THE HIGH COURT

AN ARD-CHÚIRT

[2024] IEHC 274

[2019 No. 227 EXT]

IN THE MATTER OF AN APPLICATION UNDER S. 16 OF THE EUROPEAN ARREST WARRANT ACT 2003, AS AMENDED.

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

DORIAN SZAMOTA

RESPONDENT

JUDGMENT of Mr Justice David Keane delivered on the 19 April 2024

Introduction

1. The Minister for Justice ('the Minister') applies under s. 16(1) of the European Arrest Warrant Act 2003, as amended ('the 2003 Act'), for an order directing the surrender of Dorian Szamota to the Republic of Poland, pursuant to a European Arrest Warrant ('the EAW') issued by the District Court in Wroclaw, as the issuing judicial authority ('IJA') in that Member State, on 26 February 2019.

2. The application has already been the subject of a judgment of this Court (*per* Binchy J), given on 16 November 2020, directing the surrender of the applicant; *Minister for Justice and Equality v Szamota* [2020] IEHC 666. However, pursuant to s. 16(11) of the 2003 Act, Binchy J allowed an appeal to the Court of Appeal, which in turn delivered a judgment on 21 July 2021 (*per* Collins J, Birmingham P and Edwards J concurring), making a preliminary reference to the Court of Justice of the European Union ('CJEU'), pursuant to Article 267 of the Treaty on the Functioning of the European Union ('TFEU'); *Minister for Justice and Equality v Szamota* [2021] IECA 209. The CJEU delivered its preliminary ruling on 23 March 2023; Joined Cases C-514/21 and C-515/21, *sub nom LU* (Case 514/21) and *PH* (Case C-515/21), EU:C:2023:235 (*LU & PH*). On considering that ruling, the Court of Appeal gave judgment on the appeal, setting aside the order for surrender and remitting the application to this Court for further consideration in accordance with the terms of that judgment; *Minister for Justice and Equality v Szamota* [2023] IECA 143.

3. I heard the application on 19 January 2024. The Minister was represented by Ronan Kennedy SC with Joanne Williams BL, instructed by the Office of the Chief State Solicitor. Mr Szamota was represented by Ronan Munro SC with Eoin Lawlor BL, instructed by Damien Rudden, Solicitor. Each side provided concise and helpful written legal submissions, for which I am grateful.

The background

4. The EAW seeks the surrender of Mr Szamota to serve a sentence of one year's imprisonment imposed upon him the District Court for Wroclaw-Śródmieście on 29 May 2015 for an offence of carrying out a denial-of service ('DoS') attack on the host

computer servers of a commercial business, accompanied by threats to continue the attack unless he received a monetary payment to desist (referred to in this judgment as the '*first offence*'). Mr Szamota was sentenced to one year's imprisonment for that offence, with execution of that sentence being conditionally suspended for a probation period of 5 years.

5. On 21 February 2017, Mr Szamota was convicted *in absentia* by the Regional Court in Bydgoszcz of an offence of breaking into a caravan and stealing a number of items from it ("*the second offence*"). He was sentenced to a term of imprisonment of 14 months for that offence.

6. The second offence was committed within the probation period in respect of the first offence and, as a result, on 16 May 2017 the District Court for Wroclow- Śródmieście made an order pursuant to the Polish Code for the enforcement of the first sentence. It is for the purpose of serving that sentence (the sentence of one year's imprisonment imposed for the first offence) that Mr Szamota's surrender is sought.

The sole remaining issue on the application

7. In circumstances more fully described below, the parties acknowledge that the sole remaining issue on the application is that stated at paragraph 17 of the second judgment of the Court of Appeal in the following terms:

> '[W]hether any of the conditions of [Article 4a(1) of Council Framework Decision 2002/584/JHA ('*the Framework Decision*')] is satisfied in respect of the second offence or, if not, whether it can be demonstrated that the surrender of Mr Szamota would not entail a breach of his " *rights of the*

defence" so that it may nonetheless be appropriate to surrender him in accordance with the Warrant.'

