

THE HIGH COURT

[2013 No. 240 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

KRZYSZTOF ROBERT LESKIEWICZ

RESPONDENT

JUDGMENT of Ms. Justice Murphy delivered the 7th day of October 2014**Introduction**

1. The respondent is a citizen of Poland and he is the subject of a European arrest warrant issued by the Republic of Poland on the 2nd July, 2013. The warrant was endorsed by the High Court for execution in this jurisdiction on the 15th October, 2013 and it was duly executed on the 26th November, 2013. The respondent was arrested by Sergeant Sean Fallon on that date and was brought before the High Court on the same day pursuant to s. 13 of the European arrest warrant Act 2003, (hereinafter "the Act of 2003").

2. 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 on the 20th June, 2014 and again on the 25th July, 2014.

3. The respondent does not consent to his surrender to the Republic of 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.

Points of objection

4. Points of objection were filed pleading in essence two grounds of objection. At para. 1 the respondent claims that his surrender is prohibited by s. 37(1) of the Act of 2003 and in substance pleads that his surrender would constitute a disproportionate interference with his right to respect for family life under article 8 of the European Convention on Human Rights (hereinafter "the ECHR") on grounds that there has been an unwarranted and inexcusable delay in the issue and/or transmission and/or endorsement of the European arrest warrant to the prejudice of the respondent and that his surrender at this late remove would be fundamentally unfair both generally and specifically in the context where the respondent and his family have established roots in Irish society, the Polish authorities have been aware of his presence in Ireland for several years, the respondent has attempted to engage with them without success and the Polish Authorities have had means of contacting him, but have not availed of such.

5. At paras. 2 and 3 of the points of objection a s. 21A objection is raised and it is pleaded that no decision has been made in the issuing State to charge and try the respondent in respect of the offence for which his surrender is sought.

The evidence

6. The European arrest warrant in this case is a prosecution warrant which seeks the surrender of the respondent in respect of one offence, the particulars of which are stated at para. E to be:-

"The requested person, in the period from an unidentified date in December 2005 to an unidentified date in July 2006 in Lubin near Miedzyzdroje, acting in short intervals of time with a premeditated intention, jointly and in arrangement with other persons, with the purpose of gaining a financial profit, grew cannabis other than cannabis sativa L. vulgaris and produced from them narcotic drugs in the form of marijuana in the amount of at least 3 kilograms."

7. The issuing judicial authority has purported to invoke para. 2 of article 2 of the Council Framework Decision of the 13th June, 2002, on the European arrest warrant and the surrender procedures between Member States, (002/584/J.H.A.) O.J. L190/1 18.7.2002 (hereinafter referred to as "the Framework Decision") in respect of the offence by the ticking of a box in part E1 of the warrant. The ticked offence is stated to be illicit production of narcotic drugs. In fact this is not one of the offences set out in para. 2 of article 2 of the Framework Decision. The relevant offence in para. 2 of article 2, is that of 'Illicit trafficking in narcotic drugs and psychotropic substances'. No objection has been raised in respect of this aspect of the warrant and the Court is in any event satisfied that the offence set out corresponds with a number of offences under the Misuse of Drugs Act and in particular the cultivation for sale and supply of cannabis prohibited by s. 17 of the Misuse Drugs Act 1977, as amended.

8. At para. B of the warrant the decision on which the warrant is based is said to be the decision of the District Court in Swinoujscie, dated the 22nd March, 2007, file reference II Kp 82/07 and the file reference of decisions and judgments is stated to be Ds 2265/07. The issuing authority provided further information under the heading of other circumstances at para. F of the warrant. It states:-

"Krzysztof Leskiewicz is wanted with a wanted notice. The police have established that he is living in Ireland. The time limit for the prosecution will expire on the 31st December, 2035."

