Neutral Citation Number: [2007] IEHC 332

THE HIGH COURT

Record Number: 2007 No. 13 Ext

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
IVANS DESJATNIKOVS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 10th day of October 2007

1. The European Arrest Warrant on foot of which the surrender of the respondent is sought was issued by a judicial authority in Riga, Latvia on the 7th December 2005. It was in due course transmitted to this country and was endorsed by the High Court for execution on the 23rd January 2007. The respondent was duly arrested on foot of same on the 31st January 2007 and brought before the High Court as required by the provisions of s. 13 of the European Arrest Warrant Act 2003, as amended ("the Act"). He was thereafter remanded from time to time pending the hearing and determination of the application under s. 16 of the Act for his surrender to the requesting state.

2. The Court must be satisfied firstly for the purpose of s. 10 of the Act that a decision has been made in the requesting state that the respondent be prosecuted for the offence referred to in the warrant. Kieran Kelly BL has sought to rely on some apparent ambiguity in this regard derived from the wording appearing on front cover page of the warrant as translated. This paragraph requests that the respondent be arrested and surrendered "for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order". This is in fact precisely the wording which appears in the prescribed form of warrant in the Framework Decision itself which is annexed to the Act. In many instances the requesting authority will have deleted the alternative which does not apply, but in the present case this has not been done, and Mr Kelly seeks to show that it is not clear that the respondent has not in fact already been convicted on the offence, and if such be the case then no undertaking has been provided by the requesting state in order to satisfy the provisions of s. 45 of the Act. In support of this submission Mr Kelly refers also to the contents of a letter from the respondent's solicitor to the requesting authority and the response to that letter and submits that it is not at all clear what the position is as to the number of offences being charged or whether he is already convicted. Without setting out the contents of that correspondence in detail, the response from the Latvian prosecutor's office makes it completely clear that the respondent's surrender is sought so that he can be prosecuted for the offence set forth in the warrant in spite of the respondent's suggestion in that correspondence that it was a purely civil matter. It is clear that there has been no conviction for the offence to be prosecuted in spite of a reference in translation to the prosecutor being satisfied that his guilt is proved. To interpret this as meaning only that he has been convicted is going too far. It is clear from the overall context that this must mean simply that the prosecutor is satisfied that there is sufficient evidence against the respondent to prosecute him. The merits of the criminal allegation is not a matter upon which this Court may express a view. There is a suggestion also in that correspondence that the requesting state may also wish to charge the respondent with another offence not the subject of the warrant. In such a situation the specialty provisions of the Framework Decision will be applicable and there can be no presumption that the Latvian authorities will not comply with its obligations in that regard, given the basis of mutual trust and confidence between member States which underpins the Framework Decision. This point of objection must fail.

3. Under s. 16 the court must be satisfied also that the person arrested and brought before the Court is the person in respect of whom the warrant has been issued, and that the warrant has been endorsed for execution prior to arrest. The Court is satisfied in these respects and no such issue has been raised by the respondent in any event, save that it has been submitted that there has been a delay between the issue of the warrant in the requesting state and its endorsement by the High Court here. But in this latter respect I am satisfied that the warrant was endorsed "as soon as may be" after its receipt in this State. Any delay prior to its receipt is not a matter which will of itself invalidate the warrant or the execution of it following endorsement.

4. No undertaking is required under s. 45 of the Act.

5. The Court is satisfied also that it is not required to refuse to order surrender under sections 21A, 22, 23 or 24 of the Act.

6. Since the offence referred to in the warrant has not been marked by the requesting authority as coming within the listed categories of offence in Article 2.2 of the Framework Decision, it is an offence in which correspondence/double criminality must be verified, or otherwise come within the meaning to be given to s. 38(1)(b) of the Act.

7. Subject to dealing with the remaining submissions of the respondent in respect of section 37 and section 38 of the Act, the Court is satisfied that there is no reason under Part III of the Act or the Framework Decision why the respondent's surrender is prohibited.

8. The remaining issues raised by the respondent relate to correspondence and to the fact that warrant states a certain minimum sentence which the respondent will face if convicted after surrender has taken place. The latter is said to constitute a breach of the respondent's constitutional rights.

Minimum Sentence

9. The respondent has referred the court to the part of the warrant which sets out the nature of the sentence which the respondent will face if convicted of the offence in question if surrendered and he submits that the mandatory minimum nature of the sentence lacks proportionality and is therefore a breach of the respondent's rights under the Constitution, and that his surrender is therefore prohibited by virtue of the provisions of s. 37 of the Act.

