

THE HIGH COURT

[2020] IEHC 532

RECORD NUMBER 2019/188 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

DARIUSZ ZEGAREK

RESPONDENT

Judgment of Mr. Justice Paul Burns delivered on the 20th day of October, 2020

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 19th February, 2019 ("the EAW") issued by Olgierd Dąbrowski-Żegalski, Judge of the Circuit Court in Olsztyn, as the issuing judicial authority. The EAW indicates that the surrender of the respondent is sought to enforce a sentence of 2 years and 6 months' deprivation of liberty, of which 1 year, 6 months and 23 days' deprivation of liberty remains to be served. The file reference of the EAW is II Kop 94/18.
2. The EAW was endorsed by the High Court on 24th June, 2019 and the respondent was arrested and brought before the High Court on 13th January, 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. The sentence in respect of which surrender is sought is in excess of 4 months' imprisonment.
6. The sentence in respect of which surrender is sought as described under part B of the EAW as:-

"Enforceable judgment: Cumulative judgment of the Circuit Court in Olsztyn of 27 October 2009, case file ref. II K 96/09."

7. At part E of the EAW, it is indicated that the EAW relates to 2 offences in total, namely:-

"The cumulative judgment of the Circuit Court in Olsztyn II K 96/09 which covers the penalties imposed by the judgments of the District Court in Grójec II K 58/03 and the District Court for Warszawa-Praga IX K 921/01."

Offence under the Judgement of the District Court in Grójec II K58/03

- I. On 25 August 2002 in Białobrzegi, ... he instigated other individuals to attack with the use of physical force two police officers of the County Police Headquarters [KPP] in Białobrzegi, ... who were executing his arrest order in accordance with the decision of the District Court in Grójec, Branch in Białobrzegi, case file ref. VII W

29/02 in this way forced the abovementioned officers to abstain from the performance of the lawful official activity.

Offence under the Judgement of the District Court for Warszawa-Praga IX K 921/01

II. On 07 March 2001 at the Carrefour store at ul. Glebocka 15 in Warsaw, acting jointly and in concert with another individual, a committed burglary of a shop display by forcing open a locked glass display cabinet and stealing a Sony Play Station 2 gaming console ... worth PLN 2699, to the detriment of the Carrefour store."

8. I am satisfied that offence I corresponds with an offence in this State, specifically an offence contrary to s. 18 of the Criminal Justice (Public Order) Act, 1994, as amended, viz. assault with intent to cause bodily harm or commit an indictable offence, and/or s. 19 of the same Act, viz. assault or obstruction of a peace officer. Correspondence also exists with an offence under s. 71 of the Criminal Justice Act, 2006, as amended, viz. conspiracy to commit a serious offence, namely assault of a police officer. I am also satisfied that offence II corresponds with an offence in this State, being the offence of burglary contrary to s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 200. Correspondence was not vigorously contested.

9. At part D of the EAW, the relevant boxes are ticked to indicate that the respondent did not appear in person at the trial resulting in the decision, and it is indicated:-

"3.1b the person was not summoned in person but by other means actually received official information 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 or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by the counsellor at the trial."

The EAW also goes on to state:-

"4. Dariusz Zegarek has been notified of the scheduled date of the hearing and at that time he was staying in the Detention Centre in Warsaw. Pursuant to the provisions of the Polish law the attendance of a convicted individual at a hearing which results in the issuance of a cumulative penalty is not obligatory. The convicted individual was represented at the hearing by his court-appointed defence counsel who was served with the official copy of the decision along with its justification."

10. By letter dated 19th March, 2019, the Central Authority sought further information from the Polish issuing judicial authority as follows:-

"Unless it can be confirmed that Mr. Zegarek was present at the two trials referred to – IIK 58/03 in the District Court in Grojec and IXK 921/01 in the District Court for Warszawa-Praga – you are asked to complete and submit a Section D table for each of those two trials."

11. By separate replies, both dated 8th April, 2019, the Polish authorities stated:-

"... District Court in Grójec, Second Criminal Division informs that case files II K 58/03 show that the judgement in this case was rendered on 26 November 2003. The Defendant was transported for this trial date from the Detention Centre. He was not defended by a counsel appointed by himself or appointed for him by the State. No reasons for the judgement were prepared. As a consequence, no appeal proceedings took place."

The second reply explained that:-

"... District Court for Warsaw Praga Południe, Fourth Criminal Division Enforcement Section in case IXK 921/01 regarding Dariusz Zegarek informs that the Sentenced Person attended in person the trial date resulted in the judgement. The Sentenced Person did not appoint a defence counsel by himself and did not have a defence counsel appointed for him by the State. He did not file an appeal against the judgement."

