Neutral Citation Number: [2006] IEHC 321

**THE HIGH COURT**

**Record Number: 2006 No. 92 Ext.**

**BETWEEN**

**MINISTER FOR JUSTICE. EQUALITY AND LAW REFORM**

**APPLICANT**

**AND**
**PIOTR SKOWRONSKI**

**RESPONDENT**

**Judgment of Mr Justice Michael Peart delivered on the 31st day of October 2006**

1. The surrender of the respondent is sought on foot of a European arrest warrant which is dated 29th November 2005. It was received in this State on the 4th August 2006 and shortly thereafter on the 8th August 2006 this Court ordered the endorsement of same for execution here. On the 21st August 2006 at 9.25pm, the respondent was duly arrested and brought before the Court as required by s. 13 (5) of the European Arrest Warrant Act, as amended, on the following day the 22nd August 2006, on which occasion the respondent was remanded in custody from time to time until the hearing of the present application on the 27th October 2006.

2. No issue is raised in the Points of Objection filed herein as to the identity of the respondent or the formalities of the arrest. I am in any event satisfied that the person before the Court is the person in respect of whom the European arrest warrant has been issued and I am also satisfied that the said warrant has been duly endorsed for execution in this State.

3. I am further satisfied that since the sentence of imprisonment which has been imposed on the respondent in Poland on the 21st January 2004 is not one which was imposed in absentia, no undertaking is required under s. 45 of the Act. Furthermore it is clear that the Court is not required to refuse surrender by any of the provisions in sections 21A, 22, 23, 24 of the Act, or by Part 3 of the Act or the Framework Decision itself.

4. As the offences which gave rise to the said conviction are some of those set forth in Article 2.2 of the Framework Decision and set forth also in Part E of the prescribed form of warrant in that Framework Decision, the double criminality of the acts involved in those offences does not have to be verified. In addition there are of the required minimum gravity.

5. Subject to dealing with the two points of objection on which the respondent is now relying, the Court is therefore required by the Act to make the order for the surrender of the respondent.

**The Points of Objection**

6. Before I deal in detail with the two points now being relied upon, it is necessary to refer to the Points of Objection as originally filed on the 26th September 2006, and the Amended Points of Objection filed only on the 18th October 2006. It is worthy of the Court's criticism, and in order that in future the practice will cease, that the first points of objection contained six points, only three of which survived into the amended Points of objection. In the latter document four new points were added, making seven in all. At hearing five of those seven grounds were dropped, leaving two, namely a delay ground, and a ground concerning some perceived ambiguity as to whether the sentence imposed in Poland was in respect of one offence or two offences.

7. This Court has said on previous occasions that the purpose of Points of Objection is to put the applicant on notice in a sufficiently precise and clear manner of just what points of objection will be relied upon at the hearing of the application, and that it is not appropriate or sufficient to simply file a document called Points of Objection but which contains to a large extent merely unspecific allegations of non-compliance with various requirements of the European Arrest Warrant Act, 2003 as amended or the Framework Decision. I have noted before that the application for an order under s. 16 of the Act is not to be treated in the same manner as a civil action where very frequently fairly meaningless pleadings are exchanged, on the basis that eventually in replies to particulars some meat so put on the flesh and the other party at last knows what case it has to meet. In such applications, Points of Objection serve the purpose only to put the applicant on notice in a meaningful way of what case is being made to oppose the application. Fair procedures require this, and it must always be remembered that these are not criminal proceedings where the accused is under no obligation to disclose in advance of the trial what his or her defence might be. Rules of procedure have been provided for.

8. In the present case, I intend to go through the documents filed in some detail in order to make my point clear.

9. I will take the original Points of Objection first. In that document six points were raised as follows:

> "*1. The surrender of the respondent for the offences outlined in the warrant is prohibited by statute, and, in particular is so prohibited by the provisions of the European Arrest Warrant Act, 2003.* "

10. This point is so general as to convey nothing of assistance to the applicant. The Act contains a number of possibilities as to why surrender might be prohibited; for example, any of the provisions in Part III of the Act, or sections 21A, 22, 23 or 24 of the Act. Such a general plea is not a proper manner to raise a point of objection, and it seems extraordinary that it survived intact into the Amended Points of Objection, when presumably some refinement of the points was being undertaken at a late stage before the hearing. It was ultimately not relied upon, except to the extent that it might be seen as encompassing the two grounds ultimately relied upon being points 4 and 6 in the Amended Points. In that event, this paragraph was otiose, and ought to have been deleted.

