

THE HIGH COURT

[2022] IEHC 76
[2021 No. 275 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

OSKAR DAMIAM LOCINSKI

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 14th day of January, 2022

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 the 7th of March 2018 ("the EAW"). The EAW was issued by Slawomir Bielecki, Circuit Court Judge, Circuit Court Warszawa, Praga in Warsaw, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent to enforce a sentence of imprisonment imposed upon him on the 1st day of August 2017, of which one year and six months remain to be served.
3. The respondent was arrested on the 4th of October 2021, on foot of a Schengen Information System II alert, and brought before the High Court on that day. The EAW was produced to the High Court on 15th day of October 2021.
4. 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.
5. I am 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 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.
6. 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.
7. The respondent, in his original notice of objection, submitted that surrender is prohibited by section 38. However, on the 4th of January 2022, the respondent submitted an amended notice of objection indicating that he was not pursuing this objection. I am satisfied that correspondence can be established between the offence referred to in the EAW and offences under the law of this state, i.e. robbery contrary to section 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, as amended.
8. The respondent further submits that surrender is prohibited by section 45 of the Act of 2003. At Part D of the EAW, it is indicated that the respondent "did not appear in person at the hearing, in which the decision was rendered". At Part D 1 (b) it continues: "the person concerned has not been summonsed in person, but otherwise actually received official information of the date and place of the hearing, in which the decisions was

rendered, allowing for unambiguous stating that he/she knew of the hearing, and was informed that the decision may be rendered in absentia". Part D 2 further states: "Summons for the date of the hearing were sent to Oskar Damien Locinski by letter to the address ul.Sielecka 3m. 25,00-738 Warszawa. The summons was twice advised and was considered to have been duly served".

9. The respondent swore an affidavit dated the 25th of November 2021 stating that:
 - His marriage in Poland broke down in early 2014. As a result of his wife's addiction to alcohol, which, he states, was such that their child had to reside with his grandparents as the respondent's wife could no longer raise him. The respondent decided to leave the country and to move to Ireland to find work, which he did. He states that he has resided here since and has had no contact with his wife since that date, save that the respondent's brother told him that his parents had said that she had spent time in custody at some stage after the respondent left.
 - He was the sole tenant of a social house prior to leaving Poland. His wife resided there with him but had no legal interest in that property. The respondent states that he abandoned the property when he moved to Ireland and he is unaware as to what happened to it.
 - Prior to leaving Poland, he submits that he was not served with a summons or notified by other means that he was required to attend court to answer the charge which is the subject of the conviction upon which the warrant is grounded. Further, since living in Ireland, he submits that he has had no notification of any court date. Finally, he says that he was never on bail in relation to the charge.
10. The respondent swore a second affidavit dated the 4th of January 2022, in which he states that, on the 25th of November 2021, he swore an affidavit in the present proceedings. He says that his counsel had originally drafted paragraph 5 thereof on the basis that the respondent separated from his wife in early 2015 and left Poland. Prior to swearing the affidavit, the respondent submits that he realised that the date of separation was incorrect, as he indicated having separated from his wife in early 2014, and he corrected this. However, he states that he failed to amend the paragraph and re-insert the date of his leaving Poland, which he says was May 2015.
11. A section 20 request dated the 7th of December 2021 was sent to the issuing judicial authority on foot of the contents in the affidavit of the 25th of November 2021, wherein the following questions were asked:
 - "i) Please clarify exactly how the requested person actually received notice of the scheduled trial date and place of the trial.
 - ii) Please clarify what is meant by the following statement in the EAW (at section 2 of part D) – "The summons was twice advised and was considered to have been duly served."

- iii) Please also indicate the date/s on which the summons/es issued to the address outlined in the EAW.”
12. A very lengthy response was received from the issuing judicial authority on the 31st of December 2021. This response did not add any further meaningful information in support of the application.
 13. In the present circumstances, the applicant accepts that the issuing judicial authority is not able to confirm that the respondent was actually served with the summons, and the issuing judicial authority is not able to confirm that the respondent unequivocally waived his rights in this regard.
 14. In the circumstances, the applicant concedes that the provisions of section 45 of the Act of 2003 have not been complied with.
 15. I am satisfied that surrender of the respondent is precluded by reason of section 45 of the Act of 2003.
 16. The respondent also submits that surrender is prohibited by section 37 of the Act of 2003. He submits that:
 - The proposed surrender ought to be refused pursuant to section 37 of the Act of 2003 and article 6 of the European Convention on Human Rights (“the ECHR”) on account of systemic and generalised deficiencies in the system of justice in the issuing state, in terms of independence and composition of the courts before which the respondent may seek a re-trial, appeal or measure of clemency.
 - There is no effective remedy for these grave and pervasive difficulties before the domestic courts in the issuing state and the breach of the essence of the right to a fair trial is such that surrender should be refused pursuant to section 37 of the Act of 2003 and article 6 of the ECHR.
 - In the circumstances, the respondent asked for the adjournment of the hearing of this section 37 objection pending the determination of the proceedings in *Orlowski* and *Lyszkiewicz* currently pending before the Supreme Court and, by way of an article 267 preliminary reference, before the Court of Justice of the European Union.
 - Without prejudice to the generality of the foregoing, the surrender of the respondent to serve the sentence, which is the subject of the within application, in a Polish prison in circumstances where he is a member of the LGBTQI+ community is such that it would constitute a breach of his personal rights under both the ECHR and the Constitution and would constitute inhumane or degrading treatment in the circumstances. The respondent thus submits that his surrender is prohibited by section 37 of the Act of 2003.

17. Considering my decision in relation to the section 45 objection, I have not adjudicated on these matters.
18. It, therefore, follows that this court will make an order refusing the application for surrender.