12. By letter dated 13th June, 2019, the Central Authority sought further information as to whether table D referred to the cumulative judgment of the circuit court in Olszytn dated 27th October, 2009, case file reference II K 96/09, and sought an explanation as to how that decision arose if the district court judgments had not been appealed, and also sought information as to the penalties imposed in respect of each district court trial.
13. By reply dated 17th June, 2019, the issuing judicial authority confirmed that table D in the EAW concerned the punitive judgement of the circuit court reference II K 96/09 and that on 7th May, 2009, the respondent had lodged an application for "rendering" the cumulative judgment concerning him in place of individual penalties imposed in the separate penal proceedings. The separate proceedings were, among others, files II K 58/03 and IX K 921/01. Information was provided as to how proceedings seeking a cumulative penalty are conducted in Poland. It was stated that the respondent did not appear at the cumulative hearing before the Circuit Court in Olszytn but he was notified about the hearing, his defence lawyer represented him and his lawyer lodged an appeal which caused a partial amendment of the punitive judgement. A cumulative penalty of 2 years and 6 months' deprivation of liberty was imposed instead of the individual penalties imposed by the district courts in the relevant cases. Details were provided of other punitive penalties imposed as regards other offences which were not the subject matter of the EAW.

14. The respondent delivered points of objection in a single document dated 24th February, 2020 in respect of both this EAW and a separate European arrest warrant. As regards this EAW, the respondent claimed:-
 - (a) that he may have already served the totality of the sentence referred to in the EAW during a lengthy period of imprisonment in Poland from 2007 to 2014; and
 - (b) that surrender would amount to an unjustifiable interference with his right to liberty and fair procedures given the delay in the matter and/or will amount to a disproportionate interference with his right to a family and private life under article 8 of the European Convention on Human Rights ("the ECHR").
15. By letter dated 28th February, 2020, a copy of the respondent's points of objection and supporting affidavit was furnished to the issuing judicial authority. The issuing judicial authority was asked to confirm whether the respondent had been in custody in Poland from April 2007 to January 2014 and whether, on leaving prison in January 2014, the respondent had been told that he had outstanding criminal proceedings or further sentences to be served. The issuing judicial authority was asked to explain, in respect of the sentence under file reference II K 96/09, how the respondent could still have a portion of same to serve in circumstances where the offences dated back to 2001 and 2002, the sentence was finalised in 2010 and he was in custody until 2014.
16. By reply dated 3rd March, 2020, the issuing judicial authority explained that in case file reference II K 96/09, the respondent had been ordered to serve three different aggregate sentences of deprivation of liberty. He had served the punishment in full as regards one of those and in relation to the other two sentences, including the sentence which was the subject matter of the EAW, he had served some of same and had been released on parole in August 2014. It was stated that he was fully aware at the time of his release that the sentences had not been fully served. On 9th September, 2016, by decision of the Circuit Court in Radom, the conditional early release granted to the respondent was withdrawn and he was ordered to serve the remaining punishments of 2 years and 6 months' and 2 years' of deprivation of liberty, ordered under case file reference II K 96/09. The justification for cancelling parole was that the respondent had evaded the supervision of the court-appointed probation officer. While the respondent had obtained the court's permission to travel to Ireland for work, he had not remained in contact with the probation officer since April 2016 despite the fact that messages were sent to him by email and by phone.
17. The respondent relied upon a report from a Polish law firm, Pietrzak Sidor & Wspolnicy, dated 19th March, 2020, which concluded that it was possible that the sentence imposed on the respondent in case reference II K 96/09 still remains to be served in Poland, but that there were reasonable doubts as to whether the respondent was granted the necessary procedural guarantees in the enforcement proceedings, in particular proceedings concerning revocation of his early release on parole. It also concluded that it was not probable that the respondent could make an argument in Poland that his rights

had been infringed, due to the passage of time as the period of limitation for the enforceability of his sentence had not yet elapsed.

18. At hearing, counsel for the respondent only argued the objection in respect of delay and the right to a family/private life. As regards the delay in this matter, I am satisfied that a reasonable explanation for same has been given by the issuing judicial authority and the surrounding circumstances have been adequately explained in the report of the Polish law firm relied upon by the respondent. The respondent's right to a family and private life do not appear to raise any exceptional aspect which could justify refusal of surrender. In his affidavit of 27th February, 2020, the respondent states that he has been living in Ireland since 2015 and has been working, he is in a long-term relationship and acts as a father figure to his partner's children who are aged 14 and 19. His partner underwent spinal surgery and is on disability allowance, and he avers that she requires constant care. His partner, Katarzyna Legut, in her affidavit dated 11th February, 2020, confirms that the respondent takes care of her and the children, that she recently underwent serious spinal surgery and suffers from depression and fibromyalgia. A short medical report is exhibited in her affidavit which indicates that she underwent a C5/6 decompression in 2013 and suffers from arthritis of the knee, fibromyalgia and depression.

19. In *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, the Supreme Court emphasised the public interest considerations inherent in the Act of 2003 and the Framework Decision, before outlining how a high threshold had to be reached before a court would refuse surrender on grounds such as delay or article 8 ECHR rights. MacMenamin J. stated at para. 89:-

"Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues."

It is a reality that the imposition of a term of imprisonment is disruptive of family life and will have adverse consequences not only for the person convicted, but also in many cases for other family members. The circumstances as set out in the affidavits of the respondent and his partner fall far short of being truly exceptional or egregious so as to justify a refusal to surrender.

20. I dismiss the respondent's objections to surrender.

21. I am satisfied that no issue arises in respect of the requirements of s. 45 of the Act of 2003. This was accepted at hearing.

22. I am satisfied that the surrender of the respondent is not prohibited under part 3 of the Act of 2003.

23. It follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Poland.