8. Indeed, the issue is narrower still because the Minister expressly concedes that none of the conditions of Article 4a (1) is satisfied on any view of the facts of this case. Thus, the sole remaining issue is whether the surrender of Mr Szamota would entail a breach of his '*rights of the defence*'.

The circumstances of the remittal

9. The EAW was endorsed by the High Court on 1 July 2019. Mr Szamota was arrested and brought before the Court on 23 October 2019.

10. The application first proceeded before Binchy J on 8 November 2019. The Court was satisfied that the person before it was the person in respect of whom the EAW was issued, and Mr Szamota did not, and does not, raise any issue in that regard.

11. Counsel for both sides acknowledged that none of the matters referred to in ss. 21A, 22, 23 and 24 of the 2003 Act are germane to the facts of this case, so that the Mr Szamota's surrender was not, and is not, prohibited for any of the reasons set forth in any of those sections.

12. In the circumstances described at paragraphs 6 to 11 of his judgment, Binchy J was satisfied, as am I, that the criminal acts described in the EAW would, if those acts had been committed in the State on the date of issue of the EAW, constitute any one of four different specified offences under the law of the State. Further, it is common case that a term of imprisonment of not less than 4 months (specifically, 12 months)

has been imposed in respect of the offence in the issuing State and that Mr Szamota is now required under the law of the issuing State to serve all or part of that sentence. Thus, Mr Szamota's surrender was not, and is not, prohibited under s. 38 of the 2003 Act.

13. There was one remaining issue on the application. In an affidavit sworn on 6 November 2019, ('*the first Szamota affidavit*'), Mr Szamota tersely averred that he was unaware of the proceedings for the second offence and consequently did not have an opportunity to attend or instruct legal counsel to represent him in his defence. Thus, he submitted, his surrender is prohibited by s. 37 of the 2003 Act, on the ground that it would be a violation of his fair trial rights under Article 6 of the European Convention on Human Rights ('*the Convention*') and, perhaps also, under Articles 47 and 48 of the Charter of Fundamental Rights of the European Union ('*the Charter*'). Mr Szamota also averred, without elaboration, that he had come to Ireland approximately 10 years earlier with his family; had returned to Poland in 2014 to live with his girlfriend; had come back to Ireland in 2016; and had not left Ireland since.

14. In accordance with the obligation upon it under s. 20 of the 2003 Act to request the provision of additional information or documentation to enable it to perform it functions under the Act, the High Court requested the IJA to provide it with certain specified additional information, by letters dated 16 December 2019, and 14 and 27 January 2020 ('*the first, second and third s. 20 requests*'). The IJA provided responses dated 27 December 2019, 21 January 2020, and 3 February 2020 ('*the first, second and third s. 20 responses*'). A fourth s. 20 request was made, by letter dated 2 March 2020, and a response provided, by letter dated 6 March 2020 but the information concerned is not relevant to the sole remaining issue I must decide.

15. In material part, those responses included the following information:

(i) The 5-year probation period for which the penalty of 1 year's imprisonment for the first offence, imposed on 29 May 2015, was suspended ran from the expiration of another sentence of 2 years and 3 months' imprisonment, imposed for another offence on 4 July 2014, that Mr Szamota had served between 11 March 2014 and 7 June 2016.

(ii) There was a criminal investigation into the second offence, culminating in court proceedings involving hearings on 8 and 21 February 2017. The investigation had concluded with the bringing of an indictment against Mr Szamota (first response).

(iii) Mr Szamota did not take part in the main court sessions for the second offence when those sessions took place on 8 February and 21 February 2017, although he had been notified of them. During a hearing as part of the preliminary proceedings Mr Szamota was instructed about his obligation to provide the court with his correspondence address, otherwise the court sessions could take place in his absence, and he might be prevented from submitting a complaint or appeal due to the expiry of deadlines. Mr Szamota was not informed about the dates of the court sessions in any other way (second response).

