

## THE HIGH COURT

Record Number: 2009 263 Ext

Between:

The Minister for Justice, Equality and Law Reform

Applicant

And

Albert Jarzebak

Respondent

**Judgment of Mr Justice Michael Peart delivered on the 30th day of November 2010:**

The surrender of the respondent is sought by a judicial authority in Poland on foot of two European arrest warrants which issued there on the 27th March 2009 ("the first warrant") and the 28th May 2010 ("the second warrant") respectively.

Each warrant was endorsed for execution here by the High Court prior the respondent's arrest on foot of each warrant.

On foot of the first warrant he was arrested and brought before the High Court on the 11th March 2010, and in respect of the second warrant he was arrested and brought before the High Court on the 16th July 2010.

No issue arises as to the identity of the respondent, but in any event I am satisfied from the affidavits of the arresting Garda officers that the person arrested on foot of these warrants and brought before this Court on the above dates is the person in respect of which each warrant has been issued.

In respect of each warrant surrender is sought so that the respondent can be prosecuted for the offences therein set forth when returned to Poland.

The first warrant relates to 14 offences, and the issuing judicial authority has marked each of these offences as being within the list of offences set forth in Article 2.2 of the Framework Decision and therefore ones for which correspondence is not required to be verified. For that purpose minimum gravity is satisfied since the sentence which may be imposed in respect of each offence exceeds three years' imprisonment.

The second warrant relates to 2 offences, which, again, the issuing judicial authority has marked as being within that list also and therefore offences for which correspondence is not required to be verified, and minimum gravity is similarly satisfied in respect of those offences.

No reason exists for refusing to make an order for surrender on either warrant under sections 21A, 22, 23 or 24 of the European Arrest Warrant Act, 2003, as amended, and I am satisfied also that surrender is not prohibited on either warrant by reason of any provision of Part III of the Act or the Framework Decision.

Essentially, while Points of Objection filed by the respondent raise a number of issues for determination, the Court was informed at the outset of this application that essentially only the objections under section 11 (1A) of the Act of 2003 are pursued. In that regard and in respect of each warrant the respondent contends that each warrant is lacking in necessary detail and information and that it fails to comply in that regard with the provisions of section 11(1A)(f) of that Act. While the issue is common to each warrant, the factual basis for that submission differ as between the first warrant and the second warrant, and accordingly I will deal with each warrant separately as far as that objection is concerned.

**The first warrant:**

Paragraph E states that this warrant relates to 14 offences, and then proceeds to set out the facts alleged in relation to these offences in paragraphs I, II, III, IV, and V. I will not set forth those details verbatim from the warrant as the description of these offences is very extensive. But for the sake of clarity, I should say that the 14 offences are spread among these numbered paragraphs as follows:

**Paragraph I:****Offence 1:**

This paragraph refers to one offence. The details of this offence are set forth, and it appears to relate to the offence of being a person active in an organised group or union that seeks to commit an offence or a fiscal offence contrary to Article 258.1 of the Polish Penal Code. That offence has been marked for the purpose of Article 2.2 of the Framework Decision as being within the category of "participation in a criminal organisation". In the description of this offence the respondent is alleged to be the leader of a criminal organisation which sought to commit various forms of drugs offence such as smuggling, marketing and supplying same, as well as committing other offences such as burglaries and thefts and extortion for ransom in return for stolen property, as well as selling industrial alcohol. This paragraph sets out some particulars of the respondent's role in relation to these offences, though in relation to allegations that he "*frightened and beat organisation members into submission*", it is submitted that these persons are not named or identified. The same complaint is made in relation to an allegation that part of the activity of this organisation and the respondent's own involvement was that he did certain things together with "other identified and unidentified persons".

**Paragraph II:**

Under this paragraph there are six separate offences detailed, all of which are that during different periods of time set forth in 2006 and 2007 the respondent, as a member of a criminal organisation, organised a shipment of significant quantities of narcotic drugs. Details of six such activities are set forth, and it seems clear that these six drugs offences have been marked as within the category

of illicit trafficking in narcotic drugs and psychotropic substances” for the purpose of Article 2.2 of the Framework Decision, though these offences can be also seen to be covered by the category “participation in a criminal organisation”, given the reference to the respondent acting as a member of a criminal organisation in relation to them.

### **Paragraph III:**

This paragraph sets out four separate offences. Three of these offences refer to particular dates or periods of months when the offence was committed, and one refers merely to “an unspecified period”. The first and second of these offences are that the respondent “brought into circulation a significant amount of narcotic drug ... which was delivered to [certain named persons]”. The third offence is that he made two purchases of psychotropic substances from a named person, and the fourth is that he supplied a named person with narcotic drugs on at least four occasions.

