THE HIGH COURT

[2024] IEHC 537

Record No. 2024 No. 145 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

LUDWIK JÓZEF PUK

RESPONDENT

JUDGEMENT delivered by Mr Justice Patrick McGrath on the 28 of August 2024

1. A European arrest warrant [‘EAW’], dated the 9 of July 2024, was issued by Tomasz Bialek, Judge of the Circuit Law Court in Swidnica, Poland, who is a ‘judicial authority’ within the meaning of s.2 of the European Arrest Warrant Act, 2003 [‘the 2003 Act’].

2. The warrant is, so far as is practicable, set out in the form of the Annex to the Framework Decision and I am satisfied the information provided therein satisfies the requirements of s11 of the 2003 Act.

3. I am satisfied none of the issues referred to in ss 21A, 22, 23 or 24 of the 2003 Act arise for consideration and surrender is not precluded for any of the reasons set out therein.

4. This EAW was issued for the purposes of enforcing a sentence of imprisonment of two years imposed following the Respondents conviction for an assault offence. The Respondent was convicted of an offence of Grievous Bodily Harm contrary to Art 156 s.1 (2) of the Polish Penal Code, an offence which carries a maximum term of imprisonment of 10 years upon conviction. The offence is described at Paragraph E2 of the EAW as follows:-
   'On the 11th of October 2010 in Walbrzych, in the province of Doiny Slask, acting with a direct intent by stabbing Mr Zygmunt Bober – in the region of the left side of the abdominal cavity and in the cheek – a few times with a knife he caused such bodily injuries to the victim as cut wounds to the cheek and the nose and a puncture wound in the region of the left iliac wing penetrating into the peritoneal cavity with a double perforation of the small intestine and a peritoneal inflammatory response, which constitute a life threatening illness or injury to the victim'

5. Correspondence is not in issue between the parties in this case. It is, in any event, clear from the circumstances of the offence as described in the EAW, that the conduct in question would, if done in this State, have corresponded with an offence of assault causing harm contrary to Section 3 of the Non-Fatal Offences Against the Person Act, 1997 and / or the offence of Causing Serious Harm contrary to Section 4 of the 1997 Act.

6. No issue arises in relation to Minimum Gravity. The sentence of two years remains to be served in its entirety and there is therefore compliance with the minimum gravity requirement under Section 38(1)(a)(ii) of the 2003 Act,
7. At Part B of the EAW it is indicated that the EAW is grounded upon a domestic conviction order made by the District Law Court of Walbrzych of the 13 of April 2011 which resulted in the imposition of a sentence of two years, with such sentence being suspended for a period of 7 years. It is then stated that the said District Court decided to revoke the conditional suspension and activated the sentence of two years on the 19 of August 2015. In additional information provided on the 9th of July 2024, in reply to a s20 request from this Court, the issuing judicial authority ('IJA') clarified that the suspension was revoked due to *'flagrant violation of the legal order during the probation period'* on account of:

a. The commission of and conviction for another offence during the probation period, and
b. Not fulfilling probation conditions

8. The Respondent was arrested pursuant to an SIS alert. He was brought before the High Court on the 27 of June 2024 and the EAW was produced to the Court on the 1st of July 2024.

Grounds of Objection

9. At the hearing of this matter the Respondent pursued the two following objections:-
    a. Surrender is prohibited under s45 of the 2003 Act as it is unclear if the Respondent was present or properly made aware of the *'trial resulting in the decision'*; and
    b. The rights of the Respondent under Article 8 of the European Convention on Human Rights ['the ECHR'] would be unduly interfered with by his surrender

10. In this case the Respondent does not, and could not, make any complaint about any alleged breach of his rights of defence at the 2011 trial which resulted in a decision being delivered *in absentia*. He did not attend the trial in April 2011 but, at paragraph D(1) b of the EAW, it is certified that he received official notification of the scheduled date and place of this trial *'in such a manner that it was unequivocally established that he or she was aware of the scheduled trial and was informed that a decision may be handed down if he or she does not appear for the trial'* No issue arises in relation to this hearing. His suspended sentence was activated in 2015 due to his failure to comply with probation conditions and it is his non-attendance at this hearing and his lack of knowledge of this hearing, which is in issue in these proceedings.