9. Notice of objection was filed on the 10th February, 2014 and a number of affidavits were filed in support of the points of objection. In his primary affidavit sworn on the 12th February, 2014, the contents of which have not been controverted, the respondent states that he has been in Ireland since the 14th September, 2006, that initially he stayed with his brother, who has been in Ireland since 2004. He sets out all of the places at which he has resided from the 1st December, 2006, to the date of swearing of the affidavit. He sets out his work history from the time of his arrival in Ireland to the date of swearing of the affidavit. He states at para. 5 that his then girlfriend, now wife, joined him in Ireland in February 2007, that they married in Ireland in December 2008 and that they have two daughters, Joanna who was born on the 22nd November, 2008 and Karolina who was born in Ireland on the 24th July, 2012. At para. 7 he states that since December 2006, he was aware that an investigation was being conducted in Poland into the alleged

offence set out in the European arrest warrant. He states he became aware of this because the police authorities called to his parents' residence in order to interview him in relation to the investigation in or around December 2006. He further states at para. 7 that he sent a letter in or about March 2007, to the court undertaking that he would return to Poland to give evidence at the trial of the alleged offence against other individuals if required. At para. 8 he states that he was threatened by another person who was the subject of the police investigation and that he recorded his telephone conversation with the person threatening him. He states that he sent a MP3 file of the recording to his family who furnished this to a Polish lawyer, Mr. Jerzy Nowicki who was then acting for another person involved in the investigation. That lawyer Mr. Jerzy Nowicki now represents the respondent and has done so since November 2013. At para. 9 of his affidavit, he states that he gave the authorities a forwarding address in Poland through which they could contact him, but that they had failed to do so. He also states that the Polish authorities were aware of his presence in Ireland, though not a specific address in Ireland since 2006. Paragraphs 3 to 9 of the affidavit of the respondent relate to the grounds of objection pursuant to s. 37(1) namely that the respondent's surrender would constitute a disproportionate interference with his right to respect for family life under article 8 of the European Convention on Human Rights. At para. 10 of the affidavit the respondent asserts his objection pursuant to s. 21A namely that the Polish authorities at the time of the issuing of the European arrest warrant had not formed the intention to bring proceedings for the alleged offences. At para. 10 of the respondent's affidavit states:-

"I have been informed by my Polish lawyer that he has contacted the Regional Prosecutor's Office in Swinoujscie, Poland, which is dealing with this matter. I say that my lawyer in Poland has been in contact with said office and been informed that no decision has been made to charge and/or try me in respect of the allegations contained in the European arrest warrant. I say he has been informed that I am merely sought for an interview and no substantive decision on whether I will be charged and tried will be made until the interview is conducted. I beg to refer to a true copy of the letter from my Polish lawyer Mr. Jerzy Nowicki as sent on the 7th January, 2014, upon which marked with the letter "A" I have signed my name prior to the swearing hereof, I also beg to refer to affidavit of my Polish lawyer Mr. Jerzy Nowicki when produced."

10. The letter exhibited at "A" from Mr. Jerzy Nowicki advocate states:-

"I hereby declare that I have been commissioned by Mr. Krzysztof Leskiewicz to conduct the case pending before the Regional Prosecutor's Office in Swinoujscie and related to Mr. Krzysztof Leskiewicz's liability, if any, in the case under the Act on Prevention of Drug Abuse.

The above mentioned case is conducted under the file reference number Ds. 2265/07.

At the time of writing the Regional Prosecutor's Office in Swinoujscie has to conduct a procedural act in the form of interviewing Mr. Krzysztof Leskiewicz.

After conducting this act, a substantive decision shall be made concerning a further course of proceedings in the case.

Preliminary findings made by me as the barrister for Mr. Krzysztof Leskiewicz indicate that temporary detainment order shall not be issued in relation to Mr. Krzysztof Leskiewicz.

I would like to inform that the case concerns the event which took place in 2007 and this fact should have a positive influence on the further course of proceedings with regard to Mr. Krzysztof Leskiewicz.

I have issued this letter upon request of Mr. Krzysztof Leskiewicz for the purposes of submitting it to relevant judiciary authorities."

The letter is stamped and signed by Jerzy Nowicki, stated to be a Barrister.

