

THE HIGH COURT**Record Nos: 2010/150 EXT****2011/82 EXT****2011/83 EXT****2011/416 EXT****BETWEEN:****THE MINISTER FOR JUSTICE AND EQUALITY****APPLICANT****AND****ZBIGNIEW BEDNARCZYK****RESPONDENT****JUDGMENT of Mr Justice Edwards delivered the 19th day of April 2012****Introduction:**

The respondent is the subject of four European arrest warrants issued by a judicial authority in Poland on the 15th of June 2007, the 27th of November 2009, the 30th of July 2010 and the 16th of December 2010.

The first and third warrants in time were endorsed for execution by the High Court in this jurisdiction on the 2nd of March 2011. The respondent was arrested at the Courts of Criminal Justice, Dublin 7 on the 16th of March 2011 by Sgt James Kirwan on foot of both of these warrants and 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)

The second warrant in time was endorsed for execution by the High Court in this jurisdiction on the 14th of April 2010. The respondent was arrested at the Courts of Criminal Justice, Dublin 7 on the 29th of November 2010 by Garda Stephen Hogan on foot of this warrant and was brought before the High Court on the following day, the 30th of November 2010. pursuant to s. 13 of the Act of 2003.

The fourth warrant in time was endorsed for execution by the High Court in this jurisdiction on the 23rd of November 2011. The respondent was arrested at the Courts of Criminal Justice, Dublin 7 on the 13th of December 2011 by Sgt James Kirwan on foot of this warrant and was brought before the High Court later on the same day pursuant to s. 13 of the Act of 2003.

Diverse objections to the respondents surrender have been pleaded in all four cases, and there is some degree of overlap between the different cases in terms of the objections raised. The s.16 hearing concerning the first, second and third warrants in time was spread over four separate dates, namely the 21st of October 2011, the 13th of December 2011, the 12th day of January 2012 and the 6th of March 2012. The need to break the case on three occasions and adjourn it part heard on each of those occasions arose from a need on the part of the applicant to seek additional information from the issuing judicial authority on various matters as a result of certain issues raised at a relatively late stage by the respondent, and also due to the provision to the applicant by the issuing judicial authority of poor quality translations of certain Polish documents into English leading to this Court, as the executing judicial authority, having to request the applicant to commission further and better quality translations of the original Polish documents from an Irish based Polish/English translator.

The fourth warrant in time was only endorsed by the High Court, and then executed, after the s.16 hearing in relation to the first three warrants had commenced. However, it was possible to close the pleadings in relation to the fourth warrant during the various adjournments of the s. 16 hearing in relation to the first three warrants, thereby enabling the Court to conduct a s. 16 hearing in relation to the fourth warrant on the 6th of March 2012, and having also adjourned conclusion of the s. 16 hearing in relation to the first three warrants to that date, to effectively align all four sets of proceedings, and to reserve judgment in relation to all four matters at the same time.

Although the cases proceeded in a stop/start fashion, that ultimately proved to be somewhat advantageous to their ultimate disposition. As a result of clarifications contained in additional information received over the course of the intermittent hearings quite a number of the objections that had initially been raised, and in this Court's view very properly raised, by the respondent had to be abandoned by him or were for one reason or another not then proceeded with. Accordingly, although the hearing did have to be adjourned a number of times those adjournments facilitated a considerable narrowing of the issues and so significant progress was nonetheless made.

The principal headings of objection to surrender ultimately relied upon were certain Part 3 objections relating to correspondence (s.38 of the Act of 2003), and that to surrender the respondent would be incompatible with this State's obligation to uphold the respondent's fundamental rights (s.37 of the Act of 2003) - specifically on account of an alleged breach by the issuing state of the respondent's right to due process by its failure to respect the principle of non-retrospectivity of criminal legislation. The ground based on retrospectivity was ultimately abandoned on the last day of the hearing following receipt of a very late but critical piece of additional information from the issuing judicial authority. That this ground was put forward. And then had to be abandoned, was due

to no fault on the part of the respondent or his counsel and they have behaved entirely properly in their conduct of proceedings before this Court. I will have something further to say about this at the end of my judgment.

