THE HIGH COURT

[2023] IEHC 732

[2023 No. 39 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

LESZEK JAROSLAW GUZIK

RESPONDENT

Judgment of Mr. Justice Kerida Naidoo delivered on the 3rd day of July, 2023.

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Poland pursuant to a European Arrest Warrant dated 8th May 2019. The EAW was issued by a Regional Court Judge, as the Issuing Judicial Authority ("the IJA").

2. The EAW seeks the surrender of the respondent in order to enforce a substitute penalty of 6 months' imprisonment imposed upon the respondent on the 17th May 2011, of which 5 months and 29 days' remains to be served.

3. The issuing state has certified the applicable provisions of Polish law.

4. The respondent was arrested on 11th March 2023, on foot of a Schengen Information System II alert, and brought before the High Court on the same date. The EAW was produced to the High Court on 20th March 2023.

5. I am satisfied that the person before the court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.

6. I am satisfied that none of the matters referred to in section 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.

7. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.

8. I am satisfied that no issue arises under section 11 of the Act of 2003.

9. I am satisfied that correspondence can be established between the offence referred to in the EAW and an offence under the law of the State, namely: damaging property contrary to section 2 of the Criminal Damage Act, 1991.

Section 45

10. The respondent objects to surrender under section 45 of the Act of 2003. He says he was not present at the hearing that resulted in the sentence in respect of which surrender sought. He says he did not receive notification of that hearing, which resulted in the 6

month period of imprisonment being substituted for a community service order in case Ko 1296/11.

11. The warrant relates to a single criminal damage offence committed on 22nd September 2007. On 17th May 2011, in case with reference IV Ka 263/10, the District Court in Poznań-Nowe Miasto ordered a penalty of 180 days' imprisonment substituted for a 12-month order of restriction of liberty, in effect a community service order that included a requirement to reside at a specific address.

12. The 12 month community service order was imposed by the District Court in Poznań-Nowe Miasto on 28th October 2009 in case with reference VI K 168/09. It was upheld on appeal by the Regional Court in Poznań on 17th March 2010 in case with reference IV Ka 263/10. The respondent appeared in person before the court of first instance and on appeal. He did not appear at the hearing on 17th May 2011 when the 6 month penalty of imprisonment was substituted.

13. The IJA has indicated that it relies on Part D.1.b and Part D.2 of section 45 of the Act of 2003 to the effect that the respondent was not summoned in person but was served with notice of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision could be handed down if he did not appear for the trial in case VI Ko 1296/11. The warrant also says that following the decision upholding the community service order the respondent was instructed that if he did not serve the community service a substitute penalty of imprisonment could be imposed and that he was summoned to the court hearing concerning the execution of the substitute penalty of imprisonment, scheduled for 17 May 2011, in case VI Ko 1296/11. That notification was sent to the address provided by him; however, the letter was not collected by him and he did not appear in court.

14. A reply to a request for additional information was received on 11th April 2023. It contains the following:

a. The restriction of liberty order was substituted for a sentence of 180 days' imprisonment because the respondent failed to comply with the terms of the restriction of liberty order, did not stay at his place of residence and did not inform the court of his whereabouts.

b. The dates on which the trial at first instance took place were: 31st March 2009, 15th May 2009, 1st July 2009, 25th August 2009 and 21st October 2009. The respondent was present on all of those hearing dates. Judgment was then passed on 28th October 2009. The respondent was not present when the judgement was announcement, although he was on notice of that date. On 2nd November 2009 he requested a copy of the judgment forwarded to him. He then lodged a handwritten appeal on 21st December 2009.

c. When being questioned about the offence at the investigation stage the respondent gave his address as Poznań 61-485 ul. 28 Czerwca 1956r. 249/6. Correspondence about the criminal proceedings and the enforcement proceedings was sent to that address. On 22nd

September 2007, the respondent was informed about all his rights and obligations. Those instructions were received in writing and he signed them.