11. A purported affidavit from the lawyer Jerzy Nowicki was produced to the Court. The document is stamped and signed by Jerzy Nowicki, but the jurat is not completed and the document is undated. The Court proposes to receive the document as an exhibit to the respondent's affidavit in the same manner as it received the letter contained at exhibit "A" of his affidavit. The material statement in the document is contained at para. 5, where Mr. Nowicki states that he has been engaged as the respondent's lawyer in Poland since November 2013, to date. He states:-

"I have contacted the Regional Prosecutor's Office in Swinoujscie, Poland, which is dealing with this matter. I have been informed by that office that no decision has been made to charge and/or try the respondent in respect of the allegation contained in the European Arrest Warrant. I have been informed that the respondent is merely sought for an interview and no substantive decision will be made on whether he will be charged and/or tried until the interview is conducted. I beg to refer to a true copy of my correspondence with the Regional Prosecutor's Office in Swinoujscie, Poland upon which marked with the letter "JN1" I have signed my name prior to the swearing hereof."

That correspondence has not been produced to the Court despite the request of the Court to do so.

12. A further document purporting to be an affidavit of Stanislaw Leskiewicz, the mother of the respondent was produced to the Court. The Court is not satisfied that this purported affidavit is in the proper form, the jurat having been witnessed by Mr. Jerzy Nowicki, the respondent's Polish lawyer, and the Court is not satisfied that he is either a Commissioner for Oaths/practicing solicitor.

13. On the 23rd May, 2014, the respondent filed a supplemental affidavit. This further affidavit was for the purpose of exhibiting letters sent by the respondent to the Polish authorities as well as statements of evidence given by his parents to the Polish authorities. The respondent's contact with the authorities is not controverted. His first contact appears to have been on the 8th January, 2007, and that is the letter contained at exhibit "C" of the supplemental affidavit. This was the month following the police authority's attendance at his parents' home in December 2006, seeking to interview him. The address given on the letter is his parent's address, the letter is addressed to the Regional Prosecutor's Office and is stamped "Received on the 8th January, 2007". It is headed "Notification" and reads as follows:-

"Regarding: intimidation and harassment of my person.

On the 12.11.2006, around 10.00, I received a phone call from Marcin Roszczyk who I worked for at a construction site in Lubin at Lagodna 2 Street. The first words he said on the telephone were about an incident that happened to him: a police intervention and him being stopped with large amounts of marijuana.

Then he started yelling: that I must testify the way he wants, because I am a bitch and if I did not side with him, he

would finish me, because he has already killed one person and therefore he could do it again. Because he is able to fly out here, find me and kill me. Because he is now a key witness and he would not go to jail, but I would instead. And then he would see to it that I go to jail for at least three years.

When I asked him when will he give my money back, he told me that he would not give me any money back and that I should not piss him off, because if I did then [part of the text is missing].

I heard this type of threats during the next two days. Because of that, I thought a lot about the threats from him, the intimidation and harassment of my person. I believe that my life and health may be in danger and exerting such pressure is the cause of my concern in regards to arriving in Poland, because I could get hurt. I know him and I know what he is capable of.

[Signature]

Krzysztof Leskiewicz"

14. The next letter in time is dated the 12th January, 2007, and gives the same address of his parents and is stamped "Received on 16th January, 2007" by the Regional Prosecutor's Office. It states:-

"In connection with the phone calls to me from the Miedzyzdroje Police, inviting me to give evidence, I would like to inform, that I am willing to come to Poland, provided I will not be withheld in connection with the case. Please give me a written reply in this regard to the above mentioned address.

My concern about the possibility of being detained in this case stems from the fact that Marcin Roszczyk accused me of committing a crime.

Further reason for my concern is the fact that he made threatening phone calls to me and gave false testimony.

[Signature]

Leskiewicz"

15. This letter, the contents of which are uncontroverted indicates that the police authorities were in a position to contact the respondent in January 2007.