There were also certain other objections as to form, which although not strongly pressed were also not formally abandoned.

The most convenient way of dealing with the controversial aspects of the case is to consider the position in respect of each warrant separately under relevant headings. However, before doing so it is important to first identify and to confirm the Court's satisfaction with respect to certain non-controversial matters.

Uncontroversial s. 16 issues

The Court has received affidavits of arrest and identity from the relevant Garda officer in respect of each of the four European arrest warrants with which it is concerned. Moreover, no issue has been raised as to arrest or identity in respect of any of the warrants in question. In addition the Court has inspected the original European arrest warrant in each instance and has confirmed that they each bear this Court's endorsement. The Court is therefore satisfied following its consideration of this evidence and documentation that:

- (a) each of the four European arrest warrants with which the Court is concerned was endorsed for execution in this State in accordance with s. 13 of the 2003 Act;
- (b) each of the four European arrest warrants in question was duly executed:
- (c) the person brought before the Court on the execution of each warrant, and presently before the Court, was in each instance the person in respect of whom the relevant European arrest warrant was issued, and is the respondent:
- (d) no question arises in any of the four cases of the respondent having been tried in absentia, and accordingly none of these are cases in which the court would require an undertaking under s. 45 of the Act of 2003;
- (e) the High Court is not required in any of the four cases with which it is concerned to refuse to surrender the respondent, under s. 21A, 22, 23, or 24 (inserted by ss 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005) of the Act of 2003.

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. 206/2004 (hereinafter referred to as "the 2004 Designation Order"), and duly notes that by a combination of s 3(1) of the 2003 Act. and article 2 of, and the Schedule to, the 2004 Designation Order, "Poland" (or more correctly the Republic of Poland) is designated for the purposes of the 2003 Act as being a state that has under its national law given effect to the Framework Decision.

Form, correspondence and minimum gravity

The warrant dated 15th of June 2007.

This is a prosecution type warrant relating to "one crime of a multi-act nature". It relates to case record no 2011/82 EXT., and corresponds to Polish file reference no II Kop 51/07. The underlying facts are set out at some length in Part E.2 of the warrant, and both correspondence and minimum gravity require to be demonstrated. They essentially relate to eight similar incidents of a fraudulent nature contrary to article 286 § I of the Polish Penal Code. The general circumstances are first described, following which eight specific, and more or less identical, incidents are then described. It is only necessary for the purposes of this judgment to set out the general circumstances, and one (the first) of those eight incidents for illustration purposes:

"within the period from June 1995 to 26th March 1998 in Lebork and other towns on the territory of Poland, as an owner of the "Royal" wholesale business/warehouse acting with malice aforethought. acting in order to gain material profit acting with no intention and no possibility to meet his commitments/acquit his obligations, by inducing business partners/contracting parties into error concerning his financial situation/condition and possibility of payment and with intent not to stick to the established terms of payment, he led some individuals/physical persons and business entities to disadvantageous disposition of property of total value of 288,454 PLN in the following way:

in June 1995 in Lebork and Kalisz by inducing a business partner/contracting party into error concerning his financial situation/condition and possibility of payment and with intent not to stick to the established terms of payment, he led the "MODELANA" Ltd to disadvantageous disposition of property in a way that he purchased/acquired, on condition of deferred payment, clothing commodities/articles of total value of 9,823.75 PLN, and after that he disposed of them and did not clear the outstanding dues"

(seven further instances which the Court does not propose to recite)

The Court is invited to find correspondence with the offence in Irish law of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act. 2001 (hereinafter the Act of 2001), alternatively with the offence of making gain or causing loss by deception contrary to s. 6 of the Act of 2001.