11. Article 4a of the Framework Decision provides as follows:-

> *'The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in*

accordance with further procedural requirements defined in the national law of the issuing member state:

12. Article 4a, the terms of which are mirrored and given full effect to by s45 of the 2003 Act, then sets out four alternative conditions. For the purposes of this case, it seems only necessary to set out (a):

(a) in due time:

(i) either was summoned in person and thereby informed of the scheduled time and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial;'

Decisions of CJEU

13. At issue in the present case is whether the hearing in the District Court of Walbrzych of the 19 of August 2015 [*'the activation hearing'*], which became final and legally valid on the 17 of September 2015, which resulted in the activation of the suspended sentence previously imposed by the said District Court on the 13 of April 2011, (which had become final and legally valid on the 20 of April 2011), was a *'trial resulting in the decision'* . If this activation hearing was a '*trial resulting in the decision'* then there was a failure to uphold the rights of the defence as set out in Article 4a and s45 of the 2003 Act and the Respondent cannot be surrendered on foot of this EAW. The net issue therefore on this point is whether that activation hearing was a *'trial resulting in the decision'*.

14. There is a substantial body of jurisprudence from the Court of Justice of the European Union ['CJEU'] which has addressed the scope and meaning of the phrase *'trial resulting in the decision'* in Article 4a including in particular *Ardic* [Case C-517/17] and *LU & PH ['LU']* [Joined Cases C-514/21 & C-515/21].

15. In *Ardic* the CJEU rejected the argument that a decision to activate a previously suspended term or imprisonment should be regarded as coming within the scope of the *'the trial which resulted in the decision'* for the purposes of Article 4a. The CJEU stated that *'questions relating to the detailed rules for the execution or application of such a custodial sentence'* were outside the scope of Article 4a and furthermore that the scope of *'decision'* in Article 4a *'does not cover a decision relating to the execution or application of a custodial sentence previously imposed, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard* [emphasis added]'

16. In *Ardic* the Public Prosecutor in Stuttgart had sent an EAW to the Rechtbank, Amsterdam (the District Court and executing judicial authority for the EAW). In that EAW the surrender of Mr Ardic was sought in order that he serve two sentences of imprisonment in Germany, originally imposed following trials at which he had appeared in person. He had received a sentence of one year and eight months imprisonment in each case and, after he had served a portion of these sentences, the competent German courts had suspended the execution of the balance of those sentences. By subsequent decisions of the 4 and 13 April 2013 the two relevant district courts in Germany had revoked the suspensions of both sentences and ordered the execution of the remainder of both sentences on the grounds that Mr Ardic had persisted in infringing prescribed conditions and evading supervision and guidance of the probation officer and guidance of the courts.

17. Mr Ardic did not attend at these revocation proceedings in April 2013 and submitted that, had he known of the date and place of these trials, he would have appeared in order to seek to persuade the German District Courts to refrain from revoking the suspension of the sentences. It was also clear that the German Court, when considering whether to revoke the suspension of a sentence, had a margin of discretion which allowed it to take into account the situation and personality of the person concerned and could, for example, refrain from revoking suspension of in essence the setting of further conditions or the extension of the probationary period.

18. At paragraph 40 of its Judgment in *Ardic*, the CJEU referred to the earlier decision of *Zdziaszek* [C-271/17 PPU] where the Court had drawn a distinction between measures which *'modify the quantum of the penalty imposed and measures relating to the methods for the execution of such a penalty'* At paragraph 85 of *Zdziaszek* the Court of Justice indicated that, according to the case law of the European Court of Human Rights, Article 6(1) of the ECHR does not apply to measures concerning the methods for executing a custodial sentence *'in particular those relating to provisional release'*.

19. In *Zdiaszek,* the respondent had been sentenced following a number of convictions. Following a change in the domestic law, his sentences were combined into one cumulative sentence in a manner which resulted in an overall reduction of his custodial sentence. The issue referred to the CJEU was whether the decision which resulted in a reduction in his overall sentence, at which he was not present, was to be regarded as the *'trial resulting in the decsion'*. The CJEU observed that, while the decision to amend the sentence previously imposed did not affect the finding of guilt made at his earlier trials, it did modify the *quantum* of the penalty previously imposed. The level of the cumulative sentence was not prescribed and depended on the court's assessment of the facts. It was therefore possible that, had Mr Zdziaszek attended at or been represented at the cumulative sentence hearing, he might have obtained a greater reduction and a lesser sentence. This situation was therefore different to measures which simply related to the methods of execution of a custodial sentence.

20. In *Zdziaszek* the CJEU therefore concluded that the concept of a *'trial which resulted in the decision'* had to be interpreted as referring not only to proceedings which gave rise to the decision finally confirming the guilt of the person concerned *'but also to subsequent proceedings such as those which led to the judgement handing down the cumulative sentence at issue here, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority which adopted the latter decision enjoyed a certain discretion in that regard'*.

21. At paragraph 41 of *Ardic* the CJEU concluded:-

'In the present case, the revocation decisions in the main proceedings did not modify the quantum of the custodial sentences imposed on Mr Ardic, who must serve the full duration of those sentences, with the deduction of any time already served'.