10. Before referring to some of the case-law to which the Court has been referred I will refer to the sentencing provisions as appearing in the warrant for the offence in question. It appears that under Section 179 of the Criminal Law of Latvia (Criminal Offences against Property), a person who acquires or wastes property of another the applicable sentence on conviction is one "not exceeding five years, or community service or a fine not exceeding fifty times the convicted person's minimum monthly wage. Subsection (2) is said to provide for a repeat offender of such an offence and it is provided that such a person, if convicted, will receive a sentence of "not less than three years and not exceeding eight years, with or without confiscation of property." Subsection (3) provides that where misappropriation occurs "on a large scale" or is related to certain substances including drugs, explosives and firearms, "the applicable sentence is deprivation of liberty for a term of not less than six years and not exceeding fifteen years, with confiscation of property".

11. Mr Kelly has submitted that in as much as the sentencing judge has no discretion as to whether or not to impose a custodial

sentence in subsections (2) and (3) above, this would in this State be unconstitutional, and lacking proportionality and therefore constitutes a bar to surrender to Latvia. He has relied in part upon the judgment of this Court in *Attorney General v. Blake*, unreported, High Court, 16th November 2006 where extradition was refused to the United States because if convicted there of the offence in question the respondents would face a mandatory minimum sentence of six years and this was found to constitute a breach of fundamental rights. Mr Kelly has pointed to the fact that in Blake the extradition was not being sought on foot of a European arrest warrant, but rather under bilateral treaty arrangements between this country and the United States, but nevertheless submits that the same principles ought to apply as far as protection of constitutional rights is concerned.

12. Mr Kelly referred also to earlier jurisprudence in relation to the protection of fundamental rights and it is unnecessary to refer to same in any detail for the purpose of this judgment.

13. The first thing to be said about this Court's judgment in Blake is that it was made very much on its own unusual, perhaps unique, facts. It would not be appropriate to conclude that any general principle should emanate therefrom to the effect that any such mandatory minimum sentencing provision existing in any requesting state would constitute an automatic bar to an order of surrender being made. This is a matter referred to also by the Chief Justice in his judgment in *Minister for Justice Equality and Law Reform v Brennan* [2007] IESC 21 to which I shall return in a moment. Secondly it is important to point to the distinction between an application under a European arrest warrant and a Request for extradition under other extradition treaties. Mr Kelly has submitted that there should be no distinction drawn as far as the protection of rights is concerned, but I cannot agree. Clearly the underpinning of the arrangements for a European arrest warrant by the expression of mutual trust and confidence between Member States as set forth in the Preamble to the Framework Decision, and the obligation of participating states as Members of the European Union to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU introduces elements absent from applications from countries outside those arrangements. That is not to say that the Court will not, even in those cases, operate on the basis of a degree of confidence and trust born of the principle of comity of nations and of courts. But there is a meaningful distinction to be drawn nevertheless. In recent times, the Supreme Court in *Minister for Justice, Equality and Law Reform v. Stapleton*, unreported, Supreme Court, 26th July 2007, has (per Fennelly J.) referred to this particular distinction in the following way:

