High Court of Ireland Decisions

Judgment

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[2018] IEHC 220

THE HIGH COURT

[RECORD NO. 2014 125 EXT]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

PIOTR LUDWIN

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 23rd day of April 2018

1. The surrender of the respondent is sought by the Republic of Poland ("Poland") in respect of a single European Arrest Warrant ("EAW") dated 30th September 2013 for the purpose of serving sentences arising out of his conviction on five separate offences. This is a case which had been adjourned pending the decision in *Minister for Justice v. Lipinski* [2017] IESC 26 on revocation of suspended sentences and whether the absence of a defendant during the enforcement proceedings prohibited surrender. That issue has now been determined by the Supreme Court following on from the decision of the Court of Justice of the European Union ("CJEU") in the case of *Openbaar Ministerie v. Ardic* (Case C-571/17).

2. The respondent conceded that the issue regarding his presence at the revocation of

his conditional release was finally determined against him, but submitted that his surrender was still prohibited as there was no compliance with the provisions of s. 45 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"). Counsel on behalf of the respondent submitted that there was no clarity with respect to the position as regards his appearance at the appeals giving rise to these sentences. A further issue in respect of Article 8 European Convention on Human Rights "ECHR" was also pursued.

3. Furthermore, counsel for the respondent raised a general point that the situation as regards the rule of law in Poland, which had given rise to the decision of this Court in the case of *Minister for Justice and Equality v. Celmer* [2018] IEHC 119, meant that there was a real risk that this man could be required to serve a greater period of imprisonment than that to which he had been sentenced. In particular, it was submitted that there could be no guarantee that Article 26 of the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States 2002/584/JHA of 13 June 2002 ("the 2002 Framework Decision") would be complied with. Although that point was raised in a general fashion by counsel for the respondent, it was made in the context of the finding of this Court in the decision in Celmer. This issue will be addressed further below.

Identity
4. I am satisfied on the basis of the details set out in the EAW and the contents of the affidavit of Detective Garda O'Reilly that the person who appears before the court is the person in respect of whom the EAW has issued.

Indorsement
5. I am satisfied that the EAW has been indorsed for execution in this jurisdiction.

Sections 21(A), 22, 23 and 24 of the European Arrest Warrant 2003, as Amended
6. I am satisfied that I am not required to prohibit the surrender of the respondent under the provisions of the above sections. As regards s. 22, the High Court may only prohibit surrender if it is satisfied that the law does not provide for specialty and that the person will be proceeded against, sentenced or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty in respect of an offence. There is no evidence here that such an eventuality will happen. Similarly, with regard to s. 23 there is no evidence that this person will be surrendered to another member state without the consent of this Court. This also applies to the position under s.24 with regard to surrender to a third country.

Part 3 of the Act of 2003
7. I am satisfied that, subject to further considerations of s. 37, 38 and 45 of the Act of 2003, the Court is not required to prohibit the surrender of the respondent under any other section in part 3 of the Act of 2003.

Section 38
8. The respondent is sought to serve three sentences in respect of a total of five offences. The issuing judicial authority has ticked the boxes marked "Forgery of documents and trafficking therein" and "Swindling" in part E of the warrant. This indicates an intention to avail of the opportunity to dispense with the requirement of double criminality and to rely on the fact that these offences come within the list of conduct set out in Article 2(2) of the 2002 Framework Decision. The offences each carry a maximum sentence of imprisonment of at least three years, and therefore, no issue with minimum gravity arises.

9. An issue the Court has to consider is whether the designation of some of the offences as coming within the list of offences set out at Article 2(2) of the 2002 Framework

Decision can be relied upon in the particular circumstances of this case. Offences numbered 2 and 3 in the EAW present no difficulty. They refer to presenting forged documentation in order to obtain a financial benefit and thereby causing a limited liability company to disadvantageously use their property. It is evident that those offences could come within both the categories of forgery of documents and trafficking therein and also the category of the offence of swindling. Surrender is therefore not prohibited for those offences..

