

THE HIGH COURT

Record No.: 2012/244 EXT

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

Between/

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

and

MAGDALENA ROSTAS

Respondent

JUDGMENT of Mr. Justice Edwards delivered on the 1st day of July, 2014.

Introduction:

1. The respondent is the subject of a European arrest warrant dated the 1st of September, 2009, issued by a competent judicial authority in Romania which seeks the rendition of the respondent for the purpose of the execution of a sentence of 3 years and 4 months imprisonment imposed upon her by a court in Romania in 1996, of which 1091 days remains to be served, in respect of the single robbery-type offence particularised in Part (e) of the warrant. The warrant was endorsed for execution in this jurisdiction by the High Court (Herbert J.) on the 28th of August, 2012. The respondent was arrested in execution of the warrant on the 27th of October, 2012 by Garda Barry Keegan 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"). In the course of the s.13 hearing a notional date was fixed for the purposes of s.16 of the Act of 2003 and the respondent was remanded on bail to the date fixed. Thereafter the matter was adjourned from time to time, ultimately coming before the Court for the purposes of a surrender hearing.

2. The respondent does not consent to her surrender to Romania. Accordingly, this Court is now being asked by the applicant to make an order pursuant to s.16 of the Act of 2003 directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive her. The Court must consider whether the requirements of s.16 of the Act of 2003, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependent upon a judicial finding that they have been so satisfied.

Uncontroversial s.16 issues

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

4. The Court has also received an affidavit of Garda Barry Keegan sworn on the 2nd April, 2013, testifying as to his arrest of the respondent. He states at para. 3 of his affidavit that the woman that he arrested acknowledged that she was Magdalena Rostas. Moreover, she acknowledged the part (a) details when they were put to her. In addition, counsel for the respondent has confirmed that no issue arises as to either the arrest or identity.

5. I am satisfied following my consideration of these matters that:

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

(b) The warrant was duly executed;

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

(d) The warrant is in the correct form save for part (d), an issue to which I will return, and a failure to complete part (e) II;

(e) The warrant purports to be a conviction type warrant and the respondent is wanted in Romania for the purpose of the execution of a sentence of 3 years and 4 months imprisonment imposed upon her by a court in Romania in 1996, of which 1091 days remains to be served, in respect of the offence particularised in Part E of the warrant;

(f) The nature and classification of the offence of which the respondent has been convicted in the issuing state is: "Crime against Property : robbery, [contrary to] article 211 paragraph 2 with the application of article 75(a) of the [Romanian] Criminal Code";

(g) The underlying domestic decision on which the warrant is based is stated to be "Criminal sentence no 2732/1996, pronounced in file no 10354/1995, final and not granted the appeal on 20.12.1996". Further information dated the 27th of March, 2013, establishes that this was a sentence of Oradea Court pronounced on the 9th of December, 1996;

(h) The issuing judicial authority has not invoked para. 2 of article 2 of Council Framework Decision 2002/584/J.H.A. 13th June, 2002, on the European arrest warrant and the surrender procedures between Member States, O.J. L190/1 18.7.2002 (hereinafter referred to as "the Framework Decision") and accordingly the Court requires to be satisfied both with respect to correspondence and minimum gravity;

(i) The offence is particularised within the warrant as follows:

"The night of 03/04.08.1995, in the train 3072, on route Oradea-Cluj-Napoca, the indictee together with indictees Venczel Alexandru and Rostas Stela have despoiled by violence on the victim Moisan Constantin of property and money he had, causing him injuries healed in 10-12 days of medical care and causing him injury in the amount of

1.200.000 lei.”

(j) Counsel for the applicant has invited the Court to find correspondence with the offence in Irish law of robbery, contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act 2001. Counsel for the respondent makes no objection to this suggestion. Having considered the facts set out in the warrant and the ingredients of the candidate corresponding offence the Court is satisfied to find correspondence with the suggested s. 14 offence.

(k) The minimum gravity threshold is that which now finds transposition into Irish domestic law within s. 38(1)(a)(ii) of the Act of 2003, as amended, namely that a sentence of at least four months should have been imposed by the court in the issuing state. As a sentence of 3 years and 4 months was imposed in the respondent's case the minimum gravity threshold is comfortably met;

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

6. In addition, the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States)(No. 2) Order 2007 (S.I. No. 59 of 2007) (hereinafter “the 2007 Designation Order”), and duly notes that by a combination of s. 3(1) of the Act of 2003, and article 2 and the Schedule to the 2007 Designation Order, Romania is designated for the purposes of the Act of 2003 as being a state that has under its national law given effect to the Framework Decision.

The Points of Objection

7. Although the respondent raised a number of points of objection, including a correspondence point, an in absentia point, and fundamental rights points, only the latter were proceeded with at the end of the day. In the initial “Points of Objection” document filed on the 27th of November, 2012, it was pleaded:

“VI. The warrant is based on *“criminal sentence no. 2732/1996 ... final and not granted the appeal on 20.12.1996”* and states that that sentence was for an alleged offence on the night of 3rd/4th August, 1995. Thus, the warrant seeks to enforce a sentence passed 16 years ago in respect of an offence alleged to have taken place more than 17 years ago. The respondent was 18 years of age at the time of the alleged offence and is now 35 years of age. She has had seven children since that time. She is full-time carer now to three of those children in Ireland. She remained in Romania until moving to Ireland in August, 2009, some 13 years after conviction. She served some time in prison in Romania, but her sentence was adjourned on a number of occasions because of her duties to her young family. It is disproportionate to impose the sentence on her now given the passage of time. It is in breach of her right to an expeditious determination and disposal of the criminal case against her, as required by the Constitution and the Charter of Fundamental Rights. It is in breach of her right, and the rights of her husband and children, to respect for their family and private life in this State as protected by the Constitution and the Charter of Fundamental Rights. The delay in imposing sentence constitutes a breach of the respondent's right, and the rights of her husband and children, to free movement and residence within the European Union pursuant to Articles 20 and 21 of the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights.”

8. Later, on the 18th of January, 2013, with the leave of the Court, the respondent filed “Additional Points of Objection” and these were pleaded in the following terms:

“I. The respondent relies on section 37 of the European Arrest Warrant Act 2003. There are reasonable grounds for believing that she was discriminated against as a Roma in the course of her prosecution and conviction in Romania such that her imprisonment will mean that she is being treated less favourably than a person who is not of her ethnic origin. As such, her surrender is prohibited by section 37(l)(c) of the Act. Further, her surrender would violate the Constitution, such that it is prohibited by section 37(1)(b) of the Act, and her surrender would be incompatible with State's duties under the European Convention on Human Rights, such that it is prohibited by section 37(l)(a) of the Act.

II. The “high level of confidence” between member states which is the basis of the European Arrest Warrant system (Recital 10 of the Framework Decision) cannot apply in this case because the conviction on which the EAW is based dates back to 1995/6 at a time when Romania was not fit to join the European Union and more than 10 years before Romania was permitted to join the Union in 2007.

III. The surrender of the Respondent would violate her rights under the Charter of Fundamental Rights, including those protected by Articles 7, 20, 21, 47, 48 and 49 of the Charter, and so would violate EU law and must not be permitted.

IV. Such other Points of Objection as may be permitted by this Honourable Court.”

The Respondent's Principal Affidavit

9. The Court has before it an affidavit of the respondent sworn on the 18th of January, 2013, in which she states (*inter alia*):

“3. I was born on 7th July, 1977, in Alesd, in the Bihor Municipality of Romania.

4. I am of Roma ethnic origin and a member of the Roma community. I have always lived as a member of the Roma community and have always been identified as such by others.

5. The EAW seeks my surrender to Romania to complete a term of imprisonment of three years and four months which was imposed on me in 1996 following my conviction for an offence of robbery on the night of 3rd/4th August, 1995. I was convicted with two other persons who were also members of the Roma community. I did not commit this offence and I have always protested my innocence and I say that my conviction and sentence were unfair and unlawful. I did not receive a fair trial. The system of criminal justice in 1995/1996 in Romania was seriously flawed and there was gross discrimination against Roma in that system.

6. I was convicted together with Alexandru Venczel and Stela Rostas following an attack on a person in a train. I was on that train but was not involved in any way in the incident. I think it was two days after the incident that the police came to my house and arrested me. They brought me to a police station where I was taken to a room and interrogated by a police officer. I told the police officer that I was on the train but that I was not involved in any way in the incident and was innocent. He said words along the lines: “Shut up. You are a gypsy. You are a liar.” The man who was assaulted was

brought into the room and asked if he recognised me and he said that he did not. However, the policeman said I was the person who stole from him. He said he had found goods in my home. The police officer kept saying I was guilty, and that I was Roma and a liar. I asked to go to the toilet. As I was coming back from the toilet into the room, the police officer hit me on the back with a baton. He did this even though I was eight months pregnant. I was only 18 years and one month in age at the time.