The respondent's objection on correspondence is not clearly articulated. It is merely pleaded that the particulars of the alleged offences in the European arrest warrant do not correspond to offences in Irish law, and that "the events on which the convictions" (*sic*) "were based occurred in the course of business transactions and came about by way of trading difficulties". In so far as counsel's oral submissions were concerned, the only matter put forward as a basis for objecting to the suggested correspondence was the fact that the offence as framed under Polish law does not require that the perpetrator should have acted dishonestly, whereas the offence under Irish law with which the Court is invited to find correspondence does require that the perpetrator should have acted dishonestly. In the Court's view this argument is fundamentally misconceived. This Court is not concerned with what are the legal ingredients of the relevant offence under the law of the issuing State. It is only concerned with the underlying alleged facts, and whether those facts if established before a Court in Ireland would constitute an offence under the law of this State. Whether or not the relevant provision of the Polish Penal Code requires proof of dishonesty is irrelevant. The important thing is that dishonesty is an essential ingredient both of the offence of theft, contrary to s.4 of the Act of 2001, and also of the offence of making gain or causing loss by deception, contrary to s.6 of the Act of 2001. That being the case this Court is only concerned to know whether in the description of the underlying facts set out in the warrant it is contended, either directly, or indirectly on the basis that it is reasonably to be inferred, that in doing what he is alleged to have done, the respondent acted dishonestly. The Court is satisfied that dishonesty is in fact being alleged in the underlying facts set out in this warrant in circumstances where it is expressly asserted that

he acted "with malice aforethought, acting in order to gain material profit, acting with no intention and no possibility to meet his commitments." The Court is satisfied in all the circumstances of the case to find correspondence with both suggested offences under Irish law, namely the offence of theft contrary to s.4 of the Act of 2001, and also of the offence of making gain or causing loss by deception, contrary to s.6 of the Act of 2001.

An issue arose as to the form of this warrant. The paragraph numbering of it is slightly confusing at first glance. Typically Part E of a European Arrest Warrant contains two sections as follows. In the first section the issuing judicial authority is required to indicate the number of offences covered by the warrant, to provide a description of the circumstances in which the offence(s) was (were) committed, and to specify the category and legal qualification of the offence(s). The convention frequently adopted is to internally divide this first section into three subsections with a different subsection for each of these requirements, and to number these as E.1, E.2 and E.3 respectively. This numbering system is sensible, but it is not actually required by the form set out in the Annex to the Framework Decision. There is then a second section to Part E of the warrant which is divided into two subsections and which subsections are required by the Annex to the Framework Decision to be numbered as E.I and E.II respectively. Subsection E.I contains the various boxes that may be ticked if the issuing judicial authority wishes to avail of paragraph 2 of article 2 of the Framework Decision in respect of some or all of the offences which are the subject matter of the warrant. Further, the issuing judicial authority is required to describe in subsection E.II any offences which are the subject matter of the warrant and in respect of which the ticked box procedure is not being availed of, i.e., offences not covered by E.I. Unfortunately, in this particular warrant, the potential for confusion arises because while the sub-parts of the first section of Part E are, in accordance with the convention previously referred to, numbered E.1, E.2, and E.3 respectively, the same numbering system is then used for the sub-parts of the second section of Part E, so that what should be numbered E. I is in fact numbered E.1 and what should be numbered as E.II is in fact numbered as E.2. There are therefore two E.1's and two E.2's.

Although counsel for the respondent indicated that he was relying on the ambiguity the point wasn't really pressed, and in the Court's view there is in fact no real confusion if the warrant is read and construed with reference to the form annexed to the Framework Decision. Although there has not been strict adherence to the form set out in the Annex to the Framework Decision the Court is entitled to overlook this by virtue of s. 45C of the Act of 2003 in circumstances where it is satisfied, as it is here, that no injustice would be caused to the respondent.

There was also a related objection that has slightly more substance to it. The subsection numbered E.2 and which should in fact be numbered E.II states:

"The detailed description of acts for which Zbigniew Bednarczyk was sentenced is included above."

