

Ireland, Supreme Court, Minister for Justice & Equality v Ostrowski [2013] IESC 24, appellate, 15 May 2013, [2013] 5 JIC 1501

Deciding bodies and decisions

Irish Supreme Court, Ostrowski [2013] IESC 24, appellate, 15 May 2013, [2013] 5 JIC 1501

Area of law

Criminal Law

Subject matter

European Arrest Warrant – optional ground for surrender – proportionality – right to respect of family life - Whether the Irish High Court as the executing judicial authority of a European Arrest Warrant could or was obliged to refuse surrender based on the grounds of proportionality.

Summary Facts Of The Case

Mr Ostrowski moved to Ireland from Poland with his family in 2004. In 2006 on a holiday to Poland he was found in possession of 0.72 g of marijuana and was detained and released. After a first European Arrest Warrant was refused for technical reasons a second EAW was issued by the Polish authorities for the arrest of Mr Ostrowski. The second EAW was duly endorsed but the surrender of Mr Ostrowski was refused by the High Court citing a general lack of proportionality. In its proportionality assessment the High Court took into account a number of factors including the gravity of the offence, the likely sanction, the family life Mr Ostrowski enjoyed in Ireland and delays in the overall procedure.

The state appealed the decision and requested that a point of law appeal on the issue of whether the High Court as an executing authority could refuse the execution of and EAW on the grounds of proportionality.

Relation to the scope of the Charter

Article 7 - Respect for private and family life

The Charter as such was not considered beyond a brief description of the use of the Charter by the High Regional Court of Stuttgart in *General Public Prosecution Services v C*.

Relation between the Charter and EHCR

Impact on Jurisprudence

The Court was composed of five judges: Denham CJ, Murray, O'Donnell, McKechnie and MacMenamin JJ with Denham CJ, McKechnie and MacMeneamin JJ delivering judgments allowing the appeal with the remaining two judges concurring.

Denham CJ reversed the judgment of the High Court finding that the EAW FD and the 2003 Act both established an automatic system of surrender that did not provide for a general proportionality assessment, based as it was on a system of mutual recognition and respect between legal orders. The gravity of the offence was already taken into account by the Framework Decision in imposing thresholds in relation to the minimum maximum sentences. Section 37 of the 2003 Act did provide that surrender must be refused where to do so would be incompatible with fundamental rights under the constitution or under the European Convention of Human Rights (ECHR). However, in the present instance, while all occasions of extradition and surrender involve some infringement of fundamental rights to liberty and at times family life, this was a natural consequence of an extradition/surrender system and in and of itself did not outweigh the public interest in the efficient operation of such a system. The present case did not present any unusual or exceptional circumstances that would render the infringement of Mr Ostrowski's rights under the ECHR disproportionate.

McKechnie J provided the lengthiest judgment and considered various issues under national and European law. Considering the main question to be the application of the proportionality principle

Sources - EU and national law

EU Law

Framework Decision 2002/584 on the European Arrest Warrant

National Law

European Arrest Warrant Act 2003 (as amended), in particular ss 16 and 37.

Sources - CJEU Case Law

Pupino