> *"2. The aforesaid warrant is not in the form required by s. 11(1) of the European arrest warrant Act 2003, and is not in the form set out in the Annex to the Framework Decision in that it does not contain a sufficient description of the circumstances in which the offence was committed including the precise time and location of the offence and the degree of participation in the offence by the respondent."*

11. This point also somehow survived into the Amended Points of Objection, though was not relied upon at the hearing. Paragraph E of the warrant states at its outset that "*1. in the night from 24 to 25 September 2001 acting together and under arrangement with other undefined persons he deprived [the victim] of liberty in such a way that, against her will, he drove her away to a forest*" and "*2. in the same place as specified in point 1 acting together and under arrangement with other defined persons, in order to gain material benefit he used violence towards [the victim], by beating her with his hands on the face and threatening to deprive her of life by using a pistol which he had put to her head as well as threatening to infect her with HIV virus, he tried to cause her to dispose of her own property by giving him money in the amount of not less than 4,000 Zloty…..*"

12. I find it incomprehensible how it could ever have been considered even arguable that this description of the alleged offence "*does*

*not contain a sufficient description of the circumstances in which the offence was committed including the precise time and location of the offence and the degree of participation in the offence by the respondent*" as pleaded in the document. Given that the respondent was present in court in Poland when he was tried and convicted and sentenced for these offences, the raising of the point is all the more unusual. It is not surprising that the respondent did not see fit to waste the Court's and the applicant's time attempting to argue that point.

> *"3. It is submitted therefore that this Honourable Court should exercise its discretion under section 20(1) of the European Arrest Warrant Act, 2003 to require the issuing authority to provide it with appropriate additional documentation or information."*

13. Again, there is no detail as to what information or documentation is thought to be necessary. Apart altogether from that, it is not a "point of objection", and for both reasons should not have been included. It was, I am glad to say, excluded from the Amended Points of Objection. But the fact that it was included in the first document had the capacity to add to the costs of the applicant, not to mention its capacity to waste the time of the lawyers acting for the State.

> *"4. The aforesaid warrant has not been endorsed for execution in accordance with section 13(2) of the European Arrest Warrant Act, 2003."*

14. No basis for this groundless plea was shown. It is meaningless and empty. I note that the respondent was served at the time of his arrest with a copy of the warrant, and that the arresting officer showed the respondent where it had been endorsed for execution by the High Court. Presumably it was put in simply as a sort of general traverse. It did not survive into the Amended Points of Objection. There was never any basis for it being included as a point of objection in the first place.

> *"5. The surrender of the respondent in all the circumstances would be contrary to the principles of fundamental fairness and contrary to justice."*

15. Again, this serves no purpose. It contains no information of assistance to the applicant. It is simply a general plea serving no purpose. It did not survive into the Amended Points of Claim.

> *"6. The applicant is required to prove the relevant corresponding offences, if any."*

16. Given that the requesting state had ticked the boxes in paragraph E of the warrant in respect of offences comprising some of those contained in Article 2.2 of the Framework Decision, thereby not being required to verify double criminality, the applicant and the Court was given no information as to the basis on which it was being contended nonetheless that correspondence was required to be made out. Again, this plea did not survive into the Amended Points of Objection. It appears to have been added, like so many others, simply as a make-weight.

17. Given that the Amended Points of Objection were not filed until the 18th October 2006, it is clear that the application for a recommendation of the Attorney General's scheme on the basis of two Counsel was made on the basis of the likely complexity of the arguments to e adduced for the purpose of the original points of objection. Quite clearly, the Court was not appraised of the detail of the points being raised, but if it had been, it is firstly clear that such a recommendation would not have been made, and furthermore it is quite possible that the Points of Objection in that form would not have been allowed, for the reason that they are empty of any meaningful content, and serving no purpose. The Court is entitled, when fixing a date for hearing, to know how long the case is expected to take. If those Points of Objection had been examined, it would have been quickly apparent that the application under section 16 could be disposed of in half an hour rather than the half day allocated for it.

18. However, it is a fact that the Amended Points of Objection were filed just over a week before the hearing. I am not aware that any liberty was obtained in that regard, but perhaps it was. Nothing in particular turns on it. But I want to turn to the four additional points of objection which were raised in the new document. They are as follows:

> *"3. The aforesaid warrant and in particular Section B thereof is not in the form required by s. 11(1) of the European Arrest Warrant Act, 2003 and is not in the form set out in the Annex to the Framework Decision in that it does not describe the decision on which the warrant is based."*

19. The warrant in this case states quite clearly that that the decision on which the warrant is based is an "*enforceable judgment on preventive detention*" that it is a "*valid sentence issued by the District Court in Zgorzelec on the 23rd January 2004*."

20. How that can be said not to describe the decision on which the European arrest warrant is based is not clear and certainly is not set forth in the point of objection. That point was obviously included in the amended document after some careful consideration as to the manner in which the first document needed amendment, but it has not been explained why some nine days later only it was abandoned. In my view it was never a point of any possible arguable merit.