7. On a later date I was told to sign a number of documents. I do not recall whether I signed a statement. I do not think I did. Anyway, I cannot read and no documents were read out to me. Further, whilst I can understand the Romanian language reasonably well, my native tongue is Roma and my understanding of Romanian is limited. I was desperate to get out of the police station because I felt very weak due to my pregnancy and the threatening behaviour of the police officer.

8. About one month later I attended court. I went there on several occasions. I cannot remember precisely how many. I did not see any witnesses give evidence during the course of my case. I saw the victim once in court and he did not give evidence on that occasion. I heard no evidence against me.

9. I was assigned a lawyer from the State. I remember that his first name was Marian. I do not know his surname. He never met with me, or even spoke to me, prior to my appearance in court. When we were in court he said very little to me. I do not believe that he put up any defence for me. I did not hear him assert my innocence. I was never asked if I had been involved in the offence. I was never asked to plead guilty or not guilty. I was never given an opportunity to say anything in court. I gave no evidence. The only time I was asked about the incident on the train was the one occasion that I was interrogated in the police station, when I said that I was not involved but the police officer called me Roma and a liar. I do not know if the lawyer representing me in court put forward the fact that I maintained my innocence. I had no effective defence.

10. I had no appeal against the conviction and sentence. The EAW refers to an appeal but I am not aware of any appeal hearing. You need money to pay for an appeal and I did not have that money. I believe there was no appeal. If I am wrong and there was some sort of appeal, I was not aware of it.

11. Because I am a Roma, I was discriminated against and did not receive a fair trial. The police officer who investigated the incident was strongly prejudiced against me and assaulted me. He did not accept my innocence. He was determined to assert that I was guilty. I had no effective legal representation. I was not given the opportunity to assert my innocence and challenge the case against me. The lawyer representing me barely spoke about the case with me. The proceedings were not conducted in my mother tongue of Roma. Whilst I have a reasonable understanding of Romanian, it is limited. I believe the court was against me anyway and wanted to find me guilty because I was Roma.

12. This is my only conviction in Romania. I have always protested my innocence in respect of it. I am a Christian. I am not a criminal, although I have convictions in Ireland for begging.

13. The imposition of my prison sentence in 1996 was postponed because I had a very young child. My first child, Antei, was born on 30th September, 1995. In Romania, at that time, a mother who had a very young child could have her prison sentence postponed.

14. I heard nothing more from the police until the latter part of 2001. This was a very difficult time in my life which still haunts me. I gave birth to my daughter, Maria, on 31st October, 2001. When Maria was born she was yellow in colour and ill and the staff at the maternity hospital decided to keep her in hospital. I was discharged from the hospital. When I went back the next day, Maria had been removed to another hospital for treatment. I was told to go to that hospital the following day to see Maria. I did that but was told that I could not see her, although I was allowed to see her through a window. I was never allowed to have Maria back. The police told the hospital that I had to serve a prison sentence and people from the child protection unit visited where I lived and said it was not suitable for Maria to be there. Sometime later, I was arrested by the police and told that I had to serve my prison sentence. I was put in prison. My husband and my father found the lawyer, Marian, and after I had spent about a month in prison an application was made for my release because of my children. I was released about two weeks later. However, I never got Maria back. I went to the orphanage where she was but was not allowed to have her back. I saw her once when she was about one and a half years old. I have never been given any papers to show that she has been legally adopted or legally placed in care. It has been very distressing to me. I have lost a child who is still alive. This sometimes happens to Roma people in Romania. Their children are taken from them.

15. I have had eight children in all: Antei (born on 30th September, 1995); Radu (born on 1st May, 1998); Maria (born on 31st October, 2001); Razvan (born on 11th April, 2003); Denisa-Izabela (born on 10th January, 2005); Cassandra-Magdalena (born on 17th October, 2006); Sebastian (born on 17th August, 2008) and Christian Kevin (born on 22nd April, 2010). (Court's note: Birth Certificates exhibited)

16. The imposition of my prison sentence was postponed because of the young ages of my children, although I did serve a second term in 2006. But I was pregnant with Cassandra then, so I was allowed out of prison for the birth.

17. My prison sentence was postponed because of the young age of my children and their dependence on me.

18. I left Romania on 5th August, 2009, and came to Ireland. My husband, Stoica, had come to Ireland to try to find a better life for us. We decided that I would move and I did so. We currently reside at 256 North Circular Road, Dublin, with four of our children: Antei, aged 17; Razvan, aged 8; Sebastian, aged 4; and Christian Kevin, aged 2. Radu, Denisa and Cassandra are currently staying with their paternal grandparents in Tileagd, Romania. The three younger children with me require my full-time care, and I provide this. I am their mother and they need me. We have lived as a family in Ireland for more than three years now and this is our home. Our family life is here. Also, we are treated much better here than in Romania. If we have to return to Romania we will be subjected to very serious discrimination again.

19. If I was returned to Romania to serve a prison sentence it would have a devastating effect on me and my children. This conviction has had a very bad effect on my adult life. I was only 18 at the time of the alleged offence. Ever since, it keeps re-surfacing to haunt me. I should not have been convicted. I did not have fair trial because I was discriminated against as a Roma. I applied for a Presidential pardon in Romania but this has been refused. Not only am I innocent, but I say respectfully and believe that it is unfair that this prison sentence is still hanging over me, 16 years after the

conviction.

10. Further, in the said affidavit the respondent also verifies those matters of alleged fact referred to in the Points of Objection filed on her behalf (with one correction of a minor detail). Counsel for the applicant has not sought to cross-examine the respondent as to her affidavit.

Additional Information dated 27.03.2013

11. A copy of the respondent's affidavit was forwarded by the applicant to the issuing judicial authority, together with a letter inviting the following clarifications:

"(i) Please clarify what International Human Rights organizations, conventions and treaties does Romania participate in with a view to safeguarding and protecting the human rights of citizens.

(ii) In the event of her surrender to Romania, please confirm that Ms. Rostas will :

- be expressly informed of her right to an appeal.

- be afforded legal representation at in any such appeal

- have the right to attend any such appeal and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed.

(iii) Please clarify whether or not Ms. Rostas has ever lodged an appeal against her conviction or sentence? If so, please confirm when that was and whether or not she had legal representation at the hearing?

(iv) Please forward any comments you wish to have put before the High Court in order to rebut any of the averments contained in the attached affidavit."

12. In response, the issuing judicial authority forwarded a letter dated the 27th of March, 2013, containing the following additional information:

"...we inform you the following:

- Romania is part of the United Nations, Council of Europe and she collaborates with the Organization for Security and Cooperation in Europe; herewith, through Law no. 30 from 18th of May 1994, Romania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and of additional protocols to this convention.

- by criminal sentence no. 2732 from 09th of December 1996 of Oradea Court, pronounced in file no. 10354/1995, final on 20.12.1996, by non-appellation, the named ROSTAŞ MAGDALENA was convicted to a penalty of 3 years and 4 months of prison for robbery, provided and punished by art. 211 paragraph 2 Criminal Code, with art. 75 point a Criminal Code;

- the named ROSTAŞ MAGDALENA was informed about the hearing given in cause, being present for debates;

- the named ROSTAŞ MAGDALENA didn't formulate an appeal against the criminal sentence no. 2732 from 09th of December 1996 of Oradea Court.

- the convicted started the execution of the penalty on 23.05.2002. From the execution of this penalty, the accused was released as a consequence of the interruption of the penalty execution on 01.07.2002 (by criminal sentence no. 1141/2002 of Oradea Court). The convicted was reincarcerated, in the execution of the same execution warrant, on 14.01.2006, being again released pursuant to the admission of a new interruption request of the penalty execution, on 11.04.2006 (by criminal sentence 608/27.03.2006 of Oradea Court); after this date, the convicted wasn't reincarcerated, since she benefited from 2 adjournments of the penalty execution (criminal sentences 112/24.01.2007 and 69/24.01.2008 of Oradea Court).

- By criminal sentence no. 1039/2008 of Oradea Court, it was disposed the interruption of the execution of the penalty mentioned above, because of the fact that she has a child with the age of one month, until the minor child Rostas Sebastian-Rodolfo will be 1 year old, meaning until 17.08.2009; subsequently, she wasn't reincarcerated because she eluded from the execution of the penalty.

According to dispositions of art. 522/1 paragraph 1 from Criminal Procedure Code, if it is asked the extradition or the surrender, according to an European Arrest Warrant, of a person judged and convicted in absence, the cause will be rejudged by the Court who judged in first instance, at the prisoner's request.

According to art. 171 Criminal Procedure Code, the accused or the defendant has the right to be assisted by a lawyer, during the criminal prosecution and during the judgment and judicial authorities have the obligation to inform him about this right. During the judgment, the legal assistance is also mandatory in cases in which the law provides, for the crime committed, the punishment of detention for life or the punishment with the prison for 5 years or more. When legal assistance is mandatory, if the accused or the defendant didn't chose a lawyer, measures are taken in order to appoint a public defender.

