Neutral Citation: [2015] IEHC 36

THE HIGH COURT

[2011 No. 400 EXT.]

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003, AS AMENDED

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

- AND -

I. S.

RESPONDENT

JUDGMENT of Mr. Justice Edwards delivered on the 12th of January, 2015.

Introduction

The respondent is the subject of a European arrest warrant dated the 17th January, 2011, on foot of which the Republic of Poland (hereinafter "Poland") seeks his surrender for the mixed purposes of prosecuting him in respect of one offence, and executing sentences of imprisonment in respect of a further four offences, particularised in Part (e) of the warrant. The warrant was endorsed for execution in this jurisdiction on the 16th November, 2011, and it was duly executed on the 17th December, 2012. The respondent was arrested by Sergeant Sean Fallon on that date, and he was brought before the High Court on the same day pursuant to s.13 of the European Arrest Warrant Act 2003 (hereinafter "the Act of 2003"). In the course of the s.13 hearing, a notional date was fixed for the purposes of s.16 of the Act of 2003 and the respondent was remanded on bail to the date fixed. Thereafter, the matter was adjourned from time to time in connection with preparation of the case on both sides, ultimately coming before the Court for the purposes of a surrender hearing.

The respondent does not consent to his surrender to Poland. Accordingly, this Court is now being asked by the applicant to make an order pursuant to s.16 of the Act of 2003, directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him.

Uncontroversial issues

The Court has received an affidavit of Sergeant Fallon sworn on the 29th April, 2014 testifying as to his arrest of the respondent and as to the questions he asked of the respondent to establish the respondent's identity. When these are compared with the information in Part A of the warrant they can be seen to correspond. Moreover, the respondent acknowledged that a photograph attached to the warrant was of him. In addition, counsel for the respondent has confirmed that no issue arises either as to the arrest or as to identity.

The Court has also received and has scrutinised a true copy of the European arrest warrant in this case. Further, the Court has taken the opportunity to inspect the original European arrest warrant which is on the Court's file and which bears this Court's endorsement.

I am satisfied following my consideration of these matters that:

(a) The European arrest warrant was endorsed for execution in this State in accordance with s.13 of the 2003 Act;

(b) The warrant was duly executed;

(c) The person who has been brought before the Court is the person in respect of whom the warrant was issued;

(d) The warrant is in the correct form;

(e) To the extent that the warrant is a prosecution type warrant, the respondent is wanted in Poland for the purposes of prosecuting him for three offences particularised at Part E.2.D. of the warrant;

(f) The underlying domestic decision on foot of which the warrant seeks the respondent for prosecution is a domestic warrant of arrest issued by the District Court of Pila;

(g) The nature and classification of the three offences for which the warrant seeks the respondent for prosecution is that they are offences contrary to article 310(2) of the Polish Penal Code in conjunction with article 91(1) of the Polish Penal Code and article 12 of the Polish Penal Code involving "introducing forged money into circulation – string of three offences";

(h) The issuing judicial authority has invoked para. 2 of article 2 of Council Framework Decision 2002/584/JHA of the 13th June 2002 on the European arrest warrant and the surrender procedures between Member States, O.J. L190/1 18.7.2002 (hereinafter referred to as "the Framework Decision") in respect of these three offences by the ticking of the box in Part (E) I of the warrant, relating to "counterfeiting currency, including that of the euro";

(i) To the extent that the European arrest warrant is a conviction type warrant, the warrant relates to seven offences, one of which is particularised at E.2.A.; another of which is particularised at E.2.B.; four of which are particularised at E.2.C., and one of which is particularised at E.2.E., respectively. The underlying domestic decisions on foot of which the warrant seeks the respondent for the purposes of executing sentences of imprisonment for these seven offences are three enforceable judgments of the District Court of W¹growiec dated the 11th March, 2004, the 7th April, 2004, and the 10th March, 2005, respectively, as well as a judgment of the District Court of Poznañ dated the 30th November, 2005;

(j) The nature and classification of the conviction offences covered by the warrant are as follows:

- The single offence particularised at paragraph E.2.A. is an offence contrary to articles 286(1), 270(1) and 297(1) of the Polish Penal Code, in conjunction with article 11(2) of the Polish Penal Code, involving "fraud, forgery of documents and defrauding credit";

- The single offence particularised at paragraph E.2.B. is an offence contrary to article 18(1), in conjunction with articles 286(1), 270(1) and 297(1), of the Polish Penal Code in conjunction with article 11(2) of the Polish Penal Code, involving "the commission of fraud, forgery of documents and defrauding credit";

- The four offences particularised at paragraph E.2.C. are offences contrary to article 286(1), in conjunction with articles 270(1) and 297(1) of the Polish Penal Code, and in further conjunction with article 11(2) of the Polish Penal Code; and offences contrary to article 13(1) in conjunction with articles 286(1), 270(1) and 297(1) of the Polish Penal Code, and in further conjunction with article 91(1) of the Polish Penal Code, and described as "fraud, forgery of documents and defrauding credit, attempted fraud, forgery of documents and defrauding credit – string of four offences." The detail of the various articles of the Polish Penal Code are set out in the warrant and it can be stated, in general terms, that these provisions provide for the criminalisation and punishment both of a basic form of the offending conduct involving single instance behaviour, and an aggravated form of the offending conduct involving multi-instance behaviour, the latter potentially attracting a more severe sentence;

- The single offence particularised at paragraph E.2.E. is an offence contrary to article 286(1), of the Polish Penal Code in conjunction with article 12 of the Polish Penal Code, involving fraudulent deception.

(k) The issuing judicial authority has invoked para. 2 of article 2 of the Framework Decision in respect of all conviction offences on the warrant by the ticking of the box in Part (E) I. of the warrant, relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities financial interests".

(l) Accordingly, all the offences on the warrant, both those for which the respondent is wanted for prosecution, and those of which he has been convicted, are "ticked box" offences. In that situation, subject to the Court being satisfied that the invocation of para. 2 of article 2 of the Framework Decision is valid (*i.e.* that the minimum gravity threshold is met, and that there is no basis for believing that there has been some gross or manifest error), it need not concern itself with correspondence in respect of those offences;

(m) The minimum gravity threshold in a case in which para. 2 of article 2 of the Framework Decision is relied upon is that which now finds transposition into Irish domestic law within s.38(1)(b) of the Act of 2003, as amended, namely that under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years. It appears from Part E.3 of the warrant that the maximum potential sentences available under the various provisions of the Polish Penal Code in respect of which the respondent is either charged, or alternatively has already been convicted, range from five years, to eight years, to ten years and in one instance, up to twenty five years imprisonment. Accordingly, the minimum gravity threshold is comfortably met in respect of all offences;

(n) The Court has considered the description of the circumstances in which the offences are said to have been committed as set out in Part E.2 of the warrant. Having done so, the Court has no reason to believe that the ticking of the boxes relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities financial interests" and "counterfeiting currency, including that of the euro", was in error. It is clear that the ticking of the box in respect of the "fraud *etc*." offence is intended to apply to the conviction offences at A, B, C and E in Part E.2 of the warrant, and that the ticking of the box in relation to the offence of "counterfeiting currency *etc*." is intended to apply to the prosecution offences at D in Part E.2 of the warrant;

(o) As the respondent is wanted for prosecution, no issue as to trial *in absentia* arises in the circumstances of the offences at E.2.D. In so far as the conviction offences at E.2.A., E.2.B., E.2.C., and E.2.E are concerned, the warrant indicates that the respondent was not tried *in absentia*, so no issue arises in relation to s.45 of the Act of 2003;

(p) There are no circumstances that would cause the Court to refuse to surrender the respondent under ss.21A, 22, 23 or 24 of the Act of 2003, as amended.

In addition, the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No. 3) Order 2004 (S.I. No. 206 of 2004) (hereinafter referred to as "the Designation Order of 2004"), and duly notes that by a combination of s.3(1) of the Act of 2003, and article 2 of, and the Schedule to, the Designation Order of 2004, Poland, is designated for the purposes of the Act of 2003 as being a state that has under its national law given effect to the Framework Decision.

Points of Objection

The respondent has raised two substantive points of objection, both "Part 3" type objections based upon s.37(1)(a) of the Act of 2003, namely that the surrender of the respondent should be regarded as being prohibited on the grounds that to do so would be incompatible with this State's obligations under the European Convention on Human Rights 1950 and its protocols (hereinafter "the ECHR"). The respondent is in fragile mental health and is at high risk of self harm or suicide. In these circumstances, the respondent believes that the Polish prison authorities will not adequately address his particular vulnerabilities and that he will not receive adequate care and treatment; alternatively, he will not be adequately monitored and protected against self harming and/or suicidal behaviour; and that therefore if he is surrendered, he would face a real risk of breach of his rights under Article 3 of the ECHR. The respondent further contends that any surrender would involve a disproportionate interference with his right to respect for family life, as guaranteed under Article 8 of the ECHR.

The evidence adduced by the respondent

The Court has before it two affidavits of S.B., solicitor for the respondent, sworn on the 30th April, 2013, and the 30th May, 2014, respectively; the respondent's own affidavit sworn on the 12th June, 2014; the affidavit of Dr. M. S., a consultant psychiatrist, sworn on the 22nd May, 2014; and an affidavit of Maria Ejchart-Dubois, of the Helsinki Foundation for Human Rights (hereinafter referred to as "the Helsinki Foundation"), sworn on the 16th June, 2014.

It is appropriate to commence the Court's review of the evidence by considering the respondent's own affidavit in the first instance. He describes his personal circumstances and history of mental illness. He was born in 1959 and he is originally from Poland. He has one brother and one sister. His brother resides in Poland and his sister lives in Greece. There were mental health problems in both of his parents' families. His aunt on his mother's side had mental illness and his brother on his father's side also had mental illness. The respondent's uncle and a cousin both committed suicide by hanging. Both of his parents are now dead; they also suffered from mental illness.

The respondent worked as a painter in Poland and had his own company for a period of time. His wife, K, also worked in Poland and she had her own companies there. They have three children, namely E., P. and W. E. lives in Ireland with her husband and child. P. also lives in Ireland, residing with the respondent and his wife. W. lives in England.

The respondent says that he has had recurrent mental illness in the form of depression throughout his life. This has manifested itself in a number of significant self harming incidents, in which he cut himself. He also says that he tried to hang himself on approximately six occasions throughout his life.

The respondent states that he was hospitalised in Poland on five to six occasions, although it may have been more than that. He has also been hospitalised on two occasions (in Ireland) during the course of these proceedings.

