Neutral Citation Number: [2011] IEHC 169

THE HIGH COURT

2010 55 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003 AS AMENDED

BETWEEN/

THE MINISTER FOR JUSTICE AND LAW REFORM

APPLICANT

- AND -

RADOSLAW WICINSKI

RESPONDENT

JUDGMENT of Mr Justice Edwards delivered on the 15th day of April 2011

Introduction:
The respondent is the subject of a European Arrest Warrant issued by the Republic of Poland on the 6th of August, 2009. The warrant was endorsed for execution by the High Court in this jurisdiction on the 24th of February, 2010. The respondent was arrested at No 6, Manor Close, Thornbury Estate, Douglas, Cork on the 21st of September 2010 but 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 European Arrest Warrant Act, 2003 as amended (hereinafter referred to as "the 2003 Act") directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether it is appropriate to do so having regard to the terms of s.16 of the 2003 Act.

The respondent, as is his entitlement, does not concede that any of the requirements of s. 16 aforesaid are satisfied. Accordingly, as no admissions have been made, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied. In addition the Court is required to consider in the particular circumstances of this case three specific objections to the respondent's surrender, namely:

> (i) the respondent's surrender is prohibited because the requirements of the 2003 Act , and in particular the requirements of s. 10 of that Act (as it was prior to the amendments effected by the Criminal Justice (Miscellaneous Provisions) Act, 2009), have not been satisfied;
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> (ii) the respondent's surrender is prohibited because the requirements of s. 11 of the 2003 Act, and in particular but not confined to the requirements of s. 11(e) of that Act, have not been satisfied;
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> (iii) the respondent should not be surrendered because the European Arrest Warrant fails to comply with s.38 of the 2003 Act and is in breach of the Framework Decision, i.e the requirements with respect to minimum gravity and/or correspondence are not met

Uncontroversial s. 16 issues
As no admissions or concessions have been made by the respondent, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied.

The Court has received an affidavit of Detective Garda Oisin Cotter sworn on the 16th of March 2011 and has also received and scrutinised a copy of the European Arrest Warrant in this case. Moreover the Court has also inspected the original European Arrest Warrant which is on the Court's file and which bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

> (a) the person before it is the person in respect of whom the European arrest warrant was issued;
>
> (b) the European arrest warrant has been endorsed for execution in accordance with s. 13 of the 2003 Act;
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> (c) the High Court is not required, under s. 21A, 22, 23, or 24 (inserted by ss 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005), to refuse to surrender the respondent under the 2003 Act.

The warrant is a sentence type warrant and the respondent is wanted in the Republic of Poland to serve outstanding sentences in respect of ten offences (particularised in the warrant with reference to three prosecution file reference numbers, namely file II K 311/04; file II K 657/99, and file II K 61/01) imposed upon him on various dates between 2001 and 2004, both years inclusive, either by the District Court in Elbl¹g or by the Regional Court in Elbl¹g. The sentences imposed, the Courts concerned, the relevant dates, and the periods remaining to be served were as follows:

- File II K 311/04 - 2 years imprisonment imposed by the District Court in Elbl¹g on the 8th of July 2004, with 2 years imprisonment remaining to be served;

- File II K 657/99 - 2 years imprisonment imposed by the District Court in Elbl¹g on the 14th of October 2003, with 2 years imprisonment remaining to be served;

• file II K 61/01 - 2 years imprisonment imposed by the Regional Court in Elbl¹g on the 28th of August 2001, with 1 year, 7 months and 5 days imprisonment remaining to be served;

Subject to dealing with the specific objection raised in relation to an alleged non-compliance with "s. 11(e)" of the 2003 Act, the Court is otherwise satisfied that the European Arrest Warrant in this case is in the correct form. (There is in fact no s.11(e) in the 2003 Act, and never has been, but the Court presumes that what is meant is s.11(1A)(e) of the 2003 Act as amended. It will deal with the s.11(1A)(e) objection under a separate heading below.)

In addition the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No 3) Order 2004, S.I. 206/2004 (hereinafter referred to as "the 2004 Designation Order"), and duly notes that by a combination of s 3(1) of the 2003 Act, and article 2 of, and the Schedule to, the 2004 Designation Order, "Poland" (or more correctly the Republic of Poland) is designated for the purposes of the 2003 Act as being a state that has under its national law given effect to the Framework Decision.

