

**THE HIGH COURT**

**[2023] IEHC 222**

**[2022 No. 179 EXT.]**

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**JOHN O'CONNOR**

**RESPONDENT**

**Judgment of Mr. Justice Kerida Naidoo delivered on the 13th day of February, 2023.**

- 1.** By this application, the applicant seeks an order for the surrender of the respondent to The Kingdom of Sweden pursuant to a European Arrest Warrant dated 12th August 2022. The EAW was issued by a Public Prosecutor as the Issuing Judicial Authority.
- 2.** The EAW seeks the surrender of the respondent in order to enforce a custodial sentence of 3 years and 8 months' imprisonment imposed upon the respondent on the 5th of July 2021, of which 1 year, 10 months and 20 days remains to be served.
- 3.** The Issuing State has certified that, the 14 offences to which the EAW relates, were committed contrary to the following provisions of Swedish law:
  - a. 3 gross accounting offences contrary to Chapter 11, Section 5, second paragraph of the Swedish Criminal Code.
  - b. 10 gross tax offences contrary to section 4 of the Swedish Tax Offences Act (1971:69).
  - c. 1 gross money laundering offence contrary to section 4 and section 5, first paragraph of the Swedish Act on Penalties for Money Laundering (2014:307).
- 4.** The respondent was arrested on 3rd September 2022, 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 16th September 2022.
- 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 the 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.

**Section 11 – 1A(f) and 1A(g)(iii)**

- 8.** A point was originally raised in the notice of objection on the basis that there was a lack of clarity about the length of sentence that remained to be served. As a result of additional information clarifying the length of the remaining sentence this point was not pursued at the hearing.
- 9.** The respondent does submit that there is a lack of clarity about the role the respondent played in the offending, specifically in relation to the 3 gross accounting offences and the offences that involved disregarding of accounting obligations. The warrant sets out that the respondent and other defendants acted jointly and in collusion with each other in respect of all of the acts giving rise to the offences. The background information provided about the money laundering offence, sets out the role of the respondent. In the context of the other offences the description provided in the warrant makes it clear that the respondent acted together with others in respect of the conduct giving rise to the offences. The fact that the respondent maintains he did not have a specific responsibility to physically file tax returns is not a matter for this Court to engage with, as the respondent was convicted of the offences and appeared in person at the trial resulting in the conviction and sentence.
- 10.** I am therefore satisfied that no issue arises under section 11 of the Act of 2003.

**Correspondence**

- 11.** The extradition of the respondent is sought in relation to 14 offences.

Gross money laundering offence

- 12.** There is one money laundering offence and the Issuing Judicial Authority has ticked the box in Part E.I. of the warrant in respect of "*laundering the proceeds of crime*". In this instance, the Issuing Judicial Authority has certified that the money-laundering type offence referred to in the EAW is an offence to which Article 2.2 of the Framework Decision applies, that it is punishable by a maximum penalty of at least three years' imprisonment and has indicated the appropriate box for "*laundering of the proceeds of crime*". It is accepted that the ticked box offence refers to the money laundering offence. There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same.
- 13.** At Part E.II. of the warrant the Requesting Judicial Authority says: "*Gross tax offence and gross accounting offence are not offences included in the cases in point I above.*" It is therefore necessary for the applicant to establish correspondence in respect of the remaining offences of gross accounting offences and gross tax offences.
- 14.** The warrant sets out three offences described as "*gross accounting offences*", described as follows in Part E of the warrant:

"Gross accounting offence on 3 occasions during the period 01/01/2018 to 31/08/2020"

*During the time period 01/01/2018 to 31/08/2020, John O Connor and other defendants were representatives of and/or jointly ran a business that was subject to the obligation to maintain accounts, and were thus responsible for ensuring that the requirement to maintain accounts in accordance with the Accounting Act was met. Together and in collusion with each other and others, they ran a business under the company names J & A Stenspecialist AB, J & A Stenspecialist private firm, Swedco Dränering and Markentreprenad private firm and as another unregistered business.*