15. A further letter from the IJA dated 21st of May 2023 provided the following additional information:

a. The IJA was asked about an untranslated document attached to the additional information of 11th April 2023. The additional information of 21st of May 2023 clarified that it was the return receipt for the notice of the hearing for 17th May 2011, which the respondent did not attend despite two delivery notices on 4th April and 12th April 2011.

b. The sentence of 180 days' imprisonment was imposed on the respondent for the first time by the decision of 17th May 2011.

c. At the hearing on 17th of May 2011 the court did not re-examine the merits of the case. It found the respondent had failed to carry out the community service and was therefore evading his punishment. The court therefore converted the community service into a substitute sentence of imprisonment.

d. In response to a question about whether the court enjoyed a discretion in respect of the decision to impose the substitute penalty, the IJA said that the reason for imposing the 6 month sentence was that the respondent was not interested in proceeding with the community service. That reply also says *"Most likely, the court considered the question of imposing a substitute penalty."*

e. The reply also said that the duration of the substitute penalty was determined by the rules for converting a sentence of restriction of liberty into a substitute sentence of imprisonment, which is governed by Article 65 § 1 of the Executive Penal Code. The calculation of the penalty was a purely mathematical exercise. No discretion was therefore exercisable in that regard.

f. In response to the question *"Could the presence of the requested person have influenced the Regional Court on 17 May 2011 in relation to the final order ultimately imposed?"* The response was, *"Yes. The requested person's explanations may have had an impact on converting a restriction of liberty into a substitute prison sentence."*

16. A further feature of that request for additional information is that the IJA had been provided with a copy of a decision of 7th February 2014 of the District Court for Poznań at which it was decided to undertake enforcement proceedings against the respondent regarding the execution of the 6 month sentence and to revoke the search for him. The IJA was asked what steps, if any, were taken to locate the respondent following that decision. The response was to the effect that:

a. The respondent had been sentenced on 30th June 2011 in another case with reference VI K 398/11 and was detained to serve the sentence imposed in that case. Searching for him was therefore unnecessary. When the respondent served his sentence, he was arrested

on foot of an EAW. That warrant did not relate to case VI Ko 1296/11 (I understand VI K 398/11 involved a driving while intoxicated charge).

b. By letter dated 6th December 2013 the respondent was asked to agree to the waiver of the rule of specialty in respect of the sentence of imprisonment to which that warrant relates. The respondent did not reply.

c. On 28th March 2014 he was conditionally released from prison in case VI K 398/11. Because he had not appeared in prison to serve his sentence in case VI Ko 1296/11, by order dated 24th May 2017 the search for him by arrest letter was ordered and the proceedings were suspended for the duration of the search. In addition, the regional court in Poznań issued an EAW on 8th May 2019.

17. The IJA was also given a copy of a document which had been provided by the respondent entitled *"Statement of the person under probation supervision planning to travel abroad"* dated 3rd April 2014. That document contained details of the address in Ireland where the respondent would be staying. The IJA was asked whether the authorities in case VI Ko 1296/11 were aware of the respondent's contact details. The reply is to the effect that there is nothing in the enforcement files about the respondent notifying anybody responsible for the enforcement proceedings about leaving Poland for Ireland.

18. The reply also says the respondent asked for the sentence of restriction of liberty to be converted into a fine. By order dated 25th April 2014, that request was refused because the sentence of restriction of liberty had already been converted into a prison sentence. The reply also says that the probation officer's files shows that the probation officer repeatedly tried to contact the respondent, which included going to his place of residence. The probation officer did not have any information about where the requested person was.

19. The IJA says that the persons responsible for the enforcement proceedings were not aware that the respondent had gone abroad. The steps taken to enforce the sentence were the issuing of a domestic arrest letter and then an EAW.

20. The IJA also says: *"There is also no doubt the requested person still may have the execution of the substitute sentence of imprisonment suspended and serve the sentence of restriction of liberty. However, in this case, he should make the request provided for in Article 65a § 1 of the Executive Penal Code. If such a request is made, the court may at any time suspend the execution of a substitute sentence of imprisonment in the event that the requested person declares in writing that he will undertake to serve the sentence of restriction of liberty and submit to the rigours associated with it; the suspension shall be made until the execution of the sentence of restriction of liberty is imposed. This punishment may be served in various forms. The court would, of course, take into account the personal situation of the requested person, residing permanently abroad. The requested person also has the option of appointing a defense attorney in the case or requesting the appointment of a public defender. However, the requested person has not been in contact with the Polish judicial authorities for many years."*

21. A number of affidavits have been sworn by or on behalf of the respondent.

22. The first is the respondent's affidavit of 20th April 2023. In it he says he was born in 1979 and at all material times while in Poland lived at an address of 28 June 1956, 249, Apartment 6, Poznań (I note that is the same address he gave to the prosecuting authorities). He confirms he was convicted of property damage and that he unsuccessfully appealed decision to the Court of Appeal. He explains the circumstances in which he moved to Ireland and that ultimately he and his daughter settled in Ireland in February 2011. He says he visited Poland in 2013 and when returning to Ireland via Germany he was arrested on foot of an EAW for an offence of driving under the influence of alcohol on 26th January 2011. He says he returned to Poland to serve an 8-month custodial sentence and served just under 6 months of it.