10. In respect of the first offence, the description of the circumstances of the offence as set out in part E of the EAW corresponds to the offence of burglary in this jurisdiction. It is stated that the respondent, with others, broke a windowpane in a kiosk, broke in and stole various items therein. It is not easy to see how such an offence is designated to be either swindling or forgery of documents. This is listed in the EAW as an offence of burglary in Poland. The experience of this Court is that EAWs from Poland do not list burglary as an offence to which Article 2(2) of the 2002 Framework Decision applies. The Court is familiar with the type of offences that are considered fraud or swindling within the Polish legal system, but offences of burglary or simple theft have not been indicated as coming within that box of swindling. Burglary itself is not one of the offences which come within Article 2(2) list of offences.

11. Furthermore, in respect of offences 4 and 5, these are noted on the EAW to be offences of beating/brawling or theft with violence in Poland. On the basis of the description of the offences set out in the EAW, they would correspond with offences of assault contrary to s. 2 or s. 3 of the Non-Fatal Offences Against the Person Act, 1997 and an offence of robbery or perhaps an assault followed thereafter by a theft, respectively. Neither theft, robbery *per se* or assault come within the concept of an Article 2(2) offence. Robbery is included in the list of offences if it is organised or armed robbery.

12. There is nothing on the facts set out in the EAW to show that this was necessarily organised or armed robbery. More importantly, an offence of organised or armed robbery is not ticked. Therefore, in respect of these three offences, there is a manifestly incorrect reliance on the Article 2(2) procedure. I am satisfied however that these offences correspond with offences in this jurisdiction as set out in the previous paragraphs.

13. I have considered whether it is permissible for this Court to rely upon the test for correspondence of offences where the High Court is of the opinion that the ticking of the box in reliance of Article 2(2) of the 2002 Framework Decision is manifestly incorrect. A number of decided cases have dealt with the situation where the issuing judicial authority has completed part E(I), indicating reliance on Article 2(2) of the 2002 Framework Decision, and part E(II), indicating non-reliance. Following on from the decision of Peart J in *Minister v Paulauskas* [2009] IEHC 32, the High Court has accepted that this is not a bar to surrender provided that correspondence has been met.

14. Furthermore, where there is a manifestly incorrect designation of an offence as coming within Article 2(2) of the 2002 Framework Decision, it is nonetheless permissible for the Court to consider if there is correspondence of that offence in this jurisdiction (*Minister for Justice, Equality and Law Reform v. Butenas* [2006] IEHC 378 and *Minister for Justice, Equality and Law Reform v. Horvath* [2008] IEHC 411). This is because s. 38(1) of the Act of 2003 only prohibits surrender if it is not a corresponding offence *or* if it is an offence to which Article 2(2) of the 2002 Framework Decision applies, provided that the necessary minimum gravity has been reached in respect of each situation. In so far as the relevant s. 38 of the Act of 2003 provides:

> "(1) Subject to subsection (2), a person shall not be surrendered to an

issuing state under this Act in respect of an offence unless-

> (a) the offence corresponds to an offence under the law of the State,
>
> Or
>
> (b) the offence to which paragraph 2 of Article 2 of the Framework Decision applies and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than 3 years".

15. In those circumstances, I am satisfied that the Court is entitled to have regard to whether there is correspondence of offences, even if the issuing judicial authority has manifestly incorrectly relied upon a designation under Article 2(2) of the 2002 Framework Decision. In this case, full information as regards the facts of the offences have been given and it is clear that there is correspondence of offences. The incorrect designation of these offences is not a bar to surrender. This situation is clearly distinguishable from *Minister for Justice v Desjatnikovs* [2008] IESC 53 where there was no correspondence of offences and the Supreme Court ruled that it was not for the executing judicial authority to make the designation that it was an offence to which Article 2(2) of the 2002 Framework Decision applies or was "an offence that consists of conduct specified in that paragraph" (pursuant to s. 38 as originally enacted). That was a matter for the issuing judicial authority. It is however, the exclusive role for the High Court as executing judicial authority to rule on whether correspondence has been established.