### **Paragraph IV:**

This paragraph refers to two offences set forth therein said to have been committed “as a member of a criminal organisation”. The offences are that on two separate dates he broke the lock in the door of a Mercedes car, pulled off the ignition and stole the cars. Again, it is submitted that these offences are within the marked category “participation in a criminal organisation” for the purposes of Article 2.2 of the Framework Decision, given the reference to the respondent acting a member of such an organisation. But the issuing judicial authority appears to have included these two offences also under the category of Article 2.2 offence headed “organised or armed robbery” given his acting “as a member of a criminal organisation”.

### **Paragraph V:**

This paragraph relates to one offence said to have been committed in an unspecified period in 2001 and from October 2005 to March 2007 whereby as a member of a criminal organisation he brought into circulation a large quantity of industrial alcohol “which was purified, bottled and forged stamps were affixed to it”. This paragraph then goes on to refer to the involvement of another named person in relation to the offence. Other details of the offence are set forth. But it is submitted by the applicant that this offence has also been marked as one within the category “participation in a criminal organisation” for Article 2.2 purposes, given the reference to the respondent acting as a member of a criminal organisation.

### **Objection raised – section 11 (1A)(f):**

David Keane SC submits on behalf of the respondent that each warrant fails to comply with this statutory requirement as to the contents of a warrant. Section 11 of the Act of 2003 specifies what, as far as practicable, must be contained in a European arrest warrant. Only the content specified in paragraph (f) of subsection (1 A) thereof is at issue in this case. That subsection provides as follows:

*“11.—(1) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision.*

*(1A) Subject to subsection (2A), a European arrest warrant shall specify-*

*(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, and ... ”*

In relation to the offences in the first warrant set forth in paragraph E.I, Mr Keane submits that while the offence is one of being the leader of a criminal organisation, there is insufficient detail of the acts which the organisation are said to have committed in that it refers simply to the fact that the organisation sought to commit offences by smuggling, marketing and supplying other persons with significant amounts of narcotic drugs, and marketed industrial alcohol, and committed other criminal acts such as burglaries and thefts and extortions of ransom in return for stolen property. It also gives details of the role that the respondent played in a general way. It is submitted that the warrant, if it to comply with the provisions of section 11 (1A)(f) of the Act of 2007, each of these individual acts must be set out in a way that includes “*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 in the absence of this kind of detail the warrant is invalid.

In relation to the offences set forth in the other numbered paragraphs a similar submission is made by reference to the fact that in some instances some of the victims are unidentified, dates and times of commission are absent and so forth.

In addition to those submissions, Mr Keane draws attention to the fact that while the warrant states that it relates to 14 offences, only five categories of offence have been marked for the purposes of indicating that the offences are all within the list provided in Article 2.2 of the Framework Decision and as such offences for which correspondence is not required to be verified. Accordingly, it is submitted, there is a lack of clarity as to whether the respondent is to be prosecuted for five offences or fourteen offences, and in that regard he submits that the respondent is at risk or prejudiced as regards the rule of specialty.

A number of authorities are relied upon in support of these submissions. One such is a judgment of Burgess J. in the County Court in Northern Ireland on an application by Spain for the surrender of Arturo Villanueva Arteaga (“Arteaga”). The description of the offence in the warrant seeking his surrender was set forth as follows:

*“According to the investigations carried out [Arteaga] is a member of the Basque Terrorist Organisation ETA, an organisation which uses violent means in order to achieve that the Basque Country Navarre be separated from and gain the status of an independent State along with part of Southern France. For that purpose ETA has set up several sub-organisations each one performing a specific mission: one of those subdivisions is JARRAI, of which [Arteaga] is a member. Following ETA’s strategy of fighting for the breakdown of national unity and according to documents that were seized, he carried out violent and coercive actions from 1994 to 2000, such as a course of conduct directed to disturb the public peace through the use of violent means in the streets, he set street furniture and buses on fire, made arson attacks against courts and government facilities, carried out attacks against private individuals and police, organised campaigns to discredit judges and police, he encouraged that institutions be persecuted by citizens, Basque business be coerced and forced to pay money if they do not want to suffer damages. During the period 1992 and 1999 6,263 actions of street violence were committed in the Basque country in which the JARRAI organisation was involved, organisation in which [Arteaga] is a member. It must be highlighted that many members of JARRAI were sentenced by a Ruling of Spanish Supreme Court dated 19 January 2007. Some of those members have not been tried since they fled abroad, like [Arteaga]. The mentioned Ruling declared that the JARRAI Organisation is a terrorist group.”*

The learned judge sought further information from the Spanish Court, and was informed in due course by that Court that according to

the charges brought by the Public Prosecutor Arteaga was a member of JARRAI in the years 1994 to 2000 and carried out "various violence and coercive actions as a member of that organisation between the dates referred to", and also that, inter alia, JARRAI was declared a terrorist organisation by a judgment of the Supreme Court on the 19 January 2007.