(iv) Mr Szamota was not instructed directly during the proceedings for the second offence that they could result in the enforcement of the sentence that has been imposed but conditionally suspended in the proceedings for the first offence. However, the judgment in the proceedings for the first offence stated that a breach of the law within the specified probation period, including the commission of a further

similar criminal offence, might result in the enforcement of that sentence (third response).

(v) Mr Szamota failed to collect the summons to his trial, which took place on 8 February 2017. The notification had been sent to the address provided by Mr Szamota as his correspondence address and the court assumed that he had been correctly notified of that court date. Mr Szamota was not sent a notification about the subsequent 21 February 2017 court date.

16. Mr Szamota swore an affidavit on 24 February 2020 ('*the second Szamota affidavit'*). In it, he repeated his averment that he was unaware of the proceedings for the second offence. He then acknowledged for the first time that, 'in or about October 2016', he had been arrested for that offence and brought to the police station 'for a few hours', before being released. He went on to aver, in material part, that: he was not facilitated in consulting a lawyer at any time during his arrest and detention; he was not asked to give his address to the police and did not do so; he was not given any directions about making himself available to the police or prosecutors at any later time and, thus, could not have failed to do so; he was not told of the consequences of failing to provide the police with an address at which he was contactable; he was not told that he was obliged to remain in contact with the police, or that he could not leave Poland, or that a charge would follow his detention; he did not subsequently receive a copy of the judgment on the second offence; he was not told by the court when being given a suspended sentence for the first offence that the commission of another similar offence would lead to its activation, albeit that was broadly his understanding; and he did not think that the first offence was similar to the second one.

17. As the Court of Appeal explained at paragraph 7 of its second judgment, Binchy J took the view that it followed from the judgment of the CJEU in *Ardic* (Case C-571/17 PPU), EU:C:2017:1026, that Mr Szamota's subsequent conviction for the second offence, which triggered the activation of the suspended sentence imposed on him following his conviction for the first offence, did not constitute or form part of '*the trial resulting in the decision*' for the purpose of Article 4a of the Framework Directive.

18. However, the CJEU clarified the position in the following terms in *LU and PH* in response to the three questions referred to it by the Court of Appeal:

> '1. Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and a European arrest warrant, for the purpose of serving that sentence, is issued, that criminal conviction, handed down in absentia, constitutes a 'decision' within the meaning of that provision. That is not the case for the decision revoking the suspension of that sentence.
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> 2. Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as authorising the executing judicial authority to refuse to surrender the requested person to

the issuing Member State where it is apparent that the proceedings resulting in a second criminal conviction of that person, which was decisive for the issue of the European arrest warrant, took place in absentia, unless the European arrest warrant contains, in respect of those proceedings, one of the statements referred to in subparagraphs (a) to (d) of that provision.

3. Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding the executing judicial authority from refusing to surrender the requested person to the issuing Member State, on the ground that the proceedings resulting in the revocation of the suspension of the custodial sentence for the execution of which the European arrest warrant was issued took place in absentia, or from making the surrender of that person subject to a guarantee that he or she will be entitled, in that Member State, to a retrial or to an appeal allowing for the re-examination of such a revocation decision or of the second criminal conviction which was handed down against that person in absentia and which proves decisive for the issue of that warrant.'

19. That is the background against which the Court of Appeal has remitted the application to this Court to consider whether any of the conditions of Article 4a (1) is satisfied concerning the trial resulting in the decision on the second offence and, if not, whether it can be demonstrated that that the surrender of Mr Szamota would not entail a breach of his '*rights of the defence*' so that it would nonetheless be appropriate to

surrender him in accordance with the EAW. And, as I have already mentioned, the Minister accepts that none of the conditions of Article 4a (1) is satisfied concerning that trial, so that the only remaining issue I have to decide is whether it is nonetheless appropriate to surrender Mr Szamota.