> *"4. The aforesaid warrant is not in the form required by s. 11(1) of the European Arrest Warrant Act 2003, and is not in the form set out in the Framework Decision in that it is un clear whether a single sentence was imposed or whether the sentence imposed by the court in the requesting state was for both offences."*

21. The basis of this argument is that while there are two offences ticked in paragraph E, namely "kidnapping; illegal deprivation of liberty" and "racketeering and extortion", the paragraph calling for "indication on the length of sentence" states only "*3(three years and 6 (six) months of deprivation of liberty",* and further that there remains to be served a period of *"2 (two) years and 11 (eleven) months and 27 (twenty seven) days of deprivation of liberty."* The contention is that this period should have been divided as between each offence, or that it should be stated whether the sentence was one as can happen in this jurisdiction where a sentence is imposed one each offence but the second sentence is ordered to run concurrently with the first offence.

22. Given that paragraph E.3 of the warrant states what the potential sentences for these offences are, and given that they each satisfy the minimum gravity requirement in order to come within the European arrest warrant scheme of surrender, it is difficult to see what further should have been required. But Counsel for the respondent, in her submissions, made the point that it ought to have been stated what sentence was imposed for the first offence and what sentence was imposed for the second offence. It is not clear to me even in the light of her submissions in what way the absence of that information is a failure to adhere to the form. It is nowhere stated that such detail is required. It is required simply to state in the case of a sentence already imposed, the "*length of the custodial sentence or detention order imposed*" and the "*Remaining sentence to be served*".

23. Of relevance under this head of objection is the uncontrovertible fact that the respondent was in any event present when the sentence was imposed by the Polish District Court, and so is well aware of the situation.

24. This point was one of the two points in the Amended Points of Objection which survived to the hearing, but it must be said that it was never a point of real substance, given the absence of any requirement in the prescribed form for such detail to be included, and given that it is unclear why indeed it should be thought to be necessary.

> *"5. The aforesaid warrant is not in the form required by s. 11 (1) of the European Arrest Warrant Act 2003 and is not in the form set out in the Annex to the Framework Decision in that neither offence is an offence to which paragraph 2 of Article 2 of the Framework Decision applies. The applicant is required to prove the relevant corresponding offences."*

25. Again, absolutely no information is contained as to the reason why it was contended that neither offence was one to which that Article applied, despite the fact that the requesting authority had ticked the boxes and the facts of the offences were set out as they have been in the warrant. Not surprisingly the point was dropped at the hearing, but it is disquieting that, at a point so near the hearing, it was decided that the Points of Objection as originally filed should be amended so as to include it. In my view the point was never even arguable on the warrant as issued. Nevertheless the applicant had to be prepared to meet the point, since it had been notified.

> *"6. The statutory and constitutional rights of the applicant have been violated by delay* ***between the receipt of this EAW and its endorsement for execution****. There has been a failure to comply with the provisions of the European Arrest Warrant Act 2003 and the Constitution and the surrender of the surrender of the respondent should be refused." (my emphasis)*

26. I have underlined the above passage because I have noticed only during the writing of this judgment that the delay complained of is the period from 4th August 2006 when the warrant was received here and the date of the arrest some 17 days later. Counsel argued the point on the basis that the warrant had been issued in Poland on the 29th November 2005 but had not transmitted it to this State until the 4th August 2006. That is a different date and timeframe from that which was pleaded in the Point of Objection. Of course, there is no specification in the Framework Decision or the 2003 Act in relation to the time from the date of issue of the warrant to the date of execution thereof. It is apparent from the face of the warrant itself that the translation of the document was certified by the translator as of the 31st July 2006. Certainly there was no delay on the part of the Polish authorities once the warrant had been translated. But it could never have been sensibly argued that the passage of seventeen days from the date of receipt of the warrant here and the date on which the respondent was arrested on foot of same amounted to a breach of his constitutional rights through delay, such that his surrender should be prohibited under Part III of the Act or the Framework Decision. It is understandable therefore that Counsel would have sought to argue the point on a different basis, namely the period from date of issue. But that was never pleaded in spite of the fact that trouble was taken to file the Amended Points of Objection. It was always bound to fail in any event in the absence of any evidence of prejudice suffered by the respondent. There was never the remotest possibility that it was a period such as would justify an implication of prejudice. Counsel has submitted nevertheless that given the objective contained within the Framework Decision that these matters should be dealt with expeditiously, the failure to send the warrant more speedily to this State is reason to refuse surrender, especially where that delay has not been explained. Again the point is hardly arguable but at least it is a matter which arises on the fact of the case, even if it cannot succeed.

> *"7. The surrender of the respondent in all the circumstances would be contrary to the principles of fundamental fairness and contrary to justice."*

27. For some reason unspecified this ground was added nine days before the hearing. What it is intended to embrace I do not know. It is merely another make-weight, and one which, again not unsurprisingly, that was not relied upon before me.