23. He was released from custody in 2014 and was given a copy of a decision of 7th February 2014 concerning the substitution of the custodial sentence. He says that was the first time he was made aware that the community service hours had been substituted for a custodial sentence. He says, in effect, that he understood that ruling meant a decision had been made to revoke the search for him. He says he believed that meant he was no longer required to serve the custodial sentence of 6 months' imprisonment. He says that the time that decision was made he was detained in custody and that at no time during his detention was he made aware in any manner whatsoever that he was wanted to serve a custodial sentence in respect of that offence.

24. He says that prior to leaving Poland in 2014 having completed his sentence he made enquiries with his probation officer as to whether there were any further matters pending against him and whether it would now be legally permissible for him to return to Ireland. He says he was told that he had dealt with all matters concerning him and he was free to return to Ireland and that he provided his probation officer with his address in Ireland.

25. He says that all times prior to leaving Poland he resided at the same address, an apartment owned by his sister. He says no documents were ever served at that address about the case and that he did not receive notification of the hearing of 17th May 2011.

26. The second affidavit is dated 28th April 2023 and was sworn by the respondent's sister. She says she owns the apartment with the address given by the respondent for service of documents on him. She says she did not rent out the apartment at any time. She says she lived in Ireland from September 2007 to May 2017. She says the building provided her with any mail addressed to herself and her family while she was living in Ireland and when she returned to Poland she checked the mail frequently at the apartment. She says that between 2014 and 2023 no correspondence from the police or any court was received at the apartment for her brother.

27. The third affidavit is a supplemental affidavit of the respondent sworn on 4th May 2023. In it the respondent confirms that the address he says he resided at is the address referred to in the EAW. He says that he had mistakenly believed his sister had rented out the apartment for a period of time.

28. In the fourth affidavit, sworn on 8th May 2023, the respondent changed the averment he had made in an earlier affidavit that he was not informed that the sentence of community service imposed in 2009 could be converted into a custodial sentence. He acknowledges that he was so informed.

29. The fifth affidavit is a supplemental affidavit of the respondent sworn on 9th June 2023. In it he says that in relation to the request to waive the rule of specialty he was in custody in December 2013. He says he does not recall receiving a letter asking him to declare whether he had waived the principle of specialty and that at all times he was eager to finalise any outstanding criminal matters in Poland before returning to Ireland.

30. In relation to the fact he did not appear in prison to serve the sentence in case VI Ko 1296/11 he says that he was not aware he was required to serve a sentence. He says that was because the decision of 7th February 2014 stated that a decision had been made to revoke the search for him by means of an arrest letter prior to leaving Poland in 2014.

31. In response to the information from the IJA that there is nothing on the enforcement file notifying the authorities of a change of address, the respondent says he had informed his probation officer about his new address in Ireland. He also says in relation to the information that he had asked for the community service hours to be converted into a fine, which was refused by order of 25th April 2014, that he has some recollection of the correspondence but cannot be certain as to when it was sent and that he was not aware of any hearing on 25th April 2014. He says he was not present or represented at that hearing.

32. In response to the suggestion that his probation officer had tried to contact him, the respondent cannot say why that account has been provided by the probation officer in question. He says he was in regular contact with them for a period of approximately one year. He also says that insofar as it is suggested he was responsible for informing the authorities in charge of the offence to which the warrant relates about any change of address, he says he wanted to finalise all criminal matters before leaving Poland and that is why he made enquiries with his probation officer.

33. The first issue for the court to resolve is whether the hearing that took place on 17th May 2011 was a trial within the meaning of the *Ardic* decision, (Case C-571/17 PPU). In that regard the applicant relies on the *Ardic* decision itself and says that the concept of a decision does not cover one relating to the execution of a custodial sentence previously imposed, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence. The argument is that, although the decision of 17th May 2011 was not an activation of a custodial sentence, it was an equivalent decision to which the reasoning in *Ardic* applies.

34. The applicant says that although the court that decided to substitute a 6 month sentence of imprisonment for the community service order could have decided not to impose the sentence, and in that sense had some discretion in that regard, it was not a discretion

that permitted the court to modify either the nature or quantum of the available penalty within the meaning of Ardic.