Post-remittal developments

20. The Court made a fifth s. 20 request, by letter dated 21 June 2023, requesting the IJA to provide full information on the extent to which any of the conditions of Article 4a (1) was satisfied concerning the trial resulting in the decision on the second offence and, if not, full information concerning any other circumstances that would enable the Court to satisfy itself that the surrender of Mr Szamota would not entail a breach of his rights of the defence nonetheless.

21. The IJA provided its fifth response by letter dated 20 July 2023. In material part and in summary, it stated broadly as follows. The Regional Court in Bydgoszcz notified Mr Szamota of the date of the first main court session by double advice note (informing him of both the indictment and the trial date) which was left at the address that he had indicated in the course of the preparatory proceedings. Mr Szamota had been apprehended by the police at 8.30 a.m. on the morning of 10 October 2016 on suspicion of the commission of a burglary on that date. On the same day, he was informed of his rights as an arrested person in criminal proceedings. At 12.30 p.m. on 11 October 2016, he was presented with a charge under the relevant article of the Penal Code and was interviewed as a suspect. Prior to that interview, he was informed in writing of his rights and obligations as a suspect in criminal proceedings (including the duty to report each change of address lasting longer than 7 days to the

authority conducting the investigation) and he confirmed receiving a copy of that document personally. On the same day, Mr Szamota provided explanations in person where he admitted committing the crime he had been charged with and he applied in writing for his conviction without court trial taking place, *i.e.*, applying for a measure consisting in 1 year and 2 months' imprisonment and the obligation to repair the loss he had caused. Mr Szamota was informed in writing to the address he had indicated in the course of the preparatory proceedings by double advice note that an indictment was filed to the court in his case. As appears from the written record of his detention, which Mr Szamota signed, he did not request to contact his lawyer and he did not ask to inform anyone about his arrest. During interview, he indicated his address for correspondence, and signed the written record of that interview. Mr Szamota confirmed in writing that he received a document containing a set of instructions on his rights and entitlements as a suspect in criminal proceedings (including the duty to report each change of address lasting longer than 7 days to the authority conducting the investigation). Having been presented with a charge on 11 October 2016 that he had committed a crime under Article 279§1 of the Penal Code, if Mr Szamota left Poland after that date, it was with full knowledge that the proceedings were underway in his case.

22. By letter dated 31 July 2023, the Court made a sixth s. 20 request, requesting copies of the various documents referred to in the fifth response. Copies of those documents, together with a certified translation of each, were provided under cover of the sixth response of the IJA, dated 14 August 2023.

23. In broad outline and based upon the translations provided, those documents as they relate to Mr Szamota comprise the following.

24. First, a copy of a '*Report on the Apprehension of a Person*', recording the apprehension of Mr Szamota at 8.30 a.m. on 10 October 2016. The preparation of that report is stated to have commenced at 9.45 a.m. and concluded at 9.55 a.m. on that date. Underneath the recital, 'Representation of the arrested person regarding the information about the reasons of the apprehension and his/her rights', it contains the handwritten text, 'is not filing a complaint regarding the justification, legality and correctness of the arrest, is not requiring contact with a defence lawyer, does not want anyone to be informed about the arrest.' At two separate places at the foot of that report, under each of the two separate recitals 'I have read the report/the report was read out to me' and 'I have received a copy of this report', is what purports to be the signature of Mr Szamota.

25. Second, a copy of an '*Instruction Regarding Rights and Obligation of the Suspect in Criminal Proceedings*.' That document sets out the rights of a suspect over 11 enumerated paragraphs, before describing the obligation to permit fingerprints, photographs and a cheek swab to be taken and to submit to appropriate psychological and medical examination. It then continues:

> 'The suspect is also obliged to:
>
> 1.) appear whenever summoned and to notify the authority conducting the proceedings of any change of his/her residence or stay of more than 7 days, including the change that is due to deprivation of liberty in another case (pre-trial detention, incarceration in a penal institution to serve a sentence); as well as of any change of his/her contact details (telephone

number, e-mail address); in case of failure to appear, the suspect may be detained and brought by force (Article 75§ 1 and 2);

