

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 12th day of January 2010:**

The surrender of the respondent is sought by a judicial authority in Poland under a European arrest warrant which issued there on the 23rd January 2008. That warrant was endorsed here by order of the High Court dated 21st May 2008, and the respondent was duly arrested on foot of same on the 9th March 2009.

His surrender is sought so that he can serve a sentence of one year's imprisonment which was imposed upon him on the 12th June 2002 in respect of two offences. The sentence was suspended at that time, but on the 4th October 2005 that suspension was lifted. According to the respondent's first affidavit sworn in these proceedings the respondent has not been in Poland since July 2006 when he came to this country. He does not say why he came to this country but asserts that he "did not flee from justice in Poland". This is on the basis that before he left Poland he applied to the Polish court for a postponement of the sentence. That postponement was granted by order dated 21st February 2006, and was for a period of six months until 21st August 2006. A copy of that order is exhibited, and it appears from the order that the reason why the postponement was granted was because the respondent's mother was seriously ill and "he has had to help to look after younger siblings". Further family background is recited in the order. There is no reference in the order to the respondent planning to leave Poland and to travel to Ireland in order to provide support for his family.

As I have said, the respondent has averred that he came to this State in July 2006. That was a very short time before the postponement of sentence was due to expire in August 2006.

The respondent made a further application for postponement of sentence from this country on the 28th July 2008 that application was granted for a further six months. However, that order was reversed on appeal. While the European arrest warrant had been issued on the 23rd January 2008 and was endorsed for execution on the 21st May 2008, it had not been executed by the time of this second application for postponement of sentence in July 2008. For some reason the respondent has stated in his first affidavit that in July 2008 he believed that the sentence "was not then operative", and also that it was "not operative" when the warrant was issued and when it was endorsed for execution. I do not understand those averments as clearly postponement granted in February 2006 has expired on the 21st August 2006 just after the respondent had come to this country. An issue has been raised under s. 10 of the European Arrest Warrant Act, 2003, as amended ("the Act") that he did not flee, and that the Court therefore has no jurisdiction to make an order for surrender in this case. In that regard, it is submitted that the amendment to s. 10 of the Act, achieved by s. 6 of the Criminal Justice (Miscellaneous Provisions) Act 2009, cannot apply to this case as the 2009 Act was not passed until 21st July 2009, and therefore after the respondent had been arrested on foot of the warrant. I will come to that point in due course.

At any rate, the offences for which the sentence was passed are offences which correspondence must be established, and in that regard no issue has been raised, and I am satisfied that the offences would correspond with offences here under both s. 4 and s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. Minimum gravity is met by the length of sentence imposed.

The trial and conviction were not rendered in absentia, and no undertaking is required under s. 45 of the Act. No issue has been raised in that regard.

No reason exists why surrender should be refused under sections 21A, 22, 23 or 24 of the Act, and I am satisfied that, subject to addressing the point of objection raised by the respondent in relation to delay, his surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

Three points of objection have been raised.

1. Delay - s. 37:

The only point being made under this point of objection is that the requesting authority has not explained in any way why it has delayed in its pursuit of the respondent since he came to this State in July 2006. The respondent has stated that he has been here since that time and that he has not attempted to hide or otherwise make it difficult for the authorities to locate him should they have wished to do so. He says that he is now settled here including with his partner and a child and that it would be unfair to surrender him now after so long.

That sort of plea of delay has no prospect of success. There is no obligation on the requesting authority to explain why there has been some delay, particularly in a conviction case where it cannot even be argued that delay has reduced the prospects of a fair trial. The delay in this case, such as it is, is not a bar to this court making the order sought.

2. Lack of detail as to how much of the sentence imposed relates to each of the two offences - s. 11:

This point has no relevance where there is no issue raised as to correspondence in respect of one of the two offences. Both offences

correspond, and therefore no issue exists as was the case in *Ferenca*, where one offence in respect of which a single sentence had been passed did not correspond to an offence here, and it was not possible to say how much of that sentence was applicable to the surviving offence. That difficulty does not exist here, and the fact that the warrant has not specified how much of the one year sentence applies to each offence is not something which invalidates the warrant in this case, or prevents this court from making the order sought.

3. 'Fleeing' - s. 10.

It is possible for the respondent to argue that he cannot be the subject to an order for surrender on the basis that he did not 'flee' Poland, only if the amendment to s. 10 of the Act achieved by s. 6 of the 2009 Act is not applicable in this case since the amendment postdates the date of the warrant, the date of its indorsement and/or the date of arrest in this case.

Section 1 of the 1999 Act provides in the usual way that the Act shall come into operation on such day or days as the Minister may by order or orders appoint. By Statutory Instrument 330 of 2009 signed by the Minister for Justice, Equality and Law Reform on the 20th August 2009, he ordered that the 25th August 2009 is appointed as the day on which a number of provisions of the Act, including s. 6 thereof "*shall come into operation*". Neither Section 6 of the 2009 Act nor any other provision thereof provides that the amendment to s. 10 of the Principal Act shall operate only in respect of applications for surrender made, or warrants dated or endorsed, after the commencement date.

In my view it is clear that the amendment to s. 10 of the Principal Act achieved by s. 6 of the 2009 Act operates in respect of any application for an order for surrender which comes before the court for hearing on any date subsequent to the 25th August 2009, regardless of the date of the warrant, the date of endorsement thereof or the date on which the respondent was arrested on foot of such warrant.

It follows that when this application came before this Court for hearing in December 2009, the Court must deal with the matter in accordance with the Act as amended, including by s. 6 of the 2009 Act. As amended, s. 10 reads:

"10.-Where a judicial authority in an issuing state issues a European arrest warrant in respect of a person-

a) against whom that state intends to bring proceedings for an offence to which the European arrest warrant relates, or

(b) who is the subject of proceedings in that state for an offence to which the European arrest warrant relates,

(c) who has been convicted of, but not yet sentenced in respect of, an offence in that state to which the European arrest warrant relates, or

(d) on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the European arrest warrant relates

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."

It is immediately evident that the reference to 'fleeing' has been removed from s. 10(d) of the Principal Act. Therefore the fact that the respondent may now say that he did not 'flee' when he left Poland to come here is no longer of any relevance to determining whether the case is one to which s. 10 applies. The fact that this amendment has been made by the Minister after the respondent was arrested does not mean that this application must be considered as if s. 10 had not been amended. If that was the intention of the Oireachtas when enacting the 2009 Act it would have said so.

For these reasons, I am satisfied that the Court is required to make the order for surrender sought by the applicant, and I will so order.