22. At paragraph 68, having earlier referred to the necessity for the concept of *'trial resulting in the decision'* as used in Article 4a of the Framework Decision to be given an *'autonomous and uniform interpretation'* throughout the Union, the CJEU continued:

'67. It follows from the above that Article 4a(1) of Framework Decision 2002/584 must be interpreted as meaning that the concept of 'decision' referred to therein relates to the judicial decision or decisions concerning the criminal conviction of the interested person, namely the decision or decisions that definitively rule, after an assessment of the case in fact and in law, on the guilt of that person and, where relevant, on the custodial sentence imposed on him.

68. In the present case, it must be determined whether a decision to revoke suspension of execution of a custodial sentence previously imposed is of such a nature that it can be equated, for the purpose of applying that provision, to a decision such as that defined in the preceding paragraph'.

23. Answering this question, the CJEU stated:

'75. While the final judicial decision convicting the person concerned, including the decision determining the custodial sentence to be served, falls fully within Article 6 of the ECHR, it is apparent from the case law of the European Court of Human Rights that that provision does not apply, however to questions relating to the detailed rules for the execution of application of such a custodial sentence…..

76. The position is different only where, following a finding of guilt of the person concerned and having imposed a custodial sentence on him, a new judicial decision modifies either the nature or the quantum of the sentence previously imposed, as is the case when a prison sentence is replaced by an expulsion measure (ECtHR, 15 December 2009, Gurguchiani v Spain ……..) or where the duration of the detention previously imposed is

increased (ECtHR, 9 October 2003, Ezeh and Connors v United Kingdom…….).

77. In the light of the foregoing, it must therefore be considered that, for the purposes of Article 4a(1) of Framework Decision 2002/584, the concept of 'decision' referred to therein does not cover a decision relating to the execution or application of a custodial sentence previously imposed, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard (see, to that effect, judgments of 10 August 2017, Tupiskas, C-270/17 PPU, EU:C:2017:628, paragraphs 78 to 80, and of 10 August 2017, Zdziaszek, C-271/17 PPU EU:C:2017:629 paragraphs 85. 90 and 96).

78. As regards, in particular, decisions to revoke the suspension of the execution of previously imposed custodial sentences, such as those in issue in the main proceedings, it is apparent from the case file before the Court that, in the present case, those decisions did not affect the nature or the quantum of custodial sentences imposed by final conviction judgments of the person concerned, which form the basis of the European arrest warrant which the German authorities are seeking to execute in the Netherlands.

79. Since the proceedings leading to those revocation decisions were not intended to review the merits of the cases, but only concerned the consequences which, from the point of view of the application of the penalties initially imposed and whose execution had, subsequently been partially suspended subject to compliance with certain conditions, it was necessary to consider the fact that the convicted person had not complied with those conditions during the probationary period.

80. In that context, under the relevant national rules, ***the competent court only had to determine if such a circumstance justified requiring the convicted person to serve, <u>in full or in part</u>, the custodial sentences that had been initially imposed and the execution of which, subsequently, had been partially suspended****.* [emphasis added] *As the Advocate General pointed out in point 71 of his Opinion, while that Court enjoyed a margin of discretion in that regard, that margin did not concern the level or the nature of the sentences imposed on the person concerned, but only whether the suspensions*

should be revoked or could be maintained, with additional conditions, if necessary

81. Accordingly, the only effect of suspension revocation decisions, such as those in the main proceedings, is that the person must at most serve the remainder of the sentence initially imposed. Where, as in the main proceedings, the suspension is revoked in its entirety, the sentence once again produces all its effects and the determination of the quantum of the sentence still remaining to be served is derived from a purely mathematical operation, with the number of days already served in custody being simply deducted from the total sentence imposed by the final criminal conviction'

24. This question was again considered in *LU* , which was a decision of the CJEU following on from a reference from the Court of Appeal in Ireland. The circumstances which gave rise to that reference concerned inter alia whether the ratio in *Ardic* applied where the offence which triggered the activation of a previously suspended sentence was also tried *in absentia*. At paragraph 45 of the Judgment the CJEU put the question raised as follows:

'By its first question in Joined Cases C-541/21 and C-515/21, the referring court asks, in essence, whether Article 4a(1) of Framework Decision 2002/584, read in light of Articles 47 and 48 of the Charter, 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 executing that sentence, is issued, the decision, adopted in absentia, revoking such a suspension or the second criminal conviction, also pronounced in absentia, constitutes a 'decision' within the meaning of that provision'

25. In the course of its judgment the CJEU affirmed its reasoning in *Ardic* again saying, of interest to the issue raised in this case, the following at paragraph 54:

'Furthermore, since the authority responsible for deciding on such a revocation is not called upon to re-examine the merits of the case that gave rise to the criminal conviction, the fact that that authority enjoys a margin of discretion is not relevant, as long as that margin of discretion does not allow it to modify either the quantum or the nature of the custodial sentence, as determined by the decision finally convicting the

requested person (see, to that effect, judgment of 22 December 2017, Ardic C-571/17 PPU, EU:C:20171026, paragraph 80)

26. In answering the questions forwarded by the referring court in *LU,* the CJEU stated that Article 4a of the Framework Decision, read in light of Articles 47 and 48 of the Charter of Fundamental Rights of the EU:-
    a. 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 the sentence; and
    b. 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.