2.) indicate the address to which correspondence will be sent (Article 132 § 1 and 2); otherwise, the action or trial will be conducted in the absence of the suspect; failure to indicate an address may also prevent the filing of an application, complaint or appeal due to the expiry of time limits (Article 133 § 2);

3.) indicate an addressee (*i.e.* a person or institution with address details) for service in the country when he or she is abroad; otherwise a letter sent to the last known address in the country will be considered effectively served and the action or hearing will be held in the suspect's absence; failure to indicate an addressee may also prevent the submission of a request, complaint or appeal due to the expiry of time limits (Article 138);

4.) provide a new address in the event of a change of residence or domicile, including the change that is due to deprivation of liberty in another case (pre-trial detention, incarceration in a prison for the purpose of serving a sentence); otherwise, the letter sent to the previous address will be deemed to have been effectively served and the action or hearing will take place in the absence of the suspect; failure to indicate the address may also prevent the submission of a request, complaint or appeal due to the expiry of time limits (Article 139).

26. Immediately beneath that text, appears the printed recital 'I do confirm the receipt of the instruction', immediately over the handwritten date, 11 October 2016, and, in the same handwriting, the purported signature of Mr Szamota.

27. Third, a copy of a '*Decision Regarding Presentation of Charges*', dated 11 October 2016, alleging the commission of the second offence by Dariusz Zmudziejewski, acting jointly and in concert with Mr Szamota, purportedly signed by an identified police officer. It seems reasonable to infer that this document was provided in error in place of the document recording the decision to charge Mr Szamota.

28. Fourth, a copy of a '*Record of the Interrogation of the Suspect*', commencing at 12.30 p.m. on 11 October 2016, stating that the identity of the suspect Dorian Szamota was established on the basis of 'verbal data confirmed in the National Police Information System', and setting out his personal details under a number of headings, including his: personal identification number; name; parents' names; date of birth; place of permanent residence (given as 'ul Starodworcowa 4, 89 Więcbork'); [other] place of residence (extended stay), if any (given as 'same as above'); service address in Poland [if staying abroad] (left blank); nationality; marital status; number of children; number of dependants, if any; profession, if any; place of study or employment, if any; income, if any; assets, if any; military service status; previous criminal record, if any; physical and mental health status; and relationship to the victim, if any.

29. That document contains an additional section headed '*information about the content of the charge(s)/the content of the explanations*', beneath which there is a typed narrative in which Mr Szamota is recorded as: acknowledging receipt of the written instruction on the rights and obligations of the suspect in criminal proceedings; admitting the offence; explaining the circumstances in which he committed the offence; apologising for the offence and stating that he will not do it again; agreeing to submit to the punishment set for him by the public prosecutor; and waiving the right to be provided with the case materials.

30. Immediately beneath that text, appear the handwritten words ‘it is in accordance with what I have said, having personally read it I sign it’, immediately over the purported signature of Mr Szamota, apparently in the same handwriting. The document records that the activity finished at 1 p.m. on 11 October 2016.

31. Fifth, a copy of a single-page handwritten document headed ‘*Motion*’, over the following text: ‘Instructed regarding the provisions of Article 335 of the [Polish] Code of Criminal Procedure, I move to be sentenced without conducting a trial to punishment of 1 year and 2 months of imprisonment, and obligation to redress damage caused to the wronged person.’ That document purports to be signed by ‘Dorian Szamota’ and the text and signature appear to be in the same distinctive handwriting. At the top of that document, in what appears to be the same handwriting is the address ‘Starodworcowa 4, 89-410 Więcbork’.

32. Mr Szamota swore a further affidavit on 17 November 2023 (‘*the third Szamota affidavit’*). In it, he responds to the further information and documentation provided by the IJA broadly as follows. He reiterates that he was unaware of the proceedings for the second offence. He states that the address that appears in the ‘*Record of the Interrogation of the Suspect*’ is his mother’s address, at which he has not lived for fifteen years.