35. Addressing that issue the court in *Ardic* held as follows:

"80. In that context, under the relevant national rules, the competent court only had to determine if such a circumstance justified requiring the convicted person to serve, in part or in full, the custodial sentences that had been initially imposed and the execution of which, subsequently, had been partially suspended. As the Advocate General pointed out in point 71 of his Opinion, while that court enjoyed a margin of discretion in that regard, that margin did not concern the level or the nature of the sentences imposed on the person concerned, but only whether the suspensions should be revoked could be maintained, with additional conditions if necessary.

81. Accordingly, the only effect of suspension revocation decisions, such as those in the main proceedings, is that the person concerned must at most serve the remainder of the sentence initially imposed. Where, as in the main proceedings, the suspension is revoked in its entirety, the sentence once again produces all its effects and the determination of the quantum of the sentence still remaining to be served is derived from a purely arithmetic operation, with the number of days already served in custody being simply deducted from the total sentence imposed by the final criminal conviction."

36. The respondent relies on the decision of Burns J. in *Minister for Justice and Equality v. Lukaszka* [2021] IEHC 631, which he submits involved a very similar factual scenario to this case. The respondent in *Lukaszka* had been sentenced to restriction of liberty involving community service. At a hearing in December 2011 a sentence of 150 days' imprisonment was substituted for the community service. The respondent was present at the original hearings but was not present at the hearing in December 2011. The respondent submits that of particular importance was the fact that the issuing state had indicated that it was not possible to establish if the presence of the convicted person would have influenced the court when determining whether to impose the substituted penalty.

37. In that case the court concluded that the hearing in December 2011 *"involved the variation of the nature of a sentence by the exercise of a discretionary power and so falls outside the ambit of the Court of Justice of the European Union decision in Ardic and the Supreme Court decision in Lipinski."* The court therefore refused surrender. The respondent submits that the same approach should be adopted in his case.

38. The applicant submits that there are two significant features in *Lukaszka* that distinguish it from the instant case. The first is that in *Lukaszka* the applicant conceded that the decision at issue was a trial within the meaning of *Ardic,* the court did not therefore adjudicate on the point. The second is that the court held it was important that the court in the issuing state that made the decision had a discretionary power of assessment as to the extent of the alternative imprisonment. The applicant says the discretion therefore

went beyond deciding whether or not to impose a defined custodial sentence and did involve a discretion as to the nature or quantum of the sentence to be imposed.

39. I accept the applicant's submission that the instant case can be distinguished from *Lukaszka* because the decision that court was dealing with did involve the exercise of a discretion captured by *Ardic*. Furthermore, whether or not it was an *Ardic* decision was not in dispute between the parties.

40. The respondent lays particular emphasis on the fact that in the additional information of 21st May 2003, when asked whether the presence of the respondent could have influenced the court's decision on 17th May 2011, the reply was, *"Yes. The requested person's explanations may have had an impact on converting a restriction of liberty into a substitute prison sentence."* The respondent therefore says that the court clearly did have a discretion to exercise in respect of the nature of the penalty.

41. The effect of the reply from the IJA on which the respondent relies to ground his section 45 argument is that when the decision was made to substitute a 6-month sentence for the community service order the court making the decision did have, to quote *Ardic "a margin of discretion in that regard*", but only as to whether or not to impose a custodial sentence. The court could not have imposed an alternative form of punishment or duration of imprisonment. Therefore, it did not have a discretion to modify the nature of the punishment within the meaning of the *Ardic* judgment. Similarly, the duration of the custodial penalty was arrived at by the application of a purely mathematical formula and no discretion was therefore exercisable in that regard.

42. I, therefore, accept the applicant's submission that the decision to impose the 6 month sentence was not a "decision" within the meaning of *Ardic.* That is determinative of the section 45 issue.

43. If I am wrong in that the case falls to be considered in accordance with the *Zarnescu* decision (*Minister for Justice v. Zarnescu* [2020] IESC 59) and I consider it appropriate to address the parties' arguments on that issue. In *Zarnescu*, the Supreme Court indicated that section 45 of the Act of 2003 is to be given a purposive interpretation and that even though a particular set of circumstances may not fit neatly into one of the scenarios set out in Table D, it may nevertheless be permissible for the court to order surrender if it is satisfied that the requirements of section 45 have been substantially met. However, as Baker J. pointed out in *Zarnescu*, before making an order for surrender in such circumstances the court must take a step back and satisfy itself that the defence rights of the respondent have not been breached and will not be breached.

