THE HIGH COURT

2015 No. 215 EXT

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

A.M.

RESPONDENT

AND

THE HIGH COURT

2014 No. 244 EXT

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ROBERT DONOVAN

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 28th day of October, 2016.

1. This Court delivered a reserved judgment on 14th October, 2016 in *Minister for Justice and Equality v. A.M.* [2016] IEHC 568. On the same date, the Court gave an ex tempore judgment in the case of *Minister for Justice and Equality v. Robert Donovan* [2016] IEHC 567. Although the cases were argued from a slightly different angle, the central point of objection in each case was that the surrender of the respondent should be refused, adjourned or postponed in light of the result of the referendum in the United Kingdom of Great Britain and Northern Ireland ("the U.K.") in favour of existing from the European Union ("the E.U."). The Court rejected each respondent's points of objection and indicated an intention to surrender each respondent in accordance with s. 16 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003").

2. The respondent A.M., now seeks certification for appeal to the Court of Appeal, on one question, namely:

> 'Should the surrender of the Respondent to the United Kingdom be refused, adjourned or postponed in light of the result of the referendum in the United Kingdom favouring an exit from the European Union in circumstances where the parameters of any such exit have not been delineated and in circumstances in which the allegations date back approximately 56 years and relate to a complainant who alleges that the first instant of sexual abuse occurred when she was approximately two-years-old?'

3. The respondent Donovan now seeks certification for appeal to the Court of Appeal, on one question, namely:

> *"The United Kingdom, following the referendum to leave the European Union, has indicated that it intends to invoke Article 50 of the Treaty of the European Union by March 2017. The triggering of the Article 50 of the Treaty of the European Union commences the process of withdrawal of the United Kingdom from the European Union [which can take up to two years unless extended by agreement from the other Member States]. In the circumstances, where the United Kingdom will no longer be a Member State, and will therefore not be a party to the Framework Decision and will therefore not under its national laws give effect to the Framework Decision as a Member State, can this Honourable Court presume pursuant to section 4A of the European Arrest Warrant Act 2003 that the issuing state will comply with its obligations under the Framework Decision?"*

4. In circumstances where the central issue is the same and where the arguments on the application for leave to appeal were heard together, it is appropriate to give a composite judgment. The Court has heard, and is grateful for, the written and oral submissions of counsel in each case.

Approach to be taken to Section 16(11) of the Act of 2003

5. The parties agree that the law is well established on the approach of the High Court to an application for a certification that the Order or Decision of the High Court involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be taken. There was a slightly different emphasis placed by counsel on various judgments but, in the view of the Court, the following is a correct statement of the law as regards an application for certification in a decision under the Act of 2003.

6. Section 16(11) of the 2003 Act provides as follows:

> *'An appeal against an order under subsection (1) or (2) or a decision not to make such an order may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.'*

7. In the aftermath of the creation of the Court of Appeal, the appeal is now to be taken to the Court of Appeal in the ordinary manner. It is accepted that before these respondents can bring an appeal, the onus rests upon them to satisfy the court that the decision involves a point of law of exceptional public importance and also that it is desirable in the public interest that an appeal be taken.

8. These restrictions on the right to appeal also apply in the area of planning law and immigration law. The principles of law which

have been set out in judgements of the High Court when considering the question of certification in such areas also apply when this Court is determining whether or not to grant a certificate to allow an appeal under s. 16(11) of the Act of 2003.

9. The minister has submitted that the approach to be adopted by a court when considering whether a point of law advanced by a proposed appellant is a point of law 'of exceptional public importance and' … that it is … 'desirable in the public interest that an appeal should be taken to the Supreme Court' has been set out in the following cases:

i. *Vadim Raiu v. Refugee Appeals Tribunal and Others* (Unreported, High Court, Finlay Geoghegan J., 26th February 2003);

ii. *Glancré Teoranta v. An Bord Pleanála and Mayo County Council* [2006] IEHC 250;

iii. *Arklow Holidays Limited v. An Bord Pleanála and Others* [2007] 4 I.R. 112.

10. As stated above, the respondents agree in principle that the law is as set out in those cases. In the *Glancré Teoranta* case, MacMenamin J. stated that he was satisfied, following a review of various authorities including *Raiu* and *Arklow Holidays*, that the following principles were applicable in a consideration of whether or not to certify a point of law of exceptional public importance arose:

'1. The requirement goes substantially further than that a point of law emerges in or from the case. It must be one of exceptional importance being a clear and significant additional requirement.