16. In the present case, minimum gravity has been reached in relation to these offences and the Court, having found correspondence of the offences, is not required to prohibit surrender on that ground.

Section 45

17. Under the provisions of s. 45 of the Act of 2003:

> "A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA [("the 2009 Framework Decision")], as set out in the table to this section."

The Table then sets out the new part D to the European Arrest Warrant which was inserted by the 2009 Framework Decision.

18. The EAW before the Court refers to two separate judgments in the issuing state which incorporated three separate sentences in respect of the respondent. I will deal with these sequentially below. It is important to note at the outset that the Court of Justice of the European Union in the cases of *Openbaar Ministerie v. Tadas Tupikas* (Case C-270/17) and *Openbaar Ministerie v. S³awomir Andrzej Zdziaszek* (Case C-271/17) have confirmed that the rights of the defence are to be observed in respect of findings of guilt and final determination of sentences. This applies to decisions on appeal where final guilt is determined and also to subsequent proceedings which lead to cumulative sentences where the judicial authority which adopted the decision enjoyed discretion in that regard. The EAW in the present case was issued prior to those decisions of the Court of Justice. It is necessary for this Court to ensure that the rights of the defence have been satisfied in respect of each of the judgments for which surrender is sought.

19. The first custodial sentence is described in the EAW as follows:

> "In the judgment of 29th April 2005 issued in case number XK 334/05,

> Peter Ludwin was sentenced to one years' imprisonment with a custodial suspension of the sentence for a three year period of probation. This judgment became final on 7 May 2005. In a ruling of 4 September 2009, the court decreed that the imposed penalty of imprisonment be carried out. On 27th September 2010, the court decreed that the convicted person be sought by an arrest warrant."

At part D of the original EAW, there was no reference to case number X K 334/05 (although there was a reference to other case numbers).

20. Prior to the endorsement of the EAW in accordance with s. 13 of the Act of 2003 for execution in this jurisdiction, the central authority wrote to the issuing judicial authority seeking further information as regards trial *in absentia*. Either a fresh EAW, or another copy of part D was requested by way of additional information. The issuing judicial authority replied on 20th January 2014 enclosing a number of further part Ds in respect of various case file numbers that related to the sentences.

21. The part D contained the additional information referring to case X K 334/05 and stated that the respondent did not appear in person at the trial resulting in the decision. The issuing judicial authority then ticked box 3.1a as follows:

> "The person was summonsed in person on 20.04.2005 and thereby informed of the scheduled date and place which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for that trial".

The issuing judicial authority also ticked box 3.3 which stated:

> "The person was served with the decision on 06.05.2005 and was expressly informed about the right to a retrial or appeal in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed and the person did not request a retrial or appeal within the applicable timeframe".

22. In the circumstances where the issuing judicial authority has indicated that he was personally served with notification of the hearing, there is compliance with the provisions of s. 45 of the Act of 2003. Moreover, the respondent has not contested that he was served with notice of these proceedings or that he was served with the decision. His surrender is not prohibited by the provisions of s. 45 of the Act of 2003 in respect of this sentence of one year.

23. The second judgment is a cumulative judgment of:

> "11th October, 2012 in case number II K 812/11, the following individual judgments were united:
>
> > (a) judgement of the Regional Court in Rzeszow of 22nd February 2009 issued in case number II K 103/08
> >
> > (b) Judgment of the Regional Court in Rzeszow of 25 August 2008 issued in case number X K 658/08
> >
> > (c) Judgment of the Regional Court in Rzeszow of 30th September 2009 issued in case number X K 1260/09
> >
> > (d) Judgment of the Regional Court in Rzeszow of 13th October 2009, issued in case number II K 332/09."

