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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **28/06/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

DIVISIONAL DIVISION

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IN THE MATTER OF AN APPLICATION UNDER THE EXTRADITION ACT 2003

ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF BELFAST

_____

BETWEEN:

PAVEL TORAC

Appellant:

-and-

CZECH REPUBLIC

Respondent:

_____

Before: McCloskey LJ, Horner LJ and McBride J

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Mr Frank O'Donoghue KC and Mr Sean Devine (instructed by Gillen & Company Solicitors) for the appellant
Mr Tony McGleenan KC and Mr Stephen Ritchie (instructed by The Crown Solicitor) for the respondent

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McCloskey LJ (*delivering the judgment of the court*)

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Introduction

[1] Leave to appeal to this court having been refused by the single judge, Pavel Torac ("the appellant") renews before the plenary court his challenge to the decision of Belfast County Court dated 7 December 2022 ordering his surrender to the Czech Republic (the "requesting state"), of which he is a national, pursuant to two European Arrest Warrants ("EAWs").

The EAWs

[2] Both are of the so-called "conviction" variety. Chronologically, the first is dated 19 October 2020. It identifies the appellant as a national of the Czech Republic born on 21 September 1995. It recites that it relates to two criminal offences. It alleges that at a specified time on 14 May 2016 the appellant punched an identified person in the face and details the resulting injuries. The next sentence is this:

> "At the same time the offender knew that he had been convicted of disorderly conduct pursuant to Article 358(1) and (2)(a) Penal Code … in the [identified court] judgment dated 29 March 2016 …."

The next section of the EAW reproduces Article 146 of the Penal Code ("Bodily Harm") followed by the aforementioned Article 358 ("Disorderly Conduct").

[3] In the first EAW it is stated that the appellant's extradition is sought in respect of two criminal offences, namely causing bodily harm and disorderly conduct; a description of the alleged criminal conduct – on 14 May 2016 – is provided; the maximum sentences, being eight years and three years' imprisonment respectively, are specified; the two "enforceable judgments" dated 3 February 2020 and 27 May 2020 respectively, with particulars of the court and court reference, are identified; and it is further stated that the sentence imposed was 12 months imprisonment, none of which has been served.

[4] The second EAW is dated 2 November 2020. This recites the same particulars relating to the appellant. It describes the "decision on which the warrant is based" as:

> "Arrest warrant or judicial decision having the same effect: detention and delivery to executing prison sentence order issued on 25.06.2020, file number …"

This is followed by a description of an incident in which the appellant allegedly damaged another person's vehicle. Next it is stated that previously, on 7 April 2015, the appellant had been convicted of the offence of disorderly conduct by an identified court.

[5] The EAW states that it relates to two convictions. The two offences in question, namely disorderly conduct and criminal damage, are identified; the maximum sentences, being two years and six years imprisonment respectively, are specified; a description of the criminal conduct, which occurred on 27 July 2015, is provided; the dates (14 October 2015 and 20 October 2016) and other particulars of the two court judgments are stated; by the first court the appellant "… was present in court at the trial and waived his right to appeal"; by the second court judgment the appellant was punished by a "community work" disposal of 180 hours; by the second court judgment the appellant, having failed to abide by the first judgment, was sentenced to 180 days imprisonment; no part of this sentence has been served; and, finally, it is stated, in terms, that the second court judgment "came into force" on 9 June 2020 in proceedings against the appellant.

Other evidence

[6] The hearing bundle contains *inter alia* a criminal record which on its face relates to the appellant. It is possible to correlate some of its contents to the three offences specified in the two EAWs:

(a) On 14 October 2015 the appellant was convicted of the offence of disorderly conduct committed on 27 July 2015 and was sentenced to 180 hours community service.

(b) On the same date and at the same court the appellant was convicted of the offence of criminal damage also perpetrated on the aforementioned date in respect whereof he received the same sentence.

(c) On 29 March 2016 the appellant was convicted of (i) causing bodily harm on 10 December 2014 and (ii) disorderly conduct on the same date, both punished by a suspended sentence of imprisonment.

(d) On 3 February 2020 the appellant was convicted of the offences of causing minor bodily injury and disorderly conduct, both perpetrated on 14 May 2016, receiving a sentence of one year's imprisonment.

[7] In the unsworn, unsigned, and undated statement of the appellant it is stated that he was arrested on 5 May 2022 upon the execution of both EAWs. He avers that he came to Northern Ireland "in or around 2015." He has been residing here for an unspecified period with a female partner. They have a daughter aged two years. His mother, father, three younger siblings, aunt and uncle also reside in this jurisdiction. It is further averred that all of them have EUSS (ie "settled") immigration status and intend to remain in this jurisdiction.