*Together and in collusion with each other and others, they intentionally disregarded the accounting obligation under the Accounting Act by neglecting to systematically register current business transactions or keep the accounting records in a secure manner."*

The warrant then sets out the unaccounted earnings and continues:

*"As a consequence of this, it was not possible to assess the development of the business from the accounts.*

*These offences are considered gross because the disregard involved very substantial amounts and because the acts were part of criminal activities that were carried out systematically and they were of a particularly dangerous nature as they were committed with the intention of evading tax."*

- 15.** The warrant sets out 10 offences described as "gross tax offences" in Part E of the warrant:

*"Gross tax offence on 10 occasions during the period 14/05/2018 to 17/08/2020*

*During the period 01/01/2018 to 31/08/2020, John O Connor and other defendants were representatives of and/or jointly ran a business that was subject to the obligation to maintain accounts. Together and in collusion with each other and others, they ran a business under the company names of J & A Stenspecialist AB, J & A Stenspecialist private firm, Swedco Dränering and Markentreprenad private firm and as another unregistered business.*

*Together and in collusion with each other and others, in Stockholm or in another location in Sweden, they intentionally neglected, during the accounting periods January 2018 until and including August 2020, to provide information in tax declarations to the Swedish Tax Agency, and/or they provided incorrect information about VAT for the above-mentioned business. These acts resulted in the risk of output VAT amounting to approximately SEK 7 million after deductions for any input VAT being withheld from the public purse.*

*These offences are to be considered gross as they involved very substantial amounts and the acts were part of criminal activities that were carried out systematically and on a large scale."*

- 16.** In order to understand the context in which the 13 tax offences are said to have been committed it is helpful to set out the background to the money-laundering offence set out in the warrant:

*"Untaxed business activities were run under the names J & A Stenspecialist AB, J & A Stenspecialist private firm, Swedco Dränering and Markentreprenad private firm and another unregistered business (hereinafter referred to as the Company). The majority of the invoices, that were issued by the representatives of the Company or on behalf of them to customers, were incorrect as they stated VAT that had not been paid/declared and as the invoices made it appear that the payments were going to the Company. When paying the invoices, the customers were actually making payments to the defendants' various private accounts. The case involves at least approximately SEK 7 million in withheld VAT. The payroll (employment) tax and the income tax were not paid either.*

*John O Connor:*

- *provided his private bank accounts with Skandiabanken, Handelsbanken and Swedbank and received payments to them to a total of approximately SEK 5.2 million, which originated from the above-mentioned offences committed within the scope of the Company's business activities. In addition, he received approximately SEK 1 million via another defendant's account*
- *turned over approximately SEK 4.1 million through cash withdrawals, purchases and transfers to various individuals*

*John O Connor took the above-mentioned measures within a business and/or an activity run on a habitual basis and on a large scale.*

*The measures were taken with a view to conceal the fact that the money derived from offences or criminal activities, and/or to promote the possibility of someone appropriating the property or its value. The measures illicitly promoted the possibility of another person turning over money that derived from an offence or criminal activities.*

*The offence is gross as it involved substantial amounts and the measures were part of criminal activities that were conducted systematically, or on a large scale and of a particularly dangerous nature."*

- 17.** It is apparent from the description of the acts underpinning the money laundering offence that the respondent is said to have been involved in criminal activity, specifically in the form of VAT fraud. It is also apparent that the alleged acts were done as part of criminal activities on a large scale and of a particularly dangerous nature.

