the Minister has complied with the conditions required for an order for surrender, and I propose to limit discussion to these matters.

Factual Background

3. Mr. Tejza is a native of Poland, who was born in Torun on 15 February 1993. The purpose of the request for surrender is to enforce judicial decisions executing detention orders and to decree his absolute ordered by two judgments of the regional court in Toran of 10 January 2011, in Case II K 1517/10, and 13 May 2013, in Case II K 137/12. In case 157/10, the penalty was six months of liberty deprivation and in case 137/12, the penalty was two years of liberty deprivation, and both of those penalties remain to be served.

4. Paragraph E of the warrant indicates that it relates to two offences, perpetration in Case 1517/10 on 6 June 2010 in Torun at Bema Street, and co-perpetration in Case 137/12 on 27 June 2012 in Torun at Wybikiego Street. Paragraph E.3 of the warrant describes the nature and legal classification of the offence in Case 1517/10 as:-

> *"an offence under article 254(1) of Penal code and article 60, sections 2 and 4 of the law of 20.03.09 on mass event safety in connection with article 11(2) of Penal Code. An offence under article 254 section 1 of Penal Code for the offence of active participation in a public riot, included in the category of offences against public order, and the offence under article 60 section 2 and 4 of the Law of 20 March 2009 on mass events safety consisting in throwing an object which could constitute a threat to life, health or safety of persons staying in the area or in the building where the event takes place, or in another, equally dangerous way disturbing the event with the use of elements of clothes or items to cover the face for the purpose of making it impossible or hardly possible to recognise the person."*

I will refer to this case as "the public order matter".

5. In Case 137/12, the warrant recites that the offence is classified as an offence under Article 280(2) of the Penal Code, being:-

> *"robbery with the use of firearms, a knife or any similar dangerous object or an incapacitating agent or acting in a manner which directly threatens life, or in concert with another person who uses such arms, agent or manner, included in the category of offences against life or health."*

I will refer to this case as "the robbery matter".

Section 45 of the 2003 Act

6. Paragraph D of the warrant indicates that Mr. Tejza appeared in person at the trial in both case numbers resulting in the decisions in question. However, paragraph D.l.c. then stated that being aware of the scheduled trial, he had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him at the trial, and was indeed defended by that counsellor at the trial. Paragraph D.1.d stated that he did not request a retrial or appeal within the applicable timeframe in either case.

7. On 3 March 2018, the Central Authority sought the following further information arising from the contents of the warrant:-

> *"Considering that, 'yes, a person appears in person to try and the case number II K 157/10 and II K 137/12 resulting in the decision' is underlined; why then has paragraph (d)(1)(c) which is conditional on, 'no, the person did not appear in person at the trial resulting in the decision' being underlined completed?* (sic)"

8. Judge Grzegorz Waloch of The District Court in Torun, Penal Division II, replied by letter dated 8 May 2018 as follows:-

> "1. In section D, underlining *'yes, the person appeared in person at the trial, in the cases number II K 157/10 and II K 137/12, resulting in the decision'* and underline *'this person did not request a retrial or appeal within the applicable timeframe in the cases II K 157/10 and II K 137/12'* refers to appearances at hearings as a result of which the sentences in welds (sic) were issued II K 157/10 and II K 137/12 and the issue of the appeal of these judgments. On the other hand, underlining *'being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial'* (D.1.c) – refers only to the issue of appearance of the convicted person and the participation of a lawyer in the hearing of the District Court in Torun on 17 September 2013 regarding the complaint about lodging the District Court of July 26 2013, ordering the execution of the penalty of deprivation of liberty – that is, in case number IX

Kzw 400/13.

Attached the Regional Court sends the completed ENA print in the section D section, (along with the translation into English), also taking into account the hearing of the 9th Criminal Division of the District Court in Torun of 17 September 2013 regarding the complaint about lodging the District Court in Torun on July 26, 2013 – that is, in case number IX Kzw 400/13.