The respondent claims that whilst living in Poland he worked for a good period of time and had some periods of reasonable health where he was not subject to mental health difficulties. He was able to provide for his family and they had a reasonable life in Poland. However, there was a considerable deterioration in his mental health in the year 2000 and that situation continues. He was in prison from 1999 to 2000, for a period of eight or nine months, for offences relating to the use of counterfeit money. He became progressively more unwell while he was in prison at that time. He claims that there were no doctors in the prison and that when he was not feeling mentally well, the only treatment he received was when some tablets were provided to him by a prison orderly. He says that he received no therapy whatsoever and that visits from a psychiatrist or a doctor were a rarity.

According to the respondent, he was released from prison in or about August 2000, and that the family then went to live in a town in Poland. However, the time that the respondent had spent in prison and the progression of his mental illness affected him in a profound manner. He says that he was extremely withdrawn and agitated at this time, that he had little appetite, that he was sleeping poorly and that he had thoughts of self harm.

The respondent says that he suffered these mental health difficulties in the period between 2001 and 2005, during which period many of the offences to which the European arrest warrant relates are said to have been committed. In 2001 the respondent tried to take his own life by hanging/strangling himself. He says that he was admitted to a psychiatric hospital for a period after this incident. That event was very difficult for him and for his family. The respondent's wife became estranged from him at that time and his children were also traumatised by the incident. From time to time, between 2001 and 2005, the respondent was returned to hospital for further periods of care. He exhibits a report from Dr. M. P., a psychiatrist in Poland, which is dated the 28th January, 2013, that attests to the medical care provided to him during that period.

Furthermore, during that period of time, the respondent came before the Polish Courts in relation to some of the matters that constitute the subject matter of the European arrest warrant. The respondent was ordered by a judge to undergo psychiatric assessments. He claims that that the psychiatric assessments found that he was not in a fit state to be committed to prison. Accordingly, he was not required to immediately serve custodial sentences for the offences in question.

The respondent states that he engaged in another episode of serious self harming behaviour in 2005, when he cut his left inner arm from just below the elbow to his wrist. He says that he was suicidal at this time. His arm required many stitches to stem the loss of blood. Sometime later in 2005, the psychiatrist who had examined the respondent on a number of occasions for the Polish Courts was changed. The respondent was seen by a different psychiatrist who deemed that he was fit to serve a prison sentence at that point. The Polish Courts were advised accordingly. Following on from this, he served part of one of the prison sentences imposed on him (that relating to E.2.B. on the European arrest warrant). He served that prison sentence in a prison called Czarne Prison. He says that the only medical treatment that he received while in that prison was when tablets were provided to him from time to time by prison staff. He claims that he received no therapy whatsoever for his mental illness, and that the psychiatric doctor only attended at the prison once every week or second week. He says that he was in an overcrowded cell with between four and eight other men for twenty three hours per day. He says that he was only allowed to be out of his cell for one hour each day, when he went to the yard for fresh air and exercise. He says that his mental health further deteriorated during this period, and he was frightened as to what he might do to himself and, in consequence, to his family while in prison. He says that he became totally withdrawn and uncommunicative during that period.

The respondent's evidence is that he was again released from prison in 2006, following which he was subject to probation obligations. However, because of his poor mental health, he was not able to communicate with his family and he did not have the mental or physical strength to be able to comply with the probation obligations. He says that he could not motivate himself to interact with the probation service as he was depressed. He was afraid of self harming and he felt severely ill.

The respondent says that, fearing he would be sent back to prison, he considered that he needed to move out of Poland in order to secure a fresh start for his family and also for himself. His daughter E. had moved to Ireland by that time. However, she returned to Poland in April, 2006 in order to get married. When E. returned to Ireland in August, 2006 the respondent arranged with her that he would leave Poland shortly thereafter and come to Ireland. The respondent came to Ireland in September, 2006.

The respondent has lived in this country since September 2006. Following his arrival in this state, his health improved somewhat. He had been provided with some tablets by a friend who was still living in Poland at that time. He took these tablets and he found them to be of some benefit. In addition, the new atmosphere of living in a different country assisted him and he was successful in securing work. He worked in various jobs, including as a painter, as a kitchen porter and in a warehouse in Dublin. The respondent says that his health was reasonably stable in the period from 2006 until 2012.

However, it is contended that from December, 2012 onwards the respondent found himself becoming progressively more unwell again. This development is connected with the present proceedings. He experienced anxiety and stress following his arrest on foot of the European arrest warrant, and he continues to be anxious and stressed. He contends that his mental health has been adversely affected as a consequence of the present proceedings. He was, and remains, fearful that the result of these proceedings may be that he will have to return to prison in Poland. He was hospitalised for a period of time in February/March, 2013 due to a further self harming incident. Since then, he has been under the care of an Adult Mental Health Service, and in particular, he was being cared for by Dr. F. F. initially and more recently by Dr. M. S. He says that he attends at the local Health Clinic as an out-patient.

The respondent says that he was hospitalised again in March, 2014 due to a progressive downturn in his mental health. That hospitalisation was precipitated by a family member finding a knife under the pillow of his bed. The respondent states that he could not, and still cannot, explain why he had put the knife there at that time and he is still somewhat bewildered by that.

The respondent states that he is on medication called Olanzapine, that he is generally good at taking his medication, but that there are times when he lapses in doing so. In periods of ill health he finds it difficult to keep to any routine. He also has problems sleeping. The respondent says that he is deeply fearful of any return to a Polish prison, and he is fearful concerning the level of care that he would get there. He points out that his family provide him with daily support and understanding. He states that they help him on an on-going basis every day to have the courage to try to overcome his mental illness and they have cared for him to the best of their abilities throughout his recurrent illness. He contends that he would be lost without that support in a prison setting, and he considers that his return to prison would further damage his mental health and his prospects for the future. The respondent states that members of his family monitor his position carefully, and that they are in the best position to help him access appropriate medical care if they detect that his mental health is deteriorating. Furthermore, the respondent states that the stability his family provide is important, both to him and for him, and he states that he would be bereft of that if he returned to prison in Poland. The respondent points out that his family are settled here in Ireland and that they do not wish to return to Poland.

In the affidavit sworn on the 30th April, 2013, the respondent's solicitor exhibits a medical report from a Dr. F. F., Consultant Psychiatrist, dated the 11th April, 2013. In this report, Dr. F. records the circumstances of the respondent's admission to hospital on an emergency basis on the 25th February, 2013, where he remained as an in-patient until the 19th March, 2013, with a diagnosis of severe recurrent depressive illness. He attempted to hang himself and stab himself in the chest with a knife, prior to admission. Dr. F. describes the respondent's background, his admission to hospital and his progress while there, and his progress following his discharge from hospital on the 19th March, 2013, to his attendance at an outpatient clinic in the community. Dr. F. stated (*inter alia*):

> "I reviewed Mr S. yesterday 10/04/13. His mental state has deteriorated again. His mood is very low and he feels pessimistic. I have urgently referred him to attend our day hospital which he will do five days a week. If he does not improve I plan on readmitting him to the hospital. I also increased the dose of his antidepressant and his antipsychotic medication.
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> 5. Opinion
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> Mr S. suffers from a severe recurrent depressive illness. He has a strong history of parasuicide. His risk of completed suicide with each attempt increases. He has a significant family history of mental illness and suicide. He has no interests outside of his family. They all live in Ireland now, apart from his son, who is in the U.K. Imprisonment in Poland, where he would be separated from his family and isolated, would be detrimental to his already fragile mental health. He needs ongoing expert psychiatric care and it appears he did not receive this in the past whilst in prison in Poland.
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> 6. Prognosis
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> Due to his long history of illness, and strong family history, he will need life long treatment and monitoring. His quality of life when ill, is extremely poor. This has a serious effect on his family also."

The second affidavit sworn by the respondent's solicitor, on the 30th May, 2014, exhibits two reports of Dr. M. S., the respondent's current psychiatrist, as well as a report of Ms. M.aria Ejchart-Dubois of the Helsinki Foundation.

Dr. S. subsequently swore his own affidavit verifying the contents of his said reports, which are dated the 20th January, 2014, and the 9th April, 2014, respectively. Ms. Maria Ejchart-Dubois also subsequently swore her own affidavit verifying the contents of her report, which is dated the 24th March, 2014.

Dr. S.'s report of the 20th January, 2014, stated (*inter alia*):

> "I have been requested to provide a legal report on the current mental state of the above named Mr. S. who is a patient of the Mental Health Service. I personally started working in this service on the 2nd of December 2013 and had not previously encountered Mr. S. I have met Mr. S. on two occasions a brief interview on the 11th of December 2013 and a more in-depth interview on the 14th of January 2014. Of note all assessments with Mr. S. have been conducted through an interpreter due to his poor English.
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> The following report is based upon those two encounters, [and] a review of Mr. S.'s case notes …. ."
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> **"Current Presenting Symptoms (14/1/2014):**
> On interview Mr. S. reported that his mood at the moment was stable. He described that over the Christmas period his mood was "Good" as his family were all at home with him. He reports that following his last clinic review in December that his mood had improved.
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> Mr. S. described that he had feelings of "Guilt" and "regret" when he thinks about his own life. He describes that when his mood is low he has thoughts of suicide and wanting to end his own life. He describes no particular time of the day when his mood is bad. He describes that his appetite at the moment is good and that his sleep can be intermittently poor at times. He did describe some enjoyable events in his life such as cooking and visiting his grandchildren.
>
> On questioning regarding his upcoming court hearings Mr. S. identified this as a significant stressor. He describes that he is concerned that if he were to return to Poland he would be isolated from his family and that his mood would deteriorate.
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> Regarding the symptoms of Auditory Hallucinations Mr. S. reports that these have become less intense over the past month than previously. He describes that he can occasionally hear voices telling him to "kill himself" when he is feeling low. He reports that these are heard in internal space currently and are associated with times when his mood is feeling low.
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> **Background Psychiatric History:**
> Following a review of Mr. S.'s case notes including a previous legal report written by Dr. F. F. on the 11th of April 2013. This reports that Mr. S. has a significant past history of recurrent depressive disorder with a number of serious suicide attempts previously.

He was admitted to Hospital on the 25/2/13 and discharged on the 21/3/13. Following discharge from the inpatient unit he attended the Psychiatric Day Hospital until 28/5/13. It appears from a review of his notes that Mr. S. had presented with a "severe depressive episode" with "psychotic symptoms". From review of his Out Patient notes it appears that Mr. S.'s recovery has been quite fragile and his symptoms have reoccurred on a number of occasions.

Psychotropic Medication:
Sertraline 200mg od po

Olanzepine 20mg od po

Premorbid Personality:
Due to the difficulties in conducting interviews through an interpreter it has not been possible for me to conduct an adequate personality assessment on Mr. S.