#### The 3 gross accounting offences

- 18.** The applicant argues that the 3 gross accounting offences correspond with the offence of money laundering contrary to section 7 of the Criminal Justice (Money Laundering & Terrorist Financing) Act, 2010. Section 7(1) of the Act of 2010 provides as follows:

"7. – (1) A person commits an offence if –

(a) *the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:*

(i) *concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property*

*[...]*

*and*

(b) *the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct."*

- 19.** The applicant says that the conduct of the respondent, as described in the warrant, resulted in substantial unaccounted earnings and that the acts were done systematically as part of criminal activities carried out with the intention of evading tax. The applicant therefore submits that the unaccounted for earnings are the proceeds of criminal conduct, in this case VAT fraud and/or other criminal activities as well as tax evasion.
- 20.** The activities in question are said to have been intentional and done as part of criminal activities. The applicant says that, based on the contents of the warrant, it is clear that the respondent, together with others, engaged in "*concealing or disguising the true nature, source*" of the substantial sums of money referred to by deliberately and intentionally disregarding the accounting obligation under the Swedish Accounting Act. The respondent and others did this by neglecting to systematically register current business transactions or keep the accounting records in a secure manner. The conduct is stated explicitly to have been done intentionally and as part of criminal activities. The failure to maintain accounts therefore amounted to concealing or disguising the fact the money was itself the proceeds of crime, in particular tax evasion.
- 21.** The respondent argues that because the Issuing Judicial Authority does not rely on the ticked box offence of "*laundering the proceeds of crime*" in Part E.II. of the warrant, that the applicant cannot advance an offence contrary to section 7 of the Act of 2010 as a corresponding offence. The respondent says that the explicit statement by the Issuing Judicial Authority is to the effect that the revenue type offences are not offences that fall under the rubric of "*laundering of the proceeds of crime*" therefore this Court must treat the accounting offences as something other than money laundering offences. I do not agree with that submission. The legal characterisation of particular conduct by the IJA does not determine the issue of correspondence otherwise to the extent that when a box is ticked in Part E.II. of the warrant, this Court does not have to consider the issue of correspondence further. If no box is ticked, this Court determines correspondence based on whether or not the particulars of the acts described in the warrant would constitute an offence in the State, in accordance with the decision in *Minister for Justice v Dolny* [2008] IEHC 326.

- 22.** The respondent also submits that it could not be an offence in this jurisdiction to disregard the Swedish Accounting Acts and that correspondence must then be considered in respect of section 1078 of the Taxes Consolidation Act, 1997. The respondent then says that section 1078 of the Act of 1997 cannot be relied upon as the warrant says that the failure to maintain accounts was contrary to obligations under the Swedish Accounting Acts, not the Swedish Tax Acts. He says the Court cannot therefore draw the inference that the 3 gross accounting offences relate to either the 10 gross tax offences or the money laundering offence. That is because, according to the respondent, there is nothing in the particulars provided about the three gross accounting offences that permit of the inference that the monies which the warrant says are related to the gross accounting offences are the same monies to which the tax and money laundering offences relate.
- 23.** The particulars in relation to the 10 gross tax offences refer to VAT amounting to approximately SEK 7 million. The particulars in relation to the money laundering offence refers to sums of SEK 7 million in withheld VAT as well as SEK 5.2 million and SEK 4.1 million.
- 24.** The particulars in the warrant about the 3 gross accounting offences explicitly state that:
- a. *"The unaccounted earnings for the business amounted to at least: 1) SEK 12.8 million 2) SEK 21.4 million 3) SEK 16.9 million", and that*
  - b. *"the acts were part of criminal activities" and that;*
  - c. *"they were committed with the intention of evading tax" and*
  - d. *"As a consequence of this, it was not possible to assess the development of the business from the accounts."*
- 25.** Therefore, the wrong captured by the gross accounting offences is that the respondent, acting with others, intentionally failed to register current business transactions on an ongoing basis which had the effect of concealing very substantial earnings of the business. That was done as part of ongoing criminal activities and with the intention of, in particular, evading tax. The effect was to disguise or conceal the source of very substantial sums of money. All of the offences relate to the conduct of the same companies. The entirety of the period captured by the gross money laundering offence overlaps with the period captured by the 3 gross accounting offences. The amount of money to which the gross accounting offences relate is multiples of the sum to which the money laundering offence relates. Based on the totality of the information in the warrant, I am therefore satisfied that the failure to register the current business transactions to which the gross accounting offences relate resulted in the concealment or disguising of the true nature, source, movement or ownership of sums of money which were the proceeds of criminal conduct.
- 26.** I therefore accept the submission of the applicant that correspondence can be established between the 3 gross accounting offences referred to in the EAW and offences under the

law of this State, namely: the offence of money laundering contrary to section 7 of the Criminal Justice (Money Laundering & Terrorist Financing) Act, 2010.