> 2. The judgment in case II K 157/10 became valid on January 18, 2011. Mateusz Tejza was sentenced to six months of liberty deprivation with the conditional suspension of its execution for three years as a trial period. At the stage of the enforcement proceedings, the Regional Court in Torun, by decision of 26 July 2013, ordered the convict to execution of the penalty of liberty deprivation. This decision was appealed against by the defence attorney. Mateusz Tejza was not present at the hearing on 17 September 2013 during the hearing of the complaint, despite the fact that he was duly notified of its date. His defender appeared at the hearing. On 17 September 2013, the District Court in Torun recognised the appealed appeal and upheld the appeal decision in its entirety. This decision became valid on the same day and was not subject to appeal.
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> 3. The decision of the Regional Court in Torun of 26 July 2013 concerned only the issue of ordering the convicted execution of the penalty of liberty deprivation and shortening it for a period of ten days corresponding to ten daily rates of the fine paid. This defence counsel of the conviction person lodge an appeal against only of ordering the convicted execution of the penalty of liberty deprivation."

9. The new Part D accompanying this letter contained the following highlighted sentences:

> *"D.2. No, the person did not appear in person at the trial resulting in the decision IX Kzw 400/13;*
>
> *D3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trail* (sic) *– IX Kzw 400/13.*
>
> *D.4. Mateusz Tejza was not present at the hearing on 17 September 2013 during the hearing of the complaint, despite the fact that he was duly notified of its date. His defender appeared at the hearing."*

10. Paragraph 6 of the Notice of Objection pleads that the warrant fails to include certain matters contrary to the provisions of section 45 of the 2003 Act, namely:-

> (a) "*Information about how the relevant condition has been met for the purposes of paragraph D.4as set out in section 45*….", and
>
> (b) "*Clarity as to the Respondent's presence, notification and/or representations at all trials resulting in the sentence or detention order including the Courts of First Instance and Appellate Courts in II K 1517/10 and II K 137/12."*

11. In this regard, counsel relied on the decisions of the CJEU in the cases of *Tadas Tupikas, Slawomir Andrzej Zdziaszek* and *Samet Ardic*. In essence, these decisions require that the person concerned be present when a final ruling of guilt is made and a penalty imposed during a trial or appellate procedure. He or she must also be present for the final imposition of a cumulative sentence, or a sentence that amends an initial sentence. The presence of the person concerned is not necessary for the revocation of a suspended sentence for breach of condition, once the revocation decision does not change the nature or the level of the sentence initially imposed. Otherwise, the executing judicial authority may refuse a request for surrender in such a case.

12. Section 45 of the 2003 Act provides that a person shall not be surrendered under the Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to the section. Counsel for Mr. Tejza submitted that neither the contents of the original warrant or the further information or the new Part D of the warrant provided sufficient evidence of compliance with these requirements.

13. Having considered the original warrant and the information contained in the reply to the further information sought by the Central Authority and the new Part D submitted as part of that information, I am satisfied that Mr. Tejza was present for the imposition of both initial sentences on both 10 January 2011 and 13 May 2013. The additional information relates only to the subsequent course of the public order matter, and leaves undisturbed the information in Part D of the warrant to the effect that he appeared at the trial resulting in the decision relating to the robbery matter.

14. Paragraph D.1 of the warrant refers to hearings in July and September 2013, without indicating that these hearings related only to the public order matter and not to the robbery matter. This distinction is made clear by the subsequent additional information. Part E of the warrant, in fully describing the offences in question, also provides further information as to the disposal of each offence by the courts of Torun. In relation to the public order matter, paragraph E.2 states that the judgment in that case became valid on 18 January 2011, but execution of the penalty of 6 months liberty deprivation was conditionally suspended for a trial period of 3 years.

15. This penalty of 6 months liberty deprivation was executed by order of the Regional Court in Torun on 26 July 2013, in the court case file number IX 2 Ko 1808/10, but was shortened by ten days to take account of the payment of monetary fines relating to that period. The defence counsel of the convicted person lodged an appeal against this decision, which was decided by the final decision of the District Court in Torun of 17 September 2013. The appeal against activation of the suspended sentence imposed in January 2011 was dismissed, and the execution decision was upheld.