28. What I have said already is enough to dispose of the points of objection which were relied upon by rejecting them.

29. In my view this case is a good example of a practice which has developed in applications for surrender under the Act where Points of Objection are prepared on a largely formulaic basis, with no real objection of substance being identifiable therein. I have made reference to this aspect of Points of Objection in a couple of cases already, but it now needs to be elaborated upon and stated with more emphasis. Rules of Procedure were introduced for the purpose of these applications by *[S.I. 23/2005]*. A respondent wishing to raise points of objection is permitted under these rules to do so within certain time limits. The purpose of so doing is to put the applicant on notice of what issue is going to be raised so that the applicant does not hear of it for the first time when the hearing itself commences. The document referred to as Points of Objection is not to be confused with a pleading document such as a Defence in a civil action, to which the applicant ought to deliver a Reply if issue is being joined on matters raised therein. If the Points of Objection is to serve any purpose it must contain sufficient detail as to the basis of the objection so that the applicant and the Court can know by reading the document what precisely what point is being made.

30. It is of course true that in all cases the onus is on the applicant to satisfy the Court that the requirements of the Act are complied with, before the order can be made by the Court, and of course also the respondent has at all times during the process the entitlement to professional legal representation in order to ensure that his interests are properly safeguarded, even if no actual points of objection are being raised. The duty of his legal representatives does not extend to filing in all cases a Points of Objection document just for the sake of it. Where a point of substance exists, even to the point of mere arguability it is the duty of the respondent's legal team to advance it for the consideration of the Court. It is not part of that duty, and I would suggest that it is improper practice, to include in such a document unspecific, general and make-weight points which must be known to have no possibility of argument, and which, in an effort to avoid having to argue the unarguable, Counsel at the very last moment indicates to the other side and to the Court are no longer being relied upon. The preparation of such a Points of Objection is a futile exercise, and one which needlessly raises issues to which the applicant's legal team must then prepare a response. That is a waste of everybody's time and effort.

31. Worrying also is the point alluded to earlier, namely that upon the basis of Points of Objection filed, the Court is asked to make a recommendation for representation on the basis of two Counsel and solicitor for the purpose of the Attorney General's scheme. If the Court is informed that the points raised require the services of Senior Counsel, it has been the practice of this Court, at least, to take Counsel's word for that. The Court has not been in the habit as part of a case management type of process to examine the Points of Objection in order to reach a conclusion in that regard. If the system is coming under threat of abuse, no matter how unintentionally, this Court will have to undertake an examination of the points of objection being raised prior to any recommendation being made, in order to ensure that the funds available for legal representation under the Attorney General's scheme are not wasted on unnecessary Counsel's fees. Public funds are to be safeguarded so that they are adequately available where they are needed. Indeed, in some cases it has been suggested in argument that the level of fees paid to Counsel under the scheme is insufficient to amount to

adequate remuneration (compounded by an alleged inordinate delay in payment), and that this constitutes a failure by the State to comply with its duty to accord to a respondent his/her entitlement to professional legal representation as required by the Act.. That alone seems to be a good argument for the Court's greater vigilance over the making of recommendations, so that the resources available under the scheme serve the greatest number of respondents in a timely fashion, and not simply the greatest number of lawyers.

32. Having made the recommendation in this case on the basis referred to, I will not alter that recommendation in respect of two Counsel, since no doubt both Counsel appeared on the basis of the recommendation. But it is necessary to say, I feel, that had the Court been aware of that only these two points were being relied upon, the Court would not have felt that the services of Senior Counsel were needed. It is worth noting that the applicant engaged only junior Counsel.

33. I should however remove from the ambit of the recommendation any portion of the fees otherwise payable in respect of the drafting of the Points of Objection and the Amended Points of Objection, since I am of the view that they served no useful purpose and did not comply with the requirements and purpose of the rule under which Points of Objection may be filed. I do so in order to make clear the seriousness of the matter.

34. I should state also for the purpose of sounding a warning for future cases, that I intend following the delivery of Points of Objection to ask Counsel or solicitor for a respondent to explain in some detail the points being relied upon at the hearing, so that a view can be formed as to compliance with the rule, and so that a more informed decision can be made both as to the likely length of the hearing, and the number of Counsel required to be funded under the scheme.

35. There are of course occasions when a novel and/or substantial point of objection becomes evident on the instructions received. But there is no place in these applications for the needlessly prolix pleading of impossible and formulaic points of objection, simply in order to place a document on the Court file which has an appearance of substance. It is a waste of resources and effort, both in terms of lawyer time and court time, since often the Court will have had taken an opportunity of looking at the file in advance of the case, only to find by the time it comes to hearing that much of what is pleaded is abandoned. That is unsatisfactory and the time has come to say so.

36. I make the order sought herein under s. 16(1) of the Act, as amended.