The reference to "acts for which Zbigniew Bednarczyk was sentenced" is ostensibly inconsistent with the fact that the warrant is a prosecution type warrant and not a conviction type warrant. However, the Court has considered the totality of the information contained in this warrant. and in particular certain information set out in Part F thereof which indicates that the respondent was convicted and sentenced to a term of imprisonment in two other cases, which are not the subject of the present warrant (one is in fact the subject of the third warrant with which the Court is presently concerned, and the other was the subject of another European arrest warrant which has since been withdrawn and with which the Court is no longer concerned). The Court is satisfied in all the circumstances of the case that the reference to "acts for which Zbigniew Bednarczyk was sentenced" in what should be numbered as Part E.II of the warrant is simply an error, but that there is no true ambiguity in regard to what offences the warrant relates to. The Court is quite clear that it relates only to the single multi-act offence particularised at subsection E 2 in the first section of Part E; further, that the respondent is wanted for prosecution in respect of that matter, and that the issuing judicial authority is not seeking to avail of paragraph 2 of article 2 of the Framework Decision in respect of that matter. The correctness of the Court's view that the reference to the respondent having been sentenced was erroneous was in fact confirmed in a letter from the issuing judicial authority dated the 23rd of November 2011 which was received by the applicant during one of the adjournments and which was then put before the Court when the hearing was next resumed. The Court is again satisfied that pursuant to s. 45C of the Act of 2003 it can overlook this manifest error in circumstances where it is satisfied that no injustice would be caused to the respondent by virtue of it doing so.

In so far as minimum gravity is concerned, the relevant minimum gravity threshold is that set out ins. 38(1)(a)(i) of the Act of 2003, namely that under the law of the issuing state the offence should be punishable by imprisonment or detention for a maximum period of not less than 12 months. It is clear from Part C of this warrant that the offence in question carries a maximum penalty of up to 10 years imprisonment under Polish law. Accordingly the relevant minimum gravity threshold is comfortably exceeded in this case also.

The warrant dated 27th of November 2009.

This again is a prosecution type warrant relating to a single offence. It relates to case record no 2010/150 EXT and corresponds to Polish file reference no III Kop 112/09. It is manifestly in the correct form. The issuing judicial authority has invoked paragraph 2 of article 2 of the Framework Decision by the ticking of the box in Part E.I of the warrant relating to fraud, and accordingly correspondence does not require to be demonstrated providing that the appropriate requirements as to minimum gravity are met. The relevant minimum gravity threshold is that set out ins. 38(1)(b) of the Act of 2003, namely that under the law of the issuing state the offence should be punishable by imprisonment for a maximum period of not less than 3 years. It is clear from Part C of the warrant that the offence in question carries a maximum penalty of 8 years imprisonment under Polish law, and accordingly the relevant minimum gravity threshold is comfortably exceeded.

The warrant dated 30th of July 2010

This is the third warrant in time and it is a conviction type warrant relating to two offences as particularised therein. It relates to case record no 2011/83 EXT and corresponds to Polish file reference no II Kop 29/07. The respondent is wanted to serve a single aggregate or composite sentence of one year and six months deprivation of liberty imposed upon him by the Provincial Court of Slupsk on the 3rd of October 1997 for the offences in question. The underlying facts are set out in Part E.2. I. and Part E.2. II of the warrant and both correspondence and minimum gravity require to be demonstrated.

The first offence would again appear to be a multi-act matter and the offence is particularised in Part E.2.1 in general terms in the first instance, and then three specific incidents are set out. It is pleaded in terms that:

"In the period of 23 October 1995 through 27 June 1996 in Leborg, acting under the condition of continuing offence, in order to gain material benefit, acting as an owner of "Royal" wholesale company, having misled various business entities as to the intention of and capacity to satisfy due payments, he fraudulently obtained the property totalling 59,439.27

zloty, which included public property whose value was 42,042.22 zloty to the detriment of various business entities, as follows:

- in the period of 23 October 1995 through 20 November 1995 in Lebork, having misled "Intex" Cooperative in Opole as to the intention of and capacity to satisfy due payments. he caused "Intex Cooperative in Opole to disadvantageously dispose of their property in the form of duvets, bedclothes and other products whose total value was 17,091.26 zloty to the detriment of that Cooperative;
- in the period of 29 November 1995 through 13 December 1995 in Lebork, having misled "Jednose" Disabled Workers Cooperative in Staszów as to the intention of and capacity to satisfy due payments, he caused "Jednose" Disabled Workers Cooperative in Staszów to disadvantageously dispose of their property in the form of Christmas Tree baubles and toilet soap whose total value was 24,951.96 zloty to the detriment of that Cooperative;
- in the period of 20 June 1996 through 27 June 1996 in Lebork, having misled Zakład Przemysłu Dziewiarskiego "Fala" Sp z o.o. in Gdansk as to the intention of and capacity to satisfy due payments, he fraudulently obtained a property in the form of skirt suits, tracksuits and other clothes whose total value was 17,386.05 zloty to the detriment of Zakład Przemysłu Dziewiarskiego "Fala" Sp z o.o. in Gdansk;"

Further, additional information was provided by the issuing judicial authority in relation to this offence in a letter dated the 17th of June 2011 which states (inter alia):

"... the requested person committed the offence which was imputed to him (described in Part E point 2 of the warrant) while acting dishonestly (fraudulently) that is 'in order to gain material profit', as the owner of the 'Royal' Wholesale Business (warehouse) induced into error in the matter of his intent and means (capabilities) to meet his payment commitments (to clear outstanding dues) and he obtained under false pretences (swindled out) the property of the total value of 59,437.27 PLN"

The second offence is particularised in Part E.2.II and is pleaded in the following terms:

"In December of 1995 in Lebork, he used as authentic a falsified proof of payment in the amount of 2,225 zloty on account of overdue payment to the benefit of "Intex" Cooperative, Disabled Workers Enterprise in Opole."

In relation to the first offence on this warrant, the Court is invited to find correspondence with the offence in Irish law of theft contrary to s. 4 of the Act of 2001), alternatively with the offence of making gain or causing loss by deception contrary to s. 6 of the Act of 2001.

The respondent has put forward a similar objection to the suggested correspondence to that which he advanced in respect of the first warrant in time, namely the warrant dated the 15th of June 2007. The Court again rejects the argument as being misconceived in so far as it relies on the fact that the offence as framed in Polish law does not demand that the perpetrator should have acted dishonestly. As previously stated, how the offence is framed in Polish law is irrelevant to correspondence. Dishonesty is however an essential ingredient both of the offence under Irish law of theft, contrary to s.4 of the Act of 2001, and also of the offence under Irish law of making gain or causing loss by deception, contrary to s.6 of the Act of 2001. The Court is satisfied that dishonesty is in fact being alleged in the underlying facts set out in this warrant in circumstances where it is expressly asserted in the warrant that he acted "fraudulently" and "in order to gain material benefit" and in the additional information dated the 17th of June 2011 that he acted "dishonestly (fraudulently) that is 'in order to gain material profit'". The Court is therefore satisfied in all the circumstances of the case to find correspondence with both suggested offences under Irish law, namely the offence of theft contrary to s.4 of the Act of 2001, and also of the offence of making gain or causing loss by deception, contrary to s.6 of the Act of 2001.

In relation to the second offence on this warrant, the Court is invited to find correspondence with the offence in Irish law of using a false instrument contrary to s. 26 of the Act of 2001. The Court of its own motion raised with counsel for the applicant the absence of any particulars in the warrant relating to the perpetrator's state of knowledge, in circumstances where one ingredient of an offence contrary s. 26 of the Act of 2001 is that offender must know or believe that the instrument used is a false instrument. In response, Counsel for the applicant sought to rely on the additional information contained in the letter dated the 17th of June 2011, and quoted above, and urged upon the Court that this additional information establishes that the respondent had the requisite knowledge or belief. However, it is clear to the Court from a further consideration of this additional information, and particularly having regard to the figure mentioned, that it can only relate to the first offence (i.e that particularised at E.2.I) and that it does not in fact refer to the second offence (i.e that particularised at E.2.II). In the circumstances the Court is unable to find correspondence between the second offence and the offence in Irish law of using a false instrument contrary to s. 26 of the Act of 2001.