16. Thereafter, Mr. Tejza was summoned to attend a detention centre on 15 October 2013 serve this sentence. He did not appear at the detention centre on that date, because defence counsel lodged a petition to postpone execution of the liberty deprivation penalty, and the court further postponed execution for six months to 6 May 2014 by a decision of 4 November 2013. However, Mr. Tejza did not appear at the detention centre as required on 4 May 2014. His defence counsel lodged another petition to postpone execution on 27 May 2014, resulting in a court ordered further extension on 30 June 2014 until 4 November 2014. During this period, on 13 October, his counsel lodged yet another petition for postponement based on a severe illness making it impossible to execute the penalty. The court received expert opinion evidence from a physician, stating that there were no grounds for a postponement on that basis. On 21 April 2015, the court dismissed the petition and execution of the penalty became valid on 21 April 2015. An arrest warrant was issued thereafter.

17. The information in the amended Part D confirmed that Mr. Tejza was not actually present at the execution hearing at the Regional Court in July 2013, when the suspended sentence was initially activated, or at the appeal hearing at the District Court in September 2013. The amended Part D confirms to my satisfaction that he was notified of the date of the hearing of the final appeal on 17 September 2013, and that he was actually represented by his defender at that hearing.

18. I am satisfied that he was clearly aware of these hearings, because his counsel lodged an appeal on his behalf to the District Court, at which he was also represented by counsel. The information available also notes continued and extensive engagement with the petitions process, presumably including examination of him by a physician for the purposes of advancing that process, all of which points to full awareness on his part of each stage of these extensive procedures.

19. I am satisfied that his absence from both of these hearings is not a bar to surrender on the public order matter. Section 45 permits surrender where the person concerned had counsel at each of these hearings who defended the matter on his behalf. Furthermore, the initial execution hearing in July resulted in a reduced level of sentence, based on an arithmetical exercise whereby the period of shortening corresponded with the number of daily rates of fines paid, in accordance with the Article 71(1) of the Penal Code. As the requirements of section 45 have therefore been met, I am satisfied that there is no bar to his surrender in relation to the public order matter on this basis.

20. In relation to the robbery charge, it is noted that the offence took place during the period of suspension of the penalty imposed in respect of the public order matter. The penalty of 2 years liberty deprivation imposed in respect of the robbery became valid on 11 December 2013. Once again, Mr. Tejza's counsel lodged a petition to postpone execution of this liberty deprivation penalty, and received an extension. After expiry of the extension, Mr. Tejza did not appear at the detention centre as required, and the court suspended execution proceedings on 23 April 2015 and issued an arrest warrant.

21. In these circumstances, I am satisfied that no issue arises under the provisions of section 45 of the 2003 Act in relation to the sentence imposed in 2013 in respect of the robbery offence, and that there is no bar to surrender in respect of that offence by reference to the decisions outlined above, or the requirements of section 45. The information available confirms that he was present when this sentence was imposed, and he apparently continued to engage with the petition procedure thereafter in relation to this offence as well.

Section 11 of the 2003 Act

22. Counsel for Mr. Tejza also objected to surrender in relation to the public order matter based on the provisions of section 11(1) of the Act of 2003. This section sets out various matters that a European arrest warrant shall specify, including the following matters:-

> *"(d) the offence to which the European arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned,*
>
> *(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence."*

23. Paragraph E.3 setting out the nature and legal classification of the public order matter is already set out above. Paragraph E.2 offers the following full description of Case II K 1517/10:-

> *"On 6 June 2010 in Torun at Bema Street, in the City Stadium, during the football match between TKP Elana Torun – Zawisza Bydgoszcz, acting jointly and in concert with other persons, he took an active part in a public riot being aware of the fact that its participants, acting in concert, commit a violent assault on a person or a property, by which they committed disturbance of the mass event and they used at it clothes – a wrap covering their faces and making it difficult to recognise them. For this offence, the court imposed Mateusz Tejza the penalty of six months of liberty deprivation with the conditional suspension of its exclusion for a 3-year trial period. The judgment became valid on 18 January 2011."*