Impression:
Mr. S. is a 54 year old gentleman from Poland who first attended the Mental Health Service in February 2013 with symptoms consistent with a severe depressive episode associated with psychotic symptoms. Over the past eleven months Mr. S. has received a high degree of input from the Mental Health service (including admission to inpatient unit and Day Hospital facility) and his condition has significantly improved. He is currently attending the Out Patient Department on a four weekly basis.

Although Mr. S.'s mental state has improved it remains quite fragile and he is reactive to ongoing stressors. I feel that if he were to return to Poland this would be likely to lead to a relapse in his condition and an escalation of symptoms and he would be at high risk of completing suicide.

Prognosis:
Regarding his future prognosis I feel that Mr. S. should remain on his current medication until he has had a significant period of sustained recovery (circa 12 months). If he has such a period it would be reasonable to look to reduce his medication in a gradual manner, however I suspect that he would remain on some psychotropic medication long term.

Regarding specifically the use of Olanzepine. Mr. S. was commenced on this medication due to the presence of psychotic symptoms when he was admitted to the Hospital in 2013. He seems to have responded to this medication and his psychotic symptoms have significantly decreased in intensity.

Olanzepine is a member of a group of medications known as the "atypical antipsychotics" which share some features in common but do not have identical modes of action. If Mr. S. were to be discontinued from Olanzepine suddenly I feel his risk of relapse would be high. It would in theory be possible to establish Mr. S. on one of the other drugs within this class (for example Resperidone, Quetiapine) however it is not guaranteed that this would be as effective as Olanzepine and as such he would be at risk of relapse if his Olanzepine was discontinued."

Dr. S.'s follow up report dated the 9th April, 2014, dealt with his hospital admission in March 2014. It states (*inter alia*):

"Mr. S. was admitted to the Hospital due to a history of low mood for three weeks prior to presentation at the Emergency Department. Mr. S. was admitted following attending the Emergency Department with his family. His family were insistent that he attend the emergency department due to abnormalities of his behaviour.

On assessment Mr. S. reported that he had ongoing feelings of paranoia which had led (*sic*) him to sleep at night with a knife under his pillow. He reported that he was having ongoing auditory hallucinations which were derogatory in nature towards himself and others. Mr. S. reports that he felt in danger and that he needed to protect himself at home and in other environments. Mr. S. and his family were (*sic*) not able to identify any specific precipitating factor for the deterioration of his mental state.

Following admission Mr. S. was re-established on his regular medication, as there were some questions regarding compliance on the lead up to his admission. His mental state began to improve in hospital and the auditory hallucinations decreased in intensity and frequency. He engaged in Occupational Therapy (albeit with his ongoing language fluency difficulties) while an inpatient. His mood continued to improve and he was discharged home following a review on the 27th of March 2013 (*sic*)"

The reference to the 27th of March 2013 should clearly be to the 27th of March 2014. The report continues:

"Current Issues
Regarding Mr. S.'s current mental state I feel the current issues are relevant.

- Mr. S.'s illness has had a number of relapses which have not been related to specific precipitants. I feel that these give evidence to the brittleness of Mr. S.'s current depressive illness. During relapses of Mr. S.'s illness I feel he is at significant risk of self harm and suicide, as evidenced by his sleeping with a knife prior to admission. It would be of utmost importance (*sic*) that Mr. S. is maintained in an environment where he is able to access appropriate mental health services in a timely fashion.

- Regarding Mr. S.'s ongoing legal proceedings I feel that if he were to be extradited to Poland away from his family, who are living in Ireland, this would place his mental state under increased risk. As previously stated this would place Mr. S. at an increased risk of completed suicide.

- Regarding Mr. S.'s current treatment he has been stabilised on Olanzepine and Sertraline. Regarding Mr. S.'s Olanzepine treatment I feel that he has made a good recovery while on this medication. Mr. S. is tolerating Olanzepine well and appears to experience few side effects. While it would be theoretically possible for Mr. S. to be changed onto an alternative atypical antipsychotic medication I do not feel that this would currently be prudent given his brittle mental state. If Olanzepine was discontinued Mr. S. would be at significant risk of relapse of his depressive illness and consequently of a completed suicide."

The report of Ms. Maria Ejchart-Dubois of the Helsinki Foundation which is dated the 24th March, 2014, is entitled "Expert Report On the Standard of Provision of Mental Healthcare and Psychological Treatment in the Polish Prison System". Ms. Ejchart-Dubois's expertise and competence to so report is not disputed.

The report, printed in small size type font, runs to seventeen A4 pages. However, its findings and conclusions are summarized at the end of the document as follows:

"VIII. The findings of the Report
68. Polish penitentiary system is struggling with serious issues which affect the standard of incarceration of inmates and the respecting of their rights. The large prison population constitutes a particularly significant problem which is a source of other problems.

69. In overcrowded prisons it is not possible to provide adequate healthcare and psychological treatment to all inmates that need it. Additional factors include financial, personnel and organizational problems of the prison healthcare system.

70. One of the most significant problems (*sic*) of Polish penitentiary system is Insufficient number of prison officers working directly with prisoners. Especially, the lack of psychologists qualified to carry out individual risk assessment and to prevent potential conflicts among the prisoners and between prisoners and prison staff. The average number of prisoners per one psychologist is 300.

71. As a consequence of a lack or insufficient direct contact between prison service and prisoners, lack of individualization of treatment the Prison Service might be unable to assess risk and vulnerability of prisoners.

72. Polish penitentiary system does not possess enough places in psychiatric detention facilities for all prisoners who need special treatment. This, in consequence results in a situation of overcrowding in psychiatric detention centres and to many inmates with psychiatric problems going untreated for long periods of time, if they get treated at all.

73. In view of the above factors, persons suffering from psychic disturbances or illnesses are in an especially dire situation, in particular taking into account the fact that their number has not been identified.

74. ECtHR and CPT pointed numerous times to the said problems.

75. According to the legal report prepared by Dr. (*sic*) M. S. MSc, MRCPI, MICGP, MRCPsych - Consultant General Adult Psychiatrist, *"Mr. S. was commenced on Olanzepine medication due to the presence of psychiatric symptoms (...) Olanzepine is a member of a group of medications known as the "atypical antipsychotics" which share some features in common but do not have identical modes (sic) of action. If Mr. S. were to be discontinued from Olanzepine suddenly, I think the risk of relapse would be high. It would in theory be possible to establish Mr. S. on one of the other drugs within this class(...) however it is not guaranteed that this would be as effective as Olanzepine and as such he would be at risk of relapse if his Olanzepine was discontinued*".

76. Although Mr. S. could undergo appropriate pharmacological therapy (Olanzepine therapy is available in Polish penitentiary system), there is no guarantee that any additional therapy would be provided to him. Waiting period before he is provided with an adequate psychiatric consultation would depend on the unit in which he would stay. Depending on the frequency of psychiatric visits in a given unit, it could vary between several days and several weeks.

77. Due to the nature of the condition it is possible that he could be exposed to the risk of aggressive behaviour on part of other inmates and that it would be especially difficult to adapt (*sic*) himself to the prison isolation conditions in Poland."

Ms. Ejchart-Dubois subsequently provided a short addendum to her said report dated the 28th May, 2014, updating certain statistics relied upon in the original report. The update confirms a continuing basis for concerns expressed in her main report about long waiting lists for patients in Polish prisons who require medical treatment. In particular she stated:

"2. The capacity of the system to house inmates who required psychiatric hospitalisation has been at the following levels: 2006 – 169%, 2007 – 177%, 2008 – 198%, 2009 – 247%."

Further, her report outlines that the available information for the last date of each year showed that the capacity of psychiatric hospitalisation in Polish prisons was:

"2010 – 205%, 2011 – 197%, 2012 – 201%, 2013 – 168%."

Finally, in this review of the evidence adduced by the respondent, it is necessary to quote from a third report provided by Dr. S. in the course of the hearing, for the purpose of updating the Court as to the respondent's current mental health situation. This third report is dated 5th November, 2014, and states:

"I am writing a short note to clarify the current situation regarding the above named Mr. S. Mr. S. was recently admitted to the Department of Psychiatry due to suicidal ideation and low mood. He presented to the Out Patient Clinic on the 1st October reporting that he had auditory hallucinations and low mood. He described having suicidal ideation but no plans or intent.

Following this presentation he was admitted to the Hospital on the 3rd of October. He reported that he was compliant with his regular medication during his relapse and his family corroborated this.

Following admission to hospital Mr. S.'s mood improved. He was referred to Occupational therapy and engaged well with intervention. He reported that the suicidal ideation receded over the admission as did the auditory hallucinations. He was discharged home well on the 10th of October and reviewed in Out Patients on the 15th of October. He reported that his mood remained improved.

Impression:
Mr. S. is a gentleman with a history of severe recurrent depressive episodes with psychotic symptoms. He had a recent relapse of his symptoms despite being on maximum dosages of both antidepressant and antipsychotic medication. I feel this episode demonstrates the fragility of Mr. S.'s current mental state. I feel that Mr. S. remains at high risk of relapse of

his illness and as such remains at high risk of suicide.

Plan:
Mr. S. continues to attend the local Mental Health Service (sic) and is reviewed on a regular basis and is to be maintained on his current medication."

Additional Information
By a series of letters during May and June, 2014 the respondent's affidavit, the medical reports then to hand, and the report of Ms. Ejchart-Dubois, were forwarded by the Irish Central Authority to the Polish authorities in order to afford them an opportunity to comment upon them, if they wished to do so.

In a letter dated the 12th June, 2014, by way of initial reply, a representative of the 3rd Criminal Department of the Regional Court in Poznañ (the issuing judicial authority stated (*inter alia*):

> "Regional Court in Poznañ can guarantee that the requested person will be provided with proper medical care, including specialist psychiatrist care, while serving his sentence in the Polish prison system, in accordance with the provisions of the Polish criminal sentence execution code. Pursuant to article 101 of the criminal sentence execution code, persons placed in penitentiary units shall be immediately advised of their rights and duties and shall be able to familiarise themselves with the provisions of the criminal sentence execution code and the organisational regulations applicable to persons serving custodial sentences, and shall undergo appropriate medical examinations and sanitary procedures. Furthermore, pursuant to article 120(I)(I) of the criminal sentence execution code, every inmate has the right to receive appropriate nutrition, clothes, living arrangements, living space and medical care and proper hygiene. In conclusion, the surrender of [I. S.] to Poland will not interrupt the pharmacological treatment he is currently undergoing, as he will be immediately placed under specialist psychiatric care."