In circumstances where a single aggregate or composite sentence of one year and six months deprivation of liberty was imposed upon the respondent covering both offences, it is not possible to sever the non-corresponding offence from this warrant. Accordingly, the Court will not be able to surrender the respondent for either of the offences covered by this warrant.

The warrant dated the 16th of December 2010

This is a prosecution type warrant relating to a single offence. It relates to case record no 2011/416 EXT and corresponds to Polish file reference no V Kop 106/10. It is manifestly in the correct form, save for a minor irregularity with respect to its date which appears only in the English translation and does not appear in the original Polish document. The date is properly stated as being "16 Grudnia 2010" (16 December 2010) in the original Polish version whereas it appears simply as "December" with no day or year indicated in the English translation. As the original Polish document contains the full date the Court considers the discrepancy to be of no consequence.

The issuing judicial authority has invoked paragraph 2 of article 2 of the Framework Decision by the ticking of the box in Part E.I of the warrant relating to fraud, and accordingly correspondence does not require to be demonstrated providing that the appropriate requirements as to minimum gravity are met. The relevant minimum gravity threshold is that set out ins. 38(1)(b) of the Act of 2003, namely that under the law of the issuing state the offence should be punishable by imprisonment for a maximum period of not less than 3 years. It is clear from Part C of the warrant that the offence in question carries a maximum penalty of 8 years imprisonment under Polish law, and accordingly the relevant minimum gravity threshold is comfortably exceeded.

The objection based on retrospectivity

Although the objection based on retrospectivity had to be ultimately abandoned by the respondent when true clarity was eventually provided by the issuing judicial authority concerning the relevant law in Poland, the objection had been very properly raised in this Court's view. It was properly raised because the initial information provided in the warrants dated the 15th of June 2007 and the 16th of December 2010 suggested that notwithstanding the fact that the relevant offences had been committed when the 1969 Polish Penal Code was in force, he was being charged with (and it was reasonably to be inferred, would be sentenced on the basis of having committed) offences under the 1997 Polish Penal Code, which new code increased the potential penalties for the offences in question. When the Irish Central Authority sought clarification of the position the issuing judicial authority stated in a letter dated the 18th of October, 2011 that:

"These proceedings were initiated and are conducted during the time when the Polish Penal Code of 1997 is in force. In accordance with Article 4 § 1 of the Penal Code of 1997 'if, at the moment of sentencing, another law than that which was in force during the perpetration is in effect, **the new law is applied**'. So, in accordance with the instruction of the mentioned provision, despite the fact that the requested person committed the offences imputed to him at the time when the old Penal Code was in force, the provisions of the new Penal Code must be applied when making a legal description (title) of the offences."

(emphasis as in original)

This just didn't sound right (particularly having regard to the terms of Article 7 of the European Convention on Human Rights, and Article 49 of the Charter of Fundamental Rights, both of which Poland is required to respect) and so in a letter to the issuing judicial authority dated the 11th of November 2011 the Irish Central authority sought detailed further clarification as to the position. A reply in Polish was received dated the 23rd of November 2011, which reply was accompanied by a purported translation of that document into English. Unfortunately the translation provided was of poor quality, tortuous in its mode of expression and was largely incomprehensible. In the circumstances this Court had to request the Irish Central Authority to commission a better and more comprehensible translation from a Dublin based Polish/English translator. That was done and the re-translated document was served on the respondent and put before this Court. It states (inter alia):

"Again, let me quote the contents of art. 4 (1) of the Penal Code of 1997 regarding rules of applying new code: 'if during the period of declaring the sentence a different code is in force than the code which was in force during the period of time when the offence was committed, the new code shall be applied(...)'. This law regulates a question of penal acts collision regarding time. A term 'during the period of declaring a sentence' refers to an adequate decision taken by preliminary proceedings bodies, 1st and 2nd instance Courts and court sentences issued during the preliminary proceedings. This regulation acquires priority when using a new code (in force during the period of issuing a sentence) over the previous code (in force when the crime was committed). Thus, the regional prosecutor's office in Leobork correctly applied regulations from the Penal Code of 1997 while qualifying offences identified in section E of the warrant, file ref. no.: II Kop 51/07. In view of the above facts no previous regulations shall be applied towards prosecuted Zbigniew Bednarczyk for offences committed in the period between June 1995 and 16 March 1998 if the proceedings are run under a new Penal Code."