- 27.** The applicant also relies on the offence of false accounting contrary to section 10 of the Criminal Justice (Theft and Fraud Offences) Act 2001, which provides as follows:

*"10. – (1) A person is guilty of an offence if he or she dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another –*

*(a) destroys, defaces, conceals or falsifies any account or any document made or required for any accounting purpose,*

*(b) fails to make or complete any account or any such document, or*

*(c) in furnishing information for any purpose produces or makes use of any account, or any such document, which to his or her knowledge is or may be misleading, false or deceptive in a material particular.*

*(2) For the purposes of this section a person shall be treated as falsifying an account or other document if he or she –*

*(a) makes or concurs in making therein an entry which is or may be misleading, false or deceptive in a material particular, or*

*(b) omits or concurs in omitting a material particular therefrom."*

- 28.** The gravamen of the 3 gross accounting offences is set out in the description of the offences in the warrant. It says that while running three companies the respondent, in conjunction with other defendants, was *"subject to the obligation to maintain accounts, and were thus responsible for ensuring that the requirement to maintain accounts in accordance with the Accounting Act was met."* The description of the offending goes on to say that *"Together and in collusion with each other and others, they intentionally disregarded the accounting obligation under the Accounting Act by neglecting to systematically register current business transactions or keep the accounting records in a secure manner."* The consequence of disregarding the accounting obligation was that *"it was not possible to assess the development of the business from the accounts"*, resulting in the substantial *"unaccounted earnings for the business"* referred to in the warrant and set out above.

- 29.** The respondent argues that the contents of the warrant should be interpreted to mean that the offence in the requesting State consists of the failure to systematically register current business transactions or keep the accounting records in a secure manner. I do not agree with that submission. The fact that the respondent, with others, had neglected to systematically register current business transactions or keep the accounting records in a secure manner is what evidences the commission of the offences. The offence is the intentional breach of the obligation to maintain the accounts and it is the consequence of that wrong that resulted in substantial unaccounted for earnings. Reading the description

of the offending behaviour in its entirety, I am satisfied that the essential wrong of the respondent leading to his conviction in the requesting State was intentionally breaching the obligation to maintain accounts. As pointed out above, the warrant also makes clear that the activities were carried out systematically as part of criminal activities and with the intention of evading tax.

- 30.** Section 10 of the Act of 2001 makes it an offence to do, or omit to do, certain acts in respect of “*any account or any document made or required for any accounting purpose*”. The accounts, or documents relating to the accounts of, a business are clearly captured by the offence. The prescribed acts or omissions under section 10 are:
- a. destroying, defacing, concealing or falsifying any such document,
  - b. failing to make or complete any account or any such document, or
  - c. furnishing information for any purpose that produces or makes use of any account, or any such document.
- 31.** The applicant contends that, if done in Ireland, the conduct described in the warrant would be captured by all three courses of conduct set out in section 10 (1)(a), (b) and (c). It is unnecessary to consider each of the three categories of conduct, because failing to maintain accounts, the offences in the requesting State of which the respondent has been convicted, can in my view be equated with failing to make or complete any account or any such document in section 10 of the Act of 2001. It is also apparent from the contents of the warrant that the conduct was unlawful, dishonest and done with the intention of making a gain for himself or another, or of causing loss to another.
- 32.** Section 10 of the Act of 2001 has been considered as a corresponding offence in the *Minister for Justice and Equality v Piotr Antkiewicz* [2014] IEHC 650, a judgment of Ms. Justice Murphy of 19th December, 2014. The facts of the case concerned false recording of quantities and kinds of scrap metal purchased by the respondent. As part of the description of the offending, the Part E of the warrant said that the respondent, “*ordered Pawel Kowalczyk, being a person entitled to issue documents in form of records of scrap metal purchase from natural persons, to attest an untruth via filling in the following records with untrue details as to quantities and kinds of bought up scrap metals and purchase prices which were of legal meaning for the determination of the scope of the business...*”
- 33.** In *Antkiewicz*, Murphy J. considered whether that conduct corresponded with an offence under section 10 of the Act of 2001. Ultimately, she concluded it did not, but only because of the requirement in section 10 that any falsification be done with the intention of making a gain, because it was not clear from the circumstances of that case whether the respondent was going to gain, or that anyone else was going to suffer loss, by the false accounting. What is relevant is that the conduct with which the court was concerned in *Antkiewicz* was that of maintaining false accounts, which in principle Murphy J. held was conduct that fell within the offence of false accounting pursuant to section 10 of the