24. With reference to the cumulative judgment, the EAW states that instead of those individual penalties, the following penalties were imposed:

> "Aggregate penalty of one year and four months imprisonment instead of the penalties imposed in judgments IIK 103/08 and XK 658/08, aggregate penalty of two years imprisonment instead of the penalties imposed in judgments X K 1260/09 and II K 332/09."

25. The original EAW at part D stated regarding case X K 658/08: "yes the person appeared in person at the trial resulting in the decision." It then stated regarding case II K 812/11 that he did not appear in person at the trial resulting in the decision. It stated "despite the summons, Piotr Ludwin did not appear at the trial but he was represented by his counsellor." None of the boxes were ticked and there was no further information at part D regarding this trial *in absentia*.

26. In respect of each of the other case numbers, there was no indication given in the original EAW about his attendance at each of those trials.

27. Following on from the request of the central authority referred to above, the issuing judicial authority in their communication dated 20th January 2014 also sent a part D in respect of II K 812/11, which is the cumulative judgment. In that part D, it was indicated that "he did not appear in person at the trial resulting in the decision". The issuing judicial authority then ticked box 3.1b stating that the respondent:

> "was not summonsed in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision in such a manner that it was unequivocally established that he or she was aware of he scheduled trial and was informed that a decision may be handed down if he or she does not appear for the trial".

The box at 3.2 was also ticked by the issuing judicial authority and this states:

> "being aware of the scheduled trial, the person had given a mandate to a legal counsellor who was either appointed by the person concerned or by the state, to defend him or her at the trial, and was indeed defended by that counsellor at the trial".

There is no indication at point 3.4 of part D as to how either of those conditions has been met.

28. The central authority sent a further request to the issuing judicial authority seeking a part D in respect of the three other individual judgments that had been given in the case, namely II K 103/08, X K 1260/09 and II K 332/09. The issuing judicial authority sent a reply which included three separate part Ds for each of those case numbers. The reply was sent on 11th April 2014.

29. In respect of case II K 103/08, it was stated that "yes the person concerned has been summonsed in person, which led to the decision." The problem with that statement is that the form, or at least the translation of the form of the EAW, is not in accordance with the form set out in the 2009 Framework Decision. The statement should either have been "yes, the person concerned appeared in person at the trial resulting in the decision" or "no, the person did not appear in person at the trial resulting in the decision".

30. Box 3.1b has however been bolded, and this indicates that the issuing judicial authority is seeking to rely on that fact. Box 3.1b refers to the situation where a person has not been summonsed in person but has received official information of the scheduled date and place of the trial in a manner which unequivocally establishes that they are aware of the scheduled trial and that they had been informed that a decision may be handed down if they do not appear for the trial. The issuing judicial authority did not however include in that part D a statement at 3.4 indicating how the relevant condition has been fulfilled. It appears that there also was a difference with the original

version in Polish as box 3.1b had not been highlighted there.

31. The central authority wrote to the issuing judicial authority pointing out those problems with regard to the part D which had been sent. The issuing judicial authority replied with a separate part D in respect of II K 103/08. This contained a clear indication that the person concerned was present in person at the hearing which led to the decision.

32. On the basis of that statement in part D, and in the absence of any indication to the contrary, I am satisfied that the issuing judicial authority is clearly indicating that this respondent was present at the trial. In those circumstances, there is no issue with regard to s. 45 arising out of his trial in case number II K 103/08.

33. In relation to case no X K 1260/09, the central authority sent a request for a separately completed part D. The issuing judicial authority sent a part D by letter dated 11th April 2014 in which they stated "No, the person concerned had not been summoned in person at the hearing which led to the decision." Box 3.1A was also ticked and states as follows: "The person concerned was summonsed in person on the day, 07.09.2009 and thus was informed of the date and place of the hearing which led to rendering this decision and was also informed that the decision might be rendered *in absentia*."

34. The part D also indicated at box 3.3 that:

> "the person concerned was delivered the decision on the day 09.10.2009 and was clearly instructed about the right to have another judicial review or to file the appeal in which the said person has the right to participate and which allow for another hearing checked with regards to content and including new evidence as well as which can lead to reversal or a change of the primary decision".