27. The facts and circumstances of the present case appear, for the purposes of the s4a / s45 analysis, to be quite similar to those under consideration in *Ardic.* In other words:

    (i) It is not said that there was any breach of s4a of the Framework Decision or s45 of the 2003 Act at the time of the original conviction and imposition of sentence at the District Court of Walbrzych on the 13 April 2011. In other words the rights of defence were not alleged to have been breached at that hearing in that, although he did not attend at the hearing where sentence was imposed he '*received official notification of the schedule date and place of trial which resulted in the decision of the 13th of April 2011, in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision may be handed down if he she does not appear for the trial'* [see Paragraph D.1 (b) of the EAW;

(ii) A sentence of imprisonment of 2 years was imposed on that date, the 13 April 2011, conditionally suspended for probation period of 7 years;

(iii) On the 19 of August 2015, the District Court of Walbrzych ordered the execution of that suspended sentence in its entirety. He was not present at nor informed of that revocation hearing; and

(iv) In response to the s20 request made in this case the IJA confirmed:
- When ordering the execution of the conditionally suspended sentence of imprisonment in its judicial decision on the 19th of August 2015 the District Court of Law in Walbrzych did not have any discretion to alter the nature and quantum of the sentence imposed (Reply to Question 5)
- Pursuant to Article 75 paragraph 2 of the Criminal Code, on the basis of which the execution of the conditionally suspended sentence was ordered *'the court may order the sentence to be carried out (...) '. It means that the District Court of Law in Walbryzch had discretion not to order the execution of the conditionally suspended sentence but if found that the behaviour of Ludwik Puk, who blatantly violated the legal order during the probation period and who disregarded the court's decision, justified the activation of the conditionally suspended sentence'*

28. As with *Ardic* therefore, here in this case:-

(i) There was no complaint in relation to the conviction and sentence hearing i.e. in both cases these hearings were treated as the 'trial resulting in the decision' and in each case there was compliance with Article 4a of the Framework Decision for those hearings – in *Ardic* the respondent had been present at both hearings and in this case Mr Puk was aware of the place and date of both hearings and that judgement could be rendered at such hearings;

(ii) In both cases the suspended sentences were revoked without the presence of either at the respective revocation hearings. The terms of Article 4a of the Framework Decision were not met for these respective revocation hearings.

The issuing judicial authority did not consider this to be required as, in their view, these revocation hearings were not a 'trial resulting in the decision';

(iii) Under German Law (*Ardic*) the relevant Courts had a discretion as to whether or not to activate the suspended sentence at the revocation hearings. Similarly in the present case the Polish District Court had a discretion as to whether or not to activate the suspended sentence imposed in 2011; and

(iv) In both cases the suspended sentences were activated at the revocation hearings.

29. The Respondent however submits that this case is one which falls within the parameters of the recent decision of the Supreme Court in *Minister for Justice v Radionovs* [2023] IESC 37 and, as a result, it is not clear whether the activation of the suspended sentence in this case was a 'trial resulting in the decision'. In *Radionovs* the Supreme Court, having considered the decisions of the CJEU in inter alia *Ardic* Case C571/17 and *LU & PH* Joined Cases C514/21 and C515/21, ruled that the nature of the decision under consideration in that particular case was not *acte claire* and therefore sought the assistance of the CJEU.

30. The Respondent submits that, as the IJA has in this case accepted that the court considering the revocation of the order of suspension in Poland in 2015 had a discretion not to impose a sentence of imprisonment upon him (or more properly not to activate partially or fully the sentence previously imposed upon him), the nature of that decision is similarly not *acte claire*. He submits that the same question arises in this case as was the subject of the first question referred in *Radionovs* by the Supreme Court to the CJEU and therefore his surrender should not be ordered until such time as an answer to this question is given by the CJEU or the IJA offers the Respondent the opportunity to appeal the decision of the 19 of August 2015.