16. At exhibit "D" are contained what appear to be witness statements or depositions from the respondent's parents in relation to an investigation against someone other than the respondent. In each case, the witness is stated to be a stranger to the parties. The witness statements in each case are dated the 22nd March, 2007. In their statements, both parents state that the respondent is living in Ireland. On the same date, being the 22nd March, 2007, the decision on which the European arrest warrant was based was also taken. This was a decision to arrest the respondent and as already stated was described in para. F of the warrant that the respondent was wanted with a wanted notice. It is evident that the respondent became aware of this decision and he wrote again to the Polish authorities some time later. Again he gives his address as that of his parents. The letter carries a reference No. III K 113/07, which appears to be a reference to a case other than his own. The letter reads:-

"Request

Regarding: revoking the arrest warrant and allowing for testimony on bail. (Giving evidence in the above case without being arrested and put in a detention centre).

Your Honour, I currently reside in Ireland (which is known by everyone including the law enforcement agencies). I have a steady job and residence and I would not like to lose it, as it enables me to lead a normal life, help my family and my future wife.

However, considering the fact that Marcin Roszczyk accused of the production and sale of marijuana, remains at large, has given false testimony, framed me and other persons in order to avoid criminal responsibility for the crime he committed, has led to the issuing of a decision (Court Order) for my arrest and allowing me to return and testify in the case. In addition, I would like to mention that I received threats from the accused Marcin R: that if I do not testify as he wants, then I or my family will be punished! And recently he demanded that I stay in hiding as long as I can. That is why I'm afraid to return to the country.

I Krzysztof Leskiewicz holder of the personal identity card with the number [no information] request your Honour to revoke/peel the arrest warrant/detention order and to grant me the ability to testify on bail without being arrested and put in a detention center, because I want to testify exonerate myself and indicate the real culprit [illegible]. Your Honour, I ask for correspondence (response to my request) to be directed to the address of my mother (Stanislawa Leskiewicz, 74-100 Welyn Szklona, 1a/1 Street), because I keep in touch with her and in the case the arrest warrant is revoked I will be staying there and will be present at every hearing. I'm asking for a favourable consideration of my request, because I really want to prove my innocence and to convict the guilty person."

17. Upon consideration of all of these documents the central authority wrote to the issuing authority by letter dated the 27th May, 2014, raising a number of queries.

These were listed 1 to 5 and are as follows:-

"1. I would draw you attention to paragraph 5 of the affidavit of Jerzy Nowicki, Mr. Leskiewicz's Polish lawyer, in which he claims to have been told by the Regional Prosecutor's Office that a decision has not been made to charge and try Mr. Leskiewicz. Please comment on this assertion. Please confirm whether a decision has been made to prosecute Mr. Leskiewicz for the offence set out on the warrant and what steps will be taken in the event of his surrender.

2. Please provide additional information regarding the precise nature of the decision on which the warrant is based. Please advise whether the warrant was issued specifically to authorise arrest for the purpose of charge.

3. I would draw your attention to paragraphs 7 and 9 of Mr. Leskiewicz's first affidavit in which he claims that his parents informed the Polish police in December 2006, that he had moved to Ireland in which he claims to have provided the Polish authorities with a contact address. Please comment on these assertions.

4. Please indicate what efforts were made to establish the whereabouts of Mr. Leskiewicz since the domestic warrant issued. Please also confirm how and when it was first established that the respondent was residing in Ireland.

5. I would draw your attention to Mr. Leskiewicz's supplemental affidavit sworn on 20 May, 2014. Please indicate whether you wish to comment on the averments made by Mr. Leskiewicz therein."

18. A terse reply dated the 18th June, 2004 was received. Rather than answering the queries in the format in which they were raised, the issuing authority issued what might be described as a global response. It states:-

" [t]he District Court in Szczecin, III Penal Department, in reply to your letter dated 27.05.2014, regarding Krzysztof Leskiewicz, D.O.B. 15.06.1971, having entered in possession of information provided by the District Public Prosecutor, hereby notifies that the European Arrest Warrant was issued only when information about the sought party's sojourn beyond Poland's borders was obtained. Initially, the person was sought on the territory of Poland on the grounds of the 'wanted' letter. The first information regarding the possibility of the party's possible stay abroad was obtained in 2010 and when this information was verified, the request was presented at the court to issue the European Arrest Warrant.

The court has no influence whatsoever upon dates of applications presented by the Public Prosecutor."