According to the provisions of art. 6 Criminal Procedure Code, the right to defense is guaranteed to the accused, the defendant or to the other parties during the entire criminal suit.

During the criminal suit, judicial authorities have the obligation to ensure to the parties the full exercise of procedural rights in the conditions provided by the law and to administer the evidences needed for defense.

Judicial bodies have the obligation to inform the accused or the defendant, before hearing him, about the fact for which he is investigated, its legal framework and to ensure him the possibility to prepare and to exert the defense.

Any party had the right to be assisted by a lawyer during the entire criminal suit.

Judicial bodies have the obligation to inform the accused or the defendant, before taking his first declaration, about the right to be assisted by a lawyer, noting this in the hearing minute. In the conditions and in cases provided by the law, judicial bodies gave the obligation to take measures in order to ensure the legal assistance for the accused or for the defendant, if he hasn't a lawyer chosen.

According to art. 5 Criminal Procedure Code, during the entire criminal suit, the person's freedom is guaranteed.

No person can be retained, arrested or confined in other way and she cannot be submitted to any restriction form of freedom, except cases and under the conditions provided by the law.

If the person against whom was taken the measure of the preventive arrest or it was disposed the medical hospitalization or a freedom restriction measure considers that this is illegal, she has the right to repair the damage incurred, under the conditions provided by the law.

Any person who, during the criminal suit, was confined or to whom it was restricted the freedom, in an illegal way, has the right to repair the damage suffered, under the conditions provided by the law.

During the entire criminal suit, the accused or the defendant who was preventively arrested, can ask the temporary release, under judicial control or on bail.

According to art. 21 from Romania's Constitution which regulates the free access to justice,

- (1) Any person can address to the justice in order to defense her legitimate rights, freedoms and interest.
- (2) No law can abridge the exercise of this right.
- (3) Parties have the right to a fair trial and to the settlement of causes in a reasonable time.
- (4) Special administrative jurisdictions are optional and free of charges.

The named Rostaş Magdalena, both during the court investigation and by the occasion of the judgment of adjournment demands of the penalty execution and interruption of the penalty execution was assisted by a lawyer.

In the charge of the named Magdalena it was retained the fact that, during the night 03/04.08.1995, in the personal train 3072, on the route Oradea - Cluj-Napoca, the accused and the co-defendants Venczel Alexandru and Rosta⁹ Stela striped with violence the damaged person Moisan Constantin of the goods and the money he had with him, producing him recoverable lesions in 10-12 days of medical care and causing him prejudices in the amount of 1.200.000 lei.

- according to the judicial record certificate of the accused Rostaş Magdalena, it results that, at that time, she appeared with criminal antecedents:

- in right, the facts of the accused Rostaş Magdalena meet the constitutive elements of the infraction provided and punished by art. 211 paragraph 2, with the application of art. 75 point 1 Criminal Code.

According to art. 211 paragraph 2 from Criminal Code,

(2) The robbery committed in the following circumstances:

- a) by a masked, disguised or transvestite person;
- b) during the night;
- c) in a public place or in a mean of transport, is punished with prison from 5 to 20 years.

ART. 75 point a Criminal Code - Aggravating circumstances

The following circumstances represent aggravating circumstances:

- a) the commitment of the fact by three or several persons together;

- The accused ROSTAŞ MAGDALENA was convicted to a penalty of 3 years and 4 months of prison with execution in detention, from which she executed a part during the period 23.05.2002 - 01.07.2002, respectively during the period 14.01.2006 - 11.04.2006, remaining 1091 days to be executed."

Further Evidence Adduced on behalf of the Respondent

13. The respondent further relies upon an affidavit of her solicitor, Suzanne Rush, which exhibits and refers to extensive body of country of origin information concerning Romania, and discrimination faced by Roma in that country. The material exhibited, and extensively quoted from, consists of:

(a) European Parliament "Resolution on discrimination against the Roma", September, 1995 (Official Journal C 249, 25/09/1995 P. 0156, B4-0974/95).

(b) European Commission report, 15th July, 1997, "Agenda 2000 – Commission Opinion on Romania's Application for

Membership of the European Union" (DOC/97/18), 15th July, 1997).

(c) European Commission against Racism and Intolerance's "Country-by Country Approach, Report on Romania 1999", (CRI (99) 9)

(d) European Commission against Racism and Intolerance's "Second Report on Romania", 2002 (CRI (2002) 5)

(e) Human Rights Watch report, November, 1994, "Lynch Law: Violence against Roma in Romania".

(f) European Roma Rights Centre report, "Sudden Rage at Dawn", 1996.

(g) European Roma Rights Centre, Observations to UN Human Rights Committee and UN Committee on the Elimination of Racial Discrimination, 1999.

(h) European Roma Rights Centre, "State of Impunity: Human Rights Abuse of Roma in Romania", 2001.

(i) APADOR reports 1994 and 1996.

(j) Amnesty International report on Romania entitled "Broken Commitments to Human Rights", 1st May, 1995.

(k) Amnesty International report on systematic police brutality in Romania, 9th August, 2000.

(l) Penal Reform International report, "Discrimination against Roma in Criminal Justice and Prison Systems in Romania", 2003.

(m) European Roma Rights Centre report on discrimination against Roma including the placement of children in State care, 2002"

14. The Court also has an affidavit from Stephen O'Mahony, Solicitor, sworn in these proceedings on the 29th of October, 2013, which exhibits a report of the European Roma Rights Centre entitled "Life Sentence: Romani Children in State Care in Romania", European Roma Rights Centre, June, 2011

15. The Court has carefully reviewed and considered all of this material and will refer to it later in this judgment to the extent necessary.

16. The respondent also relies upon two affidavits of Irina Maldea, consisting of a principal affidavit sworn on the 2nd of April, 2013, and a supplemental affidavit sworn on the 12th day of July, 2013. Ms. Maldea is a person of Romanian ethnicity (though not Roma) who enjoys joint Irish and Romanian citizenship, and who is a television director and producer with Akajava Films Ltd, based in Bray Co Wicklow. In 2007, a number of Roma families who had come to Ireland as economic migrants had set up camp on a roundabout on the M50 motorway just outside Dublin city, an event which received widespread news coverage and publicity at the time. Akajava Films Ltd decided to make a television documentary about that event, focusing on one of the families involved. Ms. Maldea, and a Mr. Brendan Culleton, were to be co-producers of that documentary. The documentary was called "Shelter on the M50" and was broadcast in this country on TG4 on the 3rd of October, 2010. In her affidavit Ms. Maldea describes meeting with Stoica Rostas, husband of the respondent, who was in the camp with two of his children. Mr. Rostas' wife, the respondent herein, was in Romania at the time. He agreed to return to Romania and to allow the television crew led by Ms. Maldea and Mr. Culleton to follow him and to film him and his family over the ensuing months. Ms. Maldea met with the respondent when the film crew filmed the Rostas family in Tileagd, in Bihor, in Transylvania. Ms. Maldea got to know the respondent who told her about her conviction and sentence, the subject matter of these proceedings.

17. At paragraph 7 of her principal affidavit Ms. Maldea goes on to state:

"During the making of the film we met with all the senior administration in the town where Mrs. Rostas is from, including the mayor, police, clergy, school principals, doctors and business people. We were sceptical of Mr. and Mrs. Rostas' assertion that they had never committed any crime, including petty crime, and had no convictions, except Mrs. Rostas' conviction in 1996. So we spoke to other people in the village. We also interviewed the mayor for our programme. The people we spoke to confirmed that Mr. and Mrs. Rostas had not been involved in crime, apart from Mrs. Rostas' conviction in 1996 which she maintains was a miscarriage of justice. The mayor looked up their criminal records in our presence and confirmed on camera that there were no criminal records for Mr. Rostas. We spoke to police and priests and they confirmed that Stoica and Magdalena were law-abiding people. When we interviewed the mayor, he refused to have Mr. and Mrs. Rostas within view of him. He said (on camera) that he did not want to be seen beside a gypsy. He made very strong anti-gypsy remarks to us on camera, although we chose not to broadcast these when we edited his interview for transmission."

18. The account given to Ms. Maldea is confirmed in paragraph 8 of Ms. Maldea's principal affidavit as being that which the respondent has given to this Court. While what was said to Ms. Maldea by the respondent is of course hearsay, it is admissible hearsay because it is not adduced as testimonial evidence for the purpose of seeking to establish the truth of that account. Rather it is adduced as original evidence to establish the fact that this was the account given to Ms. Maldea and also that it was given to her at a point in time that was approximately two years prior to the issuing of the European arrest warrant in this case, and while the respondent was still in Romania. The respondent relies upon such original evidence to demonstrate consistency on her part, in terms of the account that she has given to this Court in her affidavit sworn on the 18th of January, 2013.

19. At paragraph 8 of her principal affidavit, Ms. Maldea has stated:

"...what appears to have happened is that the two people she referred to in her affidavit stole oil and sugar from a person on the train who had been to Hungary. Later the police went to Mrs. Rostas' house and found oil with a Hungarian label on it. Mrs. Rostas had bought oil and sugar from the two people who had carried out the theft, and the police then charged her with the robbery and assault on the train, despite the fact that she was well over 8 months pregnant at the time and was sick. She was in fact returning from the Maternity Hospital as she thought she was about to give birth."

