

THE HIGH COURT

[2020 No. 014 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

SŁAWOMIR KAZIMIERZ LANGOWSKI

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 1st day of February, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to the Republic of Poland ("Poland") pursuant to a European Arrest Warrant dated 31st March, 2017 ("the EAW") issued by Judge Marcin Kokoszcyński, of the District Court in Gdańsk, as the issuing judicial authority. The surrender of the respondent is sought to enforce two sentences of imprisonment comprising 1 year (case reference II K 481/06) and 8 months (case reference V K 273/08), respectively.
2. The EAW was endorsed by the High Court on 20th January, 2020 and the respondent was arrested and brought before this Court on 27th August, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. I am further satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that the minimum gravity requirements of the Act of 2003 are met. Each sentence in respect of which surrender is sought is in excess of 4 months' imprisonment.
6. At part E of the EAW, the particulars of the offences to which the sentences relate are set out. As regards sentence 1 (1years' imprisonment), this relates to a deception-type offence. As regards sentence 2 (8 months' imprisonment), this relates to an assault committed by the respondent upon his wife. It is certified at part E of the EAW that offence 1 carries a maximum penalty of at least 3 years' imprisonment and falls within article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), and the relevant box is ticked for "swindling". By virtue of s. 38(1)(b) of the Act of 2003, it is not necessary for the applicant to show correspondence between an offence in the EAW and an offence under Irish law, where the offence in the EAW is an offence to which article 2(2) of the Framework Decision applies and carries a maximum penalty of at least 3 years' imprisonment. There is nothing in the EAW or other documents before the Court that gives rise to any ambiguity or perceived manifest error, such as would justify this Court in looking behind the certification in the EAW. Nevertheless, for the sake of completeness I point out that I am satisfied that correspondence could be established in respect of offence 1 in the EAW and the offence under Irish law of deception contrary to s. 6 of the Criminal Justice (Theft and Fraud

Offences) Act, 2001. I am satisfied that correspondence exists between offence 2 in the EAW and the offence of assault under Irish law contrary to s. 2 of the Non-Fatal Offences Against the Person Act, 1997. At hearing, no issue was taken on behalf of the respondent as regards correspondence.

7. Points of objection to surrender were filed, dated 21st September, 2020, and can be summarised as follows:-
 - (i) there is unacceptable ambiguity or insufficient detail in the EAW;
 - (ii) surrender is precluded by virtue of s. 37 of the Act of 2003 as it would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR") or the Constitution due to:-
 - (a) delay in the extradition process; and
 - (b) a risk that the respondent would be subjected to inhuman and degrading treatment; and
 - (iii) surrender is precluded by virtue of s. 45 of the Act of 2003.
8. The respondent's solicitor, Mr. Tony Hughes, swore an affidavit dated 9th October, 2020 in which he averred there was a lack of clarity surrounding the details of the judgments sought to be enforced. He queried whether offence 2 in the EAW could be said to correspond with an offence in this jurisdiction (this was not pursued at hearing). He also referred to the respondent possibly being a vulnerable person and that a psychological report might be necessary. When the respondent subsequently appeared before the Court, he was in much better shape and it was accepted that there was no need for a psychological report.

Ambiguity/Lack of Detail

9. At hearing, counsel on behalf of the respondent pointed out that at part I of the EAW, the name of the representative of the issuing judicial authority is stated to be Przemysław Banasik, President of the District Court in Gdańsk, whereas at part K of the EAW, the signature of the representative of the issuing judicial authority is that of Judge Marcin Kokoszcyński of the District Court in Gdańsk. By way of additional information dated 28th October, 2020, the issuing judicial authority confirmed that the EAW had been issued by Judge Kokoszcyński. The respondent did not dispute this and I am satisfied that it is clear that the EAW was issued by Judge Kokoszcyński, as set out therein.
10. The aforesaid additional information dated 28th October, 2020 also provided considerable detail in respect of the proceedings which led to each sentence. I dismiss the respondent's objection based on an alleged lack of detail.

Section 37 of the Act of 2003

11. The respondent did not adduce any evidence to support the claim that there was a serious risk that, if surrendered, he would be subjected to inhuman or degrading treatment. In such circumstances, I dismiss his objection on that ground.