31. The Minister states that in *Radionovs* a period of 'police supervision' was imposed where the default penalty notified to the Respondent at the original hearing was a fine. The Respondent there was never notified that the police supervision order could be later converted to a prison sentence if the fine remained unpaid. She submits that the rationale of the High Court in *Radionovs* was echoed to an extent by reasoning in the subsequent UK Supreme Court decision of *Bertino v Italy* [2024] IESC 9 and the

Court of Appeal decision in *Minister for Justice v Szlachcikowski* [2024] IECA 119 where, in different circumstances, it was held the protections in Article 4a must apply where there was evidence that an *in absentia* hearing could not have been forecast by the requested person. She says this is manifestly not the case in the present proceedings.

32. The Applicant submits that the facts and *ratio* of *Radionovs* are readily distinguishable from those in the instant case. She further submits that *Ardic* applies here and the revocation of the suspended sentence on the 19 August 2015 was not a 'trial resulting in the decision' and that there has therefore been compliance by the Polish authorities with Article 4 of the Framework Decision and s45 of the 2003 Act.

Radionovs

33. The facts under consideration in *Radionovs* were somewhat different from those in this case and indeed the facts and circumstances in *Ardic* and *LU.* The material facts in *Radionovs* were:
    a. Mr Radionovs was convicted of two offences in Latvia in 2014 which resulted in each case in a sentence of imprisonment followed by a period of placement under police supervision;
    b. On the 27 October 2015 a Court in Riga consolidated these sentences resulting in a cumulative custodial sentence of four years and nine months and placement under police supervision for three years. No issue was raised as the compliance of these hearings in 2014 and 2015 with Article 4a of the Framework Decision;
    c. While in prison he was informed that he must report to a local police station within 3 days of his release from custody (scheduled for 22 August 2019). He was also informed that failure to attend the police station could lead to an administrative penalty being imposed pursuant to s. 177 of the Administrative Violations Code of Latvia. He signed a copy of a written notification which confirmed his understanding of this;
    d. Following his release he failed to report to the local police station. As a result he was found guilty of committing an *'administrative violation'* in two dates in May 2020 and fined €30 and €40 respectively;

e. Under Latvian law if a person subject to police supervision violates its provision in bad faith (e.g. whereas here a person has been administratively sentenced twice within a month period for such a violation), he or she may be subject to an order of the Court replacing police supervision with an order of one 'liberty deprivation day' for 'two police supervision days'. Such an order is not mandatory;
f. In June 2020 an application was made for such an order and a court summons sent to Mr Radionovs notified place of residence on the 25 June 2020. This was not collected and returned;
g. A hearing took place on the 19 August 2020 at which Mr Radionovs did not attend and the hearing proceeded in his absence. The court issued a written decision ordering that the remaining period of two years and two days police supervision be converted to a custodial sentence of one year and one day
h. The EAW was issued in February 2021 to enforce this custodial sentence of one year and one day

34. In the High Court, Biggs J held that the hearing of the 19 August 2020 was not a '*trial resulting in the decision'* withing the meaning of Article 4a of the Framework Decision. She did however consider that there had been a breach of Mr Radionovs rights in the totality of the process which led up to the imposition of the custodial sentence on that date. This resulted from the failure to notify him at any point in the process that there could be a further court hearing which could result in the police supervision being replaced by a sentence of imprisonment.

35. By a determination dated the 19 January 2023 ([2023] IESCDET 5) the Supreme Court granted leave to the Minister to appeal. In its determination the Court indicated that it considered that a point of general public importance arose concerning the interplay between the CJEU's decision in *Ardic* and the issue of whether the activation of a suspended sentence could, in some circumstances, amount to a breach of s.45 of the 2003 Act.

36. By the time of the Supreme Court's decision, the CJEU had delivered Judgment in *LU* and this decision, together with the submissions of the parties thereon, are referred to in the Judgment of the Court delivered by Dunne J.

37. At paragraph 35 of her judgment, having referred in detail to the decision of the CJEU in *LU* Dunne J stated:

> *'Where a decision to activate a suspended sentence falls outside Article 4a (as it ordinarily will, absent an in absentia conviction triggering the activation), the fact that decision was adopted in absentia cannot form the basis for refusing surrender (para 84* of LU*), at least in the absence of evidence of systemic deficiencies in the justice system of the requesting state (para 86). Nor can the requested state impose a condition requiring the requesting state to permit a judicial review of such a decision (para 90). That follows from the fact that the Framework Decision 'lists exhaustively the grounds for refusing to execute a European arrest warrant (para 89 citing Puig Gordi)*

38. Having noted that the CJEU has made clear repeatedly that surrender is the rule and a refusal to surrender is the exception to the rule, Dunne J stated that the question that arose therefore was whether or not the respondent could bring himself within an exception to the rule. She first then considered whether the hearing of the 19th of August 2020 constituted a *'trial resulting in the decision'*