44. Having carefully considered all of the materials before the court and bearing in mind the Supreme Court decision in *Zarnescu* and the authorities referred to therein, I am satisfied that this case falls within the category of cases set out at paragraph 90(o) of the judgment:

"(o) In a suitable case a manifest absence of diligence may lead a requested authority to the view that the accused person made an informed decision not to be present at trial, or where it can be shown that there was an informed choice made by the person to avoid service."

45. The 6 month penalty was imposed was because the respondent did not comply with the terms of the restriction of liberty order. He did not carry out any of the community service and left the address at which he was obliged to reside.

46. I am satisfied the respondent knew that if he did not comply with the restriction of liberty order a custodial sentence could be imposed as an alternative. I am also satisfied that the respondent had provided an address for service, which is the address he says he was residing in at all relevant times. The warrant and additional information are to the effect that the summons to the court for the hearing on 17th May 2011 was sent to that address and it included information that a decision could be handed down if the respondent did not appear at the hearing.

47. Affidavit evidence from the respondent and his sister is to the effect that no relevant documents were ever served at that address. It is apparent that the deponent was not residing at the relevant address on 17th May 2011 when the hearing resulting in the decision to which the warrant relates took place or when the IJA says notification of that hearing was served on the respondent. His sister says she was not forwarded any documentation in relation to the offence to which the warrant relates by whoever was in charge of the apartment between 2014 and 2023. I accept the applicant's submission that the respondent's sister does not say that no documentation was received for her brother at that address in 2011.

48. I accept that the relevant authorities served notice of the hearing of 17th May 2011 at the address provided by the respondent for service. I am also satisfied that the respondent knew failure to reside at that address could result in any proceeding in respect of which notification was served at that address being conducted in his absence.

49. I accept the applicant's submission that the fact the respondent appeared throughout the trial at first instance, and again at the hearing on appeal, means that he did receive correspondence about the prosecution, which was sent to his nominated address. I also accept that one of the reasons why the respondent had the 6 month sentence imposed on him was because he did not stay at the place of residence as required by the order and did not inform the court of his whereabouts.

50. The respondent says that he informed his probation officer about his address in Ireland. He relies on that as extrinsic evidence of his desire to participate in any court proceedings about the offence to which the warrant relates. He avers that he understood that the 7th February 2014 decision was to revoke the search for him and he thought the effect was that he was no longer required to serve the custodial sentence of 6 months that had been imposed on him in his absence. In fact, that decision was one directed towards enforcement of the 6 month sentence.

51. I do not find the respondent's averment that he was at all times eager to finalise all criminal matters concerning him in Poland before returning to Ireland in 2014, and that he thought there was no outstanding matters in Poland, to be credible. Firstly, the IJA says that in a letter dated 6th December 2013 the respondent was asked to agree to the waiver of the rule of specialty in respect of the sentence of imprisonment to which the warrant relates. In his affidavit he does not deny having received that request but says he does not remember being asked about the rule of speciality. I accept he was asked to waive the rule of specialty and I find his averment in that regard unconvincing.

52. Secondly, the respondent is slow to acknowledge that he applied to have the sentence reduced to a fine, which was refused at a hearing on 25th April 2014. He simply says that that he has some recollection of the correspondence but cannot be certain as to when it was sent and that he was not aware of any hearing on 25th April 2014. I accept the information from the IJA that the respondent did make such an application. It follows that, contrary to the contents of his affidavits, he did know in 2014 that the 6 month sentence had been imposed on him.

53. Even accepting the respondent was in contact with the probation officer having left Poland, it is not credible that when he left Poland in 2014 he believed there were no outstanding criminal matters for him to attend to. In April 2014 he applied to have the sentence reduced to a fine. He cannot therefore have been unaware that a decision had to made in that regard. He then left Poland before the hearing on 25th April 2014. That reveals an intention on his behalf not to serve the 6 month sentence or participate in a hearing that might result in the sentence being confirmed. It is also to be noted that the probation officer the respondent refers to was assigned in relation to the drink driving offense not the criminal damage one.

54. I also accept the applicant's submission that the respondent's conduct in relation both the offence before me and to the drink-driving charge shows that he wanted to avoid being present when any decision might be made imposing a penalty of imprisonment on him. He was present throughout the first instance trial in the case before me but elected not to be present for the judgment, of which date he was on notice. He appealed that decision but absented himself from hearing when the judgment was delivered. He declined to respond to the request for waiver of the rule of specialty. He applied to have the 6 month sentence reduced to fine but was not present for the decision refusing that application. Having been convicted of the drink-driving charge, he left Poland and only served that sentence when arrested in Germany on foot of an EAW.