33. Mr Szamota then explains that when he was arrested his identification card was taken and his details were extracted from that. He also notes that information concerning him was extracted from the National Police Information System. Mr Szamota avers that he was not asked for address and did not give his address while detained.

34. Mr Szamota accepts that the signatures that purport to be his on the various documents already described resemble his signature, and he does recall signing documents at the time of his release.

35. Mr Szamota avers that he did not agree to go to prison for 14 months as the '*Motion*' document that appears to be in his handwriting and to bear his signature suggests. He avers that he would not have signed such a document in the absence of a lawyer.

36. Mr Szamota avers that he did not receive the document '*Instruction Regarding Rights and Obligation of the Suspect in Criminal Proceedings*', that appears to bear his signature attesting to his receipt of it.

37. Mr Szamota avers that, despite the admissions he is recorded as having made in the '*Record of the Interrogation of the Suspect*', he does not accept that he made those admissions or that he committed the second offence. He says that he provided an explanation to the investigating police officer about why he had come to be in the caravan, which was not due to his involvement in any criminality, although he does not say what that explanation was.

38. Mr Szamota avers that, as far as he was concerned, he was merely questioned and released. He was not told that he would be prosecuted, much less did he admit his guilt and agree to serve a sentence of 14 months imprisonment. Mr Szamota avers that the proposition that he admitted his guilt and agreed to serve a fourteen-month sentence of imprisonment is preposterous.

39. In conclusion, Mr Szamota avers that the idea that he would deliberately fail to appear in court in Poland, or ignore criminal proceedings there, instead of contesting those proceedings is ridiculous.

The concessions made by each of the parties

40. In the course of the hearing before me, Mr Munro SC conceded on behalf of Mr Szamota that the second offence is similar to the first offence as a matter of Polish law, notwithstanding the averment in the second Szamota affidavit that it is not. That concession was made against the background of the fifth response of the IJA, dated 20 July 2023, which states in material part that, under art. 115§3 of the Penal Code, similar crimes are defined as crimes belonging to the same type' and 'crimes with the use of violence or threat to use violence or crimes committed in order to obtain a financial profit are also treated as similar crimes.' The fifth response continues by stating, in substance, that both the first and second offences are deliberate crimes against property and, thus, are similar crimes.

41. On behalf of the Minister, Mr Kennedy SC made the following concessions of fact and law. The requirements of Article 4a (1) of the Framework Decision are not met in respect of the burglary offence. The same is true of the strict requirements of s. 45 of the 2003 Act, which gives effect in Irish law to Art. 4a of the Framework Decision. That is so for the following reasons. The information provided the IJA establishes that attempts were made to notify Mr. Szamota of the time and date of the trial for the second offence, but those attempts were not successful. It has not been established that he was actually aware of the time or date of the trial, or that he gave a mandate to a lawyer to represent him. Attempts were made to serve him with a copy of the judgment delivered *in absentia*, but those attempts were not successful, and it has not been established that he was otherwise informed of the contents of the judgment or of his right of appeal. Finally, although he has an entitlement to apply for an

'*extraordinary legal remedy'*, it has not been established that this is equivalent to a full re-trial or appeal in which the merits of the case, including fresh evidence, can be re-examined.

42. Those concessions on each side serve to confirm that the sole remaining issue that I have to decide is whether it can be demonstrated that the surrender of Mr Szamota would not entail a breach of his "*rights of the defence*" and, if that can be demonstrated, whether it is appropriate to surrender him in accordance with the Warrant.

The law

43. At the hearing, the applicable legal principles were not in dispute between the parties. They are those set out by Collins J in the second judgment of the Court of Appeal in this case (at paragraphs 18 to 32).

44. Where, as here, none of the conditions of Article 4a(1) of the Framework Decision is satisfied in respect of the material offence, the executing judicial authority is not required to refuse to execute a European arrest warrant without having the opportunity to take into account the circumstances specific to each case: *LU & PH* (para. 76). In considering whether the surrender of Mr Szamota would not entail a breach of his rights of defence, the circumstances that may be considered include, amongst others, the conduct of the person concerned and the fact, if fact it be, that he or she sought to avoid service of the information addressed to him; *ibid.* (para. 77).