20. Ms. Maldea also deposes in the same affidavit to having personally witnessed very serious discrimination against the Roma in her home country of Romania. She says that she is now ashamed of it, but that it seemed normal to her, and was all around her when she

resided there. She believes that when she first came to Ireland she was in fact perceived as racist by Irish people. She believes that discrimination against the Roma in Romania was very severe in the late 1990s and she expresses the view that the respondent's description of what occurred to her during her arrest, questioning and trial is consistent with the type of discrimination that occurred against the Roma in Romania at that particular time. She states that whilst she had moved to Ireland in 1993, she returned to Romania frequently during the 1990s.

21. In her supplemental affidavit, Ms. Maldea exhibits a DVD copy of the documentary, "Shelter on the M50", as broadcast on TG4 on the 3rd of October, 2010, together with a transcript of two portions of the footage in English, the dialogue in the footage having been translated from Romanian into English by a Court interpreter. The Court has also been provided with a affidavit in verification of the said translation sworn by the said Court interpreter, Mr. Petru Rusan, on the 26th of June, 2013. The documentary was shown in court in the course of the s.16 hearing.

22. The Court has also been furnished with an affidavit sworn by Ms. Maldea's co-producer in respect of the said documentary, Mr. Brendan Culleton. In addition to the matters deposed to by Ms. Maldea in her principal affidavit, Mr. Culleton adds (at paragraphs 6 to 8 inclusive of his said affidavit):

"6. When we met Mr. Rostas in 2007, he told us about the situation of his wife. When we subsequently met her, Mrs Rostas asked us for help in finding a lawyer to reopen her case. She told us that us they were gypsies and that no-one would listen to them, but that they might listen to us. We attempted to obtain legal assistance for Mrs. Rostas. Through the offices of the Roma Human Rights Centre in Budapest we were recommended a human rights lawyer and academic called Livia Labo, practicing in Cluj, Romania. At first she said that she had a plan to help. We transferred 500 euro to her bank account. She hired another lawyer in Oradea. When she started to enquire about Mrs. Rostas' case and found that Mrs. Rostas had served a part of her sentence, she told us that there could now be no appeal, and that the decision was final. In 2008, I gave the Rostas family 150 euro (one month's salary in Romania) so that they could go to a lawyer in Oradea, Mrs Florina (I believe her surname to be Faur), in order to make an application for a presidential pardon, as this now appeared to be the only solution. I believe that approximately one pardon is granted per year. On 17th March, 2010, we travelled to Romania with Mr. Rostas to see if the lawyer had received any answer, as Mr. Rostas had not received any answer at that time. We also tried to find the lawyer to whom we had paid previously paid 500 euro, but were refused entry to her office. We accompanied Mr. Rostas on the street and came upon Mrs Florina, who had received my 150 euro in order to apply for a presidential pardon. She refused to talk to Mr. Rostas and waved him away. Several weeks later, also in 2010, Mr Rostas told me he had found another lawyer. We contacted this lawyer on his behalf, and this man, Mr. Sava advised us that there was no appeal open to Mrs. Rostas. Shortly after that, I witnessed on Romanian television the Romanian president, Traian Basescu, abusing a journalist because of her Roma origins. I formed the opinion, which I believe to be correct, that there is no remedy available to Mrs. Rostas in Romania to address the unfair treatment that she received in 1996. I have seen the attempts made by Mr. and Mrs. Rostas to obtain legal redress and I know that Mrs. Rostas feels a burning sense of injustice and depression because of the accusation made against her in 1995. I say and believe that Mrs. Rostas persistent assertion of her innocence bears witness to a strong sense of injustice and unfairness.

7. I have visited Romania regularly since 1989, and in the course of my film-making in recent years have carried out research on the discrimination faced by Roma and the situation in Romania both before and after the Ceausescu regime. I have met Presidents of Romania, a variety of Romanian lawyers, mayors, police officers, politicians, clergy, and teachers, as well as researching the reports of a variety of institutions concerned with human rights (for example those of the US Department of State, Amnesty International, Council of Europe, ERRC and many others). I have personally witnessed (even up to the present day) discriminatory behaviour towards Roma in Romania, particularly in legal matters. For example, I have witnessed lawyers in that country taking fees from Roma and then failing to act on their behalf and refusing to even speak to them afterwards. I witnessed police violence against Roma in the early 1990s. I believe that even now it is difficult for Roma to be able to exercise their legal rights due to the obstacles stacked against them. At the time of Mrs. Rostas' conviction, Romania was still in a transition period. The legal provision which allowed a woman to postpone a prison sentence whilst one of her children was under 12 months of age was not in any way humanitarian based. Rather, it is a law from the time of Ceausescu dating to 1968 (Article 453 of the Penal Code). In 1967, Ceausescu decided to increase the population of Romania by 7 million and issued the now notorious Decree 770, which forbade abortion, contraception and imposed forced monthly gynaecological tests on women, with secret police monitoring women in hospitals. Article 453 CCP of the Penal Code of 1968 was a follow-on from the Decree 770 and its intent was population increase, not humanitarian.

8. I believe that Mrs. Rostas' description of what occurred to her during her arrest, questioning and trial is consistent with the type of discrimination that occurred against the Roma in Romania at that particular time."

23. The respondent also relies upon two affidavits of a Romanian Lawyer, a Mr. Alexander Butuc, consisting of a principal affidavit sworn in these proceedings on the 24th of April, 2013, and a supplemental affidavit sworn in these proceedings on the 24th of June, 2013.

24. In his principal affidavit, Mr. Butuc says he qualified as a lawyer in 1970. He worked as prosecutor and became licensed to practice in the Romanian courts in 1979. He presently works for the firm "Butuc Alexandru Lawyer" and is the principal thereof. He has practiced full-time as a lawyer since 1979. He is a member of the Bihor Bar Association and he practices in all the courts in Romania, including the High Court of Justice and Court of Cassation.

25. Mr. Butuc then goes on to state at paragraphs 3 to 5 of his said principal affidavit:

"3. I have read the affidavit of Magdalena Rostas in the proceedings in the Irish High Court in which her surrender to Romania is sought on foot of a European Arrest Warrant (proceedings 2012/244 EXT). I have also read the European Arrest Warrant, and the additional information which has been provided by the Oradea Court Prosecutor's office dated 27th March, 2013.

4. In response to this additional information, I have been asked to confirm, by Mrs. Rostas' lawyer in Dublin, that she has no right of appeal in Romania. I am in no doubt that she has no right of appeal. Her conviction is dated 1996. I do not believe that she can exercise any right of appeal now.

From the contents of the conviction file, it appears, without any doubt, that Magdalena Rostas was present during

the trial but was not present on the sentencing date, and the conviction was only communicated to her on the occasion of her arrest, six years after her being convicted.

According to the criminal procedure laws, any convicted person has the right to appeal within 10 days from the date on which the conviction is imposed, Magdalena Rostas being unable to exert this right because she was unaware of the fact that she had been convicted.

It is surprising that although her conviction became final and came into effect on 20th December 1996, she was not sought for the purpose of enforcing the said decision to imprison her until 2002.

At the time of her arrest in 2002, the Romanian authorities had the obligation to inform her of her right to appeal outside the statutory period, on the grounds that she was absent on the sentencing date, but she was not provided with this information.

The reason why she was treated with ignorance and indifference and her right to challenge the conviction was flouted is precisely because of her Roma origin.

In these circumstances, Mrs Magdalena Rostas no longer has the right to appeal and her surrender would in consequence lead to her being imprisoned for the purpose of serving the sentence.

I have read the reply of the Romanian Judge Racolta Ioan, where he enumerates all the defendants' rights, but when he refers to the possibility of a re-trial pursuant to Art. 522.1 of the Criminal Procedure Code - which stipulates that a person convicted in his/her absence has the right to a new trial - I believe it to be incorrect information provided to the Irish justice [bodies], as Magdalena Rostas was present during her trial and in consequence is not entitled to a re-trial following extradition.

I respectfully quote the text of Art. 522.1:

"Where the extradition or surrender of a person convicted and sentenced in his/her absence is sought pursuant a European Arrest Warrant, at the convicted person's request, the case shall be re-tried by the court which initially dealt with the case."

In consequence, Mrs Magdalena Rostas was not dealt with in her absence, having been present during her trial, but the contents of the sentencing decision were not communicated until the time of arrest in 2002 and on that occasion she was not informed about her right to appeal outside the statutory period.

In the judiciary practice of the years 1995-1996, in the cases involving offenders aged just over 18 and with no previous convictions, while being considered adults and having committed their first offence, the courts used to impose sentences and suspend their execution, giving the young people a chance to get reeducated, without being sent to prison.

I believe that there is no course of action available to Mrs. Rostas to challenge her conviction in Romania due to the fact that the decision is now final and binding.