The evidence adduced by the respondent
The respondent has filed an affidavit sworn by him on the 17th of November, 2010. He makes the following averments as to matters of fact at paragraphs 5 – 10 inclusive:

> "5. The European Arrest Warrant states that I received a prison sentence of two years imprisonment in respect of the judgement passed by the District Court in Elbl¹g on the 8th July 2004 in the case II K 311/04. This is correct however it fails to state that the two years imprisonment was suspended for a period of five years which five-year period has since expired. In support of my averment I beg to refer to a certificate from my barrister in Poland Mr Stanislaw Borzdynski who acted on my behalf in respect of this case wherein he clearly states that the sentence of two years imprisonment was suspended for a period of five years at which time has now expired. [Certificate exhibited marked "RW 1"]
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> 6. For the avoidance of doubt and for the purpose of clarification at no time was I informed of any other conditions pertaining to the suspension of the judgement imposed. Furthermore I was never informed of any reactivation of the suspended sentence by the Polish authorities nor was I brought before any court for the purposes of the reactivation of the suspended sentence or any suspended sentence.
>
> 7. The European Arrest Warrant states that I received a prison sentence of two years imprisonment in respect of the judgement passed by the District Court in Elbl¹g on the 14th October 2003 in the case II K 657/99." …… "Again the statement fails to state that the two years imprisonment was suspended for a period of five years which five-year period has since expired. In support of my averment I beg to refer to a court order from the Polish authorities where it clearly states that the sentence of two years imprisonment was suspended for a period of five years which has now expired. [Court order exhibited marked "RW 2"]
>
> 8. The European Arrest Warrant states that I received a prison sentence of two years imprisonment in respect of the judgement passed by the District Court in Elbl¹g on 28th August 2001 in the case II K 61/01 and that there is remaining 1 year 7 months and 5 days of imprisonment. This is correct however it fails to state that I even this judgement to the High Court in Gadanse whereupon the remaining term of the sentence was suspended. In this regard I beg to refer to a true copy of the said order. [Court order exhibited marked "RW 3"]
>
> 9. For the avoidance of doubt and for the purpose of clarification at no time was I informed of any other conditions pertaining to the suspension of this judgement imposed. Furthermore I was never informed of any reactivation of the suspended sentence by the Polish authorities nor was I brought before any court for the purposes of the reactivation of the suspended sentence or any suspended sentence.
>
> 10. The only condition that I am aware of in respect of the suspended sentences was to contact my probation officer (whose name was Andres Rosik) once a month, which I duly complied with. I had a good relationship with Andres Rosik and I continued to comply with this term by contacting Mr Rosik once a month when I came to Ireland. I also informed him of my intention to move to Ireland and attempt to find work in Ireland to which Mister Rosik did not object or forbid me to do same. In November 2005 Mister Rosik informs me that I was no longer on his list and that there was no longer a need to call him. I received no other contact in this respect or in fact in respect of any of the suspended sentences stating that I was in breach of the suspended sentence."

There is also a short supplemental affidavit from the respondent dated the 10th of March 2011 in which he seeks to set out the background to case ref no II K 311/04 and to protest that his plea of guilty was proffered by him, and secured by the prosecuting authorities in Poland, in unfair circumstances. He also reiterates that he received no notification of any application to reactivate the sentence. Clearly, this Court cannot be expected to look behind his conviction, most especially in circumstances where he pleaded guilty.

The s.11(1A)(e) objection
It is convenient to deal with the s.11(1A)(e) objection at this point. S.11(1A)(e) of the 2003 Act, as amended, states:

"Subject to subsection (2A), a European arrest warrant shall specify—

> (e) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of the offence";

The respondent makes two points in relation to s.11(1A)(e). First, he contends that the European Arrest Warrant does not state that the very sentences imposed upon the respondent for the offences specified in the warrant are "immediately enforceable". Secondly, he contends that the reason for this omission is that they are not as a matter of fact and of law "immediately enforceable". He contends that, on the contrary, his various sentences were all suspended and that they were either never re-activated, alternatively he received no notice of any reactivation or of any alleged breach of conditions of suspension.

The court is satisfied that both of the points made by the respondent are without foundation and that this objection is misconceived in the circumstances of this case.