19. The letter was signed by the judge of the District Court to whom it had been addressed, Artur Kamacewicz.

20. The s. 16 hearing proceeded on the 20th June, 2014, and the Court heard the oral submissions of both the applicant and the respondent in respect of the s. 21A objection and s.37 objection. The Court expressed concern that the questions touching on whether or not a decision to charge and try the respondent had not been answered. The issue had been raised by the information supplied by the respondent's lawyer, Mr. Jerzy Nowicki. The central authority had properly sought further information from the issuing Polish authority at points 1 and 2 of their letter of the 21st May, 2014. At the Court's request a further letter was sent to the issuing judicial authority by letter dated the 24th June, 2014. The letter states:-

"The proceedings in this case were last before the High Court on 20 June, 2014. On that date Judge Murphy requested, pursuant to s. 20(1) of the European Arrest Warrant Act 2003, as amended and Article 15(2) of the Framework Decision, that the issuing judicial authority be asked to provide the following additional information:

1. Please confirm that a decision has been made to charge Mr. Leskiewicz with the offence described in paragraph E of the European Arrest Warrant and to try him for that offence.

2. Please provide information describing the decision made by the District Court in Swinoujscie dated 22 March, 2007, file Reference II Kp 82/07.

3. Mr. Leskiewicz claims that he his parents informed the Polish police in December 2006 that he had moved to Ireland and that the Polish police were given a forwarding address in Poland through which they could contact him. Please comment on the accuracy of these claims.

4. Please provide information regarding any attempts made by the Polish authorities to establish the whereabouts of Mr. Leskiewicz from 22 March, 2007, to 2 July, 2013. In particular please state how and when the Polish authorities established that Mr. Leskiewicz was residing in Ireland.

5. You are referred to the correspondence exhibited to Mr. Leskiewicz's affidavit dated 20 May, 2014. Exhibit "B" is a letter which appears to have been sent by him to the District Court in Szczecin. **Please state if and when this letter was received by the District Court in Szczecin.** Exhibit "C" contains 2 letters which appear to have been sent by Mr. Leskiewicz to the Regional Prosecutors Office in Swinoujscie. **Please state if and when these letters were received by the Regional Prosecutors Office.** The High Court has set the resumed hearing of this case for 18 July, 2014, and accordingly your urgent attention to this matter would be appreciated."

21. A response to this correspondence was received on the 2nd July, 2014. The covering letter is from the issuing authority, being the judge of the Regional Court and it states:-

"The Regional Court in Szczecin, the Third Criminal Division, pursuant to the letter of the 24th June, 2014, kindly sends you herewith the answer of the Public Prosecutors Office in Swinoujscie of the 1st July, 2014, in the case of Krzysztof Robert Leskiewicz."

The response from the Public Prosecutors Office is dated the 1st July, 2014. In response to item No. 1, seeking confirmation that a decision had been made to charge and try Mr. Leskiewicz with the offence described in para. E of the European Arrest Warrant, the Public Prosecutor replied:

"The evidence collected in the case in form of the depositions of the witnesses, the opinions of experts, indicates that Krzysztof Leskiewicz by his behaviour has shown all features of acts imputed to him."

In response to the item raised at No.2 of the letter of the 24th June, 2014, seeking information describing the decision made by the District Court in Swinoujscie dated the 22nd March, 2007, file reference II Kp 82/07, the Public Prosecutor replied as follows:

"by the decision of the 22nd March, 2007, the District Court in Swinoujscie in the case II Kp 82/07 has applied with respect to Krzysztof Leskiewicz the provisional arrest for the period of fourteen days from the day of apprehension. Krzysztof Leskiewicz is suspected of this, that in the period from an undetermined daily date of the month of December 2005 till an undetermined daily date of the month of July, 2006, in Lubin near the town of Miedzyzdroje in Lagodna Street, acting at short time intervals with an intent devised in advance and in concert with other persons in order to gain a financial benefit has been growing hemp other than the fibrous ones and has been producing from them intoxicants in the form of marijuana in the amount of at least 3 kilograms."

In response to question No.3, the prosecutor accepts that the respondent's father when examined as a witness, which on the evidence appears to have occurred on the 22nd March, 2007, stated that his son was staying in the terrain of Ireland and that he did not know his exact address and telephone number.

