

THE HIGH COURT

2008 96 Ext

Between:

The Minister for Justice, Equality and Law Reform

Applicant

And

Grzegorz Jastrzebski

Respondent

Judgment of Mr Justice Michael Peart delivered on the 3rd day of February 2010:

The Court is asked by the respondent to certify a point of law of exceptional public importance for the purpose of an appeal to the Supreme Court arising from my judgment and order dated 12th January 2010.

The applicant is consenting to this Court certifying the proposed point of law, presumably as it is a point of law the decision of which will be of importance to a number of applications for surrender yet to be heard in the high Court on foot of European arrest warrants which were issued in the requesting state prior to the commencement of Part II of the Criminal Justice (Miscellaneous Provisions) Act, 2009 ("the 2009 Act").

That Act effected a number of amendments by way of substitution and deletion to the European Arrest Warrant Act, 2003, as amended ("the Act"), one of which is relevant to the present case, namely the amendment to s. 10 by removing the requirement that where the respondent is a person who has been convicted and sentenced in the requesting state, it must be established that he/she "fled" the requesting state before he/she had either commenced serving the sentence or completed serving the sentence, before the Court has jurisdiction to order surrender. In simple language, the amendment effected to s. 10 of the Act has removed the so-called "fleeing" point.

The question now is whether that amendment operates only in respect of applications for surrender on foot of European arrest warrants which issue in the requesting state after the 25th August 2009 (being the date of commencement prescribed by S.I. 330 of 2009), and not to applications for surrender on foot of warrants which, though issued prior to that date, come on for hearing after that that commencement date.

I should perhaps record that in the present case the warrant issued and endorsed prior to the 25th August 2009, and the respondent was also arrested and brought before the court as required, well before that date. In fact his Points of Objection had been filed and delivered before the 25th August 2009. The 2009 Act contains no transitional provisions such as was contained in s. 50 of the 2003 Act, and is therefore silent as to the warrants to which the amendments shall apply, save that s. 1 thereof provides that the Act shall come into operation on such day or days as the Minister may by order appoint. That date for commencement is the 25th August 2009.

I felt it is appropriate to state that on the application for surrender before me, the applicant argued that the amendment operated in respect of the hearing of the application for surrender in respect of the present warrant. In my judgment I agreed for the reasons appearing. But the applicant has now reconsidered the question, and no longer stands over the arguments put forward on that occasion, and is consenting to this Court certifying a point of exceptional importance for determination by the Supreme Court.

It seems to me that a point of exceptional public importance arises from my decision in this case, given the inevitability of some number of warrants, be that number large or small, have yet to come on for hearing, and whose date of issue predates the commencement of Part II of the 2009 Act.

I propose certifying the following as a point of law of exceptional public importance arising from my decision:

"On the hearing of an application under s. 16 of the European Arrest Warrant Act, 2003, as amended ("the Act"), for an order of surrender on foot of a European arrest warrant which was issued in the requesting state on a date prior to the commencement of Part II of the Criminal Justice (Miscellaneous Provisions) Act, 2009 by S.I. 330 of 2009 (i.e. prior to 25th August 2009) is the High Court required, when that hearing occurs after the 25th August 2009, to apply the provisions of s. 10 of the Act, as if the provisions of the said Part II of the 2009 Act, in so far as they amend s. 10 of the Act, had not been so commenced, thereby permitting a respondent arrested on foot of such a warrant to argue that he/she was not a person "who fled from the issuing state before he or she – (i) commenced serving that sentence, or (ii) completed serving that sentence", and that he/she is not therefore a person whose arrest and surrender may, subject to the provisions of the Act and the Framework Decision, be ordered?"