The three sentencing decisions on which the European Arrest Warrant is based are characterised in Part B 1 of the warrant as "valid" judgments. The position as to suspensions, reactivations and immediate enforceability was clarified in a letter from the issuing judicial

authority dated the 14th of December 2010 to the Irish Central authority, in a response to a request from the latter for additional information. The letter states (*inter alia*):

> " Regarding your questions contained in the letter of nice December 2010:
>
> - In the case number II K 311/04, an imprisonment penalty was originally passed by means of the sentence dated 8th July 2004 which subsequently was suspended conditionally for the probation period of 5 years. The said sentence put Radoslaw Wicinski under obligation to rectify the damages and losses caused by the offence by paying 6,744 PLN within two years in favour of Provident Poland plc. On the 13th of November 2006 the Court ordered to enforce the conditionally suspended penalty as Radoslaw Wicinski failed to fulfil the said obligation.
>
> - In the case II K 61/01, by means of the sentence dated the 28th of August 2001 the imprisonment penalty was conditionally suspended for the probation period of five years. Additionally, the court put Radoslaw Wicinski on probation. By means of the judicial decision dated the 9th of November 2004, the court ordered to enforce the conditionally suspended imprisonment penalty as the convicted person committed a new deliberate offence of similar nature within the probation period, for which he was convicted by means of a ballot sentence passed by the District Court in Elbl'g in the case number II K 311/04. Though, it remains obvious that the convict was fully aware of the consequences resulting from committing a subsequent offence within the probation period.
>
> - In the case II K 657/99, by means of the sentence dated 14th of October 2003, an imprisonment penalty was inflicted originally which were subsequently conditionally suspended for a probation period of five years. Additionally, the court put Radoslaw Wicinski on probation. By means of the judicial decision dated second of August 2005, the court ordered to enforce the suspended imprisonment penalty as the convict evaded supervision from a probation officer, failed to stay in touch with him and failed to notify the probation officer about the alteration of his domicile. The convict had been instructed about the duties imposed over him and about any consequences resulting from the failure to observe them at the beginning of the probation period.
>
> Polish legislation does not cover the term "immediate enforceability" with relation to the sentences passed by criminal courts. Only the sentences marked with "validity clause" are directed for enforcement. Each of the sentences inflicted against Radoslaw Wicinski remains valid and, hence, is subject to enforcement."

This additional information considerably amplifies and indeed clarifies what is set out in Part B 1 of the European Arrest Warrant. When the European Arrest Warrant is read in conjunction with the additional information just quoted from the letter of the 14th of December 2010 it is manifest that the judgments in question are enforceable, and enforceable immediately. Moreover, the assertions made by the respondent in his affidavit concerning alleged non-reactivation of suspended sentences, or non notification of him concerning re-activation or breaches of conditions of suspension are neither corroborated nor supported in any way by independent or extrinsic evidence. Having regard to the mutual trust and the high level of confidence between States that underpins the European Arrest Warrant system, and the requirement that the Courts of member states should implement the principle of mutual recognition as a "cornerstone" of judicial cooperation, this Court is entitled to assume and proceed on the basis that information provided to it by the issuing judicial authority is accurate and reliable. Before a Court would be justified in seeking to look behind what is stated in a European Arrest Warrant and/or any additional information supplied by the issuing judicial authority, it would have to be in receipt of cogent evidence, i.e. evidence that is coherent, persuasive and inherently likely to be reliable, suggesting that the warrant or additional information in question was incorrect. For example, it is reasonable to infer that the respondent, who was able to adduce independent evidence of the suspension of his sentences (which fact has never been in controversy) from his former lawyer, and from various Courts is in Poland, could, if what he says is true, have put before the Court an affidavit from his former probation officer, the Mr Andres Rosik referred to in his affidavit, to demonstrate that contrary to what is maintained by the issuing judicial authority he did co-operate with, and stay in contact with, his probation officer. However, he has not done so and with respect to the controversial aspects of his case his averments are neither corroborated nor supported by independent or extrinsic evidence. Accordingly, the respondent has not discharged the heavy onus that rests upon him in terms of an evidential burden. The uncorroborated and unsupported assertions contained in the respondent's affidavit concerning non reactivation of the sentences, or non-notification of reactivation do not provide sufficiently cogent evidence to put the court upon enquiry and to justify it in seeking to look behind the warrant and the additional information that has been provided. The Court therefore dismisses this ground of objection.