Subsequent to this, the addendum material provided by Ms. Ejchart-Dubois was forwarded by the Irish Central Authority to the Polish authorities. This elicited a further response, dated the 11th July, 2014, which stated:

> "To comment again on the issues raised, we wish to advise of the following:
>
> 1. With regard to the assertions found in the affidavit of I. S. sent on 17th May 2014, this court at this stage of proceedings does not contest the fact that he suffers from certain mental disorders; this circumstance alone cannot however constitute a basis to refuse to extradite the requested person to Poland on foot of our European Arrest Warrant. The respondent's assertions that he was not given proper psychiatric care while in custody in the Czarne prison are unsubstantiated and have not been backed with any evidence. The fact that the respondent was not happy with the prison conditions does not on its own prove that these conditions did no meet the required standards.
>
> 2. With regard to the assertions made by the respondent's representative, they are based only on the respondent's affidavit, on which we have commented above, and the report, on which we comment on in section 3 of this letter.
>
> 3. The data found in the expert report drawn up by Ms Maria Ejchart-Dubois (*sic*), dated 24th March 2014, aim at breaching the principle of mutual trust between the Member States of the European Union. In this regard, we wish to reiterate the comments found in our letter dated 12th June 2014 and we guarantee that the requested person will be provided with proper medical care, including specialist psychiatrist care, while serving his sentence in the Polish prison system, in accordance with the provisions of the Polish criminal sentence execution code. I. S. extradition to Poland will not interfere with his pharmacological treatment, as he will be immediately placed under specialist psychiatric care.
>
> We furthermore wish to advise that the respondent may petition the District Court in W[l]growiec for a deferment of the execution of the custodial sentence, attaching an expert opinion on the state of his mental health to the request."

Submissions on behalf of the Respondent
Counsel on behalf of the respondent made a number of points about the evidence in the case, and the medical evidence in particular. The following matters were emphasised:

i. The respondent has a long personal and family history of mental illness, as set out in his own affidavit and also in the medical reports exhibited;

ii. The respondent has attempted suicide on a number of occasions, including in 2001;

iii. The respondent was hospitalised on two occasions during the course of the present proceedings (February to March 2013 and in March 2014 respectively). In February 2013, the respondent was admitted to hospital after attempting to hang himself and to stab himself in the chest with a knife. In March 2014, he was found to be sleeping with a knife under his pillow;

iv. Dr. F. F. diagnosed the respondent as having *"severe recurrent depressive illness"* in April 2013;

v. Dr. F. further stated that:

> *"Imprisonment in Poland, where he would be separated from his family and isolated, would be detrimental to his already fragile mental health."*

She also stated that:

> *"His risk of completed suicide with each attempt increases."*

vi. Dr. S. stated in his January 2014 report that:

"Although Mr. S.'s mental state has improved it remains quite fragile and his is reactive to ongoing stressors. I feel that if he were to return to Poland this would be likely to lead to a relapse in his condition and an escalation of symptoms and he would be at high risk of completing suicide.

vii. Dr. S. stated in his April 2014 report that:

"Mr. S.'s illness has had a number of relapses which have not been related to specific precipitants. I feel that these give evidence to the brittleness of Mr. S.'s current depressive illness. During relapses of Mr. S.'s illness I feel he is at significant risk of self-harm and suicide, as evidenced by his sleeping with a knife prior to admission. It would be of upmost importance (sic) that Mr. S. is maintained in an environment where he is able to access appropriate mental health services in a timely fashion.

Regarding Mr. S.'s ongoing legal proceedings I feel that if he were to be extradited to Poland away from his family, who are living in Ireland, this would place his mental state under increased risk. As previously stated this would place Mr. S. at an increased risk of completed suicide."

viii The information contained in the addendum report of Ms. Ejchart-Dubois, and specifically referred to earlier in this judgment, confirms a serious on-going problem with overcrowding in Polish Prison psychiatric facilities.

In the written submissions counsel for the respondent indicated that his client was also relying on the *United States Department of State, Country Reports on Human Rights Practices: Poland 2013* (hereinafter referred to as "the U.S. State Dept. report"). Some brief reference was also made to it in oral argument.

Counsel for the respondent submitted that while the respondent acknowledges that additional information has been obtained from the Polish authorities, and that the issuing judicial authority asserts that the respondent will be immediately placed under specialist psychiatric care, this assurance does not come from the Polish Prison Service and there is no statistical information whatsoever to support these assurances.

The Article 3 ECHR based objection

Counsel for the respondent accepted that under the existing and established jurisprudence, the respondent must show that there are reasonable grounds for believing that a real risk exists that he will be subjected to conditions/treatment in Polish prisons which would be contrary to Article 3 of the ECHR. The applicable principles are those expounded in the Supreme Court's judgments in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45, [2010] 3 I.R. 783. Counsel for the respondent also accepts that this Court's judgment in *Minister for Justice, Equality and Law Reform v. Machaczka* [2012] IEHC 434 (Unreported, High Court, Edwards J., 12th October, 2012) is relevant to this case.

Reliance was also placed on *Minister for Justice, Equality and Law Reform v. Mazurek* [2011] IEHC 204 (Unreported, High Court, Edwards J., 13th May, 2011) in which this Court attempted to distil, in bullet point form, the applicable principles set forth in the judgments in *Rettinger*. Counsel for the respondent also relied on *Attorney General v. O'Gara* [2012] IEHC 179 (Unreported, High Court, Edwards J., 1st May, 2012), an extradition case, rather than a European arrest warrant case, in which this Court sought to apply the *Rettinger* principles, as identified by this Court in *Mazurek*, to the extradition context with the appropriate modifications.

This Court said in *Mazurek*:

"It is sufficient to state that the following principles can be distilled from the authorities:

- 'The normal presumption is' (per Fennelly J in *Minister for Justice, Equality and Law Reform v Rettinger* [2010] IESC 45) 'the courts of the executing member state, when deciding whether to make an order for surrender must proceed on the assumption that the courts of the issuing member state will, as is required by Article 6.1 of the Treaty on European Union, "respect … human rights and fundamental freedoms".' (per Fennelly J in *Minister for Justice, Equality and Law Reform v Stapleton* [2008] 1 I.R. 669);

- However, 'by virtue of the absolute nature of the obligation imposed by Article 3 of the European Convention on Human Rights and Fundamental Freedoms, which provides that *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*, the objectives of the system of surrender pursuant to the Council Framework Decision on the European Arrest Warrant cannot be invoked to defeat an established real risk of ill-treatment contrary to Article 3.' (per Fennelly J in *Rettinger*);

- The two foregoing principles are readily reconcilable and they do not imply that 'there is any underlying conflict between the Convention and the Framework Decision.' (per Fennelly J in *Rettinger*);

- The subject matter of the court's enquiry 'is the level of danger to which the person is exposed.' (per Fennelly J in *Rettinger*);

- 'it is not necessary to prove that the person will probably suffer inhuman or degrading treatment. It is enough to establish that there is a *"real risk "* (per Fennelly J in *Rettinger*) "in a rigorous examination."' (per Denham J in *Rettinger*). However, the mere possibility of ill treatment is not sufficient to establish an applicant's case. (per Denham J in *Rettinger*);

- A court should consider all the material before it, and if necessary material obtained of its own motion. (per Denham J in *Rettinger*);

- Although a respondent bears no legal burden of proof as such a respondent nonetheless bears an evidential burden of adducing cogent 'evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR.' (per Denham J in *Rettinger*);

- It is open to a requesting State to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from an applicant as to conditions in the prisons of a requesting State with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the applicant were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR. On the other hand, the requesting State may present evidence which would, or would not, dispel the view of the court. (per Denham J in *Rettinger*);

- The court should examine the foreseeable consequences of sending a person to the requesting State. (per Denham J in *Rettinger*). In other words the Court must be forward looking in its approach;

- The court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to governmental sources, such as the U.S. State Department."

Counsel for the respondent submitted that it is a matter for this Court to determine whether, on the evidence before it, there are reasonable grounds for believing that there is a real risk that the respondent's Article 3 ECHR rights may be breached if he is returned to Poland to serve a sentence or sentences, and/or to be detained awaiting trial in respect of the matters for which he has yet to be tried, in a Polish prison. It was submitted that such a real risk does arise, and that there is cogent evidence that supports its existence.

Counsel for the respondent emphasised that the respondent is not making a generalised case that the Polish prison system is unsuitable or unable to cater for persons who are incarcerated even if such persons have or may develop health issues. The Court is not being asked to make such a wide ranging assessment. However, counsel further submitted that this was not to make any concession in relation to the ability of the Polish Prison system to cater for a person in the situation of the respondent. It was submitted to the Court that the respondent's particular circumstances are such that he requires on-going and intensive care and treatment. The respondent's health is described as brittle and fragile by his treating consultant psychiatrists and they have also opined that he will be at an increased risk of suicide in the event that he is extradited to Poland. The report by Ms. Ejchart-Dubois points to the existing and on-going delays in the provision of adequate health care to those suffering from mental illness Polish prisons. Counsel further submitted that given the warnings outlined by Dr. F. and, in more recent times, by Dr. S., the respondent has raised reasonable grounds for believing that he would be placed at a real risk of being subjected to inhuman or degrading punishment or treatment in the Polish prisons, by virtue of a lack of adequate medical and psychiatric care.

The Article 8 ECHR based objection

Counsel for the respondent relies upon the legal principles applicable to an adjudication of an Article 8 ECHR based objection in the European arrest warrant context as identified by this Court in *Minister for Justice and Equality v. R.P.G.* [2013] IEHC 54 (Unreported, High Court, Edwards J., 18th July, 2013). Counsel further relies upon this Court's decisions in *Minister for Justice, Equality and Law Reform v. Machaczka* (previously cited), and in *Minister for Justice and Equality v. E.S.* [2014] IEHC 376 (Unreported, High Court, Edwards J., 19th June, 2014).

With reference to the evidence before the Court, counsel for the respondent relies in particular upon the following points in support of the Article 8 ECHR issue:

i. The nature of the offences themselves, in that many of the sums involved are not substantial;

ii. The moderate nature of the sentences imposed for those offences, of which the respondent has been convicted, which may show that the offences are not at the most serious end of the criminal spectrum;

iii. The prosecution offence (denoted as E.2.D. on the warrant) occurred sometime in 1999. The respondent remained in Poland until 2006 but it appears that the aforementioned offence was not prosecuted during that period. The respondent also spent some time serving the sentence denoted at E.2.B. of the warrant during that period;

iv. The respondent's ill-health and all of the information attaching to same. It was submitted that the respondent is in an extreme position and that his circumstances are at the most severe end of the spectrum as regards his risk of completed suicide if he is surrendered to Poland;

v. The evidence from Dr. F. and Dr. S. in relation to the involvement of the respondent's family in his care and their views on any disruption to that which would arise from his surrender. It was submitted that their views show that the disruption of his family life would place him at an increased risk of suicide. It was submitted that any surrender in those circumstances would be disproportionate to the respondent's right to privacy under Article 8 of the ECHR and/or his right to family life pursuant to the same Article;

vi. The information in Ms. Ejchart-Dubois's reports about the Polish prison conditions and the conclusions she draws in relation to same.