5. As I have been working in the legal field since 1970, I am familiar with the manner in which the Romanian justice system used to work in the 1990's. I have read Mrs. Rostas' affidavit and I can say that her account of what happened to her is consistent with the system then. Further, in respect of her sentence I say that at that time, 1996, the typical sentence for a minor or person of 18 years of age with no previous convictions was a suspended sentence. In circumstances where Mrs. Rostas had no previous convictions, I declare and believe that the sentence was disproportionately heavy, compared with typical sentencing at that time, and that this sentencing was, in my opinion, because of her Roma ethnicity."

26. In his supplemental affidavit, Mr. Butuc has provided the following additional evidence (at paras 3 to 7 inclusive) :

"3. In respect of the trial judge who presided over Mrs. Rostas' trial in 1996, she was Judge **Anca Radu**. I knew her and appeared before her in court. She was a very pleasant lady and I am sorry to say that she is now deceased. Whilst she was undoubtedly a nice person, I have to say, in my professional capacity, that she was completely typical of Romanian judges at that time in that she was completely docile as a judge. This is not a criticism of her. It is simply an observation of how she presided over her court which was the same as the way other judges did in Romania at that time. Romania was still in a transition period in 1996 following a long dictatorship in which there had been no proper separation of powers. The judiciary were still weak in 1996 and used to being subservient to prosecutors. In my experience, when cases were being tried, Judge Anca Radu did not intervene to challenge the prosecutor. The prosecutor was in control. She sat there and did not interject or challenge the prosecution case. I would be amazed if the prosecutor was ever challenged during Mrs. Rostas' trial or if the judge intervened to try to ensure equality of arms. Knowing how trials worked at that time, it is in my opinion almost certain that there was no equality of arms because Mrs. Rostas was facing a prosecutor who was in a dominant position and she was represented by a State-paid lawyer, and the judge would not have tried to allow for equality of arms. As I have said in my previous affidavit, Mrs. Rostas account of her trial is consistent with the system as it was then and the way Roma were treated at that time.

According to the penal legal system which was inherited from the communist period, if a person was in the proximity of the place where people known to him or her were committing an offence, this person was considered an accomplice although he or she did not participate in the commission of the crime, and an accomplice faces the same penalty as the author of the crime.

The judges should have made determinations and differentiate with regards to both the quantum of the sentence and its method of execution and in Mrs. Magdalena Rostas case, I consider that the correct solution would have been, in principle, her acquittal or, in the worst case, the minimum sentence of 2 years, the execution of which should have been suspended on conditions.

4. I also knew the lawyer who represented Mrs. Rostas at her trial. His name is **Petru Marian**. I am sorry to say that he is

also deceased. I would prefer not to comment on his professional ability as he is unable to reply to any comments which I make. But it is the case that, at that time, lawyers who were paid by the State to represent accused persons in criminal cases received very small fees. Because of this, work of this kind was only taken by lawyers who were unable to attract private clients. Also, because of the very low fees which the State paid lawyers for criminal defence work, the time spent on the work was very often not what it should have been.

5. In respect of the sentence handed down to Mrs. Rostas, I respectfully stand over what I said in my previous affidavit. For a person with no previous convictions, who was only 18 at the time of the alleged offence, I believe that the sentence was disproportionate in light of the sentencing practice at the time.

6. I confirm that Mrs. Rostas has no convictions other than the one in 1996 and I beg to refer to a copy of her record of criminal convictions which I have obtained from Oradea Court, this document being part of the file contesting the execution of the sentence, the copy of the said record of previous convictions having been issued by the Police at the judge's request, upon which marked with 'A' I have indorsed my name prior to the swearing hereof.

7. In respect of the Oradea court file on Mrs. Rostas, as far as I can see it is not complete. There are some documents, and I relied on these to draw the conclusions set out in my previous affidavit. But some documents appear to be missing. These include the defendants' statements and the statements of the injured party.

Several applications were made between 2002 and 2009 in Oradea court for the interruption of the execution of the sentence; I have studied those files and I have used the information therein as a basis to my previous statements.

I would like to clarify that no appeal was lodged by Mrs. Rostas or by her State-appointed lawyer after the decision to sentence her was pronounced in her absence and became final.

The judiciary decision was not executed for a period of five years, and in 2006, when she was taken into custody, the authorities had the obligation to inform her of her right to appeal outside the statutory period.

In 2002, while in penitentiary, Mrs. Rostas made an application for a case review; the corresponding file, together with the trial file can no longer be found."

27. Finally, the Court has been provided with three further affidavits sworn in these proceedings by the respondent herself, consisting of a supplemental affidavit sworn on the 6th of June, 2013, and a second supplemental affidavit sworn on the 12th of July, 2013, and a third supplemental affidavit sworn on the 6th of November, 2013.

28. In her supplemental affidavit sworn on the 6th of June 2013, the respondent deposes to the following matters:

"3. As I said in my previous affidavit, I was present in court during my trial but the lawyer representing me had almost no contact with me. I played no part in the proceedings and could not properly understand what was happening. As far as I am aware, I attended court when I was required to. I beg to refer to the additional information provided by the Oradea Court, on 27th March, 2013, and the affidavit of Alexander Butuc, who is a lawyer in the Oradea area, and who has examined my file at Oradea Court. This information states that I was convicted and sentenced on 9th December, 1996. I was not present on that date as confirmed by Mr. Butuc who states this in his affidavit having examined the court file. I do not believe that I was ever informed that the decision in my case would be handed down by Oradea Court on that date. If I was, I would have attended. I had attended on the previous dates. I was never informed that I had a right of appeal, either in 1996 or in 2002 when I was arrested by the police. Mr. Butuc confirms this in his affidavit. Even if I had been informed of my right of appeal, I say and believe that in 1996 I would have had to pay the legal fees involved and I would not have been able to do this. Whilst the Oradea Court has stated that I can now obtain a re-trial on return to Romania, because I was absent when I was convicted and sentenced and so lost my right of appeal, Mr. Butuc does not believe this to be the case.

4. Further, in 2007, the two journalists from Ireland who were making a documentary film about the Roma community and, in particular, my family's case, tried to have my case re-opened by a Romanian lawyer but they were advised that because I had already served part of my sentence that my case could not be re-opened. I beg to refer in this regard to the affidavit of Brendan Culleton.

5. I remember the police arresting me in 2002. It was very distressing. I was trying at that time to regain custody of my newly born daughter, Maria, who had been placed in care and who was in the process of being taken away from me. I had presumed that nothing further was happening in respect of the trial in 1996. I was not informed of my conviction and sentence until the police arrested me in 2002. They then put me in a van and hit me and I was taken to prison. When I was imprisoned in 2002, I asked for my case to be reviewed but that was refused. Several weeks later I was released because I had a young child. As I have said in my previous affidavit, I believe that the police were contacted about me at that time because my daughter, Maria, was taken into care and was being taken away from me. I was not informed by the police in 2002 that I had a right of appeal against my conviction and sentence. I had no knowledge of my rights. After being detained in 2002, I presumed that my sentence in 1996 must have somehow been adjourned probably on the basis of my son Ante's young age. However, as a result of Mr. Butuc's examination of my court file, I now know that this was a mistaken presumption on my part.

6. I have always protested my innocence. It was canvassed by this Honourable Court that I might be proclaiming my innocence only now in order to contest my surrender to Romania. I say that this is not the case. I have always stated that I am innocent and a lawyer applied on my behalf for a presidential pardon several years ago although this was unsuccessful. Furthermore, I told the two journalists, Irina Maldea and Brendan Culleton in 2007 that I was innocent.

7. My husband, Stoica, also spoke to a lawyer, Mr. Sava, and asked him to appeal my conviction and sentence but he said that too much time had passed."

29. In her second supplemental affidavit sworn on the 12th of July, 2013, the respondent further deposes to the following:

"3. I married my husband, Stoica, on 12th February 2007 and since then, and up until 2009, I resided at the same address in Tileagd, that is 208 Crisului, Comuna Tileagd. I lived there throughout that period.

4. My husband, Stoica, worked in the village in the furniture factory. There were 800 people working there. When times got bad, the unqualified, which included all the Roma, were let go. Because he was known as an honest man, he managed to get a job as a security guard in the bakery, but that then closed down. This time was very bad in Romania, many places closed down. He then worked on roadworks. The Chief of Police and the other police in the police station knew me and my husband and exactly where we lived. They were frequently in our quarter, but they never came to inform me about my conviction, and did not arrest me until May, 2002.