The s. 38 objections – minimum gravity and correspondence issues

Some of the ten offences in the warrant are ticked box offences, while others are not. Seven offences, all of a similar nature, are listed with reference to case file no II K 311/04. Two boxes are ticked in respect of these offences within Part E 1 of the warrant. One is the box relating to "fraud", and the other is the box relating to "forgery of administrative documents and trafficking therein". There can be no doubt as to the fact that both ticked boxes relate to the offences covered by this file reference because in each instance of a ticking of the box is accompanied by a statement which says "related to the offences in the case II K 311/04". The only reasonable interpretation for the court to place on this is that the offences could come within either category of offences for which a box is ticked. Looking at the facts allegedly giving rise to the offences, which as I have stated are similar in all seven instances, it is clear that that is the position.

The additional information dated the 14th of December, 2010 specifies that "all offences specified in the ticked boxes of the section E 1 are subject to the maximum imprisonment sentence exceeding 3 years." That being the case the minimum gravity requirements of s. 38(1)(b) of the 2003 Act are satisfied, and, as the offences listed with reference to case file no II K 311/04 in respect of which boxes are ticked are all offences to which paragraph 2 of Article 2 of the Framework Decision applies, correspondence does not require to be demonstrated.

There is one offence relating to file ref II K 657/99 and it is not a ticked box offence. Accordingly, the Court is required to be satisfied both as to minimum gravity and correspondence in accordance with s. 38 of the 2003 Act. The facts alleged are that the respondent:

> "on the 10th of September 1998 in Elbl'g acting against the provisions of the relevant act ….possessed the drug substances comprising 24.02 grams of marihuana and 0.06 gram of LSD."

The applicant invites the Court to find correspondence with the offence of possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act 1977 as amended. The respondent objects on the basis that neither marihuana nor LSD are controlled drugs under Irish law.

The Court does not agree with the respondent's submission and considers it to be unfounded. As far as marihuana is concerned the Court is prepared to take judicial notice on the basis of having heard as a judge, or as counsel having participated in, many drugs

cases over the years that "marihuana" is a popular and alternative name for the drug cannabis, or the cannabis plant from which it is made. The drug cannabis is listed as a controlled drug in the schedule to the Misuse of Drugs Act, 1977. In so far as LSD is concerned, the Court is again prepared to take judicial notice on the basis of having heard as a judge, or as counsel having participated in, many drugs cases over the years that LSD is a popular name for, and also an acronym for, the drug Lysergide. Lysergide is also listed as a controlled drug in the schedule to the Misuse of Drugs Act, 1977. In the circumstances the Court is completely satisfied as to correspondence.

The European Arrest Warrant states in Part C 3 thereof that a sentence of 2 years imprisonment was imposed for this offence. According the requirements of s.38(1)(a)(ii) with respect to minimum gravity are met in the case of this offence.

Finally, there are two offences relating to file ref II K 61/01, one of which is a ticked box offence.

The box relating to "illicit trafficking in narcotic drugs and psychotropic substances" is ticked in respect of the first of the two offences listed under this file reference, and it is clear from the facts alleged that this is the more serious of the two offences alleged and that the basic allegation is one of drug trafficking. The additional information of the 14th of December makes it clear "all offences specified in the ticked boxes of the section E 1 are subject to the maximum imprisonment sentence exceeding 3 years," and it in fact goes on to indicate that non-minor drugs offences are subject to a maximum imprisonment sentence of 10 years. That being the case the minimum gravity requirements of s. 38(1)(b) of the 2003 Act are satisfied, and, as the offence listed with reference to case file no II K 61/01 in respect of which the box is ticked is an offences to which paragraph 2 of Article 2 of the Framework Decision applies, correspondence does not require to be demonstrated.

The remaining offence is not a ticked box offence. Accordingly, the Court is required to be satisfied both as to minimum gravity and correspondence in accordance with s. 38 of the 2003 Act. The facts alleged are that:

> "on 27th of September 2001 in Elbl¹g acting with the intention of obtaining the property benefit Radoslaw Krzysztof Wiciñski granted Wlodzimierz Agejczyk with 0.5 gram of amphetamine worth 40 PLN"

The applicant invites the Court to find correspondence with either or both the offences of possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act 1977 as amended, and possession of a controlled drug for sale or supply contrary to s.15 of the Misuse of Drugs Act 1977 as amended.