> "There is one central difference between the European Arrest Warrant and former extradition arrangements. Recital (6) of the Framework Decision refers to "the principle of mutual recognition…" as "the 'cornerstone' of judicial cooperation'. Moreover, as is stated in Recital (10):
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> > 'The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principle set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof……'
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> It is true that the principle of mutual trust and confidence must also have been at the heart of former bilateral or multilateral extradition arrangements. Such arrangements were (and still are so far as extradition arrangements with states outside the European Union are concerned) an expression of the sovereign power of the respective states. They implied at least some level of mutual political trust and, at the judicial level, confidence in the legal systems of the cooperating states. McCarthy J, in his concurring judgment in *Ellis v O'Dea* [1991] I.R. 251 at 262 stated:
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> > 'The making of the extradition arrangement presupposes that the Government and the Oireachtas are satisfied, amongst other things, that, an Irish citizen being extradited either to the United Kingdom, as in this instance, or to any other State with which Ireland has such an arrangement, will not have his constitutional rights impaired.'
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> Murray C.J., in his judgment in A*ltaravicius v Minister for Justice, Equality and Law Reform* (Supreme Court unreported 5th April 2006, [2006] IESC 23) cited the above passage before referring, in the context of the Arrest Warrant to "…the principles and objects recited in the preamble to the Framework Decision when it refers to mutual recognition of judicial decisions, judicial cooperation and a high level of confidence between Member States."
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> The principle of mutual recognition applies to the judicial decision of the judicial authority of the issuing Member State in issuing the Arrest Warrant. The principle of mutual confidence is broader. It encompasses the system of trial in the issuing Member State. The Court of Justice has ruled, in its recent decision in Case C-303/05 *Advocaten voor de Wereld v Leden van de Ministerrad*, delivered in 3rd May 2007 (since the hearing of this appeal) that the issuing Member State, as is 'stated in Article 1(3) of the Framework Decision, must respect fundamental rights and fundamental legal principles as enshrined in Article 6 EU……'
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> It follows, in my view, that 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." Article 6.2 provides that the Union is itself to "respect fundamental rights, as guaranteed by the European Convention on Human Rights and Fundamental Freedoms……and as they result from the constitutional traditions common to the Member States, as general principles of Community law."
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> Article 1.3 of the Framework Decision, read with the recitals to the Framework Decision and, as further explained by the Court of Justice in the decision in *Advocaten voor de Wereld*, imposes these obligations, which in turn impose the obligations found in Article 6 of the Convention on each issuing Member State when seeking the surrender of a person and, necessarily in any subsequent trial process."

14. This Court must respect the fact that Latvia, a sovereign nation, is entitled to pass such laws as it wishes including those which may not appear on the statute books in this jurisdiction, and indeed which in some cases may, if passed here, be found to suffer from constitutional frailty. This would include provisions such as those impugned by the respondent herein regarding minimum sentencing, though I would in passing refer to some elements of those provisions referred to which resonate of the sentencing provisions of s. 15A of the Misuse of Drugs Act 1977, as amended. There are many differences of course as well. But the point is that simply because the laws, including sentencing laws, of one Member State differ significantly from such laws in this State is not a reason for deciding that the invocation against a respondent to an application for surrender would constitute a violation of his constitutional rights such that surrender is prohibited. The Framework Decision has been agreed upon by Member States in the clear knowledge that inevitably each Member State's laws and rules of criminal and other procedure will differ in many material respects. But each Member State at the same time respects those differences and has agreed to place, on a mutual basis, trust and confidence in those laws and procedures as meeting minimum standards of fundamental fairness.

15. In *Minister for Justice Equality and Law Reform v Brennan* [2007] IESC 2, the Chief Justice considered a similar submission made in that case regarding a minimum sentence regime in a requesting Member State. He stated:

> "The effect of such an argument is that an order for surrender under the Act of 2003, and indeed any order for extradition, ought to be refused if the manner in which a trial in the requesting State including the manner in which a penal sanction is imposed, does not conform to the exigencies of our Constitution as if such a trial or sentence were to take place in this country. That can hardly have been the intention of the Oireachtas when it adopted s. 37(1) of the Act of 1973 since it would inevitably have the effect of ensuring that most requests for surrender or extradition would have to be refused. And indeed if that were the intent of the Framework Decision, which the Act of 2003 implements, and other countries applied such a test from their own perspective, few, if any, would extradite to this country.
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> ……I am not aware of any authority for the principle that the extradition or surrender of a person to a foreign country would contravene the Constitution simply because their legal system and system of trial differed from ours as envisaged by the Constitution.
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> That is not by any means to say that a Court, in considering an application for surrender, has no jurisdiction to consider the circumstances where it is established that surrender would lead to a denial of fundamental or human rights. *There may well be egregious circumstances such as a clearly established and fundamental defect in the system of justice of a requesting State where a refusal of an application for surrender may be necessary to protect such rights.* ……The sole matter which I wish to make clear here is that the mere fact that a trial or sentence may take place in a requesting State according to procedures or principles which differ from those which apply, even if constitutionally guaranteed, in relation to a criminal trial in this country does not of itself mean that an application for surrender should be refused pursuant to s. 37(2) of the Act." (my emphasis)

16. The egregious circumstances referred to by the Chief Justice in this passage are entirely absent from the facts of this case. This passage from the judgment of the Chief Justice puts the matter beyond any possible doubt. In these circumstances, the respondent's submission that the possible mandatory minimum sentence that he would face if convicted upon surrender constitutes a bar to his surrender under s. 37 of the Act must fail.

