

**THE HIGH COURT**

[2021] IEHC 4  
[2020 No. 202 EXT.]  
[2020 No. 203 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**RAFAŁ ŁUKASIK**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 12th day of January, 2021**

1. By two applications pursuant to the European Arrest Warrant Act, 2003, as amended (“the Act of 2003”), the applicant seeks orders for the surrender of the respondent to the Republic of Poland (“Poland”).
2. In the first application, bearing record number 2020/202 EXT, the applicant seeks an order for the surrender of the respondent on foot of a European arrest warrant dated 18th March, 2015 (“EAW 1”), issued by Judge Artur Kosmala of the District Court in Wrocław, as the issuing judicial authority. As regards EAW 1, the surrender of the respondent is sought to enforce a sentence of 1 year and 6 months’ imprisonment imposed by order dated 28th October, 2011, all of which remains to be served. EAW 1 was endorsed by the High Court on 18th August, 2020 and the respondent was arrested and brought before the High Court on 7th October, 2020. The sentence relates to two offences relating to the theft or attempted theft of motor vehicles. I am satisfied that correspondence has been established between offence I in EAW 1 and the offence of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, as amended (“the Act of 2001”), under the law of this State. Similarly, I am satisfied that correspondence has been established between offence II in EAW 1 and the offence of attempted theft contrary to s. 4 of the Act of 2001, under the law of this State. Counsel on behalf of the respondent indicated to the Court that no issue was taken in respect of correspondence.
3. In the second application bearing record number 2020/203 EXT, the applicant seeks an order for the surrender of the respondent on foot of a European arrest warrant dated 5th August, 2014 (“EAW 2”), issued by Judge MA Marius Wiązek of the District Court in Wrocław, as the issuing judicial authority. As regards EAW 2, the surrender of the respondent is sought to enforce a sentence of 2 years and 6 months’ imprisonment imposed by an order dated 17th July, 2012 of which 2 years, 2 months and 2 days remains to be served. EAW 2 was endorsed by the High Court on 18th August, 2020 and the respondent was arrested and brought before the High Court on 7th October, 2020. The sentence relates to one offence of deprivation of another’s liberty and one offence of facilitation or incitement of prostitution. At part E of EAW 2, the issuing judicial authority has certified that the offence in question carries a maximum penalty of at least 3 years’ imprisonment and is an offence to which article 2.2 of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States (“the Framework Decision”) applies so that pursuant to s. 38(1)(b) of the Act of 2003, it is not necessary for the applicant to establish

correspondence between the offence in EAW 2 and an offence under the law of this State. The relevant box at part E of EAW 2 has been ticked to indicate that "*kidnapping, illegal restraint and hostage-taking*" is the relevant offence to which article 2.2 of the Framework Decision applies. On the facts as set out at part E of EAW 2, there is no manifest error or ambiguity in respect of the said certification so as to justify this Court looking behind same. I am satisfied that correspondence could be established between the offence in EAW 2 and the offence of false imprisonment contrary to s. 15 of the Non-Fatal Offences Against the Person Act, 1997, as amended, under the law of this State. Counsel on behalf of the respondent indicated to the Court that no issue was taken in respect of correspondence.

4. I am satisfied that the person before the Court is the person in respect of whom each EAW was issued and no issue was taken in respect of this.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein. No issue was taken in respect of those sections.
6. As regards EAW 1, counsel on behalf of the respondent submitted that the minimum gravity requirements as set out in the Act of 2003 are not met. He submitted that under s. 38(a)(ii) of the Act of 2003, the sentence or remainder of the sentence to be served upon surrender had to comprise at least 4 months' imprisonment. He submitted that as there were two offences referred to in the EAW, it was necessary for the applicant to establish that a separate sentence of at least 4 months' imprisonment remained to be served in respect of each offence respectively, and this had not been done. I am satisfied that EAW 1 seeks the surrender of the respondent to serve a sentence of imprisonment imposed in a single enforceable order dated 28th October, 2011. I am satisfied that in such circumstances, the minimum gravity requirement set out at s. 38 of the Act of 2003 is satisfied provided there is a sentence of at least 4 months' imprisonment to be served in respect of that enforceable order. As the entire period of 1 year and 6 months' imprisonment imposed in that order remains to be served, I am satisfied that the minimum gravity requirements are satisfied as regards EAW 1.
7. I am satisfied that the minimum gravity requirements of the Act of 2003 are met as regards EAW 2. The surrender of the respondent is sought thereby to serve a sentence in excess of 4 months' imprisonment.
8. In relation to both EAW 1 and EAW 2, counsel on behalf of the respondent submitted that surrender is precluded under 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"), in particular due to deficiencies in the administration of justice and the independence of the judiciary in Poland. The respondent's solicitor, Ms. Danica Kane, swore an affidavit dated 17th November, 2020 exhibiting a large number of reports concerning deficiencies adversely impacting on the independence of the judiciary in Poland. In a further affidavit dated 19th November, 2020, Ms. Kane exhibited a report from a Polish lawyer, Katarzyna Dabrowska. In her report, Ms. Dabrowska, dealt with a number of issues raised by the

solicitor for the respondent. Firstly, Ms. Dabrowska was of the opinion that the respondent no longer had a normal right of appeal but could submit a cassation by way of an extraordinary remedy. She did not set out any possible grounds on which the respondent might avail of such an extraordinary remedy. She advised that the respondent would have the right to submit a request for a postponement of the sentences or a conditional early release and could appeal any court decision on those matters. Ms. Dabrowska then set out the historical background to, and the nature of, the current systematic deficiencies in the Polish judiciary, particularly as regards the independence of the judiciary. She concluded with the opinion that the systemic and generalised deficiencies of the Polish judiciary may have negative consequences for the courts with jurisdiction over the proceedings to which the respondent would be subject, and therefore there are serious and factual grounds to believe that the respondent runs a real risk of a breach of his fundamental right to an independent tribunal.

9. On reading Ms. Dabrowska's report, I cannot find any basis for a finding that the respondent faces any risk that is in any way particular to him. Nowhere in her report does Ms. Dabrowska identify any particular feature of the respondent's circumstances, or any particular feature of the proceedings involving the respondent, which would indicate a particular risk for the respondent.
10. Counsel on behalf of the respondent accepted that the applicable law is as set out in both the judgments of the Court of Justice of the European Union ("the CJEU") in *LM* (Case C-216/18 PPU) (2018) and the Supreme Court in *Minister for Justice and Equality v. Celmer* [2019] IESC 80. 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. In *Celmer*, O'Donnell J. set out the position as follows at para. 40:-

*"[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)."*

11. 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 or her 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.
12. I am satisfied that the respondent's surrender is not precluded by s. 37 or any other provision of part 3 of the Act of 2003.
13. Having dismissed the respondent's objections 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 in respect of each of the European arrest warrants which are the subject matter of these proceedings.