[8] In response to this court's request for further information the Czech authorities stated:

> "1. The sentenced person may apply for conditional release from prison after he has served one half of his sentence period; in some cases, he may apply after he has served at least one third of his sentence period.
>
> 2. The Czech Republic still insists on the surrender of the above-named individual for the purposes of the execution of the sentences imposed on him; the examination of conditions for a potential conditional release of the sentenced person from prison is out of question at this stage whereas the principle of proportionality has been considered too.
>
> 3. Once surrendered to the Czech Republic, the period that the sentenced person has served in detention in Northern Ireland shall be credited to his overall sentence."

At first instance

[9] From the parties' written submissions at first instance it is apparent that the following issues were canvassed:

(i) As the first EAW contains no specification of the alleged offence of disorderly conduct it is invalid.

(ii) The second EAW is "of no effect" as the appellant was not aware of the activation of the suspended sentence of 180 days imprisonment.

(iii) The surrender of the appellant pursuant to the EAWs would be a disproportionate interference with his right to respect to private and family life (contrary to section 6 of the Human Rights Act/article 8 ECHR) given the vintage of the offences (2015 and 2016), his family circumstances, the evidence of his rehabilitation and the uncertainty pertaining to his legal entitlement to rejoin his family in this jurisdiction in the event of being extradited and serving his imprisonment sentence in the requesting state.

(iv) With specific reference to the second EAW, the appellant should be discharged since, having regard to Article 26 of the Framework Decision, the appellant having fully served his custodial sentence his surrender would be an abuse of process and a disproportionate interference with his article 8 ECHR rights.

[10] Developing the first of these issues, Mr Sean Devine (of counsel) stated in his skeleton argument:

> "At section (E) of both Warrants it is clear that extradition is sought for a total of two offences, for which only one sentence is imposed. Where only one sentence is imposed this ordinarily renders extradition impossible, as the court must make an extradition decision **per offence** and not per EAW. The court might extradite on one offence but not another. **Here** it is also impossible for the court to carry out their task because the court is told nothing of the circumstances of the disorderly conduct on either warrant."

Each of the issues raised on behalf of the appellant in his resistance to extradition was addressed in the skeleton argument of Mr Stephen Ritchie of counsel on behalf of the requesting state. The judge, in essence, was persuaded by these submissions and ordered the surrender of the appellant accordingly.

The appeal

[11] The written argument on behalf of the appellant formulates two grounds of appeal. The first of these is:

> "Both EAWs were defective and invalid. The court must extradite only for extraditable offences and it is impossible for the court to discern, on the information provided, that the sentences imposed met the legal test."

In the outworkings of this ground it is stated:

> "… it is impossible to tell what proportion of the sentence imposed was for the disorderly conduct offences on each warrant, for which no details have been provided (so it was not even possible to tell whether the conduct described met the dual criminality test)."

[12] The contours of the appellant's case have continued to evolve. At the hearing Mr O'Donoghue KC refined his client's challenge to two grounds. The first is formulated thus: as the appellant is now "time served" in respect of the first EAW there can be no question of surrendering him to the requesting state on foot thereof. The factual ingredients of this submission are that the first EAW relates to a sentence of 12 months' imprisonment, it was executed on 2 May 2022, the appellant has been in custody ever since and, on the date of the hearing before this court (11 May 2023) that represents a custodial period of 375 days.

[13] Mr O'Donoghue was driven to acknowledge that it is not possible to discern whether the separate sentences to which the two EAWs relate are to be served concurrently or consecutively – or, for that matter, in some other way. This is <u>not</u>

one of the questions which this court was asked to include in its request for further information directed to the Czech Republic authorities. Notwithstanding this court added the following question to the appellant's draft:

> "If extradited, what credit, if any, will [the appellant] receive for his period of imprisonment in this jurisdiction?"

The response – see para [8] above – is that he will be given full credit.

[14] This question was prompted by Article 26(1) of the Framework Decision, which provides:

> "The issuing Member State shall deduct all periods of detention arising from the executive of a European Arrest Warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed."

Notably, Article 26 does not impose any other specific duty – for example the provision of certain computation information – on the requesting state. Furthermore, the only procedural duty of any kind contained in Article 26 is found in paragraph [2], which obliges the required state to provide "all information concerning the duration of the requested person on the basis of the [EAW] …." at the time of surrender.

[15] We consider that this first ground of appeal cannot be sustained. The reason for this is that it raises issues of sentence calculation and the interplay among the three sentences specified in the two EAWs which can be determined only on the basis of the relevant laws of the Czech Republic. Indeed, questions of sentencing practice, policy and discretion might also be involved. This court is not equipped – and, more important, not required – to resolve any of the foregoing questions. We would add that the first ground of appeal was not advanced on the basis of any provision/s of the Framework Decision or the Extradition Act or any jurisprudence of the CJEU or any relevant United Kingdom Supreme Court decision binding on this court. Given all of the foregoing the first ground of appeal must be rejected.

[16] The second ground of appeal developed is based on Article 2(1) of the Framework Decision, which provides in material part:

> "A European Arrest Warrant may be issued …. where a sentence has been passed or a detention order has been made for sentences of at least four months."