In response to the query raised at No.4, as to the attempts of the Polish authorities to establish the whereabouts of Mr. Leskiewicz from the 22nd March, 2007, to the 2nd July, 2013, and the request for information as to how and when the Polish authorities established that Mr. Leskiewicz was residing in Ireland, the Public Prosecutor replied:

'The Polish police have established that Krzysztof Leskiewicz is staying on the terrain of Ireland, however they did not establish his exact address, the time of his possible return to Poland has also not been known.'

In response to query No. 5, the public Prosecutor confirms that the respondent sent a letter to the Regional Court in Szczecin which in turn was sent to the Public Prosecutors Office on the 18th September, 2007. The response is silent as to the letters which the respondent states he sent to the Regional Prosecutor's Office.

Section 21A issue

22. The respondent contends that on the totality of the evidence that the Polish authorities at the time of issuing this European arrest warrant had not formed the intention to bring proceedings for the alleged offence to which the European arrest warrant relates. Further, it has been contended on behalf of the respondent that the court is prohibited by s. 21A from surrendering the person on the basis that the court should be satisfied on the evidence that a decision has not been made to charge the respondent with, and try him for the single offence set out in the European arrest warrant. The applicant on the other hand relies on s. 21A(2) which presumes that a decision to charge and try the respondent has been made and that there is no cogent evidence before the court sufficient to rebut the presumption.

23. The nub of the question is whether this warrant is in fact a warrant issued for the purposes of the investigation of an offence alone, in circumstances where that investigation might or might not result in a prosecution. Or in the words of s. 10 of the European Arrest Warrant Act 2003, as amended, - is the respondent required for the purposes of conducting a criminal prosecution and does the Republic of Poland intend to bring proceedings against him as required under s.10(a) of the Act of 2003. If it is the former, then his surrender must be refused. If it is the latter, then his surrender is mandatory pursuant to section 10.

24. In the course of legal argument on the 25th July, the Court referred to its judgment given the previous day in the case of *Minister for Justice and Equality v. Czazkowski*. In that case, which also concerned a Polish warrant, the respondent argued that on the evidence there was no decision to charge and try the respondent. The Court rejected that argument on the basis that there was at the time of issuing the warrant, sufficient evidence to lay an indictment; that a decision had been taken to charge the respondent with the offences outlined in the warrant and that the only outstanding procedural step was the requirement to interview the respondent so that the charges could be put to him. In those circumstances, the Court concluded that the position was similar to that which existed in *Olsson* [2011] 1 I.R. 384, where there was a clear intent to bring criminal proceedings against the respondent and that the only thing which stood in the way of the commencement of such prosecution was the requirement of the presence of the respondent and the interview where he could respond to the investigation.

25. The factual situation in this case is quite different. The warrant itself at para. F states that the respondent is wanted **with a wanted notice**. The evidence provided by the respondent's Polish lawyer indicates that the respondent is "wanted" for interview and that no substantive decision will be made on whether or not he will be charged and/or tried until that interview has been conducted. This led the central authority properly to inquire of the issuing authority and to raise queries in relation to the matter. In its letter of the 27th May, 2014, the central authority asked the issuing authority to comment on the assertion that the Regional Prosecutors Office had told the respondent's lawyer that no decision had been made to charge and try the respondent. The issuing authority in the same letter was asked to confirm whether a decision had been made to prosecute the respondent for the offence set out in the warrant and the steps that would be taken in the event of his surrender. Furthermore, at item no. 2 of that letter, additional information regarding the precise nature of the decision on which the warrant was based was sought. In replying to that letter on the 18th June, 2014, the issuing authority failed to respond to those specific queries. The letter of response did however state that "initially he has been searched for only in Poland on the grounds of a domestic wanted warrant". In a second version of that letter which is before the Court, this is referred to as a wanted letter. In ordinary parlance, if a person is stated to be wanted in connection with a crime that normally denotes that he is sought for the purposes of the investigation of that crime.