Burgess J. found it unnecessary to reach any conclusion in relation to a submission made on behalf of the respondent on the basis that the acts alleged against Arteaga predated the declaration of JARRAI as a terrorist organisation.

The issue he had to decide was whether the warrant before the Court was in fact a warrant within the meaning of Part I of the Extradition Act 2003 – i.e. a European arrest warrant. Under that Part, according to the judgment, a European arrest warrant is a warrant issued by a judicial authority and which contains (a) ... the information referred to in subsection (4). The information specified in subsection (4) is described in the judgment as being:

*"particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged constitutes (sic) the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the Category 1 Territory under which the conduct is alleged to constitute the offence."*

It will be seen immediately that this provision mirrors, albeit in somewhat terms the provision contained in paragraph 11(1A)(f) of the Act of 2003 in this jurisdiction. But it must be appreciated also that under the United Kingdom legislation this information is inserted as being part of the definition of a European arrest warrant, in contrast to the Act of 2003 which defines such a warrant in section 2 as being "a warrant, order or decision of a judicial authority of a Member State, issued under such laws as give effect to the Framework Decision in that Member State, for the arrest and surrender by the State to that Member State of a person in respect of an offence committed or alleged to have been committed by him or her under the law of that Member State".

The provisions in section 11 (1A) of the Act of 2003 by contrast simply specify what such a warrant shall contain in accordance with the provisions of the Framework Decision. That is a distinction, though perhaps not one which is finally determinative of the question whether in the present case sufficient detail has been provided for the purposes of section 11 (1A)(f) of the Act of 2003. Burgess J. concluded that the information contained in the Spanish warrant, augmented by the additional facts provided in answer to the request for further information, was insufficient and that the warrant was "invalid" as it did not meet the requirements of section 2(4) (c) of the U.K. Act.

In so finding, Burgess J. stated:

*"I have therefore concluded that the particulars given are general and lack any specificity as to the actions of the Requested Person which evidences his alleged membership of the organisation such as attending meetings, giving interviews, being involved in the organisation of the Group (and if so, how) and other outward manifestations that might allow the court to come to a view that the element of membership of the Group is particularised with proper specificity."*

As regards the actual allegations as contained in the warrant he stated:

*"Dealing with the offence stated in the particulars to the Warrant what is deficient in the particulars is either the evidence whereby it is alleged that the Requested Person is a member of that organisation other than by a general statement that he committed a number of offences about which no details are given as to when they occurred – for example*

- The nature of disturbance of the public peace and in what streets it is alleged this occurred.*
- Where street furniture and buses were set on fire.*
- Where arson attacks against courts were carried out.*
- Which private individuals and police it is alleged that he carried out attacks, or*
- The nature of the campaigns to discredit judges and the police."*

Mr Keane has referred also to a judgment of Dyson LJ. in *Von Der Pahlen v. Government of Austria* [2006] EWHC 1672 (Admin), in which having considered, inter alia, a judgment of Lord Hope in *Office of the King's Prosecutor v. Cando Armas and another* [2006] 1 All E.R. 647 emphasising the need for strict compliance with the provisions of the 2003 Act, concluded that in respect of the three charges set forth in the warrant the details contained in the warrant were vague and in relation to two of the charges obscure, and that the requirements of the UK Act were not complied with accordingly. In particular it was concluded that "the conduct alleged to constitute the offence" was not adequately set forth. The three offences were involved the obtaining of money by deception/fraud. In relation to the first charge there were no details of the identity of the victims of the fraud, or the number and size of payments in question, or the nature of the alleged fraudulent misrepresentation. In relation to the second and third charges there were similar deficiencies, such that in the view of Dyson LJ., and having regard to the need for strict compliance as explained by Lord Hope, the warrant was invalid.

Mr Keane submits that similar deficiencies occur in the present warrants. In relation to the first warrant he refers to offence I and to the fact that it is alleged therein that between 2001 and March 2007 the respondent was the leader of a criminal organisation, and that while certain actions by the organisation, as opposed to the respondent himself, are set forth as to the nature of the organisation's activities, the role of the respondent is stated by reference to general matters, failing in any way to indicate the identity of victims or any other persons involved with him in the activities alleged, and there is no indication of any even reasonably precise date or dates when these actions were carried out. Similar submissions are made in relation to the remainder of the offences set forth in the first warrant.