45. I note, as did Collins J (at para. 27) in the second judgment of the Court of Appeal, that Mr Szamota does not challenge the relevance of the decision of the CJEU (Fourth

Chamber) in Case C-569/20 *IR* ECLI:EU:C:2022:401 on the proper interpretation of Article 8 and 9 of Directive (EU) 2016/343 on the right to be present at the trial in criminal proceedings (albeit that the Directive does not apply to Ireland). In that case, the CJEU observed (at para. 52) that it is clear from the case-law of the European Court of Human Rights that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his or her own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. Such a waiver may be found where it is established that an accused person has been informed of the existence of the criminal proceedings against him or her, is aware of the nature and the cause of the accusation, and does not intend to take part in the trial or wishes to escape prosecution (para. 53). Such an intention may be found in circumstances, amongst others, where the summons to appear could not be served on account of a change of address which the accused failed to communicate to the competent authorities (ibid.). A tacit waiver of the right to a retrial after a conviction in absentia may be found to have occurred if it is apparent from precise and objective criteria that the person concerned received sufficient information to know that he was going to be brought to trial and, by deliberate acts and with the intention of evading justice, prevented the authorities from informing him officially of the trial (para. 59). In considering whether the person concerned received sufficient information to ensure his awareness of the trial, particular attention should be paid to the diligence exercised by public authorities in order to inform the person concerned and the diligence exercised by the person concerned in order to receive that information (para. 50).

46. The principles just identified are those that the Court must apply in properly construing s. 45 of the Act of 2003 and in properly applying the requirements of s. 37 of that Act in respect of fair trial rights under Article 6 of the Convention and Articles

47(2) and 48 the Charter, given that s. 45 of the Act of 2003 must be interpreted purposively; *Minister for Justice and Equality v Zarnescu* [2020] IESC 59 (at para. 90).

47. I do not understand any of these legal principles to be in controversy between the parties. Rather, the dispute between them is whether their application to the evidence before the court requires the refusal of surrender under s. 37 of the Act of 2003.

Would the surrender of Mr Szamota entail a breach of his '*rights of the defence*'?

48. Mutual trust is the bedrock on which the Framework Decision rests. The principle of mutual recognition requires that a statement by an IJA that has not demonstrably acted in bad faith should be respected, and accepted at face value, by this court as the executing judicial authority; *Minister for Justice v McArdle* [2014] IEHC 132 (*per* Edwards J at para. 279).

49. There is cogent evidence before the court, in the form of the information and documentation provided in the fifth and sixth responses of the IJA of the following facts. Mr Szamota was apprehended by the police at 8.30 a.m. on the morning of 10 October 2016 on suspicion of the commission of a burglary on that date. On the same day, he was informed of his rights as an arrested person in criminal proceedings. At 12.30 p.m. on 11 October 2016, he was presented with a charge under the relevant article of the Penal Code and was interviewed as a suspect. Prior to that interview, he was informed in writing of his rights and obligations as a suspect in criminal proceedings (including the duty to report each change of address lasting longer than 7 days to the authority conducting the investigation) and he confirmed receiving a copy

of that document personally. During that interview, he provided details of his address by way of verbal data confirmed in the National Police Information System. The Regional Court in Bydgoszcz notified Mr Szamota in writing directed to the address he had provided during the charge and interview process both of the fact that an indictment had been filed and of the date of the first main session of his trial upon that indictment.

50. In the face of that evidence, Mr Szamota now acknowledges that he was arrested and interviewed concerning the second offence. Implausibly, he insists that he was not asked for, and did not provide, his address when arrested and interviewed. He notes that, during the arrest and interview process, his identification card was inspected and information concerning him was extracted from the National Police Information System. He then asserts that the address that appears in the record of his interrogation is his mother's address at which he has not lived for fifteen years, thereby inviting the court to speculate that the police refrained from asking him to provide his address and chose instead to rely on out-of-date information contained on either his identification card or the National Police Information System. Mr Szamota is silent concerning the different address he claims to have been living at.