The respondent does not accept that the assurances given by the Polish authorities can overcome the express evidence before the Court concerning the likely interferences with the respondent's enjoyment of family life in the event that he is surrendered, and in particular, the denial to him of the essential support that he receives from his family in helping him to cope with his serious mental health problems, in circumstances where the ability of the Polish prison system to care for him adequately, in the absence of such family care and support, is demonstrably lacking. It was submitted to the Court that the respondent does not contest the bona fides of the Polish courts in setting out the matters contained in the additional information (quoted earlier in this judgment). However, it was contended that the express evidence from the psychiatrists, who have provided expert opinions to this Court, and the further evidence from Ms. Ejchart-Dubois, is highly cogent and is to be regarded as altogether more persuasive.

Submissions on behalf of the applicant

Counsel for the applicant, while accepting that the legal principles set forth in *Minister for Justice, Equality and Law Reform v. Rettinger* apply in the context of the Article 3 ECHR based objection, and that those legal principles set forth in *Minister for Justice and Equality v T.E.* [2013] IEHC 323 (Unreported, High Court, Edwards J., 19th June, 2013) and in *Minister for Justice and Equality v. R.P.G.* (previously cited) apply in the context of the Article 8 ECHR based objection, has referred the Court to a number of judgments from courts at various levels in the United Kingdom in cases based upon an alleged risk of suicide.

The Court was referred to *Valintelis v. Prosecutor General's Office, Lithuania* [2014] EWHC 1527 (Admin), [2014] All E.R. (D) 149, in which the respondent judicial authority sought the appellant Lithuanian national's extradition pursuant to a European arrest warrant in order to stand trial for the theft of €14,000. The appellant had been diagnosed with schizophrenia and relied on his family for support. There was a risk that he would attempt suicide if extradited. The district judge ordered the appellant's extradition and he appealed. Dismissing the appeal, the High Court of England and Wales, Administrative Division, held that the appellant could not establish that his extradition would be oppressive due to his mental condition as there had been no evidence that he would not receive treatment in prison in Lithuania. Further, the appellant's extradition would not be a disproportionate interference with his right to family life in the circumstances. Giving judgment in the matter *ex tempore* on the 16th April, 2014, Cranston J. stated at para. 14 that:

> "There is now very clear binding authority in *Wolkowicz v Lithuania* [2013] EWHC 102 (Admin), [2013] 1 WLR 2402 . That was a lead case where three appeals were heard together and the court reviewed the authorities. The judgment was given by Sir John Thomas, then President of the Queen's Bench Division. In the court's judgment, Lord Thomas referred to the principles that had been collected by Aikens LJ in *Turner v Government of United States of America* [2012] EWHC 2426 (Admin), and said that the key issue in almost every case will be the preventive measures in place to prevent any attempt of suicide being successful:
>
> > 'It will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary … [It] should not be necessary to require any assurances from requesting states within the European Union … It is therefore only in a very rare case that a requested person will be likely to establish that measures to prevent a substantial risk of suicide will not be effective.' (Paragraph 10)"

The Court was further referred to the case of *Michal Rawski v. The Lublin Provincial Court Poland* [2013] EWHC 668 (Admin), again a decision of the High Court of England and Wales, Administrative Division, a case where surrender on foot of a European arrest warrant was resisted, *inter alia*, on the grounds that the requested person presented a suicide risk in the event of being surrendered. In his judgment, Simon J. in rejecting the arguments based upon suicide risk, stated, at para. 11, that:

> "Proposition 5, I do not accept on the present evidence that the risk of succeeding in committing suicide is sufficiently great to result in oppression 'whatever steps are taken to prevent it'. As already noted, the District Judge said that the CPS should pass on to the prison authorities in Poland the recommendation that he be subject to regular monitoring procedures. Perhaps somewhat anomalously the argument was raised that this itself might amount to oppression. I reject that argument.
>
> Proposition 6, nor do I accept that there are insufficient arrangements in place in the Polish prison system to cope with the appellant's mental condition and risk of suicide. There is a presumption, which can only be displaced on cogent evidence, that a requesting state member of the European Union will be able to comply with its ECHR obligations, and that the risk of suicide in case of extradition will be no greater in one country than another."

The Article 3 ECHR based objection

Counsel for the applicant has submitted that the facts of this case are markedly different to those in the case of *Minister for Justice, Equality and Law Reform v. Machaczka* (previously cited) which essentially turned on the fact that the necessary pharmacological treatment of the respondent could not be continued in the issuing state, in circumstances where such treatment was not licensed in that country. However, the report of Ms. Ejchart-Dubois, upon which the entire Article 3 ECHR argument is predicated, predates the receipt from the issuing State of guarantees of immediate specialist psychiatric care. Counsel note that it is also acknowledged by Ms. Ejchart-Dubois that the specific drug, namely Olanzapine, which is stated by the respondent's treating doctors to be effective, is available in the issuing State. In so far as Ms. Ejchart-Dubois speculates regarding a delay in the respondent receiving the drug Olanzapine, this view predates the receipt of the aforementioned guarantees.

Counsel for the applicant further relies upon s. 4A of the Act of 2003, as inserted by s.69 of the Criminal Justice (Terrorist Offences) Act 2005, which provides that:

> "It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown."

In that regard, recital 12 to the Framework Decision makes clear that it respects fundamental rights. As a consequence, s.4A of the Act of 2003 has long been interpreted as presuming, in the absence of cogent rebutting evidence, that an issuing state will respect the fundamental rights of a requested person in the event of that person being surrendered.

Counsel for the applicant contends that there is insufficient evidence before the Court to rebut the presumption that the respondent will be properly treated in the issuing state. On the contrary, it is submitted that there is a positive and clear guarantee that he will be appropriately cared for.

The Article 8 ECHR based objection

In this context, counsel for the applicant has referred the Court to certain passages within it's own judgments in the cases of *Minister for Justice, Equality and Law Reform v. Machaczka* (previously cited), *Minister for Justice and Equality v. J.A.T.* [2014] IEHC 320 (Unreported, High Court, Edwards J., 9th May, 2014) and *Minister for Justice and Equality v. E.S.* (previously cited).

In *Machaczka* I stated, at paras. 159-164, that:

> "159. The question for the Court in the present case is whether truly exceptional circumstances exist such as would justify this Court in concluding that it would be a disproportionate measure to surrender the respondent having regard to his rights, and those of his partner Ms. Malecki, and their two daughters, to respect for their family life under article 8 E.C.H.R. After much reflection I have concluded that truly exceptional circumstances do exist.
>
> 160. First, there is the strong medical evidence that the respondent suffers from a progressive schizoaffective disorder, characterised by low mood symptoms coupled with psychotic symptoms such as auditory hallucinations and paranoid

beliefs, which has proved difficult to treat in his particular case. He has made two serious attempts at suicide in the past, and these crises were linked to the break-up of his first marriage in Poland and in particular the enforced separation from a son of that marriage, who would now be about thirteen years old.

161. Secondly, his condition has been somewhat stabilised by Dr. Doran through the use of Clozapine combined with Cognitive Behavioural Therapy, in an environment where his family here in Ireland have been very supportive of him. In his evidence, which I accept, Dr. Doran stressed the importance of this family support for the maintenance of the respondent's mental stability.

162. Thirdly, if the respondent is returned to Poland he is likely to be remanded in custody, and although the Court accepts that the Polish authorities will do all in their power to look after him and will afford him the same standard of psychiatric treatment and medical care as is available to the general populace of Poland, the fact remains that Clozapine is not licensed in Poland for prescription to patients suffering from schizoaffective disorder, and the Court also has unchallenged evidence that Cognitive Behavioural Therapy would also be unavailable to him. Further, and most significantly, he would be separated from his family who, as I have said, are providing essential support for him.

163. Fourthly, the evidence of Dr. Doran is that if he is returned to Poland there is *a very serious risk that he will commit suicide* (the Court's emphasis), and that the tipping or precipitating factors are likely to be the withdrawal of Clozapine treatment, coupled with the distress of being separated from his family, in circumstances where no other effective or very effective alternative treatment is available to be substituted for the Clozapine treatment. Such anti-psychotic and other medications as are available in Poland have been tried previously but have proved to be of little effect in the respondent's case.

164. Fifthly, it is hardly realistic or reasonable to expect that the respondent's partner, Ms. Malecki, and the couple's two daughters, should have to (sic) move to Poland in the event of the respondent being surrendered, in circumstances where they have put down roots here, and Ms. Malecki has her own business here. Nevertheless, their support for the respondent to date has been impressive and they might well elect to do so, as difficult as that choice might be to make, for the purposes of being able to visit him more conveniently. Be that as it may, contact will inevitably be confined to periodic prison visits and they will be unable to provide the level of continuing family support that Dr. Doran has stressed is so important in the respondent's case."

It should be noted by any reader of this judgment that, while *Machaczka* was decided at a time where an exceptionality requirement was thought to exist, the jurisprudence in regard to Article 8 objections has moved on. It was subsequently held by this Court in *Minister for Justice and Equality v T.E.* (previously cited), and reaffirmed in *Minister for Justice and Equality v R.P.G.* (previously cited) that the test is one of proportionality, not exceptionality. The demonstration of exceptional circumstances is not required to sustain an Article 8 type objection because in some cases the existence of commonplace or unexceptional circumstances might, in the event of the proposed measure being implemented, still result in potentially affected persons suffering injury, prejudice or harm. The focus of the court's enquiry should therefore be on assessing the severity of the consequences of the proposed extradition measure for the potentially affected persons or persons, rather than on the circumstances giving rise to those consequences. Having stated that, it was legitimate to characterise the particular circumstances of the *Machaczka* case as being exceptional, amongst which was the fact that his proposed rendition would have exposed him to exceptionally severe consequences.

The Court was also referred by counsel for the applicant to the following passage from *Minister for Justice and Equality v. J.A.T.*, where I stated at para. 145 that:

"The Court has considered in great detail the personal circumstances of the respondent and his family, including the very specific vulnerabilities of the respondent, and his son D., on account of their medical and mental health difficulties. In doing so, I have sought to apply the principles that I have outlined above and to be rigorous in considering every relevant aspect. However, having done so, I have concluded that although it will be distressing and difficult for the whole family, and particularly for the respondent and D., if the respondent is surrendered, the consequences for them of the proposed surrender would not be so profound or extraordinary as to outweigh the substantial public interest that exists in the respondent's rendition."

