

THE HIGH COURT

**[2023] IEHC 465
[2022 No. 231 EXT.]**

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

KAROLINA JOANNA BERDOWSKA

RESPONDENT

Judgment of Mr. Justice Kerida Naidoo delivered on the 11th day of May 2023.

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 27th October 2022 (“the EAW”). The EAW was issued by a named Judge, as the Issuing Judicial Authority (“the IJA”).
2. The EAW seeks the surrender of the respondent to prosecute her in respect of 4 alleged appropriation of property-type offences.
3. The issuing State has certified the provisions of Polish law relating to the offences.
4. The EAW was endorsed by the High Court on 21st November 2022 and the respondent was arrested and brought before the High Court on the 13th January 2023 on foot of same.
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.

Section 21A

6. The respondent objects to surrender under section 21A of the Act of 2003 on the grounds that the warrant does not indicate whether the respondent was arrested for this offence or what steps, if any, the Polish authorities took to prosecute this matter and because it does not set out that a decision was made to charge the respondent.
7. This point was not relied on at the hearing.
8. 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 this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
9. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences in respect of which surrender of the respondent is sought carries a maximum penalty in excess of twelve months’ imprisonment.

10. As surrender is sought to prosecute the respondent, no issue arises under section 45 of the Act of 2003.

Section 11 and Correspondence

11. The respondent objects to surrender under section 5, section 11 or section 38 of the Act of 2003, on the basis that the offences and each or other of them do not correspond in their entirety or at all to an offence or offences under the laws of the State or the facts as disclosed in the warrant are insufficient to correspond to an offence or offences under the laws of the State.
12. I am satisfied that, taken together, the warrant and additional information provide sufficient detail of the offences to meet the objectives of section 11 of the Act of 2003. There is sufficient information for the court to carry out its function under the Act. There is also sufficient particularity in respect of the timeframe within which the offences are alleged to have been committed, the location of them and the subject matter of each offence for the respondent to understand the nature of the offences with which she is charged and to challenge the application for surrender.
13. I am satisfied that no issue arises under section 11 of the Act of 2003.
14. The warrant relates to 4 offences. The first 3 offences are similar and can be considered together. They involve agreements allegedly entered into by the respondent to lease a number of vehicles.
15. The correspondence point is now being relied on only in relation to offence 4.
16. Offence 1 alleges the respondent entered into a lease agreement for a BMW car on 9th June 2016, when she received the car. The respondent did not make any payments after 16th February 2018. The lessor of the car terminated the lease agreement on 2nd May 2018 and demanded the return of the car. The respondent did not return the car and did not tell the lessor where it could be found.
17. Offence 2 alleges that the respondent entered into a lease agreement for a trailer on 27th January 2017. She received the trailer on 17th February 2017. The respondent did not make any lease payments after 16th February 2018. The lessor of the trailer terminated the lease agreement on 2nd May 2018 and demanded return of the trailer. The respondent did not return the trailer and did not tell the lessor where it was. The trailer was recovered from a third party on 4th June 2020.
18. I am satisfied that correspondence can be established between the offences 1, 2 and 3 described in the EAW and offences under the law of this State, namely, theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.
19. Offence 4 alleges that on 29th October 2018 the respondent entered into a contract for transport services with a named individual in the knowledge that she could not pay for the services, because she did not have the means to do so. The service was then provided to the respondent on the basis that she would pay for it, but she did not do so.

20. The applicant says the conduct outlined corresponds with the offence of obtaining services by deception contrary to section 7 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, which provides:

"7. - (1) A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception obtain services from another is guilty of an offence

(2) For the purposes of this section a person obtains services from another where the other is induced to confer a benefit on some person by doing some act, or causing or permitting some act to be done, on the understanding that the benefit has been or will be paid for."

21. The applicant says that it is clear from the contents of the warrant and the additional information that the allegation is that at the time of entering into the contract for transport services the respondent did not have the means to pay for them. It is therefore alleged that the respondent acted dishonestly within the meaning of the Act of 2001 because she did not have a claim of right made in good faith in circumstances where she knew she could not pay for the services. The lessor suffered a loss within the meaning of the Act of 2001 because they did not get the payment to which they were entitled under the contract.

22. In relation to offence 4 the respondent says that the IJA engages in speculation in the section 20 response where it states the respondent "*knew that she did not have the funds to pay for his service*". To establish correspondence the court must be satisfied that what is alleged to have taken place would be an offence if done in Ireland. The allegation against the respondent is that she did not have the funds to pay for the service and knew that she did not have them at the time she entered in the contract. It is not necessary for the court to be satisfied that the allegation is true.