2. The jurisdiction to certify such a case must be exercised sparingly.

3. The law in question stands in a state of uncertainty. It is for the common good that such law be clarified so as to enable the Courts to administer that law not only in the instant, but future such cases.

4. Where leave is refused in an application for Judicial Review i.e. in circumstances where substantial grounds have not been established a question may arise as to whether, logically, the same material can constitute a point of law of exceptional public importance such as to justify certification for an appeal to the Supreme Court (Kenny).

5. The point of law must arise out of the decision of the High Court and not from discussion or consideration of a point of law during the hearing.

6. The requirements regarding "exceptional public importance" and "desirable in the public interest" are cumulative requirements which although they may overlap, to some extent require separate consideration by the Court (Raiu).

7. The appropriate test is not simply whether the point of law transcends the individual facts of the case since such an interpretation would not take into account the use of the word "exceptional".

8. Normal rules of statutory construction apply which mean inter alia that "exceptional" must be given its normal meaning.

9. "Uncertainty" cannot be "imputed" to the law by an Applicant simply by raising a question as to the point of law. Rather the authorities appear to indicate that the uncertainty must arise over and above this, for example in the daily operation of the law in question.

10. Some affirmative public benefit from an Appeal must be identified. This would suggest a requirement that a point to be certified be such that it is likely to resolve other cases'.

11. In *Minister for Justice and Equality v. Kasprowicz* [2013] IEHC 531, when considering the correct approach as to whether or not a certificate under s. 16(11) of the 2003 Act should issue, Edwards J. stated at para. 9 as follows:

"*The general approach to be taken is that identified by Clarke J. in Arklow Holidays v. An Bord Pleanala* [2007] 4 I.R. 112 *as being appropriate in considering, as in that case, whether to grant leave to appeal a decision of the High Court to the Supreme Court under s. 50(4) (f) of the Planning and Development Act, 2000, but also bearing in mind the remarks of Murray J.* (nem diss) *in the Supreme Court in Minister for Justice and Equality v. Tokarski* [2012] IESC 61 (*Unreported, Supreme Court, 6th December, 2012) concerning particular considerations that arise under s. 16(11) of the Act of 2003 that do not arise in some other areas of the law where there are similar restrictions on an appeal, such as in asylum and planning and development law, and which therefore create the imperative for a broad approach to the interpretation of that provision*."

12. In *O'Sullivan v. Irish Prison Service* [2010] 4 I.R. 562, McKechnie J. in the High Court stated at p. 578 that:

"This type of certification goes back at least to s. 29 of the Courts of Justice Act 1924, which regulates the capacity to bring a point from the Court of Criminal Appeal to the Supreme Court; there are numerous examples of successful applications in that regard where points of a wider nature were raised and where those points were ultimately considered by the Supreme Court. The standard is therefore not impossibly high."

13. The Court considers that it is important to emphasise that it is irrelevant to the question at issue, namely whether this is a point of law of exceptional public importance and whether it is desirable in the public interest to have an appeal, for the Court to consider the strength of the appeal. Thus, the Court cannot consider if the appeal point is strong, if it is merely arguable or, subject to what is said below, if it is devoid of merit, in calculating whether the tests have been met. If the appeal point comes within the tests set out in s. 16(11) of the Act of 2003 and amplified in the case law, then a certificate for appeal must be granted.

14. In *Raiu v. The Refugee Appeals Tribunal, Ireland and the Attorney General*, this point, and the implications arising from it, were stated with customary clarity by Finlay Geoghegan J. at pp. 6-7 as follows:

"The strength of the grounds of appeal is relevant to the probability or otherwise that the decision of the High Court is correct. It might also be relevant to the importance of the decision of the High Court. However it is not the decision of the High Court which [the statutory provision] requires to be of exceptional public importance. Rather, it is the point of law involved in the decision. Hence, it appears to me that this court must consider the point of law involved in its

decision rather than its determination of that point of law. The point of law, irrespective of how it is decided, must be of exceptional public importance. Accordingly, the strength of the grounds of appeal against the decision of the High Court, which involves the point of law, does not appear relevant.

I am reinforced in my conclusion on this submission by the fact that the Supreme Court has determined that there is no right of appeal against a refusal to grant a certificate under s.5(3)(a) Baby O. v. Minister for Justice, Equality and Law Reform, Supreme Court, Keane C.J., Unreported, 6th June 2002).