In addition the Court was referred to the following passage from its judgment in *Minister for Justice and Equality v. E.S., in which I stated at paras. 70-73 that*:

"70. The respondent has a number of mental health issues. The Court has already extensively reviewed the medical evidence and it is not necessary to repeat it. In summary, the picture is one of a psychologically vulnerable young woman who has suffered from chronic low-grade depression and anxiety throughout her life, and who is now experiencing increased depression and anxiety largely in reaction to concerns arising from the present proceedings and worry about what may happen to A. in the event that she, the respondent, is surrendered. The Court is satisfied that there is strong medical evidence, which is not challenged, that the respondent has had, and continues to have, serious suicidal ideation, and that there is substantial concern that she may indeed take her own life. Dr. O.D., who does not regard the respondent as 'bluffing', characterised her situation thus:

> 'In terms of protective factors from suicide, she seems to have only the immediate care of her daughter to keep her from completing suicide. She has no spiritual beliefs that would serve as a barrier to suicide. She sees only the choice between 'ruining' her daughter's life by going to prison and subsequently re-emerging to upset her daughter further or giving her daughter to her brother, [Ad.], to raise so that [A.]'s only upset would be a short-term loss associated with her mother no longer being around. Her careful consideration of these options is of grave concern to me.'

71. While it cannot be the sole determining factor, it would clearly be in the best interests of A. for the respondent not to be surrendered. Both mother and daughter are extremely close, and to separate them in circumstances where the child has no significant relationship with any other adult is likely to be profoundly distressing, and potentially damaging, for her. The experts from XXX Psychological Services have opined that the respondent's separation from her daughter would have a devastating and irreversible effect on A.'s life and development, both presently and into the future.

72. It is a also a matter of significance that this is not a case where the respondent relies upon roots put down in circumstances where she knew that she was being pursued by the issuing state, and in the knowledge that she was in peril of facing a rendition request at any time. The evidence is all one way that the respondent was not aware that she

was the subject of any criminal investigation at the time at which she left Poland, and had no reason to believe that she would be sought for criminal prosecution. The Court accepts her deposition, in the absence of evidence to the contrary, that she merely believed that she was being pursued for civil debts, and that, even in regard to that, she intended to make restitution when in a position to do so. There is evidence of some actual restitution being made, although it appears to fall a long way short of being full restitution. Nevertheless, the fact of it having been made in circumstances where the respondent was unaware of any criminal investigation in Poland, or of potential charges in Poland, lends some support to her claims, and is inconsistent with the contention that she fled Poland to avoid criminal prosecution. If she had indeed fled to avoid criminal prosecution, she would have been extremely foolish to risk disclosing her whereabouts by making small restitution payments. Indeed, her entire behaviour, and that of her parents, is inconsistent with the contention that she left Poland as a fugitive. In this Court's assessment, the respondent was justified in believing that she was free to put down the roots in this jurisdiction that she has put down, and she is now significantly prejudiced by the delay of the authorities in pursuing her.

73. In conclusion, this Court is satisfied that the respondent's surrender will be injurious and harmful, as opposed to distressing and difficult, in its consequences to those concerned. Having regard to the fact that there exists only a moderate public interest in the respondent's rendition, I am satisfied that the adversities that may have to be faced in the event of the respondent being surrendered are such as to render the proposed surrender a disproportionate measure in all the circumstances of the case. The Court will, in those circumstances, uphold the s. 37(1) objection and refuse to surrender the respondent."

Counsel for the applicant submitted that it is clear from the passages quoted above that the circumstances of each case require a careful and thorough analysis, in accordance with the 22 point approach commended by this Court in *Minister for Justice and Equality v. T.E.* (previously cited), and *Minister for Justice and Equality v R.P.G.* (previously cited). Moreover, it is clear that each case will turn on its own facts. The consequences of the proposed rendition or extradition measure must be sufficiently profound or extraordinary so as to outweigh the public interest that exists in the proposed rendition measure being carried out. The Court was urged to follow its own injunction, stated in *Minister for Justice and Equality v. T.E.*, as stated in the following terms:

"17. It will be necessary for any Court concerned with the proportionality of a proposed extradition measure to examine with great care in a fact specific enquiry how the requested person, and relevant members of that person's family, would be affected by it, and in particular to assess the extent to which such person or persons might be subjected to particularly injurious, prejudicial or harmful consequences, and then weigh those considerations in the balance against the public interest in the extradition of the requested person."

It was submitted by counsel for the applicant that in this case the respondent sought to serve the balance of certain sentences which, by his own admission, he had left Poland to avoid serving. He was also sought for the purpose of prosecution in respect of the use of false instruments. One of the offences for which he had been sentenced related to a fraud in an amount equivalent to €18,500. It is submitted that in these circumstances there is a strong continuing public interest in the rendition of the respondent to the issuing state.

The Court was reminded that at point 11 of the 22 principles enunciated in *Minister for Justice and Equality v. T.E*. it had indicated that:

"The gravity of the crime is relevant to the assessment of the weight to be attached to the public interest. The graver the crime, the greater the public interest. However, the opposite effect, namely 'the lesser the crime the lesser the interest' may not follow in corresponding proportion. Where on the spectrum the subject offence may sit, is an aspect of each case which must also be explored as part of the process."

This Court was further reminded that at point 6 in those 22 principles it is also stated that:

"The correct approach is to balance the public interest in the extradition of the particular requested person against the damage which would be done to the private life of that person and his or her family in the event of the requested person being surrendered".

Much of the case being made by the respondent demands that the Court conclude that his particular needs will not be met by the issuing state and therefore that his right to respect for his private life and family life will be damaged. It was submitted that this contention ignores the plain and clear guarantees of the issuing state concerning how he will be treated.

In conclusion, counsel for the applicant submitted that, unlike in the case of *Minister for Justice and Equality v. E.S.*, there is no compelling evidence in this case regarding the potential of damage to the family. Rather, what is described is a supportive family that are resident in this jurisdiction who, the Court is urged to note, appear to have been available during the period in Poland when the respondent suffered significant mental health issues.

Analysis and Decision

This Court is satisfied that the medical evidence before it establishes that the respondent is seriously mentally ill and that he suffers from severe recurrent depressive episodes with psychotic symptoms. He has reasonably frequent episodes of suicidal ideation, and a history of self harming and suicide attempts. Moreover, the evidence is that the risk of completed suicide increases with each attempt. The respondent's condition has been somewhat stabilised, though not wholly stabilised, through a combination of medication, regular attendance at psychiatric clinics and close monitoring and supervision by his obviously caring and loving family. However, despite being on maximum dosages of both anti-depressant and anti-psychotic medication, he has had frequent relapses. Further, the Court has before it uncontested evidence that in the event of the respondent being returned to Poland on foot of the European arrest warrant, it is likely that there would be a further relapse or relapses in his condition, an escalation of symptoms, and that he would be at high risk of completing suicide. The key to his protection and future welfare is that he should be maintained in an environment where he is able to access appropriate mental health services in a timely fashion, and that he have continued close monitoring, supervision and support similar to that which is currently being provided by his family.

The Article 3 ECHR based objection

The Article 3 ECHR case made by the respondent is problematic for him in the following circumstances. The starting point for this Court is s.4A of the Act of 2003, which obliges this Court to presume, unless there is cogent evidence tending to rebut that which is to be presumed, that the issuing state will respect the fundamental rights of the respondent. Accordingly the respondent bears the

burden of adducing cogent evidence to suggest that that which is to be presumed is not the case.

In terms of Article 3 ECHR, it is not necessary to adduce evidence that the person will *probably* suffer inhuman or degrading treatment, or threat to bodily integrity or to life. It is enough to establish that there is a "real risk" that that which is apprehended might occur. However, demonstration of the mere possibility of ill treatment is not sufficient to establish a respondent's case. Moreover, the circumstances or deficiencies complained of as giving rise to the apprehended risk must be shown to exist at a level of seriousness sufficient to establish the reality of the alleged risk. With regard to the latter point, this Court, in its judgment in *Minister for Justice, Equality and Law Reform v. Machaczka* (previously cited) stated:

> "In so far as article 3 E.C.H.R. is concerned, it is well established that for this provision to be engaged a person has to be subjected to ill-treatment. Moreover, the ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3 E.C.H.R. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Vilvarajah and Others v. the United Kingdom,* E.Ct.H.R. 30 October 1991, Series A, no. 215, p. 36, § 107; *Kud³a v. Poland (sic)* [GC], App No. 30210/96, § 91, E.Ct.H.R. 2000-XI; and *Peers v. Greece,* App No. 28524/95, § 67, E.Ct.H.R 2001-III). The European Court of Human Rights has consistently stressed that the suffering and humiliation involved must in any event go beyond that which is inevitably connected with a given form of legitimate treatment or punishment. As regards prisoners or detainees, the Court has repeatedly noted that measures depriving a person of his liberty may often involve such an element. However, under article 3 E.C.H.R, the state must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.

The main evidence adduced by the respondent in support of his Article 3 ECHR case is the evidence of Ms. Ejchart-Dubois. The contents of her report, though not accepted by the Polish authorities, have not been engaged with by the issuing judicial authority or disputed in any meaningful sense. The Court is therefore disposed to accept that psychiatric care for prisoners suffering from mental health problems in Polish prisons is, in many cases, suboptimal in that: there are sometimes delays in accessing treatment; resources are scarce; there is a shortage of suitably qualified personnel and there continues to be a significant overcrowding problem.

Moreover, the Court accepts that in some circumstances these conditions of detention, individually or cumulatively, could in theory reach the threshold of severity amounting to the inhuman or degrading treatment of a particular prisoner contrary to Article 3 ECHR. However, as emphasised in *Rettinger*, every case will be dependent on its individual circumstances.

Every state is entitled to establish and operate prison and detention facilities as part of its criminal justice and penal systems. Inevitably, a certain percentage of prisoners will be in the category of vulnerable mentally ill persons at high risk of suicide. Such persons have to be coped with, cared for, and protected from opportunities for self harming. However, even in the best prison systems some prisoners will from time to time succeed in committing suicide. The Court notes that the report of Ms. Ejchart-Dubois, while seriously critical of mental health care in the Polish prison system in the respects mentioned above, does not specifically address the care of suicidal prisoners. In particular, there is nothing in the report to suggest that the rate of suicides in Polish prisons is any higher than the rate elsewhere in the European Union. Moreover, the respondent has adduced no evidence concerning how such limited resources as do exist for mental health care in Polish prisons are in fact being applied and utilised by the Polish authorities. The Court is entitled to presume, unless there is cogent evidence to the contrary, that the issuing state will respect the fundamental rights of a person in the respondent's position. Therefore, the Court is entitled to presume, in the absence of evidence to the contrary, that, notwithstanding scarcity of resources, such resources as are available in the Polish system will be deployed for the protection of a vulnerable mentally ill prisoner at high risk of suicide, such as the respondent. If that were not happening one would expect to see evidence of a higher rate of prison suicides in the state in question than in the prisons operated by other member states. The evidence before the Court in this case does not suggest a significantly higher incidence of suicides in Polish prisons compared with prisons in other member states. Indeed, no comparative evidence at all has been adduced, and nowhere in the evidence before the Court is it suggested that there is a disproportionately high rate of suicides within the Polish prison system.