23. I accept the applicant's submission that the description of the acts in the warrant in relation to offence 4 is sufficient to establish that all of the elements of the contended for corresponding offence would be present if those acts were done in this jurisdiction.

24. I am therefore satisfied that correspondence can be established between offence 4 described in the EAW and an offence under the law of this State, namely, obtaining services by deception contrary to section 7 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

Personal and/or Family Rights

25. The respondent objects to surrender under section 37 of the Act of 2003 on the grounds that her surrender would be a breach of, or a disproportionate interference with, her rights pursuant to Article 8 of the European Convention on Human Rights or her and her family's rights under the Constitution or Article 8 of the European Convention on Human Rights or Article 7 of the Charter of Fundamental Rights of the European Union.

26. The respondent's objection to surrender under section 37 of the Act of 2003 is grounded on her affidavit of 20th March 2023. In summary she says she is a 46 year old Polish national. She sets out the details of her personal circumstances, including her family circumstances and her employment history. She says she and her family moved to Ireland to get better healthcare. She provides details of her medical history and exhibits a number of medical records and reports that evidence the medical ailments from which she suffers. No issue is taken by the applicant about the contents of those reports. It is clear that the respondent has sought and continues to receive treatment from a number of medical professionals in several areas of specialty. They include treatment for severe asthma, anxiety, depression, back pain (spondylosis) and multi-nodular goitre. She has also received treatment from a consultant gynaecologist and obstetrician, a consultant rheumatologist and requires ongoing physiotherapy. She also had a breast cancer referral.
27. The respondent also says, in effect, that she is not guilty of the offences to which the warrant relates. That is not an issue for this court to adjudicate on. She also says that she has been attempting to engage with the relevant authorities in the requesting State and that, if surrendered, she is likely to be remanded in custody. Again, those are matters for the requesting State not this court.
28. The respondent relies on *Minister for Justice v D.E.* [2021] IECA 188 in support of her section 37 objection to surrender on Article 8 ECHR grounds. I accept that a concise and clear elaboration of the relevant principles is set out in the judgment of Donnelly J., who concluded as follows: "*Where the facts, assessed as set out above, come close to being truly exceptional in nature thereby engaging the possibility that surrender might be incompatible with the State's obligations, the Court will engage in a proportionality test of whether the high public interest in the prevention of disorder and crime (and the protection of the rights of others) is overridden by the personal and family circumstances (taken where appropriate with all the cumulative circumstances) of the requested person. That is a case-specific analysis which will be required in very few cases.*"
29. By letter dated 3rd April 2023, the IJA was asked to provide assurances to the effect that, if detained in the requesting State, the respondent would be medically assessed and provided with appropriate medical treatment at all relevant times during her detention and that she would receive the same medical care and treatment available to the general Polish population. To assist the IJA a list of the respondent's health difficulties was provided. The reply included a letter dated 21st April 2023 setting out the procedures that will be adopted in respect of the respondent's medical needs if she is subject to deprivation of liberty. In response to a further request for additional information dated 4th May 2023, a letter dated 8th May 2023 from the IJA enclosed a letter from the Central Board of the Prison Service dated 2nd May 2023.
30. Taken together I am satisfied that the assurances from the IJA, including those provided to the IJA by the Central Board of the Prison Service in the requesting State, address the concerns raised by the respondent about the medical assessment and care she will

receive if surrendered to the requesting State. Based on those assurances I am satisfied that the respondent's medical needs will be addressed in the event of her being surrendered.

31. Applying the law summarised in *Minister for Justice v D.E.*, I am satisfied that the respondent has not established that the facts she relies on are so truly exceptional in nature as to engage the possibility that surrender might be incompatible with the State's obligation under Article 8 of the Convention. That being so, it is not necessary for the court to engage in a proportionality test of whether the high public interest in the prevention of disorder and crime and the protection of the rights of others is overridden by the personal and family circumstances relied upon in this instance.
32. I am not satisfied that the surrender of the respondent would contravene section 37 of the Act of 2003 and Article 8 ECHR.

Systemic and Generalised Deficiencies in the System of Justice in the issuing State

33. In her notice of objection, the respondent objected to surrender under section 37 of the Act of 2003 and Article 6 ECHR on account of the systemic and generalised deficiencies in the system of justice in the issuing State, in terms of the independence and composition of the courts and the standards of Polish prisons.
34. This point is no longer being pursued.
35. 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.
36. 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 Republic of Poland.