In such circumstances it appears particularly inappropriate that any part of the relevant considerations of a High Court Judge upon an application for a certificate would involve an assessment by that Judge of the strength of any arguments against the correctness of the decision. It appears to me that a High Court Judge should be entitled to assess the importance of the point of law involved in his or her decision without regard to his or her own determination of the point of law".

15. There is authority from the High Court in respect of European arrest warrants ("EAWs") stating that where the point is clear cut and beyond argument, it may not be desirable in the public interest to have an appeal. Counsel for the minister in the case of Donovan, referred to *Minister for Justice, Equality and Law Reform v. Adams* (No. 2) (Unreported, High Court, Edwards J., 18th October, 2011), in which the High Court (Edwards J.) refused to certify a question pursuant to s. 16(12) (as it then was) of the Act of 2003. In *Adams* (No. 2), in considering the issue of the public interest in certifying an appeal, Edwards J. expressly agreed with the sentiment expressed by Hogan J. in *U. (M.A.) & Others v. Minister for Justice & Equality* (No. 3) [2011] IEHC 59 where the latter stated at p. 6:-

"Given the burden of work which the Supreme Court is required to discharge, it cannot be regarded as being desirable in the public interest that the Court should be expected to adjudicate upon an issue which is clear-cut almost to the point of being beyond argument".

16. In the view of this Court, that is a determination by Edwards J. which goes to the issue of uncertainty in the law and does not go towards the strength of any appeal on the particular point. Therefore, the Court will approach these cases on the grounds that the relative strength of the appeal is not in itself a factor for this Court in its decision to grant or not to grant a certificate; however, the Court will consider whether there is any uncertainty in the law.

17. It is also important that Edwards J. in *Adams* (No. 2) observed that, in *O.O. and B.O. v. Minister for Justice, Equality and Law Reform, Attorney General and Ireland* (Unreported, High Court, Cooke J., 4th May 2011), Cooke J. at p. 8 (considering an application for leave to appeal to the Supreme Court under s. 5(3)(a) of the Illegal Immigrants (Trafficking) Act, 2000) "[made] the important point that the court must take into account the practical consequence of any such appeal, particularly where the actual outcome of the case is not going to be affected even if the appeal is successful".

18. In *Adams* (No. 2), Edwards J. appears to have approved, inter alia, the following extract from the judgment in *O.O. and B.O. v. Minister for Justice, Equality and Law Reform, Attorney General and Ireland* and wherein Cooke J. stated at pp. 8-9 as follows:-

"In applying those principles, two preliminary observations may be appropriate. The first relates to the last of the criteria listed above, namely the desirability of the appeal. Clearly, as the two conditions are cumulative, it is not sufficient that there be an important point of law; it is also necessary that the particular case is one in which it is desirable that it be resolved by an appeal. There may well be cases in which such a point of law arises but which are inapt or unsatisfactory vehicles for its consideration in the framework of an appeal. There will also be cases in which an appeal, even if successful on the point of law in question, will not alter the outcome of the judicial review for the appellant because of findings on other grounds which are independent of the point of law. Having regard particularly to the imperative in asylum cases of avoiding delay and unnecessary litigation it would be undesirable in such a case that an appeal be allowed notwithstanding a possible public interest in the point of law".

19. One legal issue arose on which there was some disagreement between counsel for the minister and respondent in the A.M. case, namely the implication of this appeal for other cases pending before the High Court. Counsel for the minister submitted that if the court were to certify this appeal, it would not be desirable in the public interest as it was unmeritorious and would cause delay in respect of other pending applications for surrender to the United Kingdom. Counsel for A.M. pointed to the fact that number 10 in the test set out by MacMenamin J. above, referred to the requirement that an affirmative public benefit from the appeal be identified, which suggests a requirement that the point to be certified would be such as it is likely to resolve other cases.

20. In the view of the Court, the submission of counsel for the minister was premised upon an appeal being devoid of merit in the sense of not reaching the criteria set out in s. 16(11) of the Act of 2003, and therefore not being desirable in the public interest that there would be an appeal which would hold up other cases. Clearly, if there is a point of law of exceptional public importance which has the potential to resolve many other cases, it would be desirable that such an appeal be taken. The Court considers that the question of devoid of merit should not be considered in terms of the strength of the appeal; rather this goes to the issue of uncertainty in the law and the applicability of the point of law to the facts of the case before it.