A further point of note is that the delay in initial assessments of prisoners' risks and vulnerabilities as described by Ms. Ejchart-Dubois does not provide a basis for the concern in the present case. The respondent does not require initial assessment and diagnosis. If he is surrendered, it will be in circumstances where the Polish prison authorities will have been provided with the full clinical picture concerning his morbidity and mental ill-health as ascertained in this jurisdiction.

It will be recalled that counsel for the respondent indicated that, in addition to relying on the report of Ms. Ejchart-Dubois, his client was also relying on the U.S. State Dept. report. The Court has read this report and it in fact contains little of specific relevance to the issue with which the Court is concerned. The only commentary on prison health care in Poland contained within the report in question, beyond noting that in the first nine months of 2012 some twelve prisoners had committed suicide (out of a total prison population of in excess of 80,000 prisoners), was the following passage (at pp. 3-4) which stated that:

> "During the year a report by the Helsinki Human Rights Foundation described systemic problems with medical care in prisons. These included inadequate medical staffing - for instance, a lack of specialized medical care and too few doctors to handle the workload - and poor medical infrastructure. The report also listed a number of specific problems raised by individual prisoners, such as inadequate care for prisoners with disabilities and facilities unequipped for the needs of elderly prisoners. The report was the result of a two-year assessment of medical care in detention facilities around the country."

The Court is fully alive to and appreciates that Ms. Ejchart-Dubois was the co-ordinator of the project leading to the report of the Helsinki Foundation referred to in the passage just quoted. Indeed, Ms. Ejchart-Dubois refers to this herself in the report that she prepared for this Court. However, in so far as the U.S State Dept. report itself is concerned, it has nothing to add to what was stated in the Helsinki Foundation report, and re-iterated by Ms. Ejchart-Dubois in the report that she prepared for this Court.

On the more general issue of reports, such as the U.S. State Dept. report, and the Helsinki Foundation report, this Court wishes to re-iterate certain remarks that it made in *Machaczka*. The Court stated that:

> "Moreover, with particular respect to the United States Department of State, *Country Reports on Human Rights Practices: Poland 2010* , the Court would remark that the views of Latham L.J. in *Miklis v. Lithuania*, [2006] E.W.H.C. 1032 (Admin), with which this Court has expressed concurrence in previous judgments, again appear apposite. In that case Latham L.J., who was giving judgment on behalf of a Divisional High Court in the Queen's Bench Division in England, said at

para. 11:-

> 'It is, however, important that reports which identify breaches of human rights, or other reprehensible activities on the part of governments or public authorities are kept in context. The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the violations are systemic, their frequency and the extent to which the particular individual in question could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse.'"

Having carefully considered all of the evidence in this case, I do not consider that the evidence adduced by the respondent establishes a systemic and fundamental deficiency or malpractice in the treatment of mentally ill prisoners in the requesting state, such as might cause this Court to conclude that, in the event of the respondent being surrendered, there is a real risk that his rights under Article 3 ECHR would be breached. Having said that, it is fair to note that the evidence adduced on behalf of the respondent was sufficient to raise a degree of concern in that regard in the mind of the Court. However, the Court's concern has been allayed by specific assurances that have been furnished to this Court by the issuing judicial authority.

The issuing judicial authority, having been appraised of the contents of the respondent's affidavit, of the medical evidence concerning the respondent, and of the evidence of Ms. Ejchart-Dubois, has given the following assurances to this Court:

- The respondent will be provided with proper medical care, including specialist psychiatrist care, while serving his sentence in the Polish prison system, in accordance with the provisions of the Polish criminal sentence execution code (see letters dated 12th June, 2014, and 11th July, 2014 quoted earlier);

- The Polish criminal sentence execution code requires that prisoners shall undergo appropriate medical examinations and sanitary procedures (see letter dated 12th June, 2014);

- The Polish criminal sentence execution code guarantees to prisoners the right to receive appropriate medical care (see letter dated 12th June, 2014);

- The surrender of the respondent to Poland will not interrupt the pharmacological treatment that he is currently undergoing (see letters dated 12th June, 2014, and 11th July, 2014 quoted earlier);

- The respondent will be immediately placed under specialist psychiatric care (see letters dated 12th June, 2014, and 11th July, 2014 quoted earlier);

- The respondent may petition the District Court in W¹growiec for a deferment of the execution of the custodial sentence, attaching an expert opinion on the state of his mental health to the request (see letter dated 11th July, 2014 quoted earlier).

Having considered all of the evidence, including these assurances, this Court considers that it does not have reasonable grounds for believing that there is a real risk that the respondent will not receive appropriate mental health care and support in the event of his surrender; or that he will be ill treated, or subjected to inhuman or degrading conditions of detention, in breach of his rights under Article 3 ECHR.

The treatment that the respondent can expect to receive while in prison in Poland will not, perhaps, be as good as the treatment he is presently receiving while at liberty in Ireland, but that is beside the point. His entitlement, as stated in *Kaprykowski v. Poland* (App. No. 23052/05) (Unreported, European Court of Human Rights, 3rd February, 2009), is to receive the standard of public health care available to the general population in Poland. He is entitled to that, but to no more than that.

In the circumstances, the Court is not disposed to uphold the objection under s.37(1)(a) of the Act of 2003 to the extent that it is based on Article 3 ECHR.

The Article 8 ECHR based objection

In its judgments in *Minister for Justice and Equality v. T.E.* (previously cited) and *Minister for Justice and Equality v R.P.G.* (previously cited) this Court conducted an extensive review of the relevant Irish, English, European Court of Human Rights, and Court of Justice of the European Union ("the C.J.E.U.") case-law and sought to distil from that jurisprudence a series of principles for application both in those cases and in future cases.

Among the cases reviewed were *Minister for Justice, Equality and Law Reform v. Gorman* [2010] IEHC 210, [2010] 3 I.R. 583; *Minister for Justice, Equality and Law Reform v. Gheorghe* [2009] IESC 76 (Unreported, Supreme Court, 18th November, 2009); *Minister for Justice, Equality and Law Reform v. Bednarczyk* [2011] IEHC 136 (Unreported, High Court, Edwards J., 5th April, 2011); *Launder v. United Kingdom* (App. No. 27279/95) (1998) 25 E.H.R.R. CD67; *King v. United Kingdom* (App. No. 9742/07) (Unreported, European Court of Human Rights, 26th January, 2010); *Babar Ahmad and Ors. v. United Kingdom* (App. No. 24027/07) (Unreported, European Court of Human Rights, 10th April, 2012); *Huang v. Secretary of State for the Home Department* [2007] UKHL 11, [2007] 2 A.C. 167; *Ruiz Jaso & Ors. v. Central Court of Criminal Proceedings (No. 5) of the National Court, Madrid* [2007] EWHC 2983 (Admin), [2008 1 W.L.R. 2798; *Norris v. Government of United States of America (No. 2)*, [2010] UKSC 9, [2010] 2 A.C. 487; *Z.H. (Tanzania) v. Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 A.C. 166; *R.(H.H.) & (P.H.) v. Deputy Prosecutor of the Italian Republic, Genoa, also R.(F-K) v. Polish Judicial Authority* [2012] UKSC 25, [2013] 1 A.C. 338; *In re Ciprian Vasile Radu (Case C-396/11)*, (Unreported, C.J.E.U., 29th January, 2013) and *Minister for Justice and Equality v. Ostrowski* [2013] IESC 24, [2014] 1 I.L.R.M. 88 (in particular the judgment of McKechnie J.). This represents an indicative, but by no means exhaustive, list of the many cases and judgments reviewed in *Minister for Justice and Equality v. T.E.* and in *Minister for Justice and Equality v R.P.G.*

As a result of its review, the Court was satisfied to set forth and adopt twenty two principles of law for application in the European arrest warrant context in cases where Article 8 of the ECHR is engaged. Not all of these principles are relevant to the case presently under consideration. Some of the principles were concerned with cases involving minor children. There are no minor children involved in the present case. Accordingly, to the extent that they are applicable to the present case, the relevant principles are:

> 1. The test imposed by Article 8(2) ECHR is not whether extradition is on balance desirable but whether it is necessary in a democratic society;

2. There is no presumption against the application of Article 8 ECHR in extradition cases and no requirement that exceptional circumstances must be demonstrated before Article 8 grounds can succeed;

3. The test is one of proportionality, not exceptionality;

4. Where the family rights that are in issue are rights enjoyed in this country, the issue of proportionality involves weighing the proposed interference with those rights against the relevant public interest;

5. In conducting the required proportionality test, it is incorrect to seek to balance the general desirability of international cooperation in enforcing the criminal law and in bringing fugitives to justice, against the level of respect to be afforded generally to the private and family life of persons;

6. Rather, the assessment must be individual and particular to the requested person and family concerned. The correct approach is to balance the public interest in the extradition of the particular requested person against the damage which would be done to the private life of that person and his or her family in the event of the requested person being surrendered;

7. In the required balancing exercise, the public interest must be properly recognized and duly rated;

8. The public interest is a constant factor in the horizontal sense, *i.e.*, it is a factor of which due account must be taken in every case;

9. However, the public interest is a variable factor in the vertical sense, *i.e.,* the weight to be attached to it, though never insignificant, may vary depending on the circumstances of the case;

10. No fixed or specific attribution should be assigned to the importance of the public interest in extradition, and it is unwise to approach any evaluation of the degree of weight to be attached to the public interest on the basis of assumptions. The precise degree of weight to be attached to the public interest in extradition in any particular case requires a careful and case specific assessment. That said, the public interest in extradition will in most cases be afforded significant weight;

11. The gravity of the crime is relevant to the assessment of the weight to be attached to the public interest. The graver the crime, the greater the public interest. However, the opposite effect, namely "the lesser the crime the lesser the interest" may not follow in corresponding proportion. Where on the spectrum the subject offence may sit is an aspect of each case which must also be explored as part of the process;

12. The public interest in extraditing a person to be tried for an alleged crime is of a different order from the public interest in deporting or removing an alien who has been convicted of a crime and who has served his sentence for it, or whose presence in the country is for some other reason not acceptable. This does not mean, however, that the court is required to adopt a different approach to Article 8 ECHR rights depending on whether a case is an extradition case or an expulsion case. The approach should be the same, but the weight to be afforded to the public interest will not necessarily be the same in each case;