39. At paragraph 68 – 69 of the Judgment, Dunne J stated:-

> *'68. What is clear from the information provided by the Latvian authorities in this case is that the period of three years police supervision commenced from the moment the serving of the period of four years and nine months had been completed. Thereafter, in the event of a breach, an arithmetic calculation is used to determine the period of any deprivation of liberty that will follow from a breach of the police supervision. It appears, to use the language used by the CJEU, that no new judicial decision is made in relation to the quantum of sentence to be served, as the maximum period involved has already been decided by the District Court in Zemgale. Neither the nature nor the quantum of the sentence is varied, save and in accordance with the provisions of Latvian law, as previously described. No additional terms are imposed and no additional time is added to that which was already provided for in the original*

court decision of 2015. Latvian law provides for the maximum period that can be allocated to police supervision, having regard to the offence and the period for which the initial terms was imposed

69. However, as was made clear in Ardic,'decision' does not cover a decision relating to the execution or application of the custodial sentence previously imposed, except where the decision modifies the nature and quantum of that sentence 'and the authority which adopted it enjoyed some discretion in that regard'(see Para 77). In this case, as has been seen, there has been no variation or modification of the terms of the sentence imposed but it does appear that the relevant court making the decision as to the execution of he sentence had some discretion as to whether or not to impose the additional sentence (emphasis added)'

40. Dunne J stated that whilst a failure to comply with police supervision could, under Latvian law, lead to a further deprivation of liberty, and whilst there might be a need to calculate the precise period of time by reference to an arithmetic exercise provided for by law, the outer limits of what could be imposed in this regard was fixed by the sentencing court back in 2015. The outer limit could not be increased or changed by Zemgale District Court at the later hearing in August 2019. The only question for that later hearing was whether or not to impose the additional sentence. At paragraph 72 she continued:

72. Notwithstanding the obvious differences between the system in Latvia and in this country, it does not seem to me that those differences are such as to cause any issue in relation to surrender, by reason of the fact that the terms of the sentence imposed in Latvia provide for a fixed term in relation to imprisonment, together with a period of a fixed term for police supervision, and that in the event of a breach of the police supervision, a calculation is required in order to fix the period of time for the deprivation of liberty. I therefore would not refuse surrender on the basis that the sentence imposed on 19th August 2020 was a new sentence . As far as I am concerned, the terms and parameters of the deprivation of liberty that followed a breach were clear and ascertainable and did not involve a new decision or a variation in terms of the nature or quantum of the original sentence. Nevertheless, in circumstances where the Court enjoyed a discretion as to whether or not to

impose the additional sentence (emphasis added) *, and the hearing took place in the absence of Mr. Radionovs, it is not clear to me that the decision of the Zemgale District Court of the 19th August, 2020 comes within the meaning of 'a trial resulting in the decision' as explained in Ardic'*

41. The Court in *Radionovs* rejected the argument that imposition of the administrave sentences, the fines of €30 and €40 respectively which led ultimately to the conversion of police supervision into a period of custody in August 2020, engaged fair trial rights under Article 6(1) of the ECHR. Dunne J therefore decided that surrender ought not be refused on the basis that the imposition of these administrative sentences did not comply with Article 6(1).

42. At paragraph 89 of her Judgement, Dunne J emphasised again that, from the facts put before the Court in *Radionovs*, it appeared:

> *'to use the language used by the CJEU, that no new judicial decision is made in relation to the quantum of sentence to be served, as the maximum period involved had already been decided by the District Court in Zemgale. Neither the nature nor the quantum of the sentence is varied, save and in accordance with the provisions of Latvian law, as previously described. No additional terms are imposed and no additional period of time is added to that which was already provided for in the original court decision of 2015. Latvian law provides for the maximum period that can be allocated to police supervision, having regard to the offence and the period for which the initial term of imprisonment is imposed. Nevertheless, there is a discretion left to the Latvian court as to whether or not to impose the additional sentence. Mr Radionovs was not present at that hearing and it could be that his presence might have made a difference to the outcome of that hearing*

43. Two questions were then referred to the CJEU as follows:-

> *'(1) Where the surrender of the requested person is sought for the purpose of serving a custodial sentence imposed on that person as a result of violating the terms of a sentence of police supervision previously imposed on him, in circumstances where the court that imposed that custodial sentence had a discretion whether to impose a custodial sentence (though no discretion as to*

the duration of the sentence if imposed), are the proceedings leading to the imposition of that custodial sentence part of the 'trial resulting in the decision' for the purposes of Article 4a(1) of Council Framework Decision 2002/584/JHA?

(2) Was the decision to convert the sentence of police supervision into a custodial sentence in the circumstnces set out in (1) above, one that had the purpose or effect of modifying the nature and / or quantum of the sentence previously imposed on the requested person and, in particular, the sentence of police supervision that formed part of his previous sentence, such as to come within the exception referred to in para 77 of Ardic?'