Submissions in *Minister for Justice and Equality v. A.M.*

21. In this case, the respondent raised the issue of the recent referendum in the U.K. to leave the E.U. as a reason by which his surrender should be refused, adjourned or postponed. He did so primarily on the basis that there would be implications for his rights if the U.K. were to leave the European Union. He also raised the issue that the delay in his case had been very significant and that it was something that should be taken into account in dealing with his case but that it was the decision in *Minister for Justice v. Stapleton* [2008] 1 I.R. 669 that precluded it. He argued that the ratio of Stapleton was that it was membership of the E.U. which essentially provided for the protection of fundamental rights.

22. The respondent's argument was that he was at a disadvantage as regards the impossibility of adducing evidence as regards the effects of the U.K.'s exit from the E.U. but that there would be no legal or political impediment to repealing the Human Rights Act, 1998 and in particular to continued accession to the European Convention on Human Rights ("ECHR").

23. Counsel submitted that it was a point that was likely to recur frequently and pointed to the two cases before the court and other cases pending. Counsel submitted that in the absence of an appeal, respondents will continue to argue that the judgment was per incuriam.

24. Counsel also submitted that if there was a change in circumstances such as a triggering of Article 50 or a greater evidential basis

and there was a decision of the Supreme Court that surrender must be prohibited, it would be cold comfort to this respondent in three years time. He submitted that those who raise the point first should be allowed appeal.

25. Counsel also pointed to this being raised as a matter of fundamental rights relating to the individual and submitted it was desirable that there should be clarity.

26. Counsel submitted that the main point of the case was "Brexit" but that if there was an appeal, there should be a certification also on the point of delay as this was an extreme set of circumstances. While he accepted there was no dispute at the trial as to the law, he submitted that the court had not considered the prosecutorial delay element of this case as culpable and the criteria as to how the court should treat this should be resolved by the Court of Appeal.

27. Counsel for the minister rejected the submissions as amounting to speculation. The minister submitted that the U.K. is required to continue to abide by E.U. treaties and laws until it ceases being a member of the European Union. The principles of mutual trust and confidence continue to apply. The law is as it stands under the Act of 2003.

28. Counsel submitted there was no lack of clarity or uncertainty. The U.K. is a member state and is bound by the provisions of the 2002 Framework Decision. One cannot impute uncertainty with respect to the law by simply raising a view as to what may happen in the future.

29. In respect of delay, it was submitted that there was no legal issue. There was also a finding of fact that there was no culpable delay and this could not form the basis of an appeal.

30. Counsel submitted there was no affirmative public benefit in the case such as this. Counsel submitted that if the point was reached where there was evidence that the U.K. was going to withdraw from the ECHR or repeal its Human Rights Act, that was another matter.

31. In response to the sense of grievance point, it was submitted that there could be no legitimate sense of injustice as any such case would be governed by the law at that time.

Submissions in *Minister for Justice, Equality and Law Reform v. Donovan*

32. Counsel for Mr. Donovan adopted the submissions of counsel for A.M. Counsel submitted further that there was uncertainty in the law as to what will happen in the future. Counsel relied on the decision in Riau to the effect that evidence of uncertainty in relation to a point of law may be a relevant factor in determining whether a point of law was one of exceptional importance but as Finlay Geoghegan J. stated: "I do not consider that the absence of such evidence necessarily precludes a determination that the point of law is of exceptional public importance." In counsel's submission, in light of the impending exit of the U.K. from the E.U., there will be uncertainty in the applicability/application of the 2002 Framework Decision and s. 4A of the Act of 2003. He submitted that the presumption in s. 4A of the Act of 2003 was a presumption that operated into the future and he referred to the decision of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Altaravicius* [2006] 3 I.R. 148 in this regard.

33. Counsel further submitted that, in light of the fact that the exiting process will take two years and may not be clear for some time, it was desirable to have certainty in the law during that withdrawal period. He also submitted that this was an issue which transcends the facts of the case.

34. Counsel for the minister adopted her colleague's submissions in the A.M. case. She also submitted there was in fact no real dispute on the law. There was no uncertainty in the law. She submitted that counsel for this respondent was basing his case on possible events but that this Court had to apply the law as it stands.