5. What happened was that my husband, Stoica, was in the main street in Tileagd. The Head of the local police station, a man named Marin, went up to Stoica and told him that he had an arrest warrant for me. Stoica asked him for what, and Marin said it was for what happened in 1996. This happened after my daughter Maria was born. She was born on 31st October, 2001. Maria was in hospital at the time because she was sick, possibly with jaundice. As I said in my first affidavit, when I went to the hospital to bring Maria home, the staff there told me that she had been moved to a different hospital for children. I went there but was told that I could not have Maria back. I was told that the police had phoned the hospital and said that there was an arrest warrant for me and that my daughter should not be returned to me. Stoica and I went to look for the lawyer who had been assigned by the State to represent me at the trial, and whose name was Marian. We asked him what had happened and he said that there was nothing he could do for me except to try to have my sentence postponed on the basis of my newborn baby. I was never told about any possible right of appeal. The lawyer gave me a document which he said stated that I would be applying for postponement of my sentence. Sometime after this, some armed policemen and five masked gendarmes dressed in black, wearing balaclavas, and armed with batons (they are known as the Mascati), burst their way into my house at 5am. My family and I were all in bed in the same room. The children started crying and we were all very frightened. We showed them the document from the lawyer. They said they had an arrest warrant, and that they were taking me to prison. They put me in a van and took me to prison. They said nothing to me about any right of appeal. I remained in prison for almost six weeks before the lawyer, Marian, applied for and obtained my release on the basis of my baby.

6. By the time of my arrest on 23rd May, 2002, I had had two sons and had just given birth to my first daughter, Maria. I had presumed the charge in 1996 was over, and had got on with my life and was building my family with Stoica. I remained in the village throughout this time, in the same house, so there was no reason for me to think otherwise. I was in my early to mid-20s and had three children whom I loved and cherished. Antei was born on 30th September, 1995, Radu was born on 1st May, 1998, and Maria was born on 31st October, 2001. My arrest, and imprisonment in May, 2002, will forever haunt me because it caused me to lose custody of my daughter, Maria, and I no longer know where she is. I never consented to her being adopted by anyone.

7. After my release on 1st July, 2002, I went to the hospital to look for Maria and the staff there told me that they did not know where she was. I went from hospital to hospital to try to find her but I could not find her. I went to the Town Hall of Tileagd and talked to a lady there who was nice to Roma. She said that she would make some phone calls to try to find Maria. After approximately one week, two women from the child protection unit came to my house unexpectedly. They told us that we could not have Maria back because we had no proper living conditions, no separate room for her (we had two boys), no shower and running water, and because I had a criminal sentence hanging over me. They said that they would have to keep her until I dealt with the sentence. Maria was then kept by them in an orphanage.

8. The loss of Maria has been devastating to me and I have been constantly worried since that time that my other children will be taken from me. This has continued to haunt me over the years.

9. When I was released on 1st July, 2002, I presume it was because my sentence was postponed whilst Maria was less than 12 months old. As I have said, she had been taken from me anyway. I was not contacted by the authorities in 2003, 2004 or 2005 and Stoica and I continued with our lives as best we could and did as much as possible to provide for our children and we added to our family. Razvan was born on 11th April, 2003, and Denisa-Izabela was born on 10th January, 2005. Three years and six months passed before the authorities took any steps to implement my sentence again. I was arrested and imprisoned on 14th January, 2006. I do not know what caused the authorities to act at this particular point in time. As I have said, I was living in my home in Tileagd during all of this time and the authorities knew that but took no action in 2003, 2004 or 2005. When they arrested me again in 2006 I had further family commitments because I had two more children. Denisa-Izabela was eleven months old when I was arrested, and I was pregnant again at that particular time. I was released three months later on 11th April, 2006, and gave birth to my third daughter, Casandra-Magdalena on 17th October, 2006.

10. In 2007 and 2008, I believe that applications to have my sentence postponed were made successfully on the basis of Casandra-Magdalena's age, and the age of my son, Sebastian, who was born on 17th August, 2008.

11. Stoica had travelled to Ireland during this period to try to find work and he found that Roma were treated far better in Ireland than in Romania, and that we and our children would have a far better future in Ireland. We decided to move to Ireland to try to improve our family's situation, and give a better life to our children, although we could not bring all the children at that point in time and so Radu, Denisa and Casandra remained with Stoica's parents in Tileagd.

12. I came to Ireland on or about 5th August, 2009. I have found Ireland a far better place to live as a Roma than Romania, and it is a far better place for my children to grow up in. It is a matter of great sadness to me that all my children are not with me at the moment, and we have always intended to bring them over as soon as we could. Stoica and I wanted to bring them to Ireland once we were settled and we have been working towards that but our lives have been put on hold again whilst these European Arrest Warrant proceedings are being determined.

13. The present situation regarding my children is as follows. Antei (aged 17) commutes between Romania and Ireland and tries to keep the two sides of the family closely connected. In Ireland he has worked in a garage cleaning cars. He likes cars and is interested in becoming a mechanic. He brings toys and sweets to the girls in Romania.

14. Razvan (aged 10) and Sebastian (aged 6) are with me here and the ISPC is in the process of organising schools for them for the next academic year. It has been difficult to place them for various reasons, but the ISPC officer Anca Popescu has experience of these problems. She visits regularly and is confident that she will manage to place them. One of the difficulties is whether or not they can stay in Ireland for the next school year. She is currently on annual leave, but by next month she will have more concrete information. I believe that both children are intelligent and I know that they are well behaved children and should do well in an educational environment. They currently speak English and Roma, with limited Romanian.

15. Chistian Kevin, whom we call Kevin, was born in Ireland and is aged 3 years, and is also with me. Needless to say, because of his age he is totally dependent on me.

16. My other three children are in Romania. Radu (aged 15) hopes to be a truck driver. Denisa (aged 8) and Casandra (aged 7) are currently looked after by Stoica's parents. They are elderly and not in the best of health. The grandfather, Augustin, suffers from debilitating migraine which incapacitates him for days. The grandmother, Ana, apart from caring for the children, must also do domestic work for others despite being a pensioner. The separation from Radu, Denisa and Casandra is very difficult for me and the children. Stoica rings the two girls three or four times a week. I listen on the loudspeaker but I am afraid to talk to them too much, because I get upset. They ask me when am I coming to see them. Casandra is often angry and refuses to talk to me because she feels I left her behind and I promised her that I would bring her to be with us.

17. Both Kevin and Sebastian are extremely attached to me. They refuse to sleep without me. They constantly hug and kiss me. They are always sitting on me and climbing up on my lap. They become apprehensive when they cannot see me, and follow me from room to room. They were particularly scared when the two male Gardaí arrested me under the EAW. They were crying and asking her where I was going. They begged me to bring them with me. Stoica was not at home at the time.

18. In respect of the village in Romania where I lived with Stoica, the particular group which he belongs to lives on the edge of the village, sandwiched between a very busy road (a main thoroughfare between Romania and Budapest) and an unpredictable river. Trucks hurtle up and down the road. The river is frequently subject to flash floods due to releases from a huge dam close by. Children have been drowned and run over in this area, including my niece and nephew who were drowned four years ago. My daughter Casandra was the victim of a road traffic accident in 2011 as a result of which she was hospitalized for one week. Stoica's brother was killed, when aged four, on the road, and this makes Stoica's parents very anxious as they mind three of our children. Children need constant supervision in this area, and the grandparents really do not think they can take the responsibility any longer. They are now asking Stoica and me to have Denisa and Casandra re-united with us in Ireland as soon as possible. But because of our uncertainty we have not done this yet.

19. In order to bring Denisa and Cassandra over I will also need to raise money for air tickets and 300 euro for the legal documents required to bring the children here. Romania has laws to guard against child trafficking.

20. If I am sent back to Romania to go to prison, I believe that my children Razvan, Sebastian and Kevin will be taken into care, and I will lose them forever. It will be very difficult for Stoica to manage with them on his own and to try to find work, and his parents could not cope with them as well as Denisa and Casandra. I believe that the child protection unit in Romania will take my children away because they will be Roma children with only their father to care for them. Stoica is a good father, but it will be very difficult for him to keep the family together to provide food, shelter, care and a stable environment for the children. This is deeply distressing to me.

21. I have been petrified that my children will be taken into care and then taken from me altogether. I have not manufactured this for the purpose of these proceedings. I have had this discussion with our family doctor on a number of occasions over the years, as evidenced by the footage filmed by Akajava in 2007, which has been submitted in these proceedings together with a transcript in English.

22. If my children are taken away from me it will utterly destroy my life and I believe it will be permanently damaging for them. They will grow up with no family around them. My two youngest children are very attached to me. They will not sleep without me in the room, and they get upset when they cannot see me. It is much better for children to be with their family. I know how much the children suffer without their mother. I have already had to leave my children behind when I was in prison before. The uncertainty of our position has caused me, my children and Stoica much distress. We live in fear that I will be imprisoned again. In 2007, the children saw their father, Stoica, being tortured with electric batons when the Mascati came again at five in the morning to look for me and I was not at home. He rang Ms Irina Maldea just after and told her what had happened. Our son, Radu, was so traumatized that he ran away that day.