Box 3.3 continued that "the person concerned did not file a petition for judicial review and did not file the appeal within the statutory term". Under box 3.4, which is the requirement to set out how the relevant condition has been fulfilled, it is stated "the copy of the judgment with the instruction concerning the possibility of filing an appeal was sent by post. On 09.10.2009 Peter Ludwin in person signed for delivery of the mail."

35. Part D requires a statement that either the person appeared in person at the trial resulting in the decision or that the person did not appear in person at the trial resulting in the decision. The part D sent in respect of X K 1260/09 had wrongly certified that "No, the person concerned has not been summoned in person to the hearing, which led to the decision." The central authority therefore sought further information about this. The issuing judicial authority then sent a new part D which stated "no the person concerned was not present in person at the hearing which led to the decision". Thereafter the completed form was the same as before. In those circumstances, I am satisfied that s. 45 of the Act of 2003 does not prohibit surrender on the basis of the trial in respect of X K 1260/09.

36. Following request from the central authority, the issuing judicial authority by letter dated 11th April 2014, sent over a part D regarding case no. IIK 332/09. This also contained the incorrectly worded statement that "no the person concerned had not been summoned in person at the hearing which led to the decision". The part D also stated, in reliance on box 3.1a, that he was summonsed in person on 10th September 2009 and thus was informed of the date and place of the hearing which led to rendering this decision and was also informed that the decision might be rendered in absentia. The part D also went on to say at box 3.2 that "knowing about the hearing, the person gave

power to the defence attorney who was appointed by that person or the state to defend him/her during the hearing and the attorney defended him/her in reality at the hearing." At box 3.4 it was stated as follows: "The defence attorney of Peter Ludwin filed an appeal from the judgment. The appeal was not taken into account by the higher court".

37. Again the central authority queried that translation and by email dated 11th April 2004, the new part D stated that "no, the person concerned was not present in person at the hearing which led to the decision." The rest of the part D was the same as that which had been included earlier.

38. Counsel for the minister submitted that in respect of this matter, it appeared that there had been service of the summons and that it also appeared that he had been represented at this hearing. With respect to the appeal, counsel submitted that it appeared that the attorney filed the appeal himself. Counsel for the minister submitted that the Court should treat that as the defence attorney having had the mandate to appeal. If there was any query, counsel submitted that the Court could seek further information.

39. The point that concerns the Court at this stage is that other than the cumulative judgment of 11th October 2012, there is no reference to another appellate hearing in this case. That may not be of major significance if the Court was sure that the respondent's defence attorney had a mandate to appeal and had in fact attended at the appeal. If there was a full appeal in respect of this matter at which he was at risk of receiving a different sentence, it appears that the judgment of the CJEU in Tupikas applies. In that case, the CJEU stated at para 83:

> "It is the judicial decision finally disposing of the case on the merits, in the sense that there are no further avenues of ordinary appeal available, which is decisive for the person concerned, since it directly affects his personal situation with regard to the finding of guilt and, where appropriate, the determination of the custodial sentence to be served." At paragraph 86 the CJEU stated "conversely, the executing judicial authority must carry out the checks provided for in that article when the person concerned was present at first instance, but not in the proceedings concerned with a fresh assessment of the merits of the case."

40. In this case, the issuing judicial authority are not seeking to enforce any new sentence given on any appeal, but rather the sentence given originally by the regional court which was subsequently aggregated in case no IIK 812/11. Yet it remains unclear as to whether there was an actual appeal heard and determined by another court which dealt with the merits of the case. It is possible that such an appellate court rejected the appeal and simply affirmed the decision of the lower court which, under Polish law, is the decision to be enforced. Such an appeal would appear to be a judicial decision disposing of the case in finality. The difficulty that this Court has is that there is no information with regard to the nature of the appeal itself or what transpired there.