26. At the Court's request in the course of the hearing on the 20th June, 2014, the issuing judicial authority was again requested to clarify the status of the proceedings in Poland. The judicial authority was asked to confirm that a decision had been made to charge the respondent with the offence at para. E of the European arrest warrant and to try him for that offence. The judicial authority which issued the warrant referred the matter to the Public Prosecutors Office for reply. The reply given was the evidence collected in the case in the form of the depositions of the witnesses and the opinions of experts, indicates that Krzysztof Leskiewicz by his behaviour has shown all features of acts imputed to him. At its highest this is a statement that the Public Prosecutor has lots of evidence. It stops short however, of saying that a decision to charge has been made and having regard to the fact that the question was posed directly on two occasions, the Court is forced to the conclusion that a decision to charge him has not been made. The second question which was asked at the request of the Court was to provide information describing the decision made by the District Court in Swinoujscie dated the 22nd March, 2007, file reference II Kp 82/07, and the response it received was:-

"By the decision of the 22nd March, 2007, the District Court in Swinoujscie in the case II KP 82/07 has applied with respect of Krzysztoff Leskiewicz the provisional arrest for the period of fourteen days from the day of apprehension. Krzysztoff Leskiewicz is suspected of"

27. The letter goes on to set out the offence contained in the warrant. The proposed arrest is not stated to be for the purpose of charge or for putting the evidence to him. The arrest is described as provisional and it allows for the respondent to be detained for a period of fourteen days from the day of apprehension. Such an arrest and detention period in the view of the court can only be for the purposes of investigation. This in the court's view is supported by the next sentence which begins "Krzysztoff Leskiewicz is **suspected** of ...".

28. The Court is therefore compelled by the evidence to the conclusion that the respondent is sought for the purposes of investigation only and that is not permissible. The Court has been assisted in arriving at this conclusion by having had an opportunity of considering the same argument in respect of another Polish warrant in which the evidence clearly indicated an intention to charge. Despite two clear opportunities to answer the question raised by the central authority and later by the court that question has not been answered affirmatively. The evidence in this case does not indicate an intention to charge, let alone to try the respondent for

the offence contained in the European arrest warrant. In the particular circumstances of this case, I am satisfied to hold that a decision has not been made to try the respondent for the offence in the warrant in the issuing State. In the circumstances I am obliged in accordance with s. 21A(1) to refuse to surrender the respondent.

The s. 37(1) issue

29. By reason of the Court's finding in relation to the s. 21A argument, the Court's decision in this regard is somewhat academic in circumstances where it has already held that it is precluded from surrendering the respondent on s. 21A(1) grounds. Lest this matter go further, the Court however, does point out that it is not persuaded that the objection based on s. 37(1) is valid. Undoubtedly, there has been a considerable and largely unexplained delay. The Court is satisfied that the Regional Prosecutor in the case was aware of the respondent's presence in Ireland from at the latest September 2007, when the letter which he sent to the Regional Court in Szczecin was forwarded to the Prosecutors Office. The prosecutor also held the evidence of his father dated the 22nd March, 2007, that his son, the respondent, was in Ireland. Notwithstanding this knowledge, the European arrest warrant in this case was not issued until the 2nd July, 2013. The warrant however, did not come out of the blue, as the correspondence in the case shows that the respondent was aware of the existence of a warrant for his arrest in Poland, more or less from the date the arrest warrant was issued. Notwithstanding its existence, he went ahead and married and undoubtedly has established roots in the community and has two young daughters, both born in Ireland. Overall, however the respondent has failed to adduce evidence of sufficient cogency to demonstrate that to surrender him would represent a disproportionate interference with his rights to respect for family life in breach of article 8 of the ECHR. His evidence does not establish, or even come close to establishing either that he personally or that a member of his family would be so profoundly affected by a decision to surrender him such as to outweigh the significant public interest in his extradition and the necessity for this State to comply with and fulfil its international obligations with regard to extradition particularly in circumstances where the surrender is being sought for the purposes of conducting the prosecution of an alleged drug offence involving at least 3kg of cannabis. The Court therefore is not persuaded that the surrender of the respondent would be prohibited by s.37(1) of the European Arrest Warrant Act 2003 as amended.