This is commonly described as the "seriousness threshold." Mr O'Donoghue submitted that the second EAW is invalid as it simply specifies the total sentence

imposed in respect of the two sentences in question (180 days' imprisonment) and fails to indicate whether the minimum sentence of four months imprisonment was ordered in respect of either offence.

[17] The unspoken premise in Mr O'Donoghue's submission is that both the initial sentencing disposal in respect of the two offences in question (180 community work hours) and the later, substituted sentence, a species of default order (180 days' imprisonment), contain separate components relating to the two offences. This has no foundation in either the second EAW or any other material before the court or any agreed material fact or any concession on the part of the requested state. We consider that this ground entails pure conjecture and dismiss it accordingly.

[18] If the foregoing analysis and conclusion are incorrect, we consider that this ground of appeal must fail in any event as it is defeated by the *ratio* of the decision of the House of Lords in *Pilecki v Poland* [2008] UKHL 7. In that case some of the sentences to which the two Polish EAWs related were for less than four months imprisonment while others were for longer periods. The requesting court aggregated all of the sentences resulting in, in each case, a total sentence exceeding the four month threshold. Neither EAW nor the further information provided specified how much of the aggregated sentence in each case was attributable to each individual offence.

[19] Lord Hope delivered the unanimous judgment of the House. Para [5] is of some importance:

> "The short but important question on this appeal is whether, for the purposes of Part 1 of the 2003 Act, it has to be shown that the sentence that was imposed in respect of each offence, taken on its own, was at least four months or whether it is sufficient, where the person has been convicted of several offences and an aggregated sentence has been imposed on him, that the aggregated sentence was for four months or a greater period."

The argument on behalf of the requested person was that it was necessary to take each of the offences specified in each EAW separately and to determine whether each satisfied the threshold requirement. It was specifically argued that it was not permissible to "… consider as a whole the conduct which the warrant specified": para [19]. This argument was resoundingly rejected, as appears from the following passages in the judgment of Lord Hope:

> "[25] … It is the length of the sentence alone that determines whether or not it falls within the scope of a European Arrest Warrant …

> [26] …. This system is based on the principle of mutual recognition … subject to sufficient controls to enable the judicial authorities of the requested state to decide whether or not surrender is in accordance with the conditions which the Framework decision lays down. **But they are not to be unnecessarily elaborate, as complexity and delay are inimical to its objectives** …
>
> [28] …. There is no indication … in the Framework decision that the sentence needs to be examined more closely to see how it was arrived at. There is no indication that it is any concern of the executing Member State to enquire as to the number of offences to which the sentence relates, if there was more than one. **It is the length of the sentence that the requested person is to be required to serve, and the length of that sentence alone, that determines whether or not it falls within the scope of a European Arrest Warrant** ...
>
> [29] … All the executing court needs to know …. is whether or not the sentence was one for at least four months …
>
> [34] …It is unnecessary, in a conviction case to which section 65(3) applies, for the judge to ask himself whether the sentence that was passed for each offence satisfies the test that is set out in section 65(3)(c). If the other requirements of section 65(3) are satisfied, all he needs to do is to determine whether the sentence for the conduct taken as a whole meets the requirement that it is for a term of at least four months."
>
> [emphasis added]

[20] We consider that the appellant's second ground of appeal is confounded by these passages. In our estimation his case falls four square within the *ratio* of *Pilecki*.

[21] The case of *Zakrzewski v Poland* [2013] 1 WLR 324 also features in the appellant's argument, evidently for the purpose of contending that it is distinguishable from the present case. In *Zakrzewski* the Supreme Court held that the validity of an EAW depended upon whether the prescribed statutory particulars have been provided and not on whether they are correct. Where issues of this kind are raised, they can be addressed by the mechanism of either seeking further information from the requesting state or invoking the inherent jurisdiction of the

court to prevent an abuse of its process. Recourse to the latter mechanism would be appropriate only where the statutory particulars are wrong or incomplete in some respect which is misleading, where the true facts required to correct the error or omission are clear and beyond legitimate dispute and where the error or omission is material to the operation of the statutory scheme. The fact that subsequent to the execution of the particular EAW a court of the requesting state had made an "aggregation" order or "cumulative sentence" combining the four suspended sentences of imprisonment originally imposed did not suffice to satisfy this test.

[22] Lord Sumption JSC, delivering the unanimous judgment of the court, stated at para [15]:

> "All the executing court needs to know …. is whether or not the sentence was one for at least four months."

And further at para [34]:

> "It is unnecessary, in a conviction case to which section 65(3) applies, for the judge to ask himself whether the sentence that was passed for each offence satisfies the test that is set out in section 65(3)(c). If the other requirements of section 65(3) are satisfied, all he needs to do is to determine whether the sentence for the conduct taken as a whole meets the requirement that it is for a term of at least four months."

We consider that this passage confounds the appellant's case. Furthermore, the correctness of *Pilecki* was unequivocally confirmed.

Conclusion

[23] For the reasons given we affirm the decision of Belfast County Court and refuse the application for leave to appeal to this court.