24. Paragraph 7 of the Notice of Objection pleads as follows:-

> *"The Respondent does not know with clarity the number of offences that he will be surrender for, in breach of s. 11 of the European Arrest Warrant Act 2003, as amended. In this regard, Part E.2 of the warrant states that he is sought in respect of two offences, contrary to this:-*
>
> *(a) Part E.3 of the Warrant is entitled 'Category and legal qualification of the offence (offences)'. (our emphasis)*
>
> *(b) Part E.3 of the Warrant provides in respect of IIK 1517 three separate and distinct offences, Article 254(1) of the Penal Code, Article 60(2) and Article 60(4) of the law of 20.03.2009 on mass safety event.*
>
> *(c) Part E states that there is more than one offence 'an offence under Article 254(1) of Penal Code for the offence of active participation in a public riot, included in the category of offences against public order, and the offence under Article 60 s. 2 and 4 of the law of 20 March 2009 on mass events safety."*

25. Paragraph 8 of the Notice of Objection pleads as follows:-

> *"Further, or in the alternative, paragraph E.2 fails to provide the degree of participation by the Respondent in the offence or offences contrary to section 11 of the European Arrest Warrant Act 2003, as amended."*

26. At my request, the Central Authority initiated a request for further information pursuant to section 20 of the 2003 Act by letter dated 18 December 2018, which requested the following additional information:-

> *"Confirm that the offences committed contrary to Article 60 section 2 and 4 of the Law of 20th March, 2009, on Mass Event Safety; engaging Article 254, Section 1 and Article 11, Section 2 of the Penal Code is a single stand-alone offence."*

27. This was replied to as follows by a letter dated 19 December 2018 from Piotr Szadkowski, Judge of the Regional Court in Torun:-

> *"The charge of having committed the offence from Article 60 subparagraph 2 and 4 of the 20th March, 2009 Act on the Safety of Mass Events and from Article 254, paragraph 1 in conjunction with Article 11 paragraph 2 of the Penal Code*

made up on deed attributed to the convict in the sentence of the case file reference number II K 1517/10. This deed was qualified as one deed exhausting the attributes defined in two provisions of the penal act, as in accordance with the content of Article 11 paragraph 2 of the Penal Code, in such case, the Court sentences for one offence pursuant to all concurring provisions."

28. I am satisfied that this submission relates only to the public order matter, and there is no bar to surrender in relation to the robbery matter by reason of the provisions of section 11 of the 2003 Act. Insofar as the public order matter is concerned, although the information initially set out in paragraph E of the warrant tended to suggest that the public order matter involved the commission of two offences, I am satisfied that the reply to the section 20 request set out above brings further clarity to this aspect of the matter. I interpret this information as meaning that the conduct of Mr. Tejza on the occasion in question engaged separate provisions of the Polish Penal Code and that the components of that conduct were combined together and treated as a single act for the purposes of conviction contrary to the provisions of that Code. It also indicates that in accordance with the content of Article 11 and paragraph 2 of the Code, the sentencing court dealt with one offence pursuant to all concurrent provisions.

29. In the circumstances, notwithstanding the initial ambiguity of the warrant, I am satisfied that the full information made available establishes that Mr. Tejza was convicted and sentenced in respect of a single offence, and that the provisions of section 11 do not operate as a bar to surrender in respect of the offence in case file reference number II K 1517/10.

Correspondence:
30. Paragraph 9 of the Notice of Objection pleads as follows:-

"Surrender of the respondent in respect of the offences and each of (sic) other of them contained in the warrant is prohibited by section 5 and/or section 38 of the European Arrest Warrant Act 2003, as amended as the offences and each or other of them do not correspond in their entirety or at all to an offence or offences under the laws of the State and/or the facts disclosed in the warrant are insufficient to correspond to an offence or offences under the laws of the State."

31. I am satisfied that the factual description of the robbery offence as contained in paragraph E.2 of the warrant establishes that the offence of robbery under the Polish Penal Code clearly corresponds with the statutory offence of robbery in this jurisdiction, in that the facts alleged to constitute the offence in question are that items were stolen from a pizza delivery driver after he was intercepted during a delivery and threatened with a knife. I see no need to replicate that statement of facts here, and am satisfied that there is no bar to surrender in relation to this offence.