Mr Keane submits that if the warrant in the present case is considered by reference to the same criteria as in *Arteaga* and in *Von Der Pahlen*, it would be found to be invalid, and he urges this Court to refuse to surrender the respondent on foot of it in view of the failure to comply with the provisions of section 11(1A)(f) of the Act of 2003.

#### **The second warrant:**

The two offences in this warrant are firstly that as leader of an organised criminal group he along with others organised and gained financially from prostitution. While these offences have not been marked as being Article 2.2 offences, additional information which

has been provided by the issuing judicial authority informs that the this omission was an error, and that in fact each offence is within the category of "participation in a criminal organisation", and should have been marked as such for the purpose of Article 2.2. I am satisfied that therefore it is unnecessary to establish correspondence.

In respect of these offences there is a considerable amount of detail provided in the warrant, but an objection is again raised in relation to a failure to provide enough information for the purposes of section 11 (1A) (f) of the Act of 2003.

#### **Legal submissions:**

For the applicant, Remy Farrell BL submits that firstly that it is perfectly clear from the first warrant that it is fourteen offences which are the subject of the application for surrender and not five, and that no problem therefore exists either in relation to lack of certainty in that regard, or as regards the rule of specialty. Secondly, he submits that the manner in which the issue of compliance with section 11(1A)(f) of the Act is considered in this jurisdiction may differ from that by which the same matter is considered under the jurisprudence in the United Kingdom, and may be less stringent. In that regard he refers to the judgment of Denham J. in *Minister for Justice, Equality and Law Reform v. Martin Stafford*, (Unreported, Supreme Court, 17th December, 2009) where she stated:

*"Article 8 of the Framework Decision and section 11(1)(f) of the Act of 2003, as amended by s.72 of the Criminal Justice (Terrorist Offences) Act 2005, require that there be a description of the circumstances in which the offences or alleged offences were committed. The matter of time and place are important as they are central to issues such as the statutes of limitation and jurisdiction.*

*It is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act, 1965, as amended, and indeed classically in extradition law. A description of the acts, or the acts alleged, are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the court and so a decision may be made as to whether there is, for example, double criminality. I am satisfied that the facts on the warrant in this case are sufficient to describe the circumstances in which the alleged offences were committed."*

Later she went on to state that it is not necessary to show a *prima facie* case or a strong case, and that "the question which arises for determination is whether the acts alleged on the warrant show a link with the requested person".

Mr Farrell has referred also to judgment of mine in *Minister for Justice, Equality and Law Reform v. Hamilton* [2008] 1 I.R. 60 emphasising the need for the warrant to contain sufficient factual information so that the Court be satisfied that the respondent is implicated in some way in the offence referred to, but that there is no question of the warrant having to show anything like a strong case or *prima facie* case against the respondent in spite of the fact that the prescribed form of warrant contains a heading "Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person".

Mr Farrell refers to the difference between the way in which the UK Courts must consider the contents of the warrant when deciding whether it is in fact a warrant, and the requirement in section 11 (1) of the Act of 2003 here that "A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision". (my emphasis) He refers also to the fact that the respondent has not attempted in any way to say that he is unaware of what these offences are about, and in what way he is prejudiced by the manner in which the offences have been set forth in the warrant. He submits that especially in such circumstances form should not be permitted to triumph over substance, even if there is found to be some lack of clarity in relation to certain aspects of the offences alleged.

In relation to the *Arteaga* case, Mr Farrell submits that the warrant in that case appears to have alleged much against the JARRAI organisation, but not so much against the respondent personally, and he suggests that this is in contrast to what is alleged in the warrants being considered on this application.

#### **Conclusions:**

Taking the second warrant first, I am satisfied that the two offences are sufficiently particularised in the warrant for the purposes of section 11 of the Act of 2003. The offences of leading a criminal group and of deriving a profit from prostitution are said to have been committed between two specified dates and in a particular town. In respect of the first of those offences some of the other gang members are named and others are said to be unidentified, but the escort agency involved in the enterprise is identified and the *modus operandi* of the respondent is explained. Similarly, in relation to the second of these offences, the escort agency is identified as are the names of some of the prostitutes engaged there. In addition there is some detail of the respondent's *modus operandi*. No further detail could possibly be required to inform the respondent in a sufficient way of what these offences are alleged to be, for the purpose of section 11 of the Act of 2003.

