



THE SUPREME COURT

DETERMINATION

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 (AS AMENDED)

AND IN THE MATTER OF WOJCIECH ORLOWSKI (DOB: 23rd day of September 1983)

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

WOJCIECH ORLOWSKI

RESPONDENT

Neutral Citation: [2021] IESCDT 28

Supreme Court Record No: S:AP:IE:2021:000018

High Court Record No: 2015 No. 145 EXT, 2015 No. 159 EXT, 2015 No. 160 EXT, 2017 No. 50 EXT

Date of Determination: Tuesday, 9th March 2021

Composition of Court: Clarke C.J., O'Malley J., Baker J.

Status: Approved

APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.4° OF THE CONSTITUTION APPLIES

RESULT: The Court grants leave to the Respondent to appeal to this Court directly from the High Court.

REASONS GIVEN:

ORDER SOUGHT TO BE APPEALED

COURT: High Court
DATE OF JUDGMENT OR RULING: 4 th February, 2021
DATE OF ORDER: 17 th February, 2021
DATE OF PERFECTION OF ORDER: Not perfected as of this date
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 5 th March, 2021 AND WAS IN TIME.

General Considerations

1. The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *B.S. v Director of Public Prosecutions* [2017] IESCDET 134 and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. The additional criteria required to be met in order that a so-called 'leapfrog appeal' direct from the High Court to this Court can be permitted were addressed by a full panel of the Court in *Wansboro v Director of Public Prosecutions* [2017] IESCDET 115. It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.
2. Furthermore, the application for leave filed is published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the applicant. Due to the urgent nature of this application for leave and the unusual circumstances in

which it came to be considered by the panel, which are set out in greater detail below, there is no respondent's notice published alongside this determination.

3. In that context, it should be noted that it is not known if the respondent opposes the grant of leave.

Discussion

4. An application for leave to appeal to this Court from the order of the High Court directing the surrender of the applicant ("Mr Orlowski") was received in the office of the Supreme Court on the afternoon of Friday, March 5th, 2021. The High Court had directed the surrender of Mr Orlowski for the reasons set out in the judgment of Binchy J. (see, *Minister for Justice and Equality v. Orlowski* [2021] IEHC 109). It should be noted that in an *ex tempore* judgment delivered on the 17th of February, 2021, Binchy J. refused to certify that an appeal to the Court of Appeal was justified. The Court has been referred to a written copy of this judgement. Mr Orlowski argues that the refusal to grant such a certificate provides the basis for a leapfrog appeal directly to this Court.
5. It was intimated by the solicitor acting on behalf of Mr Orlowski that there was a possibility that his surrender might be effected on Monday, March 8th, 2021. Having regard to that potential urgency it was indicated to the Chief State Solicitor's office, on behalf of the Minister, that a panel would meet to consider the application for leave to appeal at 10.30 am on Monday morning unless it was clear that Mr Orlowski would not be surrendered on that day in which eventuality a longer timeframe could be provided.
6. The panel met at 10.30 am as planned. A communication had been received from the Chief State Solicitor's office which indicated that certain

advices had been tendered but there was no confirmation as to whether Mr Orlowski was or was not liable to be surrendered on March 8th. The panel remained in session from time to time during Monday morning but, in the absence of any formal confirmation, decided to consider the matter on the merits at 1.00 pm.

7. The principal issue which Mr Orlowski wishes to raise on appeal concerns a contention that the courts in Poland which would consider his case on his surrender may not be constituted in accordance with law in the manner recently referred to by the Court of Justice in *A.B. and Others*. (*Appointment of judges to the Supreme Court – Actions*) (Case C-824/18) [2021] ECLI:EU:C:2021:153. The Court considers that this is at least a stateable proposition. Having regard to the difficulty in obtaining a clear commitment from the state authorities to the effect that Mr Orlowski will not be surrendered, the Court considers that it is in the interests of justice that leave to appeal be granted. The Court will also place a stay on the High Court order for surrender until further order of the Court and will grant liberty to apply to either party in respect of that or any other relevant matter.
8. Leave to appeal is, therefore, granted.

And it is hereby so ordered accordingly.