Conclusion on s45 / Article 4 Objection

44. From the above case law it seems that the following principles have been established:

(i) The '*trial resulting in the decision',* as used in Article 4a of the Framework Decision, is a concept which has an autonomous and uniform interpretation and meaning throughout the Union;

(ii) For the purposes of Article 4a of the Framework Decision, the activation of a suspended sentence will ordinarily not be considered a *'the trial resulting in the decision'*. In cases where an activation hearing takes place in the absence of a Respondent (or without him receiving due notification of the same) surrender is the rule and the question is whether or not an individual respondent can bring himself withing an exception to that rule in the particular circumstances of his or her case;

(iii) The fact that a Court, when considering whether to activate a suspended sentence enjoys a margin of discretion such that it might not activate a suspended sentence at all or activate it in whole or in part, does not alter the nature of such a hearing and does not mean that such a hearing is a *'trial resulting in the decision'* and therefore one to which the requirements under Article 4a apply. In other words, as made clear at paragraph 80 of *Ardic* and re-affirmed at paragraph 54 of *LU,* there is no requirement that a respondent be present at or have notification of such a hearing under Article 4a of the Framework Decision as it is not a *'trial resulting in the decision';*

(iv) Where a Court can modify the quantum or nature of the penalty imposed, for example *Gurgiudiani v Spain* (where a new penalty was imposed at this

further hearing), *Ezeh & Connors v United Kingdom* (where an increased period of detention was imposed following the later hearing) or *Zdziaszek* (where a new cumulative sentence was imposed at a further hearing), then such further hearing is *'the trial resulting in the decision'* as the nature or quantum of the penalty imposed has been or may be modified and the requirements of Article 4a apply to such a hearing; and

(v) Where the suspended sentence originally imposed is or may be activated as a result of a further offence ('the triggering offence') then the respondent must have been present or have had proper notification of the hearing of the triggering offence. In other words the fair trial rights under Article 6(1) of the ECHR and the requirements of Article 4a of the Framework Decision must be met in relation to this triggering offence and if this did not happen then surrender may be refused.

45. It does not seem to me that there is any lack of clarity in relation to the above principles following on from the decision of the Supreme Court in *Radionovs.* I do not consider that the questions raised by the Supreme Court and forwarded to the CJEU have application to the facts in this particular case.

46. In *Radionovs* the Supreme Court were clear that the *'police supervision sentence'* (the sentence that could be imposed following a breach of police supervision after release from custody) was not a new sentence and the imposition of the same by a Latvian Court did not involve a new decision or variation in the terms or nature and quantum of the original sentence imposed upon conviction. Despite the fact that the quantum of the same would be arrived at as a result of a mathematical calculation, nonetheless the activation hearing in that case involved the Latvian Court, in the words of the Supreme Court, deciding whether to impose 'the additional sentence'. The Supreme Court, as per the first question forwarded to the CJEU, have asked that Court whether the imposition of that sentence is a '*trial resulting in the decision'*

47. The facts at issue in the present case are different. They do not involved the imposition of any 'additional sentence' such as in *Radionovs.* The circumstances here are closely similar to those under consideration by the CJEU in *Ardic*. In this case the activation hearing took place a number of years after the suspended sentence had been imposed whereas in *Ardic* the respondent had served some time in prison prior to the

balance of the sentence being suspended, but this does not seem to in any way affect question of whether the activation hearing was a *'trial resulting in the decsion'.* In both *Ardic* and the present case, not only was there non-compliance with the presence / notification requirements of Article 4a in relation to the activation heaing but in both cases the Court enjoyed a margin of discretion at such activation hearing as to whether to activate the suspended sentence. In those circumstances it seems to me that the circumstances of this case fall four square within the principle established in *Ardic* and that the activation hearing in this case was not a '*trial resulting in the decision'* as it does not alter or affect the nature or quantum of the sentence imposed following the trial of Mr Puk Ludwig in 2011.

48. I do not therefore consider that this is a case where it is necessary to refer any question to the CJEU or where the outcome of this case could be affected by the decision of the CJEU in the reference in the *Radionovs* case.

49. I therefore dismiss the objection raised on this ground.

Article 8 Objection

50. The applicant seeks to resist surrender on the grounds of Article 8 of the ECHR. Whilst acknowledging that his circumstances are not 'on a par' to those of the Respondent in *Minister for Justice v JAT (No 2)* [2016] IESC 17, he refers to the fact that this family is based in Ireland and that he has been receiving treatment for an ongoing psychiatric condition.