55. In the context of the *Zarnescu* argument the first question is whether I can be satisfied the respondent in fact received personal service of the documents that I accept were served at the address he had given. In the circumstances I cannot be so satisfied. The second question is whether the reason he may not have received the notifications served at that address was because he was no longer living at it. I accept that notification of the hearing of 17th May 2011 were served at the respondent's address on 4th April and 12th April 2011. In his own account he left Poland in February 2011. It therefore follows that if

he was unaware of the date of the hearing, it was because he was no longer living at the address he had given for service. The respondent does not dispute that he was obliged to provide notice of any change of address to the authorities responsible for the criminal damage case. He did not do so. He also knew that if he did not carry out the terms of the community service order, that it could be converted into a custodial sentence.

56. In the circumstances I am satisfied that the respondent had made an informed decision not to attend the hearing of the appeal or take any further part in the process before the courts of the issuing state. I am also satisfied that the respondent made an informed decision to bring about a situation in which it was not possible for the authorities in the requesting State to affect personal service upon him of the hearing of 17th May 2011.

57. In arriving at the above conclusions, I am fully aware of the central importance in any fair criminal procedure that an accused person has the opportunity to be present at any hearing that will affect his fundamental rights. I have therefore carefully considered whether, in the circumstances, I can be satisfied that the rights to defence have not been breached and were adequately protected. The respondent made a decision not to provide details of any change of address to the relevant authorities in circumstances where he knew a failure to do so would result in service at the address he had previously given.

58. Perhaps more fundamentally, the IJA has stated unequivocally that the respondent can avail of a rehearing of the decision to substitute the sentence of imprisonment that, in effect, amounts to a full appeal. He can make such an application at any time as of right and the rehearing will involve a reconsideration of the merits of the case taking into account his personal circumstances as they now are, including the fact that he is permanently resident in Ireland. It is apparent from the information provided by the IJA that if the respondent indicates he is prepared to undertake to serve the original sentence of restriction of liberty that the punishment can be served in various forms. He is also entitled to have a defence attorney to represent him. In all the circumstances, I therefore am satisfied that he can still exercise his defence rights.

59. I therefore reject the respondent's argument under section 45 of the Act of 2003.

Right to a fair trial and/or right to liberty

60. The respondent objects to surrender in circumstances where he says his rights under the Constitution and the ECHR were breached as he was not informed and present at the court hearing on 17th May 2011 which led to a custodial sentence being imposed. He says a respondent's fair trial rights are protected by compliance with section 45 of the Act of 2003.

61. This ground of objection has been addressed in the context of the section 45 argument and I am satisfied surrender should not be refused on the basis of it.

Delay/Family Life – Section 37

62. The respondent objects to surrender on the basis that his surrender would be in breach of section 37 of the European Arrest Warrant Act 2003, as amended, in that it would

interfere with his right to respect for his private and family life as guaranteed by Article 41 of the Constitution and Article 8 of the ECHR.

63. He also objects to surrender under section 37 of the Act of 2003 on the grounds that there is an egregious delay in the present case so as to make the surrender of the respondent disproportionate, that the respondent and his daughter have been residing together in the State since in or around February 2011 and are settled in this jurisdiction to the extent that the surrender of the respondent for the single offence contained in the European Arrest Warrant at this point in time would be a disproportionate interference with the his right to enjoyment of his family life.

64. The respondent grounds those arguments on his affidavit of 20th April 2023. I have considered the contents of same.

65. It is for the respondent to persuade the court that surrender should be refused on the basis of his personal and family circumstances. The EAW regime contemplates that surrender will almost inevitably have an adverse impact on the requested person and their family. It is well established that only where a case involves exceptional circumstances falling well outside the norm that surrender should be refused on grounds of the impact of surrender on the respondent's personal circumstances, although exceptionality is not the test. It is likewise well established that surrender should not be refused on grounds of delay otherwise than in very unusual circumstances.

66. Having considered the respondent's submissions and the contents of his affidavit, I am satisfied that the grounds relied on by him, either in isolation or when taken together, are not so truly exceptional or egregious as to provide a basis for refusal of surrender.

67. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.

68. It, therefore, follows that this court will make an order pursuant to section 16 of the Act of 2003 for the surrender of the respondent to the Republic of Poland.