Section 38(1) – Correspondence

17. The issuing judicial authority has not marked any of the offences contained in the list of offences in paragraph (e) of the warrant, being offences in respect of which by virtue of Article 2.2 of the Framework Decision double criminality/correspondence need not be verified. Mr Kelly, on behalf of the respondent, submits therefore that it is incumbent upon the applicant to make out correspondence as defined by s. 5 of the Act, namely to establish that "the act or omission that constitutes the offence …… would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State." That is certainly how correspondence is defined in the Act. But one must look at the precise wording of s. 38 (1) in order to see precisely the circumstances in which the surrender is prohibited in relation to correspondence.

18. Section 38 (1) provides:

> 38.—(1) Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—
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> (a) the offence *corresponds* to an offence under the law of the State, and—
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> (i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or
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> (ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,
>
> or
>
> (b) the offence is *an offence to which paragraph 2 of Article 2 of the Framework Decision applies or is an offence that consists of conduct specified in that paragraph*, and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than 3 years." (my emphasis)

It is paragraph (b) which is important for the moment. That is the manner in which the Oireachtas has chosen to give effect to what is contained in Article 2.2 of the Framework Decision, which in turn states:

> 2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant: ……"

19. There follows a list of thirty two types of offence.

20. There is nothing in Article 2.2 which states that an issuing judicial authority must tick or otherwise mark the appropriate offence in the list appearing in paragraph (e) of the warrant, that list being identical with the list set forth in Article 2.2 itself. Article 2.2 in my view places an obligation upon the requested state to surrender in respect of offences coming within the listed offences. That obligation is not dependent upon the offence in question being ticked or otherwise marked by the issuing authority. In the present case the issuing authority has not ticked any offence, though it might very well have chosen to do so under the general heading "fraud". The fact that the issuing authority has chosen to set forth factual details of the offences in paragraph (e) instead of ticking the offence of fraud, does not preclude this court from concluding that the facts as set forth in the warrant constitute "*an offence that consists of conduct specified in that paragraph*" as provided in s. 38(1)(b).

21. It seems to me that the Oireachtas has provided clearly for the fulfilment of the obligations under Article 2.2 of the Framework Decision, which makes no reference to the issuing authority marking the offence or designating it as such, by requiring this Court to decide the matter in a number of alternative ways, (a) by correspondence being made out in accordance with s. 5 of the Act, (b) by the issuing authority actually nominating the offence as an Article 2.2 offence by ticking or otherwise marking the offence in the list contained in paragraph (e) of the warrant, and finally (c) by deciding whether the conduct alleged consists of conduct coming within

any of the offences contained in that list, whether it has been ticked or not. Otherwise, the words "an offence that consists of conduct specified in that paragraph" appear otiose.

22. I refer to this feature of the Act and the Framework Decision since Mr Kelly has submitted that the offences in this jurisdiction put forward by Ms. Stack on behalf of the applicant as candidates for correspondence in accordance with s. 5 of the Act, are not in fact corresponding, as there are significant features in the Irish offences which are absent from the facts as disclosed in the warrant.

The offences alleged in the warrant

23. As often is the case where a narrative of the offences alleged is before the Court in the form of a translation from the original language, the words used in the translation are in some respects unclear, and the Court is left to try and grasp the real meaning of the words. That is not to say that the recitation is so unclear as to render the warrant invalid but it does sometimes present difficulties in relation to assessing whether a particular set of facts as outlined in the translated warrant fits precisely the Irish offence put forward for correspondence, where that is necessary.

24. It seems to me however that what the respondent is alleged to have done can be summarised accurately as follows: In January/February 2002 while the respondent was Chairman of a limited liability company called 'Omega' which operated a pawnshop, he handed out to himself "*for his own economic needs*" cash belonging to the company from the cash desk of the shop, and has neither accounted for it or repaid it to the company. When taking the cash in question he filled out three dockets referred to as "cash expense orders" in differing amounts but totalling a sum of about 45000 Lvl. These dockets confirmed that he was the recipient of the cash.