35. She referred to the specific question asked, namely whether the court can presume that the s. 4A presumption will be complied with. This was an abstract question, asking a hypothetical. The Court had to apply the law as in the Act, i.e. the Court had to apply the presumption.

36. Counsel also referred to the fact that this respondent had raised s. 37 grounds in his points of objection but expressly abandoned those at the hearing. This was an entirely abstract argument. There was no evidence that this issue could benefit him in any way. Therefore, the issue does not transcend this case.

Analysis and Decision by the Court

37. The law is as set out above. It is specifically acknowledged that this Court must take a broad approach to interpretation of the principles set out in the Act of 2003 and as the Supreme Court has stated in *Minister for Justice and Equality v. Tokarski* [2012] IESC 61. This is important because in applications for surrender pursuant to an EAW, the appearance before the High Court is the only opportunity that these respondents have to ventilate their issues before any court or tribunal, subject to the certification of an appeal. Furthermore, issues of fundamental rights, such as liberty, are at stake in these cases. Nonetheless, the Court is conscious that the Oireachtas has laid down strict criteria for the certification by the High Court before an appeal may be allowed. This Court is bound to apply those criteria having given due latitude to their interpretation.

Point of law?

38. The first issue is whether this application raises an issue of law at all. At first glance, this may seem a surprising issue to raise, given the legal language in which the questions are phrased. It is necessary to examine those questions (and the central issues) closely.

39. The question in the Donovan case, in short, is a simple question of whether the High Court can presume that pursuant to s. 4A of the Act of 2003 that the U.K. will comply with its obligations under the 2002 Framework Decision.

40. The question in the A.M. case is directed towards the factual situation of this respondent (an allegation of historic sexual abuse) and a question of whether surrender should be postponed, refused or adjourned because the circumstances of the proposed U.K. exit from the E.U. has not been delineated. In its essential features, this is a factual question as to whether there is a real risk that the U.K. will not abide by the guarantees under the 2002 Framework Decision and in particular the guarantees of fundamental rights.

41. These factual questions have been resolved in the judgments. There was no evidence to establish any basis for claiming that there was a real risk that rights would not be protected and no basis for claiming that the presumption could not be relied upon. Neither of these respondents put forward any evidence, other than the fact of the referendum vote, to establish that there was a

real risk that, on surrender, the U.K. would not comply with the requirements of the 2002 Framework Decision.

42. On this basis alone, the Court rejects each of these applications for certificates under s. 16(11) of the Act of 2003.

Point of law of exceptional public importance and desirable in the public interest that an appeal should be taken to the Supreme Court.

43. Despite the above finding, the Court will also deal with the points made by these respondents on the basis that their questions raised points of law. The issue is whether these are points of law of exceptional public importance and whether it is desirable in the public interest to appeal.

44. The Court accepts that these are issues which have been raised by other persons contesting their surrender to the U.K. and may be raised in the future by others. That is certainly a factor to which the Court would have regard. The Court is also conscious that in any extradition/surrender issues of liberty are at stake, that other fundamental rights can be put in issue in the case and that the Court should give a broad interpretation to the principles. This would seem to imply that the jurisdiction to certify should be less sparingly used than in other areas of the law.

45. It is not every point of law that must be certified but one of exceptional public importance which is a clear and significant additional requirement. Therefore, even giving a broad interpretation to the issues, the Court is bound by law only to grant a certificate where the matter involves a point of law of exceptional public interest. Even then, that is not sufficient in itself for a certificate, as the appeal must be desirable in the public interest. It is appropriate to quote from the Supreme Court (Murray J.) in the decision of *Minister for Justice, Equality and Law Reform v. Noel McPhillips* [2015] IESC 47 at para. 23:

> "*The restriction in s. 16(11) on an appeal is quite broad and emphatic. It says than an appeal may be brought against the High Court "decision", "if and only if" the High Court certifies for an appeal. The provision, enacted in 2003, enjoys the presumption of constitutionality. As indicated, the Oireachtas clearly intended to preclude an appeal, even for important questions of law, unless such questions also fell into the category of being a point of law of* "exceptional public importance". *Even that is not enough in itself, it must also be "desirable in the public interest" that an appeal should be brought. This is for the High Court to decide*." (emphasis in original).