The position therefore appeared to be quite clear. The issuing judicial authority was ostensibly saying that even though the offences had been committed while the old penal code was in force, he would be prosecuted and dealt with under the new penal code because Art 4 § 1 of the Penal Code of 1997 requires it.

It has to be remembered that both this, and the previous, purported clarifications emanated from the issuing judicial authority, whose communications must in general be treated by this Court as being accurate and reliable having regard to the principles of mutual trust and mutual recognition. This Court, conscious of the need to show respect for these principles, was therefore not inclined to question them and was prepared to rely upon them, and indeed both the applicant and the respondent were initially content that I should do so,

Most unfortunately, both communications (i.e the letter of 18th of October 2011 and the further letter of 23rd November 2011) were seriously (if unintentionally) misleading in that they each failed to appraise this Court of a further, and critical, sub clause within Article 4 § 1 of the Polish Penal Code of 1997 which immediately follows the partial quotation of that provision that appears in both of the said letters. The full provision, as the Court has since discovered, in fact reads:

*" if, at the moment of sentencing, another law than that one which was in force during the perpetration is in effect, the new law is applied: **however, the law which was previously in force shall be applied if it was less severe for the offender.** "*

(this Court's emphasis).

This Court, and the parties, only became aware of the full quotation when, during one of the adjournments, the applicant (the Irish Central Authority), using its powers under s. 20(2) of the Act of 2003, decided to press the issuing judicial authority for yet further clarification of the position under Polish law. This was provided in a further letter from the issuing judicial authority dated the 23rd of February 2012 which finally, revealed, and made clear, the true position but which also very regrettably struck an admonishing tone in relation to the multiple requests for clarification that had been submitted. It sought to remind the Irish Central Authority, and, implicitly, this Court also, that we are required to have due regard to the principle of mutual trust among member states, and it concluded by expressing the sentiment that *"it should be a rule/principle that the court decisions made by the competent authorities of the Member States of the European Union shall not be disputed/challenged"*

It is sufficient to remark in response to the criticism that it is considered by this Court to be unwarranted, and that the true cause of the difficulty that arose in this case does not result from any unwillingness by the Irish Central Authority, or by this Court, to have appropriate regard to the principles of mutual trust and confidence, and the need for mutual recognition of judicial decisions and actions. Indeed, were it not for the persistence of the Irish authorities in seeking necessary clarifications from the Polish authorities an injustice might well have been done in this case to the interests of the Republic of Poland and its people in their pursuit of the rendition of the respondent as a legitimate aim or objective. While it is most regrettable that an erroneous impression should have been temporarily conveyed to this Court and to the parties concerning the legal position in Poland, this Court is certain that there was no deliberate attempt to mislead, and that any misunderstanding that occurred arose in consequence of language, translation

and comprehension difficulties, compounded perhaps by the differences that exist between the legal systems of the issuing state and the executing state respectively. What I do wish to emphasise, however, is that the respondent ought not to be criticised for raising and vigorously pursuing the issue of retrospectivity in the circumstances of this case. In the Court's view both he and his legal advisers were right to do so having regard to the information emanating from the issuing judicial authority at the material time. This Court considers that they have behaved responsibly throughout the proceedings before it and, further, that the respondent's case was conducted by his counsel and instructing solicitor with the utmost propriety and with appropriate professionalism.

Conclusion:

The Court is satisfied that the Part 3 objections raised by the respondent with respect to correspondence are not made out, save in the case of the second offence on the third warrant in time, ie., the warrant dated the 30th of July 2010. The Court is therefore disposed to surrender the respondent pursuant to s. 16(1) of the Act of 2003 for the offences the subject matter of the first, second and fourth warrants respectively. However, for the reasons stated earlier in this judgment, the Court is unable to surrender the respondent for the offences which are the subject matter of the third warrant.