25. It is also alleged that in 2001 while "presenting himself as an employee of the … pawnshop" he received a loan of money from an acquaintance of his, and undertook to pay her 2% interest on the sum on a monthly basis. This he failed to do. This loan appears to have been reduced to writing by his friend's daughter, and signed by the respondent as Chairman of Omega, and it provided that the sum in question, namely 7300 Lvl would be loaned to Omega for one year "for production activities" and, according to the warrant it provided that "the pawnshop undertakes to pay to Natalija Iljina monthly 2% of the amount on the 12th date of each month …..". The warrant goes on to recite that the respondent did not transfer the money over to the pawnshop "and misappropriated it", and that "it is established that the misappropriated money was not used in the interests of the pawnshop Omega and Natalija Iljina and that the criminal offences [sic] was committed by [the respondent] alone, he had no accomplices". This offence is said to one under Latvian law of misappropriation contrary to Section 179 of the Criminal Law. Earlier in the warrant that section is set out and it is described as 'misappropriation' and involves "illegally acquiring or wasting property of another, if such has been committed by a person to whom such property has been entrusted or in whose charge it has been placed. The appropriation in this case is said to be "on a larger scale", and as such will attract a sentence on conviction of not less than six years and not more than fifteen years imprisonment.

26. This Court must decide firstly if the acts alleged to have been done by the respondent would, if committed in this State on the date of the warrant, namely 7th December 2005, constitute an offence under Irish law. If they would, then surrender must be ordered. If they do not "correspond" in accordance with s. 5 of the Act, and as I have already stated, it seems to me that the Court by virtue of s. 38(1)(b) of the Act must examine the facts and decide if the offence "consists of conduct specified in that paragraph" i.e. paragraph 2 of Article 2 of the Framework Decision.

27. The warrant has specified that it relates to one offence of misappropriation. It is not clear to me to which set of facts that offence relates, i.e. the facts relating to the taking of 45000 Lvl in January/February 2002 or the later transaction involving the receipt of 7300 Lvl which he had undertaken to put into the company and has failed to either account for or repay.

28. However Ms. Stack has submitted that the facts disclosed in the warrant would if done in this State give rise to an offence under s. 4 (1) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 ("the 2001 Act"), as well as an offence under s. 6 of the same Act.

29. Section 4 (1) provides:

> "Subject to section 5 a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving the owner of it".

30. The subsections which follow subsection (1) are not relevant except that in subsection (5) "appropriates" is stated to mean "usurps or adversely interferes with the proprietary rights of the owner of the property", and "depriving" is stated to mean "temporarily or permanently depriving".

31. Importantly the offence under section 4 contains the word "dishonestly". For this offence to be a successful candidate for the offence alleged against the respondent in the warrant there would have to be facts indicating a dishonest intent on his part in taking sum of 45000 Lvl from the cash desk of the pawnshop, or in relation to the sum of 7300 Lvl on the later date. It is clearly stated in the factual account of the offence that in January/February 2002 the money is alleged to have been taken out of the till by the respondent "for his economic needs" and that he signed what are sometimes referred to as three IOUs. There is no suggestion that he disguised in any way the recipient of the money. He failed to repay the money. In relation to the second sum of 7300 Lvl, he appears to have received a loan of money and signed an agreement that he would pay monthly interest of 2% on the loan over one year. It is alleged that he was supposed to put those funds into Omega and that he did not do so and that he did not repay it when obliged to.

32. Each of these matters undoubtedly gives rise to a civil claim for the recovery of money by Omega in the first instance and by Ms. Iljina secondly. But can it be said that these actions by the respondent would give rise to an offence of theft under s. 4 in this State? I think not. There is no act alleged which comes within the concept of dishonesty referred to in s. 4, and that gap precludes correspondence with the offence here. In addition it seems to me that there is absent also any fact to indicate an intention on the part of the respondent to deprive Omega or Ms. Iljina of the sums in question either temporarily or permanently and this would be a necessary ingredient of the offence here. In fact the allegation in respect of the first transaction is that he left an IOU. That would not be evidence of intention to deprive the company of the money, and the second transaction was committed to writing in the form of a loan agreement. Those facts do not seem to me to correspond to an offence of theft under s.4 given the absence of dishonest intent alleged in the factual background.

33. The second candidate for correspondence which has been put forward by Ms. Stack is s. 6 of the 2001 Act which provides:

> "(1) A person who dishonestly with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an act is guilty of an offence".

34. In my view the facts alleged as set forth in the warrant do not give rise to this offence. Again there is no dishonest intent allegation evident on the known facts, and no deception or inducement.