23. If I am surrendered to Romania and imprisoned, then my family will be devastated. The impact on my children will be dreadful. They will be without their mother and I believe they will be put into care. They will completely lose their family. As children in care, they will have no family identity and will grow up apart from their family. They will not have the close and loving upbringing that they deserve as children, and which I am currently providing for them with Stoica. I say respectfully that we are devoted parents. Despite huge social disadvantage and discrimination, we are law-abiding people (although I have convictions for begging) and are doing our best to bring our children up to respect the law and as Christians. Like any parent I want the best for my children, although it is very difficult as Roma from Romania to provide them with opportunities.

24. As is clear from the documentary evidence before this Court in these proceedings, I was sentenced in December, 1996, but not informed of this and was not arrested until May, 2002. I was 19 years of age when I was sentenced, and had one young child at that time. If I had served the sentence then, (and I continue to maintain that I was not guilty of the offence and did not receive a fair trial, and beg to refer to the additional television footage and transcript submitted to this Honourable Court in this regard), I could have postponed building my family until my release when I would have been 22. However, I was not aware of the sentence and the authorities in Tileagd took no steps to inform me of my conviction, or implement my sentence, for a period of more than five years, despite the fact that they knew where I lived. During those five years, I began to raise my family as a young wife and had three children. By the time the authorities decided to implement the sentence, my circumstances and, in particular, my family life, had greatly changed from the time of my conviction. I say very respectfully and am advised that the delay in informing me of my conviction and in implementing my sentence has gravely prejudiced me as a young mother wishing to rear a family, and my children and husband, and fails to respect my family life and that of my husband and children, and constitutes an inordinate and prejudicial delay in the administration of justice.

25. As is recorded in the European Arrest Warrant, and as I stated in my first affidavit, two other people were convicted of the offence, Alexandru Venczel and Stela Rostas. Mr Venczel was sent to prison immediately. Stela Rostas was arrested and imprisoned about one year later. She lived in the same part of the village as me and was arrested there.

26. I repeat that I am innocent."

30. Finally, in her third supplemental affidavit sworn on the 6th of November, 2013, the respondent further states:

"I make this affidavit to up-date this Honourable Court as to my family's circumstances. As I stated in my previous affidavit, my daughters Denisa and Casandra have been in the care of my husband's parents in Romania. However, my father-in-law, Augustin, became very ill in July, 2013, and was hospitalised in intensive care in Oradea. We thought he would not survive and my husband Stoica travelled to Romania on 24th July to be with him. My father-in-law now needs the care of his wife and so we decided that Denisa and Casandra should join me in Ireland, something we have wanted for a long time. I went to the Romanian Embassy for help in getting the necessary documents so that Stoica could bring the girls back with him. About two weeks later, they travelled by bus to Ireland and we are now residing together as a family. It is great to be re-united. It has taken a little time for the two girls to adjust. We are trying to place them in a school, although they do not speak English. Razvan, who is at school, is speaking English to them, and we hope to find a suitable place for them soon."

Further Additional Information

31. By a letter dated the 26th of April, 2013, the issuing judicial authority, via the Oradea Court – Bihor County Criminal Division, Prosecutor's Office, provided the following further information:

"...we communicate you the following:

- through the criminal sentence no. **2732 from 09th of December 1996** of Oradea Court, pronounced in file no. 10354/1995, final on 20.12.1996, by non-appellation, the named **ROSTAS MAGDALENA was convicted to a penalty of 3 years and 4 months of prison** for robbery, provided and punished by art. 211 paragraph 2 Criminal Code with art. 75 point a Criminal Code;

- the named **ROSTAS MAGDALENA** was informed about the hearings given in cause, being present for debates;

- the named **ROSTAS MAGDALENA** didn't formulate an appeal against the criminal sentence no. **2732 from 09th of December 1996** of Oradea Court;

The law no. 48 from 16th of January 2002 for the approval of the Government Ordinance no. 137/2000 regarding the prevention and the sanction of all discrimination types provides, at article 1, the fact that in Romania, a right, democratic and social state, the human's dignity, the citizens' rights and liberties, the free development of human personality represent supreme values and they are granted by law. According to art. 2 from the same law, the principle of equality between citizens, of exclusion of privileges and discrimination are granted especially in the exercise of the following rights:

a) the right to an equal treatment before courts and before any other jurisdictional body;

b) the right to person's security and to the obtainment of state protection against violence or abuse from any individual, group or institution;

According to art. 2 from Ordinance no. 137/2000 regarding the prevention and the sanction of all discrimination forms, by discrimination we understand any difference, exclusion, restriction or preference, by race, nationality, ethnics, language, religion, social category, convictions, sex or sexual orientation, appurtenance to a disfavored category or any other criteria which has as purpose or effect the restriction or the removal of recognition, use or exercise, in equality conditions, of the human rights and of fundamental liberties or of the rights recognized by the law in the public, economic, social and cultural field or in any other fields of the public life. Any active or passive behavior which, by the effects generated, favors and disfavors in an unjustified way or forces to an unfair or to a degrading treatment a person, a group of persons or a community, in respect to other persons, groups of persons or communities attracts the civil responsibility according to this ordinance, if it doesn't enter under the incidence of criminal law.

Regarding the convicted Rostas Magdalena we appreciate that were met the rights provided by the law."

32. The translation of the last sentence just quoted was considered by all parties, and the court, to be somewhat unclear. By consent of all parties, the Romanian interpreter present in Court was shown the original document in Romanian and was asked to provide his alternative translation, which he did in the following terms:

"We are of the opinion that the rights awarded by the law in respect of the convicted person Rostas Magdalena were complied with"

DAR reference, 13.06.2013, Court 21 CCJ, at 15:15

33. The document then continues:

"In respect to the information requested by you, regarding the presence of the convicted to the evidence administered in cause, we cannot indicate you information considering the period of time from her conviction and considering the periods for keeping the fond files.

But, we certainly indicate you that she was summoned from the domicile addresses known and on the dates indicated in the people's evidence and, during the trial, she was assisted by a lawyer appointed ex officio.

The culprit started the punishment execution on 23.05.2002. From the execution of this punishment, the culprit was released as a consequence of the interruption of the punishment execution on 01.07.2002 (through criminal sentence no. 1141/2002 of Oradea Court). The culprit was reincarcerated, in the execution of the same arrest warrant, on 14.01.2006, being again released as a consequence of the admission of a new request for the interruption of the punishment execution, on 11.04.2006 (through criminal sentence; 608/27.03.2006 of Oradea Court), date after which the culprit wasn't reincarcerated anymore, since she benefited from 2 adjournments of the punishment execution (criminal sentence 112/24.01.2007 and 69/24.01.2008 of Oradea Court).

Herewith, we communicate you that on 18.09.2008 the culprit submitted, in person, to the court a request for the interruption of the punishment of 3 years and 4 months of prison, applied by the Criminal Sentence no. 2732/1996 of

Oradea Court, considering that she has a minor child with the age of one month. At the judgment of the fond cause, the culprit wasn't present and, through the Criminal Sentence no. 1039/2008 of Oradea Court, it was admitted the request for the interruption of the punishment execution until the minor child Rostas Sebastian-Rodolfo will be 1 year and the culprit has the obligation that, for the interruption duration of the punishment execution, meet the following obligations: not to exceed the territorial limit fixed in the conditions established by the Court, to be present in Court anytime she is called or to the police body appointed with the Court's supervision, according to the supervision program elaborated by the police body or anytime: called, not to change the domicile without the approval of the Court which disposed the interruption of the punishment execution and not to detain, use or wear any category of weapons.

According to the minutes from 11.08.2009 and from 06.08.2009 elaborated by the Police from Tileagd Township (domicile locality of the culprit), the culprit wasn't present to the Police Office from Tileagd on 28.07.2009 and from the researches effectuated resulted that the convicted culprit left in Ireland.

Thus, the Court ex officio, by means of the Prosecutor's Office within Oradea Court, formulated a revocation request for the interruption of the punishment execution, considering that the convicted solicitor didn't meet the obligations imposed by the law. Although she was legally summoned for several hearings from the domicile indicated by the culprit both in the file in which she was convicted and in the files in which were judged the interruption request, respectively the adjournment request of the punishment execution, the culprit wasn't present and, through the Criminal Sentence no. 1065/2009 of Oradea Court, it was disposed the revocation of the interruption of the execution of the punishment disposed by Criminal Sentence no. 1039/2008 of Oradea Court."

(emphasis as in original).