51. Whilst accepting that delay in and of itself does not constitute a bar to surrender and the facts here are different, relying upon the Judgment of the Supreme Court in *Minister for Justice v Palonka* [2022] IESC 6, he says that there has been an unacceptable failure to explain a delay of 9 years in seeking the surrender of the Respondent.

52. An affidavit was filed by the Respondents sister, Patryca Puk, dated the 15 July 2024. She confirms therein that the her entire family, including the applicant his mother and their siblings, now live in Ireland. She also refers to her brothers ongoing history of psychiatric illness and says that he has been diagnosed with schizophrenia. She refers

to his treatment over the years, including voluntary and involuntary admissions to hospital and various addiction issues. He has also been homeless at various stages over the years. A letter from Galway Community Mental Health services has been exhibited and this confirms his ongoing mental health problems.

53. It is common case that most, if not all, extradition cases by their very nature involve an element of infringement of the right to family life. It is well settled that member states should execute any warrant on the basis of mutual recognition and that it is only in a truly exceptional case that Article 8 rights outweigh the requirement to surrender, on foot of an otherwise lawful EAW.

54. In *Minister for Justice v Ostrowski* [2012] IESC 57 the Supreme Court made it clear that to be successful in cases such as the present, a family/ private rights objection to surrender, the circumstances must be shown to be well outside the norm, that is truly exceptional and, in the words of S37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention. Again in *Minister for Justice v Verstaras* [2020] IESC 12, that Court said that, when considering such objections to surrender, there must be cogent evidence to rebut the presumption in s4A of the Act, the circumstances must be shown to be well outside the norm, that is truly exceptional and, in the words of S37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention.

55. In *Minister for Justice v D.E.* [2021] IECA 118, having comprehensively reviewed the earlier authorities, Donnelly J re-emphasised that exceptionality is not the taste in itself but instead the phrase 'exceptional' in the case law is a description of the rare cases in which an Article 8 analysis will be appropriate such that an order for surrender might be refused pursuant to section 37 for incompatibility with the Convention or the Constitution.

56. ***Minister for Justice v Daly*** [2023] IEHC 733, Naidoo J stated at paragraph 43:

'Delay is not a ground for refusal of surrender unless accompanied by other factual circumstances falling so far outside the norm as to amount to an abuse of process'

57. At paragraph 54 Naidoo J continued:

'The period of time that the respondent can therefore point to as potentially amounting to delay is the 16 years between the issuing of that warrant and the respondents arrest in 2023. That is itself a long period of time, but delay, even delay of that magnitude does not necessarily, in and of itself, amount to an abuse of process. In that regard, the applicant points out that in Minister for Justice and Equality v Stapleton the Supreme Court dismissed the delay objection where between 24 and 29 years had passed since the alleged commission of the various fraud offences at issue. Similarly, in Minister for Justice and Equality v Stanislaw Potocki, a decision of Creedon J, surrender was ordered at a point in time when the offence was 26 years old and there had been an almost 20 year delay between the activation of the custodial sentence in 2001 and the date of arrest in 2021'

58. The Respondent refers to the period of 9 years between the activation of the sentence and the issuing of the EAW in this case. He further refers to his family and personal circumstances and claims that his surrender would be disproportionate in all the circumstances.

59. The circumstances in this case are not, for example, like those which arose for consideration in *Minister for Justice v Palonka* [2022] IESC 6. In that case Charleton J. set out the complex procedural history of the case. Recognising the principles of mutual trust and the simplified and effective regime for surrender envisaged under the Framework Decision and the 2003 Act, the court nonetheless held that that was one of those exceptional cases where surrender should be refused. In the course of reaching this conclusion, he concluded:-

'[31] This is not a case of potential infringement of fundamental rights. Rather, what is involved is a real, exceptional and oppressive disruption to family life in the most extreme and exceptional circumstances. Of itself, that

would not justify a refusal to surrender as delay does not create rights, but delay may enable the growth of circumstances where a new situation has emerged that engages Article 8 of the European Convention in a genuinely exceptional way as set in the context of the individual procedural circumstances of the case'

60. This is not a case where in my view lengthy delay can be considered in support of ean Article 8 family or private rights breach. It is not a case where any delay has therefore enabled the growth of circumstances such as to engage Article 8 of the ECHR.

61. Whilst it is natural that there will be human sympathy in any situation such as the present, given the family ties the Respondent has in this State and given his ongoing mental health issues, there is nothing exceptional on the facts that would require this court to carry out a proportionality analysis. The facts relied upon by the Respondent are not in any way so exceptional or so outside the norm of cases where a surrender is sought on foot of a lawfully issued EAW, such as to require an analysis as to whether the high public interest in the surrender of persons on foot of the State's obligations under the Framework Decision is overridden by the personal and family circumstances of Mr Puk.

62. I would therefore also dismiss this ground of objection.