41. Of further significant concern in this case is the cumulative judgment, II K 812/11. In the original EAW it was stated that "No, the person did not appear in person at the trial result in the decision. Despite the summons, Piotr Ludwin did not appear at the trial but he was represented by his counsellor." That statement was made on its own with no relevant box ticked.

42. The central authority sought a fully completed part D in respect of that cumulative sentence. The issuing judicial authority replied by email dated 20th January 2014. The part D stated that "No, the person did not appear in person at the trial resulting in the decision". Both boxes 3.1b and 3.2 are ticked. There is no further information as to how those conditions were complied with because the issuing judicial authority did not fill in

box 3.4. as is required by Article 4A regarding the amended form of the EAW as set out in the 2009 Framework Decision.

43. As has been clear from the decision of the Court of Appeal in *Minister for Justice and Equality v. Palonka* [2015] IECA 69 it is necessary for that information to be included in the EAW so that the High Court can be satisfied that the conditions set out in s. 45, which incorporate the part D form of the EAW as inserted by the 2009 Framework Decision, have been satisfied. In the present circumstances, the Court simply does not have that information. As the decision in *Palonka* made clear, it is not necessary for the respondent to contest any matter with regard to the situation in s. 45 of the Act of 2003.

44. It is noted however that while the respondent does not expressly state he was not present at that hearing, it is clear from his affidavit that he left Poland for Ireland in or about the summer of 2009. That is well before the decision as regards the cumulative judgment in October 2012. It is also worth noting that at the time the respondent left Poland, he alleges that he was under serious pressure from people he terms "hooligans" and from whom he had borrowed money. He says that he was told that he would be in severe difficulty if he did not repay the money. He says that in or about 2008 he jumped out of the window of a building in Rzeszow with a view to ending his life. He suffered significant injuries and was taken to hospital where he stayed for two weeks. In my view, it is implicit within his affidavit that he did not return to Poland at any period of time. It is therefore unclear, even from his own affidavit, as to how he was officially notified of the cumulative judgment hearing and indeed how he could have notified the defence solicitor.

45. I am therefore not satisfied that the provisions of s. 45 have been complied with in respect of the cumulative judgment in II K 812/11 comprising the aggregate penalty of 1 year and 4 months and the aggregate penalty of 2 years imprisonment. The remaining issue therefore, is whether this Court should seek further information pursuant to s. 20 of the Act of 2003. The Court will deal with that issue after it has dealt with the next heading.

Article 8 ECHR

46. Under this heading, the respondent has claimed that his personal and family rights would be interfered with by his surrender. In his affidavit, he records the circumstances in which he left Poland in 2009. He says his parents were separated and his father had been living in Ireland prior to 2009. His mother had lived in Poland. He said prior to leaving Poland he was working as a gravedigger. He states he left because of the pressure he was under by the gangs in Poland who he said would have contacts in the prisons in Poland. He says that he worked in Ireland at various labouring jobs.

47. This respondent was initially arrested on foot of this EAW on 9th September 2014. He says that he was granted bail by this Court but failed to turn up on 4th November 2014. He says that he moved to Bray and was living and working for Avoca/CPU. He says he worked as a warehouse chef and was living with his girlfriend. He says that he was working and earning money for a period of about two and a half years and that he had established significant roots in the country. He said his sister lives in the country and intends to continue living here and he had a good relationship with his father and his sister. He says that he was afraid to turn up in November 2014 as he had not wanted to be surrendered. He was afraid that he would not be protected from dangerous individuals.

48. This respondent was arrested on foot of the bench warrant on 28th June 2017. It appears that he may well have served a short sentence here. He says however, that he has been in custody now in this matter alone for eight months and will have served a

proportionate piece of the sentence. His counsel submits that the sentence total would have been one of just over two years. He submits that there was nothing to say that these were consecutive. The experience of this Court as an executing judicial authority has been that, in Poland, a sentenced person is required to serve the sentences one after the other unless they have been aggregated.