The relevant provisions of S.3 of the Misuse of Drugs Act 1977 as amended state:

> (1) ……., a person shall not have a controlled drug in his possession.
>
> (2) A person who has a controlled drug in his possession in contravention of subsection (1) of this section shall be guilty of an offence.

The relevant provisions of s. 15 of the Misuse of Drugs Act 1977 as amended provides:

> "(1) Any person who has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act, shall be guilty of an offence."

The relevant regulations are the Misuse of Drugs Regulations, 1988 as amended which regulations provide in regulation 4 thereof that "Subject to the provisions of these Regulations a person shall not (b) supply or offer to supply a controlled drug."

The drug amphetamine is listed as a controlled drug in the schedule to the Misuse of Drugs Act, 1977.

The Court is satisfied on the basis of the facts set out in the warrant that there is correspondence both with respect to s. 15 of the Misuse of Drugs Act, 1977, as amended and with s. 3 of Misuse of Drugs Act, 1977, as amended. As far as the s.15 offence is concerned the Court is satisfied that the reference to "granting" "with the intention of obtaining the property benefit" connotes and can only reasonably be interpreted as being, the transfer of the drug in question from the respondent's possession to the other party named by way of sale or supply.

Alleged non- satisfaction of s. 10 criteria – the "no flight" contention.
This is a case to which s.10 of the 2003 Act it was prior to the amendment effected by s. 6 of the Criminal Justice (Miscellaneous Provisions) Act, 2009 applies. Prior to the relevant amendment s. 10 of the 2003 Act (as substituted by s.71 of the Criminal Justice (Terrorist Offences) Act, 2005) provided (to the extent relevant):

> "10.—Where a judicial authority in an issuing state duly issues a European arrest warrant in respect of a person—
>
> (a) ….
>
> (b) ….
>
> (c) ….
>
> (d) on whom a sentence of imprisonment or detention has been imposed in respect of an offence to which the European arrest warrant relates, and who fled from the issuing state before he or she—
>
> (i) commenced serving that sentence, or
>
> (ii) completed serving that sentence,
>
> that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state.".

Accordingly, this Court must be satisfied that the respondent "fled" Poland before commencing, alternatively before completing, the sentences variously imposed upon him for the offences to which each warrant relates. The respondent contends that he did not flee. The Court interprets the word "fled" in accordance with the Supreme Court in *Minister for Justice, Equality & Law Reform v Tobin* [2008] 4 I.R. 42 as importing more than the word "left" and as connoting an escape from justice.

In *Minister for Justice, Equality & Law Reform v Sliczynski* [2008] IESC 73. Macken J stated:

> "All of the factors germane to whether a person can be said to have fled must be taken into account. That includes the motivation of the person sought to be returned to the requesting Member State, which is almost inevitably likely to be a subjective motivation. So also the court must take into account other material factors, such as whether the sentence was suspended, and where the suspension of the sentence was subject to terms, whether those terms were known to the convicted person and whether those terms were complied with. It is telling to recall that the appellant admits he was convicted and sentenced on the first three charges in his presence, and has not challenged the content of the letters exhibited in Mr. Doyle's affidavit. He must therefore be understood to have known and appreciated the significance of the terms attaching to the suspension of those sentences.
>
> The court then must determine whether, objectively speaking, bearing in mind all of these factors, it can be reasonably concluded that the appellant "fled" within the meaning of the subjection. If it were the case that the subjective motivation, as averred to on affidavit, had to be accepted as being conclusive of the question whether a person fled within the meaning of the section, it seems to me that this would always or almost always "trump" any information or material factor presented to the Court and upon which it could be objectively found that a person had fled the requesting state. In the present case, it was a term of the suspension – not denied by the appellant – that he would reside at a particular place, would notify the probation officers or responsible authority of his whereabouts and, in particular, would notify it of any intention to leave Poland. It is axiomatic that if the terms and conditions of a suspended sentence are not met, there is a likelihood of the suspensions being lifted and the sentences having to be served."