12. The two sentences in respect of which surrender is sought were imposed in 2006 and 2008, respectively. While there has undoubtedly been a significant lapse of time between the imposition of the sentences and the application to this Court for surrender, it is far from clear that this lapse of time is entirely, or even significantly, due to any culpable delay on the part of the issuing state. The respondent was aware of the sentences but failed to present himself to the authorities to serve same. In *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, the Supreme Court emphasised that only in truly exceptional or egregious cases could delay be a ground for refusal of surrender. The Supreme Court also emphasised that it was only in truly exceptional cases that an order for surrender would be incompatible with the State's obligations under article 8 ECHR. In the present case, the respondent has not adduced any evidence to support a plea that the circumstances of this matter are truly exceptional so as to render an order for his surrender incompatible with the State's obligations under article 8 ECHR. In such circumstances, I dismiss the respondent's objection to surrender based upon delay/lapse of time.

Section 45 of the Act of 2003

13. By virtue of s. 45 of the Act of 2003, a person shall not be surrendered if he did not appear in person at the proceedings resulting in the sentence in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points two, three and four of part D of the form of warrant annexed to the Framework Decision, as set out in the table to s. 45 of the Act of 2003. This section and the table set out therein are derived from article 4a of the Framework Decision.
14. At part D of the EAW, it is indicated that as regards sentence 1 (II K 481/06), the respondent appeared at the trial resulting in the decision. However, it goes on to state:-

"In the preparatory proceedings the requested person pleaded guilty of the alleged offence. The requested person lodged a petition for voluntary submission to penalty; was properly advised on appellate measures, did not lodge an appeal. The requested person appeared at the sitting concerning judgment on execution of the penalty conditionally suspended; did not use legal counsel; was advised on appellate measures. The requested person lodged a complaint against the said decision. The requested person appeared at the sitting before the District Court."

By way of the additional information dated 28th October, 2020, the issuing judicial authority explained that the sentence had initially been suspended, but had subsequently been activated due to the respondent committing two petty offences, failing to make redress and failing to abstain from overusing alcohol. The respondent had appeared at the hearing to lift the suspension. The respondent had appealed the order lifting the suspension and had appeared at the appeal which was dismissed. In such circumstances, I am satisfied that the requirements of s. 45 of the Act of 2003 have been met as regards sentence 1.

15. At part D of the EAW, it is indicated that as regards sentence 2 (V K 273/08), the respondent did not appear at the trial resulting in the decision. However, it goes on to indicate a reliance on point 3.3 of the table as follows:-

"d. the person was served with the decision – a copy of the verdict with advice on appellate measures was sent with two advice notes and deemed served , and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed."

Further information was set out in the EAW as follows:-

"The requested person did not appear at the trial resulting in the decision – having been properly notified of the date. In the preparatory proceedings the requested person pleaded guilty of the alleged offence. The requested person lodged a petition for voluntary submission to penalty; agreed on the penalty with the prosecutor; did not use legal counsel. The requested person appeared at the sitting concerning judgment on execution of the penalty conditionally suspended; was advised on appellate measures. The requested person lodged a complaint against the said decision. Having been properly notified of the date, the requested person did not appear at the sitting before the District Court. A copy of the final decision was served to him on 28.09.2009 – collected personally."

By way of the additional information dated 28th October, 2020, it was explained that the original suspended sentence was activated due to the respondent committing a petty offence. He had not appeared at the hearing at which the suspension had been lifted. However, he had appealed that decision but failed to appear at the appeal hearing. He had personally collected the notification of the hearing dates, including the hearing date of the appeal.

16. On foot of a request for additional information, the issuing judicial authority set out a comprehensive history of proceedings for sentence 2 (case reference V K 273/08) by letter dated 19th November, 2020. This indicated that the respondent had appeared personally at the hearing which lifted the suspension on 30th June, 2009. He had appealed that decision and personally collected notice of the appeal hearing date on 27th July, 2009. He did not appear at the appeal hearing on 21st September, 2009. He had not collected the subsequent notice to serve the sentence.
17. On the basis of the additional information received, it is clear that the requirements of s. 45 of the Act of 2003 have been met as regards sentence 2.
18. In fairness to counsel for the respondent, he conceded that the additional information did appear to satisfy the requirements of s. 45 of the Act of 2003.
19. I dismiss the respondent's objections based on s. 45 of the Act of 2003.

Conclusion

20. I am satisfied that surrender of the respondent is not precluded by reason of ss. 37 or 45 of the Act of 2003 or any other provision of part 3 of that Act.

21. Having dismissed the respondent's objections, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Poland.