51. Even more implausibly, while acknowledging that the signatures on the various documents provided in the sixth response of the IJA resemble his signature and that he does recall signing documents at the time of his release, Mr Szamota asserts that he was not presented with a charge and did not receive the document '*Instruction Regarding Rights and Obligation of the Suspect in Criminal Proceedings*' that appears to bear his signature attesting to his receipt of it. Mr Szamota asserts that all that occurred was that, when interviewed, he provided an innocent explanation for his

presence at the scene of the second offence (although he does not say what that explanation was) and was then released.

52. Mr Szamota asserts that the proposition that he entered a plea-bargain is preposterous and that the idea that he would deliberately attempt to evade justice rather than contest his trial is ridiculous. As there is nothing innately preposterous about a plea-bargain *per se* nor, unfortunately, anything innately ridiculous about the idea that some persons seek to evade justice rather than contest a criminal trial, and as Mr Szamota does not elaborate on why either of those things should be so in the particular circumstances of his case, I cannot accept either those assertions.

53. For completeness, I should add that, in written submissions and at the hearing before me, Mr Szamota sought to argue that, in the absence of any evidence that during the arrest and interview process he was informed not only of his obligations in respect of the prosecution of the second offence but also of the implications of any breach of those obligations for the activation of the suspended sentence imposed for the first offence, the court cannot be satisfied that his proposed surrender would not be in breach of his '*rights of the defence*'. However, no authority was cited for that proposition and, as the Minister points out, there is no reason to believe that Mr Szamota would not have been properly advised of all of the implications of the imposition of a suspended sentence for the first offence at the time it was imposed. Accordingly, I reject that argument.

54. Applying the bedrock principle of mutual trust and confidence, I have no hesitation in accepting the cogent and specific evidence provided by the IJA over the bare assertions to the contrary made by Mr Szamota. Thus, I am satisfied that Mr Szamota was aware of his status as a person charged with the second offence and, hence, a

person the subject of criminal proceedings. I am also satisfied that Mr Szamota had been informed, and was aware, of his obligation to appear when summoned; to provide the authorities with an address for service and for correspondence; to notify the authorities of any change of address; and to nominate an address and addressee for service within Poland if abroad. I am further satisfied that Mr Szamota had been informed and was aware that service at the address provided would be deemed effective and that his trial could then be held *in absentia* if he did not respond. Thus, there is no evidence that the Polish authorities demonstrated any lack of diligence in seeking to inform Mr Szamota of his trial, and no evidence that Mr Szamota exercised any diligence whatsoever in order to receive that information.

55. On the basis of those precise and objective criteria, I am satisfied that Mr Szamota by his own deliberate acts and with the intention of evading justice, unequivocally and of his own free will, tacitly waived his right to be present at his trial. In those circumstances, I am satisfied that the surrender of Mr Szamota would not entail a breach of his '*rights of the defence*'.

Necessary proofs under s. 16(1) of the Act of 2003

56. On the information and evidence before me, I am duly satisfied that:

(a) the person before the court is the person in respect of whom the EAW issued (upon which no dispute has been raised),

(b) the EAW, or a true copy thereof, has been endorsed in accordance with s. 13 of the Act of 2003 for execution of the warrant,

(c) the EAW and the additional information provided state the matters required by s. 45 of the Act of 2003, properly construed,

(d) the High Court is not required under s. 21A, 22, 23 or 24 of the Act of 2003 to refuse to surrender Mr Szamota under that Act (as none of the matters referred to in those sections arise), and

(e) the surrender of Mr Szamota is not prohibited under any of the provisions of Part 3 of the Act of 2003.

Conclusion

57. It follows that, having due regard to the obligation to surrender under s. 10 of the Act of 2003, I will make an order under s. 16(1) of that Act, directing the surrender of Mr Szamota to such person as is duly authorised by the Republic of Poland to receive him.