The first warrant is more complicated in some ways. There is first of all an offence of being involved as a leader in a criminal organisation. The warrant then gives details of what the gang was involved in by way of criminality, such as smuggling, marketing and supplying narcotics and industrial alcohol, burglaries, thefts and extortion. His role or involvement is explained in that it describes in a general way what he did in the organisation. The dates within which this offence was committed is stated as is the town.

There follows six offences which are all dated sufficiently, and places are clearly identified. Each of these offences says exactly what is alleged the respondent did even if it says that he did these things "in consort with identified and unidentified persons". The fact that there are no names of these people does not matter for section 11 purposes.

The remainder of the offences in the first warrant are similarly described, and by reference to particular dates and locations are identified, and the respondent's degree of involvement is clearly set forth. I cannot see how for the purpose of section 11 of the Act of 2003, anything further is required.

The content of the warrant is important of course. There must be sufficient to satisfy in a reasonable way the requirements for the contents of a warrant under the Framework Decision and the Act of 2003. But unlike what appears to be situation in the United Kingdom, where a European arrest warrant is actually defined in the legislation as being a document which contains the details as to the date, time and place of the offence and the degree of involvement of the respondent in the offence, the warrant is more simply defined in section 2 of the Act of 2003 and not in any way by the nature of the contents. The Framework Decision provides a template form of warrant, and in Article 8 provides for what shall be contained in the warrant including "a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person". Section 11(1A)(f) of the Act of 2003 reflects that requirement.

The judgments of our Courts in these matters indicate a somewhat different approach to the contents of a warrant to that adopted in the neighbouring jurisdiction. Perhaps that can be explained by reference to the manner in which a European arrest warrant is defined under the Act giving effect to the Framework Decision in the United Kingdom. While it is interesting to see how the Framework Decision is applied in different jurisdictions and how their enabling legislation operates and is interpreted, this Court must look to its own and the Supreme Court's case-law when considering how the Act giving effect in this State to the Framework Decision is to be applied and interpreted.

It has been made clear here that the purpose of the factual details of the offence and the involvement of the respondent in it as described in the warrant serves is beyond mere formal adherence to a prescribed form. It is important that a warrant contains sufficient detail to indicate the respondent's role or involvement in the offence, so that when arrested on foot of it, he/she can be immediately be aware in broad outline what it is that he has been arrested in relation to. But the information need not be exhaustive in every known detail.

Equally, such broad factual detail is necessary so that the High Court, when considering whether or not to endorse the warrant prior to a respondent's arrest, can be satisfied that the person named in the warrant is a person who is alleged to have been involved in or to have committed the offence in the warrant. But there is no question of a strong or *prima facie* case having to be apparent, as the strength of the case against the respondent is of no relevance to what this Court must decide on an application for surrender.

This Court needs to be apprised of sufficient information either from the warrant itself or, as supplemented by additional information, to enable it in appropriate cases to be satisfied that the offence in the warrant corresponds to an offence in this State.

The content of the warrant may be important also if, at the hearing of the application for surrender issues such as specialty or extra-territoriality need to be considered. There may be other issues which will need to be decided by reference to the contents of the warrant.

But there is no question of the Court having to apply the same strict rules to adherence to form as it might in a criminal case in this State, such as in a warrant or an indictment, provided that a reasonable summary of the offences is contained in the warrant, which at least sufficient to show that the respondent is implicated in the offence, and sufficient for any of the other purposes to which I have referred.

I prefer to express no view as to whether the warrant in *Arteaga* and which I have referred to in some detail above would or would not have passed muster in this jurisdiction, given the apparent difference in the way we consider the adequacy of the information contained in the warrant.

I am satisfied that the respondent in this case, if he looked at these two warrants following his arrest would be possessed of more than sufficient information to know what offences he is alleged to have been committed and for which his surrender is sought. That function of section 11 is fulfilled to a sufficient extent, even if the respondent may learn even more about the alleged offences following surrender and as part of whatever pre-trial process applies in the issuing state.

If this Court was required to be satisfied as to correspondence, which it is not in this case, there would I suspect be sufficient information also.

It seems to me that in all relevant ways, the information supplied in these warrants suffices for the purpose of section 11 (1A)(f) of the Act of 2003.

I am satisfied that there is no reason to refuse to order surrender by reason of any of the provisions of sections 21A, 22, 23 or 24 of the Act, and I am satisfied also that there is no reason why under Part III of the Act or the Framework Decision surrender is prohibited.

I am therefore required to make the order sought and I will so order.