49. The offences for which the respondent has been convicted were committed between 2005 to 2009. They include offences of violence. Given both the recidivist and violent nature of the offending, there is a high public interest in ensuring surrender for offences of violence. The delay in the case has largely been due of his own making. He left Poland of his own volition and has delayed the determination of his own case here because of his failure to appear at an earlier stage. His own personal circumstances are entirely unremarkable. In light of the Supreme Court decision in *Minister v JAT No. 2* [2016] IESC 17 and in light of the seriousness of the offences for which the respondent is sought, which include offences of assault, and that any delay is largely his own fault, I have no hesitation in rejecting his Article 8 point.

Section 20 of the Act of 2003

50. The question now for the Court is whether the Court should seek further information from the issuing judicial authority in respect of the presence or knowledge of the respondent at the hearing of the cumulative judgment. In line with the decision of *Minister for Justice v. Sadiku and Gherine* [2016] IECA 65, the Court of Appeal has made it clear that that is a matter for the discretion of this Court. That is of course a discretion which must be exercised judicially.

51. Factors that militate against seeking further information is that this is information that has already been requested in this case and has been inadequately responded to. In the case of II K 812/11, the original EAW referred to the case file but did not complete the part D by ticking any appropriate box. Even when information was sought there was a further failure to complete the form correctly. There has also been a very significant delay in the case since the second arrest of the respondent in circumstances where the outcome of the *Lipinski* decision was awaited. Despite that delay, no further information was sought by the central authorities.

52. On the other hand, much of the delay has been as a result of the respondent's own making as he failed to appear at his original hearing. If the matter had been dealt with at that time, the Court in the normal course would have been likely to have requested this information and the case could have proceeded much earlier. The Court notes that the issuing judicial authorities responded reasonably quickly in respect of earlier requests from the central authority. The matters are also of a certain seriousness, covering offences of personal violence being carried out in a recidivist manner even during the period of his conditionally suspended sentence. In the ordinary course I am satisfied that this would be a case where I should exercise my discretion to seek further information from the issuing judicial authority in Poland.

53. As an issue has been raised about the rule of law in Poland, it is necessary to address that matter prior to finalising whether a request should be made under s. 20 or whether this respondent should be surrendered solely on the sentence of one year imprisonment.

The Rule of Law in Poland

54. In this judgment, the Court has demonstrated that, in so far as the sentence of one year's imprisonment imposed on this respondent is concerned and subject to further consideration of the rule of law issue in Poland, there is no bar to his surrender under the provisions of the Act of 2003. Before surrender could be ordered on the cumulative sentence, the Court would have to have received satisfactory additional information that

the respondent's defence rights were met.

55. The Court has been asked by the respondent to consider refusing his surrender based upon the findings of the Court in *Celmer*, in so far as observations were made therein about the rule of law and implications for mutual trust. The respondent's point is in essence that the High Court could not be satisfied that Poland will comply with its obligations under the Framework Decision in light of the findings made. In *Celmer* however, the Court made a referral to the CJEU on the protection of fair trial rights in light of the findings concerning Poland and the common values of the European Union. To that extent, the argument in the present case about the wider implications for the operation of the European arrest warrant system is distinguishable. Nonetheless, it is entirely possible that the decision of the CJEU in *Celmer* could be relevant to the wider issue of the impact a finding of a breach of the common value of the rule of law has on surrender procedures in general that this respondent (and others) have raised. Moreover, the urgent procedure has been adopted by the CJEU in *Celmer* and an early hearing date has been given.

56. In those circumstances, I am of the view that it is appropriate to await the decision of the CJEU in *Celmer*, prior to making a final determination as to surrender in these proceedings. As this case cannot proceed to final determination today, I am also of the view that the Court should proceed with its s. 20 request to the issuing judicial authority. The information provided may assist this respondent in resisting his surrender in respect of those sentences. If that is the case, he should be entitled to that information as soon as possible, as it may have an impact on the length of time he can be kept in custody on this European arrest warrant. If the information points towards surrender being permissible, he will be entitled to make further arguments as to the reliance this Court may attach to that information.