13. Delay may be taken into account in assessing the weight to be attached to the public interest in extradition;

14. In so far as it is necessary to weigh in the balance the rights of potentially affected individuals on the one hand, with the public interest in the extradition of the requested person on the other hand, the question for consideration is whether, to the extent that the proposed extradition may interfere with the family life of the requested person and other members of his family, such interference would constitute a proportionate measure, both in terms of the legitimate aim or objective being pursued, and the pressing social need which it is suggested renders such interference necessary;

15. It is self-evident that a proposed surrender on foot of an extradition request will, if carried into effect, result in the requested person being arrested, possibly being detained in custody in this State for a period of time pending transfer to the requesting state, and being forcibly expelled from the State. In addition, he/she may have to face a trial (and may possibly be further detained pending such trial), and/or may have to serve a sentence in the requesting state. Such factors, in and of themselves, will rarely be regarded as sufficient to outweigh the public interest in extradition. Accordingly, reliance on matters which could be said to typically flow from arrest, detention or surrender, without more, will be of little avail to the affected person;

16. Article 8 ECHR does not guarantee the right to a private or family life. Rather, it guarantees the right to respect for one's private or family life. That right can only be breached if a proposed measure would operate so as to disrespect an individual's private or family life. A proposed measure giving rise to exceptionally injurious and harmful consequences for an affected individual, disproportionate to both the legitimate aim or objective being pursued and the stated pressing social need proffered in justification of the measure, would operate in that way and in breach of the affected individual's rights under Article 8;

17. It will be necessary for any court concerned with the proportionality of a proposed extradition measure to examine with great care, in a fact specific enquiry, how the requested person, and relevant members of that person's family, would be affected by it. In particular, it will be necessary for the Court to assess the extent to which such person or persons might be subjected to particularly injurious, prejudicial or harmful consequences, and then weigh those considerations in the balance against the public interest in the extradition of the requested person;

18. Such an exercise ought not to be governed by any predetermined approach or by preset formula; it is for the court seized of the issue to decide how to proceed. Once all of the circumstances are properly considered, the end result should accurately reflect the exercise;

19. The demonstration of exceptional circumstances is not required to sustain an Article 8 ECHR type objection because, in some cases, the existence of commonplace or unexceptional circumstances might, in the event of the proposed measure being implemented, still result in potentially affected persons suffering injury, prejudice or harm. The focus of the court's enquiry should therefore be on assessing the severity of the consequences of the proposed extradition measure for the potentially affected persons or persons, rather than on the circumstances giving rise to those consequences.

It is necessary in the first instance to assess and weigh the public interest in the respondent's extradition. It is then necessary to consider the degree to which the proposed rendition measure (*i.e.*, the proposed surrender of the respondent to Poland so that: (i) he would face trial for the three offences described at E.2.D. on the European arrest warrant, and (ii) so that he would serve the balances outstanding of the sentences imposed upon him for the seven offences described at E.2.A., E.2.B., E.2.C., and E.2.E., respectively, on the European arrest warrant) will interfere with, and operate to the prejudice of, his private and family life. Having determined that, it is then necessary to balance the public interest in his extradition against those private interests.

If, upon a balancing of the relevant public and private interests, it appears that the proposed measure is disproportionate to the legitimate aims being pursued, and that it is not justified by a pressing social need in the circumstances of the case, then the Court ought to uphold the s.37(1)(a) objection, and not surrender the respondent, as to do so would breach his right to respect for his private and family life as guaranteed by Article 8 ECHR.

Conversely, if, upon a balancing of those interests, it appears that the proposed measure is indeed proportionate to the legitimate aims being pursued, and continues to be justified by a pressing social need, the Court will be at liberty to surrender the respondent and will be obliged not to uphold the s.37(1)(a) objection.

In considering the public interest in the respondent's rendition, it is necessary to examine, in the first instance, the gravity of the offences to which the warrant relates. In doing so, the circumstances of the offending conduct and the range of available penalties should be taken into account.

The three offences outlined at E.2.D. on the European arrest warrant, i.e., the offences for which the respondent is wanted for prosecution, all occurred between February and September 1999, and were allegedly committed in joint enterprise with a number of others. They involved the purchase of 350 forged PLN 100 notes in three instalments and the introduction of those notes into circulation. The Zloty to Euro conversion rate is approximately 4:1. Accordingly, PLN 35,000 converts roughly to €8,750. The penalties provided for under Polish law include imprisonment for up to 10 years. In the Courts view, these are moderately serious offences in respect of which the issuing state can legitimately claim a significant public interest in having prosecuted.

The seven offences listed at E. 2.A., E.2.B., E.2.C., and E.2.E., respectively, on the European arrest warrant, are all fraud or attempted fraud type offences, involving either forgery of documents, or the use of forged documents, alternatively engaging in deception or false pretences, for the purpose of obtaining or attempting to obtain goods on credit, or by means of loan finance.

The single offence described at E.2.A. of the European arrest warrant involved goods obtained on loan finance of PLN 4,260, which converts to a little over €1,000. This offence was committed on the 20th November, 2001.

The single offence described at E.2.B. of the warrant also involved goods obtained on loan finance, this time in the amount of PLN 5,410, which converts to a little over €1,250. This offence was committed on the 27th December, 2001.

The four offences listed at E.2.C. of the warrant also involved goods obtained on credit, and in one instance an attempt to obtain goods on credit. The total amount involved was PLN 12,004, which converts to approximately €3,000. These offences were committed on dates in December, 2001 and January, 2002.

The single offence described at E.2.E. of the European arrest warrant also involved goods obtained by deception in the amount of PLN 76,760 which converts to approximately €19,000. This offence was committed in May, 2001.

Accordingly, all of the conviction offences occurred over a nine month period between May, 2001 and January, 2002, inclusive. They all involved significant dishonesty, and significant losses or potential losses (totalling approximately €23,250) spread across the financial institutions concerned. Moreover, the same or a similar modus operandi of offending was employed on multiple occasions, so that there is a recidivist dimension to the offending conduct. Moreover, the Court notes from the respondent's own affidavit that he was in prison for eight or nine months between 1999 and 2000 for earlier offences relating to the use of counterfeit money, again suggesting recidivism on the respondent's part in committing the crimes of dishonesty at E. 2.A., E.2.B., E.2.C., and E.2.E., respectively, on the European arrest warrant.

The respondent received a sentence of one year's imprisonment for the offence at E.2.A., all of which remains to be served; one year and three month's imprisonment for the offence at E.2.B., four months and twenty days of which remains to be served; one year and ten month's imprisonment for the four offences at E.2.C., all of which remains to be served, and one year and six month's imprisonment for the offence at E.2.E., all of which remains to be served.

In this Court's view, the offences in question are all of moderate seriousness, and the issuing state has a legitimate entitlement to insist on the sentences in question being served in their entirety. That it should aim to do so is all the more legitimate in circumstances where the respondent, having been conditionally released from prison upon a regime of probation, absconded in breach of the condition of his probation and came to Ireland

Accordingly, there is in this Court's view a strong public interest in the respondent's extradition.

Moreover, the strong public interest that the Court has identified is not, in this Court's view, diluted or negated by any delay which may have occurred in the case. The respondent was shown considerable mercy and forbearance by the Courts in the issuing state on account on his mental illness, and on several occasions execution of sentences which he would otherwise have been required to serve immediately was postponed. When in 2005 to 2006 he was eventually required to serve a period of time in Czarne prison, he was admitted to probation after some months and conditionally released. During the period of his conditional release, he absconded and came to Ireland as a fugitive. There is nothing in the evidence before the Court to suggest that his whereabouts was immediately known to the Polish authorities, or that they were dilatory in searching for him. Accordingly, in this Court's assessment, such delays as have occurred have been almost entirely due to a combination of postponements due to the respondent's mental ill health, and the fact that the respondent absconded and went abroad necessitating the ascertainment of his location and the making of the present rendition request. In the circumstances, the passage of time involved cannot benefit him. In the Court's view there remains a pressing social need for the respondent's rendition.

It is necessary to move at this point to a consideration of the respondent's personal circumstances, and the interference that would be occasioned to his private and family life by the proposed surrender measure. He is unquestionably seriously mentally ill. However, there mere fact that he is ill would not, of itself, justify the Court in refusing to surrender him, providing that he will be adequately treated and cared for in prison in the issuing state. The opportunity for a convicted person, with an extant and immediately enforceable prison sentence to serve, to enjoy a private and family life is necessarily abrogated by the existence of that sentence.

For any state to temporarily deny a convicted person the opportunity to enjoy private and family life in such circumstances, is not to disrespect the convicted person's private and family life. Article 8 ECHR does not guarantee the entitlement to enjoy private and family life at all times and in all circumstances. Rather, Article 8 guarantees respect for private and family life.

However, this is not just a case in which the respondent is mentally ill, albeit seriously mentally ill. By virtue of his illness, he represents a significant suicide risk. The Court very much takes that into account. The arguable relevance of this factor to the right to respect for a private and family life is that the existing significant risk of the respondent taking his own life will be further increased if he is denied society with his family, who are loving and supportive of him. To put it another way, the respondent's case is that, in the circumstances of his particular vulnerability, if to deny him the love and support of his family increases his risk of suicide, to so deny him would be to disrespect his right to a private and family life in breach of Article 8 ECHR and that it would be a disproportionate measure to surrender him, notwithstanding the existence of a significant public interest in his rendition.

The Court has reflected at length on the submissions made by the respondent, and upon the evidence in the case. The Court has no doubt, and fully appreciates, that it will be difficult and distressing for the respondent to separated from his family, and that indeed it will be difficult and distressing for them to be separated from him. However, the evidence does not go so far as to suggest that he cannot be adequately cared for in prison in Poland, and be effectively supported and protected, albeit in different, less familiar and less personal ways than those currently being employed by his family. At the end of the day, the Court has, and must also take account of, the express assurances from the issuing judicial authority that the respondent will be appropriately cared for and afforded specialist psychiatric care while in prison. If the respondent is surrendered, the Polish authorities will have the fullest information concerning his mental health difficulties, his suicidal tendencies, and his particular vulnerabilities, and it is to be presumed that they will take all appropriate measures to protect him.

In the circumstances the Court does not consider the proposed surrender to be a disproportionate measure, or that it would breach the respondent's right to respect for his private and family life contrary to Article 8 ECHR.

The Court is not disposed in the circumstances of this case to uphold the objection under s.37(1)(a) of the Act of 2003 to the extent that it is based on Article 8 ECHR.

Conclusion
In circumstances where the surrender of the respondent is not to be regarded as being prohibited under Part 3 of the Act of 2003, the Court is disposed to make an order under s.16(1) of the Act of 2003, directing the surrender of the respondent to such person as is duly authorised by the issuing state to receive him.