32. In relation to the public order matter, case reference II K 1517/10, the relevant contents of the warrant have been set out above. At my request, the Central Authority sought additional information by the letter dated 18 December 2018 referred to above, as follows:-

"Clearly set out specific details of the act or acts committed by Mateusz Tejza which formed the basis for his conviction."

33. This request was replied to by the letter of 19 December 2018 referred above as follows:-

"Detailed description of the deed attributed to the convict in the sentence in case file reference number II K 1517/10 was indicated in part E.2 of the European Arrest Warrant."

34. Perhaps understandably, in the light of this reply, the Central Authority by letter dated 8 January 2019 requested further information as follows:-

"Please advise if any property or person suffered damage or injury as a consequence of the riot described in the warrant. This information is required to establish dual criminality with an offence in this jurisdiction."

35. By letter from Judge Marek Biczyk, the District Court in Torun replied as follows:-

"District Court in Torun, in reply to the letter of 8 January 2019, informs that the criminal offence Mateusz Tejza was convicted for by the judgment of the Regional Court in Torun of 10 January 2011, issued under court file number II K 1517/10, concerned the incident which took place on 6 June 2010 in the City Stadium in Torun. This incident involved two groups of football teams (sic) supporters. At about 6:00 p.m., during the break in the match, a part of hosting team supporters entered a buffer sector and the barriers between sectors were broken. One part of guest team supporters left their sector, too. The contact between the supporters or both groups took place in the buffer sector and the top deck of the stadium, on the buffer section level. The supporters were struggling with one another. The incident lasted for several minutes and it was stopped by the police.

During the proceedings it was not established whether any specific property or a person sustained damage or was injured in the consequence of this incident. These circumstances were not the part of the features of the criminal offence attributed to the convict."

36. Counsel for the Minister submitted that the information available regarding Mr. Tejza's conduct suggested that it corresponded with the commission of various offences in this jurisdiction contrary to the provisions of the Criminal Justice (Public Order) Act, 1994, namely the offences of violent disorder, affray, riot and/or threatening, abusive or insulting behaviour in a public place with intent to provoke a breach of the peace.

37. On the issue of correspondence, the basic approach in extradition law generally is that the Irish court should look at the acts alleged against the subject of the warrant to assess whether or not the acts complained of are ones which, if committed in this country, would amount to a criminal offence. This approach is confirmed by section 5 of the 2003 Act, which provides that for the purposes of the Act, correspondence between an offence specified in a European arrest warrant and an offence under the law of this State occurs where the act or omission that constitutes the offence so specified would, if committed in the State on the date upon which the European arrest warrant is issued, constitute an offence under the law of the State.

38. The difficulty in this case is that it appears from the available information that Mr. Tejza committed an offence in Poland by virtue of being part of a group of football supporters that invaded the territory reserved for the opposing supporters in a football stadium, and did so in circumstances where he concealed his face by clothing in order to render identification or recognition either impossible

or, at least, more difficult. There is reference to a bottle being thrown, but that is not attributed specifically to Mr. Tejza. There is no description of his individual conduct beyond being part of a group, save that he may have concealed his face to some extent with clothing.

39. In my view, this factual material indicating the commission of an offence by an individual as part of a group cannot be easily reconciled with the fact that an essential ingredient of each of the suggested corresponding offences in Irish law is specific behaviour on the part of the individual concerned. Some of these offences also have a group aspect as an ingredient, but this is additional to the proof of individual conduct necessary to establish criminal liability for these offences, and the domestic offences cannot be committed simply by virtue of the fact that an individual is part of a larger group.

40. For example, the offence of violent disorder created by section 15 of the 1994 Act requires that it first be established that three or more persons present together at any place used or threatened to use unlawful violence. If that grouping is established, it must then be demonstrated that the conduct of that specific group of persons, taken together, was such as would cause a person of reasonable firmness present at that place to fear for his or another person's safety. If both elements are proved, then each of the group members using or threatening to use unlawful violence is guilty of the offence of violent disorder.

41. Section 15 also provides that the use of violence by each of the three or more persons need not be simultaneous, and no person of reasonable firmness need actually be, or be likely to be, present at the place in question. Finally, the section specifically states that a person shall not be convicted of the offence of violent disorder unless the person intends to use or to threaten to use violence or is aware that his conduct may be violent or threatened violence, thereby underlining the individual conduct requirement of the offence.

