

**THE HIGH COURT**

[2021] IEHC 27  
[2017 No. 186 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**TOMASZ LATEK**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 15th day of January, 2021**

1. In 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 16th March, 2017 ("the EAW"). The EAW was issued by Michał Pieńkowski, Presiding Judge of the Regional Court, Second Criminal Division, Ostrołęka, Poland, as the issuing judicial authority. The EAW seeks the surrender of the respondent to be prosecuted for a single fraud-type offence allegedly committed in 2011.
2. The EAW was endorsed by the High Court on 17th July, 2017, and the respondent was arrested and brought before the High Court on 4th November, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. No issue was raised in this respect.
4. 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 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 have been met. The maximum penalty for the offence in respect of which the surrender of the respondent is sought is 8 years' deprivation of liberty.
6. I am satisfied that the offence referred to in the EAW corresponds with the offence in the State of deception contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and/or the offence of using a false instrument contrary to s. 26 of the said Act. Correspondence was not put in issue by the respondent.
7. The respondent delivered points of objection but at hearing, counsel only relied upon the single ground of objection that surrender was precluded by reason of the systemic deficiencies in the Polish judicial system, and in particular deficiencies in the independence of the judiciary. The respondent swore an affidavit setting out that he had been working in Ireland since 2011, had occasionally returned to Poland and had never been questioned or had any dealings with the Polish authorities in respect of the alleged offence. He also stated that the Polish criminal justice system had been undermined by the executive and for that reason he should not be surrendered. The respondent did not exhibit any reports from human rights bodies or an affidavit from a lawyer in Poland.

8. The Court of Justice of the European Union ("the CJEU") has recently considered this issue in the combined cases of *L (Case C-354/20 PPU) (2020)* and *P (Case C-412/20 PPU) (2020)* and held that such systemic or generalised deficiencies concerning the independence of the judiciary does not automatically allow the court in the executing judicial authority to deny the court which issued the European arrest warrant of the status of "issuing judicial authority" and nor can such an executing judicial authority presume that there are substantial grounds for believing that the person will, if surrendered, run a real risk of breach of his fundamental right to a fair trial. Before coming to a conclusion that there are substantial grounds for believing that the person will, if surrendered, run a real risk of a breach of his fundamental right to a fair trial, the executing judicial authority must carry out a specific and precise verification which takes account of, *inter alia*, his or her personal situation, the nature of the offence in question and the factual context in which that warrant was issued, such as statements by public authorities which are liable to interfere with how an individual case is handled. The CJEU reiterated the principles it had expressed in its earlier judgment in *LM (Case C-216/18 PPU) (2018)*. In *LM*, the CJEU accepted that, in principle, a member state could refuse surrender on foot of a European arrest warrant in circumstances where there was a real risk that the person, if surrendered, would suffer a breach of his fundamental right to an independent tribunal and, thus, a breach of the essence of his fundamental right to a fair trial. However, the CJEU emphasised that it was not sufficient for the requested person to point to systemic or generalised deficiencies regarding the independence of the issuing member state's courts, but rather that he or she would have to demonstrate that there were substantial grounds for believing that the individual requested would run a real risk of a breach of his/her right to a fair trial.
9. In *Minister for Justice and Equality v. Celmer* [2019] IESC 80 the Supreme Court considered the CJEU judgment in *LM* and O'Donnell J. set out the position as follows at para. 40:-

*"However, the court pointed out that under the Framework Decision, surrender could only be suspended generally, if the European Council was to adopt a decision under Article 7(2) TEU that there was a serious and persistent breach in the issuing Member State of the principles set out in Article 2 TEU. So long as such a decision had not been adopted, then it was only in exceptional circumstances that a court could refuse to surrender, and that was where the authority found, after a specific and precise assessment of the particular case that there were substantial grounds for believing the person in respect of whom the European arrest warrant had been issued would, following a surrender to the issuing judicial authority, run a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial. This assessment required the executing authority to examine, in particular, to what extent the systemic or generalised deficiencies regarding independence of the issuing Member State's courts were liable to have an impact at the level of that state's courts with jurisdiction over the proceedings to which the requested person would be subject (para.74). If so, the assessment must consider, in light of any information supplied*

*by the individual, and any concerns expressed by him or her, whether there are substantial grounds for believing that, having regard to his or her personal situation, and the nature of the offence charged, he or she will run a real risk of a breach of the fundamental right to a fair trial (para.75)."*

10. In his affidavit, the respondent expressed his concern regarding recent developments undermining the criminal justice system in Poland. However, counsel for the respondent was unable to adduce any evidence concerning any risk or prejudice, particular or specific, to the respondent in terms of any deficiency in the Polish justice system. I can find no evidence in the documents before me to establish any substantial grounds for believing that, having regard to his personal situation and the nature of the offence charged, the respondent will run a real risk of a breach of his fundamental right to a fair trial. In the absence of any such evidence, I dismiss the respondent's objection to surrender based upon alleged deficiencies in the court system of Poland.
11. I am satisfied that the respondent's surrender is not precluded by part 3 of the Act of 2003.
12. Having dismissed the respondent's objection to surrender, 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.