46. The fact that the appeal raises particular issues of fundamental rights, e.g. fair trial or issues of inhuman and degrading treatment, over and above the deprivation of liberty involved in any surrender may, on the Tokarski principle, be grounds for considering the matter desirable in the public interest to grant a certificate. If there are other cases likely to raise the same point, again this could be seen as a reason why it is both of exceptional public importance and also desirable in the public interest to send the case forward to the Court of Appeal. The absence of other potential cases appears not, in itself, to be a ground to refuse to send forward as per the decision in Tokarski.

47. From the case law cited, it has been established that an important criterion is that the law stands in a state of uncertainty. This does not require differing judgments on the same issue as that would prevent a claimant who raises a point for the first time from being entitled to appeal. Where the High Court has dealt with a point for the first time, it may be proper to focus on the originality of the jurisprudence and the need for clarity in the law which an appellate court can provide. On the other hand, where the law in question has been clarified by the appellate courts, there can be no uncertainty.

48. It is undoubtedly the case that the courts are bound to apply the law as it stands at present. The law in relation to surrender under the Act of 2003 is clearly set out in that legislation and in the decisions of the superior courts which interpret that legislation. Section 4A of the Act of 2003 provides that "[i]t shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown." That is a very clear statement of how the Court must operate (see Altaravicius). The Court also observes that the presumption in s. 4A of the Act of 2003 is a presumption that an issuing state will comply with the requirements of the 2002 Framework Decision, which said requirements relate to fundamental rights and rights relating to matters post-surrender, e.g. the rule of speciality. The Court must operate on the basis of the law at present. The presumption is clear and is binding on the High Court as to how it must proceed when dealing with an application for surrender.

49. There is no uncertainty in the law on this most fundamental aspect. Therefore, there is no basis for granting a certificate .

50. Similarly, in respect of the issue of breach of fundamental rights, the Supreme Court in numerous cases has dealt with the approach to be taken depending on the particular right. The case of *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783 deals with the test where breach of the prohibition on inhuman and degrading treatment is apprehended. The case of *Minister for Justice, Equality and Law Reform v. Stapleton* deals with the case of fair trial rights, including delay. Stapleton has been followed on numerous occasions by the Supreme Court.

51. On that basis, there is no uncertainty in the law. If either of these respondents had a fear that there was a real risk that their rights would not be respected in the U.K. on surrender, the law set out a clear path as to how this could and would be addressed. Indeed, it is striking that both respondents chose to make abstract arguments of law, rather than address by way of evidence the law as it stands. Mr. Donovan did not raise a specific breach of his fundamental rights and raised no evidence as to any risk that the U.K. would not respect his fundamental rights or indeed any rights under the Framework Decision. In relation to Mr. M., he claimed that his rights to a fair trial would be violated but he did not raise any evidence to show that he could not have that addressed in the U.K., either now, in the next couple of years or at any stage in the future.

52. Points of law that are argued at a level of abstraction will not normally satisfy the criteria of exceptional public importance and desirable in the public interest that an appeal be taken. The point of law argued by these respondents is at a level of abstraction, it has little or no grounding in the evidential or legal situation that obtains in these applications for surrender. On that basis also, the Court is obliged to refuse each of these applications for certificates for leave to appeal.

53. The Court is also of the view that these are arguments which are devoid of merit in the sense that the issue actually raised "is clear-cut almost to the point of being beyond argument" (as per Hogan J. in U.(M.A.) & Others). The Court is bound to apply the legislation and case law as it stands at present. The law as it stands is absolutely clear, a presumption of compliance by the issuing state with the requirements of the 2002 Framework Decision applies and can only be set aside when "the contrary is shown". That has not been shown. Similarly, there is no evidence of a real risk to any fundamental rights.

54. Finally, as regards the issue raised by counsel for A.M., that it would be an injustice to his client if in three years time, the Supreme Court were to rule that surrenders to the U.K. should be refused, the Court believes that this submission is without merit. This respondent is subject to the law as it is at present. If on a different set of facts (including perhaps evidence of legal conditions

in the U.K. after withdrawal from the E.U. treaties and a risk to fundamental rights) the Supreme Court were to refuse surrender to another individual, this respondent can have no legitimate sense of grievance as his case has been dealt with in accordance with law.

55. The Court therefore rejects each of these applications for certificates pursuant to s. 16(11) of the Act of 2003 that these decisions involve a point of law of exceptional public importance and that it is desirable in the public interest that appeals should be taken to the Supreme Court [Court of Appeal].