Act of 2001. It is likewise the intentional failure to maintain accounts that in my view is the criminal conduct to which the warrant in the present case relates.

- 34.** Section 10 of the Act of 2001 was treated as a corresponding offence in the *Minister for Justice and Equality and Marius Karaliunas* [2021] IEHC 149, a decision of Paul Burns J. of 3rd March 2021. The factual circumstances of the allegations to which the warrant related are not set out in the judgment. However, the court was satisfied that a number of the offences in the warrant corresponded to offences contrary to section 286(2) of the Companies Act 2014, relating to the keeping of accounting records. The court was also satisfied that the same conduct corresponded to offences contrary to section 10 of the Act of 2001. It therefore appears that this was also a case in which section 10 corresponds with offences involving the failure to maintain business records.
- 35.** I therefore accept the submission of the applicant that correspondence can be established between the 3 gross accounting offences referred to in the EAW and offences under the law of this State, namely, the offence of money laundering contrary to section 10 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

#### The 10 Gross tax offences

- 36.** The applicant submits that the 10 gross tax offences also correspond with an offence contrary to section 1078 of the Taxes Consolidation Act, 1997, which provides:

*"1078. - (2) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person –*

- (a) knowingly or wilfully delivers any incorrect return, statement or accounts or knowingly or wilfully furnishes any incorrect information in connection with any tax,*
- (b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return, statement or accounts in connection with any tax,*
- (c) claims or obtains relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which, to the person's knowledge, the person is not entitled,*
- (d) knowingly or wilfully issues or produces any incorrect invoice, receipt, instrument or other document in connection with any tax,"*

The section also provides that it shall be an offence to:

*"(g) knowingly or wilfully fails to comply with any provision of the Acts requiring –*

- (i) the furnishing of return of income, profits or gains, or of sources of income, profits or gains, for the purposes of any tax,*

- (ii) the furnishing of any other return, certificate, notification particulars, or any statement or evidence, for the purposes of any tax,*
- (iii) the keeping or retention of books, records, accounts or other documents for the purposes of any tax, or*
- (iv) the production of books, records, accounts or other documents, when so requested, for the purposes of any tax*

- 37.** No specific submission is made by the respondent in relation to the 10 gross tax offences. I accept the applicant's submission that correspondence can be established between the 3 gross tax offences referred to in the EAW and offences under the law of this State namely: offences contrary to section 1078 (a) and/or (g) of the Taxes Consolidation Act, 1997.
- 38.** The applicant also submits that the 10 gross tax offences also correspond with the offence of money laundering contrary to section 7 of the Criminal Justice (Money Laundering & Terrorist Financing) Act, 2010. No issue was taken by the respondent in that regard.
- 39.** I accept the submission of the applicant that correspondence can be established between the 10 gross tax offences referred to in the EAW and offences under the law of this State, namely: the offence of money laundering contrary to section 7 of the Criminal Justice (Money Laundering & Terrorist Financing) Act, 2010.