Ms Siobhan Stack B.L., representing the applicant, points to the totality of the information contained in the warrant and the additional information provided. In addition to the information provided in the letter of the 14th of December, 2010 there is yet further additional information that was supplied by the issuing judicial authority on the 3rd of February 2011. It states:

> "As regards the case II K 311/04
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> The convicted Radoslaw Krzysztof Wiciński was present at the hearing held on 8th July 2004 during which the verdict was delivered. The court conditionally suspended the enforcement of a 2-year imprisonment sentence inflicted against Radoslaw Krzysztof Wiciński for a probation period of five years and committed him to rectify the losses in their entire scope, i.e. amounting to 6,774.07 PLN, in favour of the wronged person within 2 years after the aforementioned sentence validated, which happened on the 16th of July 2004. Until the 13th of November 2006 Radoslaw Krzysztof Wiciński did not make any payments for the losses in line with the obligation imposed.
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> For these reasons, the District Court in Elbl¹g ordered to enforce the penalty of 2 years imprisonment against Radoslaw Krzysztof Wiciński adjudicated in the sentence stated 8th July 2004, case number II K 311/04.
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> As regards the case II K 61/01
>
> The convicted Radoslaw Krzysztof Wiciński was present during the hearing held on 28 August 2001 as well as during the delivery of the sentence passed by the court of first instance. Additionally, he was present during the appealing hearing and during the delivery of the verdict on 20th February 2002 in the course of the appealing proceedings. Pursuant to the case, Radoslaw Krzysztof Wiciński was sentenced to 2 years imprisonment and the court conditionally suspended the enforcement of the said penalty for a probation period of five years and put him under supervision from a probation officer.
>
> By means of the judicial decision dated the 9th of November 2004 the court ordered to enforce the imprisonment sentence adjudicated by the Regional Court in Elbl¹g on 28 August 2001, dossier reference II K 61/01, as the convict committed an offence of similar nature within the probation period for which he was sentenced by a valid verdict (II K 311/04). Radoslaw Krzysztof Wiciński was present during the court sitting and the verdict delivery held on 9th November 2004. Subsequently, he lodged a motion to adjourn the enforcement of the imprisonment penalty but the court dismissed it.
>
> The court orders to enforce a penalty if, within a probation period, a convict has committed a similar offence for which a valid imprisonment sentence has been passed.
>
> The court may order to enforce a penalty if, within a probation period, a convict breaches significantly the law and especially if they have committed an offence other than specified in the aforementioned sentence or if they have been outstanding from paying a fine, supervision from a probation officer, fulfilment of the duties imposed or penal measures inflicted."

It is quite clear to the Court that, notwithstanding the respondent's protestations to the contrary, he must have known when travelling to Ireland that his sentences were liable to be reactivated. He was present on the various occasions when his sentences were suspended and knew well the conditions on which they were being suspended including the requirement to be of good behaviour and not to commit further serious offences, the requirement to submit to a court ordered regime of supervision by a probation officer with whom he was required to stay in touch, and also with respect to the offences in file ref; II K 311/04 to pay restitution to the wronged party. He breached all of those conditions at one stage or another and must have been aware of the consequences of doing so.

In the case of *Minister for Justice, Equality and Law Reform v Stankiewicz* [2009] IESC 79 Geoghegan J, giving judgment in the Supreme Court at the hearing of the respondent's appeal, was required to address arguments very similar to those being advanced by the applicant in this case. He said:

> "Put simply when the appellant departed for Ireland in March 2005 he had already committed the later offence. That meant that at the very least he was in potential danger of the suspensions in relation to the earlier offences being lifted. He would have known that he would have to be notified of any applications to have that done. But equally he knew that he had to give the authorities an address for service of documents which indeed he did. He must be taken to have known or ought to have known that under Polish law any such proceedings against him would go ahead in his absence if he did not appear. Irrespective therefore of whether he authorised the lawyer who did in fact appear for him or not, in my view, by not ensuring he would receive the notifications, he must be taken to have been evading justice. As has been pointed out in the judgments he cannot simply make assertions of innocence. There would be a heavy onus of proof on him which of course was discharged by Mr Tobin in his case."

I believe that in the main those observations are apposite to the respondent's position in the present case as well.

The Court is satisfied in all the circumstances of this case that the respondent has not discharged the heavy onus upon him to adduce cogent evidence in support of his contention that he did not flee and did not leave Poland with a view to evading justice. The Court is satisfied that the available evidence establishes on the balance of probabilities that the respondent did flee Poland in the "Tobin" sense and that he left that country in order to evade justice and to avoid serving the sentences for the offences to which the European Arrest Warrant in this case relates.

Conclusion
The Court is not disposed to uphold any of the specific objections made by the respondent in this case, and in the circumstances it is appropriate to make an order for his surrender under s. 16 of the 2003 Act.