Section 38(1)(b)
35. The remaining question for decision is the issue as to whether the facts as disclosed consist of conduct specified in paragraph 2 of Article 2 of the Framework Decision, and as such coming within the ambit of s. 38(1)(b) of the Act as already set forth. Clearly the Framework Decision envisages a change to the previous requirement in extradition arrangements of establishing correspondence or double criminality. Article 2.2 of the Framework Decision has provided a list of thirty two categories of offence for which double criminality does not require to be verified. Article 4 goes on to provide:

> 4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

36. Given the wide ranging differences between the criminal laws and codes of a large number of member states it is obvious that there may not be an exact equivalence of the constitutients of a particular crime in one Member State when compared with the equivalent or a similar offence in another, and therefore correspondence might not be made out, resulting in a refusal of surrender. This was undoubtedly one of the aspects of extradition proceedings which previously gave rise to what in the Preamble to the Framework Decision are referred to as 'complexities'. Paragraph (5) of the Preamble states:

> "…… Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures."

37. Section 38(1)(b) of the Act can be read as widening the range of offences for which surrender may be ordered.

38. In the present case the respondent is alleged to have done certain acts which under the law of Latvia are referred to as 'Misappropriation'. That is the word in English which the translator has used when translating the warrant from the Latvian language into English. There is no crime here of that name. Neither is an offence of that precise name included in the list as appearing in the English version of Article 2.2 of the Framework Decision. There are however offences listed therein which are of at least a similar nature or genus, such as 'fraud' and 'swindling'. There is no offence here of either 'fraud' or swindling', but there are offences of that genus contained in the 2001 Act. If a person committed acts here and he was referred to somewhere here as a 'swindler' most people would understand what was meant and would take it to mean that the person had done some act by which he had improperly, in a broad sense, acquired the property of another. It might be equally referred to as cheating. The victim is alleged to have been cheated of his or her property. Cheating while not giving rise to an offence on the statute books here, (or even at Common Law since its repeal by s. 3 of the 2001 Act) could be an offence in Latvia or some other Member State, and if in a European arrest warrant the requesting authority was to tick the offence of 'fraud' to cover the act of cheating alleged against the respondent, that would not give rise to any great surprise or objection, given the linguistic differences at play.

39. In fact in the French text of the Framework Decision the word used in respect of the Article 2.2 offence of swindling in the English is 'escroquerie' and certainly in the French language that word is used for both 'cheating' and 'swindling'. In the German test the noun used is 'Betrug', and the German-English Oxford Dictionary, 1997 gives the meaning of that word as either deception or fraud. In the Italian text the word used is 'truffa' which according to the Oxford Italian Dictionary, 1997 means both swindle and fraud. I refer to these matters in order to highlight the inevitability of different words being used among different Member States but which are intended to cover the same broad concept, and it is that breadth of concept which has been captured by or reflected in the wording of s. 38(1)(b) of the Act. In this way some of the complexities and complications of previous extradition arrangements are removed in pursuit of the objective of creating what is described in Recital (5) of the Preamble to the Framework Decision as "a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice".

40. Therefore, s. 38(1)(b) permits this court to examine the facts alleged against the respondent in order to see whether what is alleged against the respondent can be placed within the general concept of one or more of the listed offences, such as, say in this case, fraud or swindling. If they can, then there is no bar to surrender being ordered, provided that the offence in the requesting state meets the necessary minimum gravity requirement that it is punishable in the issuing state by a maximum period of not less than three years imprisonment. In the present case that condition is met.

41. I have examined the acts alleged in this case and have already determined that they exclude certain elements which would be necessary for a conviction here under either s. 4 or s. 6 of the 2001 Act. However, the acts certainly in my view come within a broad concept of swindling, cheating or fraud, as opposed to these terms being seen as terms of art. The allegation in the first instance is that he took money from the till, perhaps intending to pay it back or not as the case may be, but that he did not pay it back to Omega. Secondly there is an allegation that he obtained money from a person, signed a loan agreement promising to pay interest on the sum over a period of a year, and on the understanding at least that it would be put into Omega, and that this did not happen. I do not have to decide the merits of the charge. Taking a broad view of the facts under s. 38(1)(b), rather than the very closely scrutinised examination under s. 38(1)(a), I have no difficulty in deciding that this is an offence in the issuing state which the Oireachtas has intended should be the subject of a surrender order.

42. I therefore make the order sought on this application under s. 16 of the Act.