42. Therefore, it is not sufficient to convict of this offence simply on the basis that the accused was present as part of a large group that behaved in a violent or threatening manner. The individual concerned must actually contribute specifically to the overall behaviour and effect of the group by themselves using or threatening to use violence. On the known facts of Mr. Tejza's case, I do not believe that he could be convicted of an offence of violent disorder in Irish law, because there is no proof that his individual conduct involved the use or threat of violence by him, or that he had the necessary intention or awareness in relation to that conduct, even if the behaviour of the group would have had an effect that fulfilled the second requirement set out above. There is no specific evidence that he used or threatened to use unlawful violence, so as to qualify him for membership of the group of three or more necessary for proof of the offence of violent disorder.

43. Although there was clearly general and group misconduct involved in the behaviour of the two groups of supporters causing disorder in the stadium, a sufficient number of individuals must be identified as using or threatening to use unlawful violence before the combined effect of that group on the person of reasonable firmness could be assessed for the purpose of establishing the offence of violent disorder in Irish law. Simply being part of a larger group within a stadium as described, with the face either totally or partially obscured, does not reach the level of specificity required to prove violent disorder. The facts do not support a finding that the crucial individual element of the offence was present. It seems to me that the Polish Penal Code provides that one may be convicted if one is part of a group threatening mass safety and concealing or partially concealing ones face. The facts of this case do not correspond with and are insufficient to establish the violent disorder offence in this jurisdiction.

44. A similar difficulty presents in relation to the suggested offences of riot and affray. The offence of affray (section 16 of the 1994 Act) has a similar statutory structure to that of violent disorder. The individual must use or threaten to use violence. The mental element is similar, in that a person may not be convicted of affray unless the person intends to use or to threaten to use unlawful violence or is aware that his conduct may be violent or threatened violence. The group element is different, in that it consists of two or more persons, but there is a requirement in this offence that the violence be used within the relevant group. The facts of this case do not support a finding that Mr. Tejza and one other person used violence towards each other.

45. The offence of riot (section 14 of the 1994 Act) is based on twelve or more persons present together at any place using or threatening to use unlawful violence for a common purpose, with the same provisions as to the effect of that group on a person of reasonable firmness at that place as apply to the offence of violent disorder. An individual using or threatening to use violence as part of such a group is guilty of the offence. No mental element is specified in this section. Although the group condition could probably be fulfilled by the effect of the group of supporters of which Mr. Tejza was a part, there is also insufficient factual material illustrating the use or threat of unlawful violence by him necessary to support a conviction for this offence.

46. For the same reason, I am not satisfied that the known facts are sufficient to prove the summary offence of using threatening, abusive or insulting words or behaviour such that the conduct demonstrated that Mr. Tejza acted with intent to provoke a breach of a peace, or was reckless as to whether a breach of the peace may have been occasioned (section 6 of the 1994 Act).

Conclusion:

47. In the circumstances, I am not satisfied that the known facts of this event and Mr. Tejza's part in it are sufficient to permit me to conclude that the necessary correspondence exists between his conduct on that occasion and the ingredients of the corresponding offences suggested by the Minister. In the circumstances, there will be an order refusing to surrender Mr. Tejza on the public order matter, Polish case references II K 1517/10 (original conviction), IX 2 Ko 1808/10 (execution of suspended penalty) and IX Kzw 400/13 (appeal against execution), by reason of the absence of the necessary element of correspondence between that offence and any offence in Irish law.

48. However, I am satisfied that there is no bar to surrender on the robbery offence, Polish case reference II K 137/12, on the basis of any of the points advanced in the Notice of Objection. As I am also satisfied that there is no issue as to identity, or reason to refuse or prohibit surrender under sections 21A, 22, 23, 24 or Part 3 of the 2003 Act, there will be an order surrendering Mr. Tejza to the Republic of Poland for the purpose of serving 1 year, 7 months and 2 days, being the remainder of the term due to be served in respect of the sentence imposed for that offence.