

## IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 (AS AMENDED)

Between:

MINISTER FOR JUSTICE AND EQUALITY

Applicant

-and-

P.W.

Respondent

## Judgment of Mr. Justice Alexander Owens delivered on 19th July 2019

1. This European arrest warrant was issued in Bydgoszcz, Poland on 5th June 2018. It relates to the activation of a suspended sentence of ten-months imprisonment, following a hearing which the respondent failed to attend on 29th March 2007. This penalty was imposed on 9th January 2009. He had previously agreed the sentence with the court probation officer and had accepted the penalty on the basis that the imprisonment was suspended for 4 years under probation supervision. The documents supplementing the warrant disclose this. He was told that if he did not adhere to the terms there was the possibility that the sentence would be activated.

2. He did not attend the hearing. He opted for emigration to Ireland instead and made himself unavailable. He was returned to Poland on foot of a different European arrest in 2016. There is nothing to show that the judicial or police authorities in Bydgoszcz were or ought to have been aware that he was in Ireland at the time of the proceedings which led to the 2016 return.

3. The respondent has not placed evidence before me to justify his assertions that the Polish prison system is inhumane or has inadequate medical facilities. If issues such as delay or prison conditions are relied on by a respondent resisting surrender and it is contended that there has been default by the authorities in the issuing jurisdiction, the respondent should put evidence before the Court. If material is lacking, there are procedures for obtaining information and discovery of documents under section 20 of the European Arrest Warrant Act 2003 and O. 98 of the Rules of the Superior Courts. This should not be left to the date of the hearing. The European arrest warrant procedure mandates that applications are processed in early course and legal representatives of respondents have an obligation to assist in achieving this objective.

4. Various authorities were opened to me on the topic of what was referred to as "delay". It is necessary for me to examine what is meant by "delay" and to try to identify and analyse exactly what the use of the word "delay" conveys. Where steps are not taken in any process, a change of circumstances may occur during the passage of time which may have a bearing on the outcome of that process. This has happened in this case. If this application had come before the Court three or four years ago the respondent would have been in better health. Our legislation does not appear to have an equivalent to section 14 of the United Kingdom 3003 Act which deals with cases where it would no longer be right to extradite a defendant due to the passage of time.

5. While "delay" is asserted, the respondent has not gone further and made a positive case based on an identified default by the Polish authorities. In his objection, he states that because there was a delay between the offence and the issue of the warrant, it would be unfair to return him to Poland to serve the sentence. There was a delay between the sentence in this case and the issue of the warrant in the sense that a number of years elapsed.

6. This does not assist the respondent unless he can go on to show that there was an abuse of process or other relevant factor which can be weighed in the balance in some legitimate basis of objection to enforcement of the European arrest warrant. The impact of "delay" can be taken into account in that context and the fact that delay in initiating procedures has not been explained may be relevant. That said, those who flee from or make themselves unavailable to criminal procedures in other jurisdictions can have no legitimate expectation that the arm of the law will not eventually catch up with them. If they adopt this course, they bring problems upon themselves and their families and these problems may become more acute with the passage of time.

7. I have been referred to the judgments delivered by members of the Supreme Court in *Minister for Justice and Equality v. J.A.T. (No.2)* (2016) IESC 17.

8. It is necessary to be careful in placing reliance on this decision as an authority. The factual matrix in *J.A.T. (No.2)* was exceptional. The Court found that the issue of a European arrest warrant was an abuse of process. In refusing surrender it also had regard to whether the return of the respondent to the UK would be incompatible with rights under Article 8 of the ECHR. The judgments do not give detailed guidance on how a court should weigh competing considerations. O'Donnell J. in his concurring judgment refers to some considerations which may be important in any given case.

9. Rights under Article 8 of the ECHR will only trump the public interest in implementing surrender in accordance with the Framework Decision in exceptional circumstances. Exceptionality is described in the authorities as a prediction of the likely outcome and not as a test. The authorities in the United Kingdom such as *Norris v. Government of United States of America* (2010) 2 AC 487 and *H(H) v. Deputy Prosecutor Genoa: H(P) v. Same; F-K v. Polish Judicial Authority* (2013) 1 AC 338 make clear that, in determining an Article 8 issue, the test is whether the gravity of the interference with family life is justified by the gravity of the public interest pursued. The cases where family considerations will result in a refusal of surrender will be few and the exception will not become the rule. I am adopting this test.

10. In most cases disruption to family life as a result of criminal proceedings or punishment will not weigh heavily as a consideration. Usually, the international public interest in ensuring that crimes are prosecuted and that criminals serve sentences imposed on them is given a higher value in the weighting of competing considerations.

11. I now turn to the evidence in this case. Counsel for the respondent contends that, having regard to the medical evidence, an order that he be surrendered to Poland to face the ten-month sentence at this stage would be a cruel outcome. I agree.

12. There is no doubt or dispute about this medical evidence. Professor Houlihan states that the respondent has decompensated liver cirrhosis with deep jaundice, ascites and encephalopathy. He has extreme ulceration caused by venous congestion of his lower limbs

and he has a large umbilical hernia. He has diabetes mellitus. He may have had an incident of cardiac arrest. While his symptoms may be ameliorated, his progress is terminal. He is certainly not fit to travel. He has a very poor prognosis and will probably not be alive a year from now.

13. The prison system in Ireland is ill equipped to deal with the respondent's medical conditions and there is no reason to suppose that a prison system anywhere in the world enjoys facilities which can provide the respondent with the treatment and care which he requires in a custody setting. The respondent has no family in Poland who can visit him. His family are in Ireland with his son in full time employment.

14. It is likely that a return to Poland at this point will result in further medical complications and shorten the respondent's life expectancy. It will completely disrupt his family life and the lives of his family members during the remaining months of his life.

15. It is easy to envisage circumstances where there may be a strong case for requiring that a person in the terminal stage of life be taken away from his family and returned to another jurisdiction to face justice. The offending alleged may be serious and there may be a public interest that a person be prosecuted or punished by deprivation of liberty, even though that person is suffering from a terminal illness.

16. This is not such a case. The offence here related to a bogus certificate which the respondent issued in 2005 claiming that a bricklayer and plasterer was employed by his company. It resulted in a ten-month suspended sentence which was subsequently activated. The public interest in surrender for the purpose of enforcing this sentence now does not outweigh the gravity of the interference with the respondent's family life and the lives of his family members which will result from the surrender to Poland. I am refusing surrender for these reasons.