#### **Section 45**

- 40.** At Part D of the EAW, it is indicated that the respondent appeared at the hearing which resulted in the decision which is sought to be enforced. I am satisfied that surrender is not precluded by section 45 of the Act 2003.

#### **Section 37/Article 8 ECHR – Family and Private Life**

- 41.** The respondent submits that the proposed surrender of the respondent to the Issuing State would be a breach of or a disproportionate interference with his rights pursuant to Article 8 of the European Convention of Human Rights and/or his and/or his families rights under Article 8 of the European Convention of Human Rights and/or the Constitution and/or Article 7 of the Charter of Fundamental Rights of the European Union and as a consequence surrender of the respondent will be in breach of section 37 of the Act of 2003. This objection is advanced on account of the respondent's family circumstances and the health of his wife. That argument is grounded on the respondent's affidavit sworn on 11th October 2022.
- 42.** In the respondent's affidavit dated 11th October 2022, he avers the following:
- a. The respondent says his wife has suffered from severe depression since 2004 when their 11 month old son died. In 2015 he says that he and his wife had another stillborn baby. On 7th July 2007 the respondent states that his wife's brother was killed in a road traffic accident in Holland and her father died in 2018. He says that those events caused his wife to go into a deep depression and was beginning to recover before the respondent was arrested in Sweden.

- b. The respondent says that his wife's sister was supportive of his wife while he was detained in Sweden, but she became ill and died shortly before the swearing of the respondent's affidavit. The respondent avers that her death had a devastating effect on his wife. He says he and his wife have five children ranging from 5 to 20 years of age and that his eldest daughter has a new-born baby. The respondent says that his daughter is separated from her husband and is totally reliant on her parents (the respondent and his wife) both financially and emotionally for support.
- c. The respondent says his other children are frightened that he will be taken away again and are afraid to go to sleep in case he will not be there when they wake up.
- d. He says that at the end of August 2021, having served 11 months on remand, he had applied for transfer to serve the remainder of his sentence in Ireland. He says that the circumstances of his detention on remand and that as a result of very limited telephone access to his family he considered ending his life. He says that he had never previously been involved in crime and felt that he had been misled by an employee of the company.
- e. The respondent outlines that having served 22 months of his sentence in an open prison he was informed that he was going to be released on a "tag" permanently on 18th August 2022, which meant he would have to remain in Sweden until March 2023. The respondent explained that due to the circumstances in Ireland, he was "*mentally and physically broken and made the impulsive decision to return to Ireland.*" The respondent in his affidavit indicates that he continues to desire to serve the remainder of his sentence in Ireland.

**43.** I have carefully considered the authorities upon which the respondent relies on in his written and oral submissions together with the other material before me. The authorities are clear that it is only in exceptional circumstances that surrender can be refused on the basis of the objections raised by the respondent. In relation to his wife's health there is no independent evidence, either medical or otherwise, that the presence of the respondent is essential to her care or that she would be unable to access appropriate care in his absence. Neither is the evidence before me that she would be unable to visit him if the respondent were surrendered to the requesting State.

**44.** There is a letter from the respondent's general practitioner that the respondent has suffered from stress and panic attacks due to anxiety and that he has been prescribed medications to relieve anxiety and depression. There is no evidential basis that causes me to have a concern that the respondent will not receive the appropriate treatment for any mental health issues from which he suffers while in the requesting State.

**45.** Where extradition is sought of any person the unfortunate effect may be that the person's life, and in this case that of the respondent's partner, will be adversely impacted for some period of time. Other than in the most exceptional of cases this cannot act as a bar to

extradition. I am satisfied no such exceptional circumstances arise on the facts of this case.

- 46.** I therefore reject the respondent's argument that his extradition should be refused on the basis that it would contravene section 37 of the Act of 2003 and/or Article 8 ECHR.
- 47.** I am therefore not satisfied that surrender ought to be refused pursuant to section 37 of the Act of 2003 and/or Article 8 ECHR.

**Part 3**

- 48.** 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.
- 49.** 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 Kingdom of Sweden.