

Neutral Citation No. [2013] NICty 2

Ref: **2013NICty2**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **12/04/2013**

IN THE MATTER OF THE EXTRADITION ACT 2003

IN THE COUNTY COURT DIVISION OF BELFAST

BY THE RECORDER

Reference No. 12/121903

BETWEEN

REPUBLIC OF POLAND

Requesting State/Respondent

and

THOMASZ RZEWNICKI

Requested Person/Applicant

His Honour Judge McFarland

Recorder of Belfast

12th April 2013

1. The Requested Person ("the RP") has applied to this Court to be discharged under section 36(8) of the Extradition Act 2003 - *"If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay."*
2. It is agreed between the parties that section 36(2) was not complied with on or after 31st March 2013 as the RP was not extradited to Poland by that date.

3. The reason for the failure to comply by that date was that the solicitors representing Poland did not advise the police, who would normally facilitate the removal of parties to be extradited, of the decision of the High Court in Belfast dismissing the RP's appeal against an order of extradition of this Court. The reason stated was an oversight and pressure of work.
4. The wording of the legislation is clear, namely that this Court must discharge the RP unless Poland shows that there is reasonable cause for the delay.
5. In **re: Owens [2009] EWHC 1343 (Admin)**. Pill LJ at [48] stated: "*There have been different approaches, in this court, in different contexts, to the meaning of "reasonable cause...for the delay" in section 36(8) and other provisions in the 2003 Act to the same effect. In considering these, and how the expression should be applied to particular facts, it is, in my judgment, important to have regard to the wording and purpose of the [the Council Framework Decision of 13 June 2002]*".
6. Article 23 of the Council Framework Decision provides -

"1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. *Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.*"

7. The 10 day rule contained in section 36(8) of the Extradition Act 2003 is based on the provisions of Article 23 of the Council Framework Decision. Notwithstanding this, it is clear that the examples of acceptable delay set out in Article 23 should not be treated as the only type of cause that could be regarded as reasonable that would lead a court to exercise its discretion (see Pill LJ at [52] in **re: Owens**) but they have some relevance, and should be regarded as typical examples of reasonable causes for delay.
8. "Reasonable cause" is a straightforward English phrase and it must be interpreted applying its normal and everyday meaning. It will, of course, vary from case to case and depend on the particular circumstances of the case. It will usually involve an exceptional or unforeseen event which is beyond the control of the person or institution.
9. The authors of *The Law of Extradition and Mutual Assistance (3rd edition)* at para 10.6 state: "*The EA [Extradition Act] 2003 therefore deliberately narrows the circumstances in which the court may decline to order discharge; to those where reasonable cause is shown for the delay. General considerations of comity or reasonableness (eg, it is only a short delay or there has been an oversight) ought not come into play. Under the EA 2003 the court is concerned, and only concerned, with whether there is reasonable cause for the delay.*"
10. The reason for the delay in this case was the failure of the solicitors to notify the police of the decision of the High Court of the 8th March 2013 to dismiss the RP's appeal and to affirm the extradition order. As a consequence no steps were taken to implement the order of the High Court that the RP be extradited, and the RP remained in custody.
11. The comments of Pill LJ **re: Owens** at [50] that the legislation "*should not readily be defeated by an administrative error .. which [has] resulted in a very short delay in protracted proceedings involving very serious offences*" are very specific to the facts in that case, and should not be seen as applicable to all cases. As the test in the legislation relates to the reasonableness of the cause for the delay, and is not a more wider 'interests of justice' test, there will be limited scope in exploring such issues as the period of the delay, the protracted nature of the proceedings or the seriousness of the offences alleged. Any relevance that they have should relate back to the reason for the delay.

12. If one considers the facts in this case and the facts in re: Owens the periods of delay are both short, but there are other substantial differences. Owens was facing murder and robbery charges, and the RP faces drugs charges. In this case the proceedings were straightforward and not protracted. In Owens the error was a misinterpretation by the SOCA officer of the time limits in the legislation resulting in him assuming a later date and preparing for the extradition on that later date. This was described by the District Judge in England as an administrative error with no suggestion of bad faith, general inefficiency or slack administration. In this case there is also no suggestion of bad faith, but there has been what could be described as general inefficiency and slack administration with a complete failure by Poland, through its solicitors, to advise the police of decisions and dates, a failure to review the file and an apparent failure to diary ahead to trigger further reviews closer to the relevant dates. Although the police were aware of an appeal, they had not been advised of the hearing date and therefore could not independently monitor the case and organise accordingly.

13. The court must discharge the order unless Poland satisfies it that there is reasonable cause for the delay. The reason put forward of an oversight between 8th March 2013 and 31st March 2013, and beyond, could not be said to be reasonable in all the circumstances and the court has no alternative but to order the discharge of the RP in accordance with the provisions of section 35(8) of the Extradition Act 2003.