34. In response to a request from the applicant in these proceedings for certain further clarifications, the issuing judicial authority, again via the Oradea Court – Bihor County Criminal Division, Prosecutor's Office, provided yet further information in a letter dated the 26th of June, 2013, in which it was stated:

"... we communicate you the following:

- By the criminal sentence no. **2732 from December the 9th, 1996** of Court of Oradea, pronounced in file no. 10354/1995, final on December the 20th, 1996, since no appeal entered, the called **ROSTAS MAGDALENA was convicted to 3 years and 4 months of jail** for the crime of robbery provided and punished under art. 211, par. 2, Criminal Code with art. 75 letter "a" of Criminal Code,

- A person may appeal within 10 days from the date of communication of the copy of the criminal sentence minutes if the person in question is not present when pronouncing the solution, or he/she can **appeal within 10 days from the solution pronouncement if the person has been present;**

- The called **ROSTAS MAGDALENA** can not appeal against sentence no. **2732 from December the 9th, 1996** of Court of Oradea, because the **pronounced sentence is final**, since no appeal was submitted by the convicted within the term provided by law;

- The called **ROSTAS MAGDALENA** can not appeal against sentence no. **2732 from December the 9th, 1996** of Court of Oradea, because the pronounced sentence is **final**, since no appeal was submitted by the convicted within the term provided by law;

- If a person is sentenced in absentia she/he is communicated the copy of the minutes of the criminal judgment at the official address of this or at the address indicated by this during the criminal case, but the called Rostas Magdalena **was present** at the debate on the merits of the case; therefore the solution has not been any longer communicated to her;

- As we communicated you in the previous replies, the convicted started executing the punishment on May the 23rd, 2002. From the execution of this punishment, the convicted was put in freedom as result of *suspension of the sentence on July the 1st, 2002* (under criminal sentence no. 1141/2002 of Court of Oradea). The convicted *was again imprisoned, under the same execution warrant, on January the 14th, 2006* being again put to freedom as a result of the admission of a new request of interruption of punishment execution on April the 11th, 2006 (under criminal sentence no. 608/27.03.2006 of Court of Oradea), date after which *the convicted was not imprisoned, because she was granted other 2 suspensions of the punishment execution* (criminal sentence no. 112/24.01.2007 and 69/24.01.2008 of Court of Oradea) and than she evaded from the punishment execution.

- We do not have data about the judicial situation of the convicted, for other convictions or crimes committed on the territory of Romania, please contact the **POLICE INSPECTORATE OF BIHOR COUNTY-CRIMINAL RECORD;**

- We do not have data if the convicted formulated any complaint in front of the Romanian authorities regarding the way she had been treated by the Police, for further information please contact the Public Prosecutor's Office of Court of Appeal Oradea, the institution competent for these complaints;

- We have neither data whether the convicted has requested individual pardon (presidential pardon) nor data regarding the number of individual pardons granted each year, for further information please contact the Presidential Institutions.

- **We communicate you that on September the 18th, 2008 the convicted personally submitted the court a request of interruption of the punishment execution of 3 years and 4 months of jail applied under Criminal judgment no. 2732/1996 of Court of Oradea** considering that she has a one month old minor child. When judging the request, the convicted was not present, and under Criminal sentence no. 1039/2008 of Court of Oradea the request of interruption of punishment execution was admitted until the child Rostas Sebastian-Rodolfo reaches the age of 1 year and the convicted was imposed as duties that during the interruption of the punishment execution complies with the following obligations: not to go over the established territorial limits except under the conditions established by the court, in order to appear in court or in front of the police authorities assigned by the court for supervision, whenever she is called, according to the supervision program prepared by the police authorities or whenever she is called, not to change her domicile without the consent of the court which ruled the interruption of the punishment execution, and not to possess, use or carry any type of weapon.

According to the reports from August the 11th, 2009 and August the 6th, 2009 drawn up by the Police of Tileagd Commune (the residence locality of the convicted) the convicted hasn't appear in front of the Police Unit of Tileagd since July the 28th, 2009. Therefore, the court by means of the Criminal Enforcement Office from Court of Oradea presented an appeal for reversal of the interruption of the punishment execution, considering that the convicted did not comply with her obligations stipulated by the law. Although duly summoned for several hearings, the convicted did not present herself from the domicile indicated by the convicted in the files in which the requests of interruption and respectively of suspension of punishment execution were judged, but she was represented by a publicly appointed lawyer, and the revocation of interruption of punishment execution ordered by criminal sentence no. 1039/2008 of Court of Oradea, was ordered by the criminal sentence no. 1065/2009 of Court of Oradea.."

(emphasis as in original).

35. On the 31st of October, 2013, the applicant wrote to the issuing judicial authority to communicate the Court's request, made pursuant to s. 20(1) of the Act of 2003, for yet further information. The issuing judicial authority was asked to:

- Please explain why Ms. Rostas was not arrested following her conviction for a period of six years.
- Please provide details of what efforts were made to locate and arrest Ms. Rostas during that time.
- Please also clarify whether it is the case that Ms. Rostas took measures to avoid arrest.

36. The issuing judicial authority replied by letter dated the 1st of November, 2013, stating:

"... we hereby inform you as follows:

- By the criminal sentence no.2732 from December 9m 1996 of Oradea District Court pronounced in the file no. 10354/1995, final on December 20th 1996, that was not appealed, the above mentioned Rostas Magdalena was sentenced to 3 years and 4 months of imprisonment for the offence provided and sanctioned by article 211 paragraph 2 of the Criminal Code, article 75 letter a of the Criminal Code;

- The convicted person Rostas Magdalena was arrested and served a part of the sentence of 3 years and 4 months of imprisonment from May 23rd 2002 to July 1st 2002, namely January 14th 2006- April 11th 2006, and 1091 days remained to be served.

By the criminal sentence no. 1141/2002 of Oradea District Court the convicted person was released on July 1st 2002 following the interruption of sentence enforcement. She was sent to jail again on the basis of the same mandate of sentence enforcement from January 14th 2006, released again following the admission of a new request for sentence enforcement interruption on April 11th 2006 by the criminal sentence no.608/27.03.2006 pronounced by Oradea District Court.

After that the convicted person hasn't been imprisoned as she benefited by 2 postponements for the execution of sentence by the criminal sentences 112/24.01.2007 and 69/24.01.2008 both pronounced by Oradea District Court and an interruption for sentence enforcement ordered by Oradea District Court, by the criminal sentence 1039/29.09.2008.

From the documents attached to the file of the case submitted by the Police Inspectorate of Bihor county results that Rostas Magdalena was sought many times at her permanent address by the police authorities of Tileagd police, an APB was issued for her according to decision of the General Inspectorate of Romanian Police no.324487/24.08.2009 and an international APB by the message no.21057 from 17.09.2009 issued by the Interpol National Office.

On September 1st 2009 Oradea District Court released the European Arrest Warrant no.47/E/2009.

On August 17th 2009, the period for interruption of Rostas Magdalena's sentence execution expired, and she had the obligation to present herself at Oradea jail for the continuation of sentence to be executed, but she left Romania, and thus she avoids enforcement of the sentence."

Submissions

37. The Court is grateful to counsel on both sides for providing it with helpful written and oral submissions.

Relevant Legislation

38. Section 37(1) of the European Arrest Warrant Act 2003 as amended provides (as material to this case):

"A person shall not be surrendered under this Act if—

- (a) his or her surrender would be incompatible with the State's obligations under—
 - (i) the Convention, or
 - (ii) the Protocols to the Convention,

(b) his or her surrender would constitute a contravention of any provision of the Constitution (other than for the reason that the offence specified in the European arrest warrant is an offence to which section 38(1)(b) applies),

(c) there are reasonable grounds for believing that—

- (i) the European arrest warrant was issued in respect of the person for the purposes of facilitating his or her prosecution or punishment in the issuing state for reasons connected with his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or
- (ii) in the prosecution or punishment of the person in the issuing state, he or she will be treated less favourably than a person who—

(I) is not his or her sex, race, religion, nationality or ethnic origin,

(II) ... (not relevant)

(III) speaks a different language than he or she does, or

(IV) ... (not relevant)

or

(iii) ... (not relevant)."

The Respondent's Case

Overview

39. Counsel for the respondent submits that the respondent received an unfair trial and was wrongfully convicted before Oradea District Court. He contends that she has been, and if surrendered will continue to be, discriminated against on account of her ethnicity. He also contends that the respondent's surrender would represent a disproportionate measure that would breach her right, and the cognate rights of her family members, to respect for family life, and enjoyment of family life as guaranteed under the ECHR (and the Charter of Fundamental Rights of the European Union) and/or the Constitution of Ireland. He contends that in those circumstances the respondent's surrender is prohibited under s. 37(1) of the Act of 2003.

40. Before elaborating on this, counsel referred the Court in the first instance to the evidence in the case, and then to certain jurisprudence of the the European Court of Human Rights (the E.Ct.H.R) concerning discrimination against the Roma in Romania.

41. Counsel placed particular reliance upon the evidence contained in the respondent's own affidavits concerning the manner in which she was questioned by police and tried and convicted in 1995 and 1996. It was submitted that there was a flagrant breach of her fair trial rights – including that she had no effective legal representation; that she did not participate in the trial; that the trial was not conducted in her mother tongue and in circumstances where her understanding of Romanian was limited; that the legal system in Romania was seriously flawed at the time and discriminated against the Roma (as evidenced also by findings of the E.Ct.H.R and country of origin information); that she was not made aware of her right of appeal and was denied any effective means of pursuing it; and that she was discriminated against in the sentencing process because she is a Roma.

42. Counsel for the respondent further placed considerable reliance on the fact that in the additional information provided by the issuing judicial authority, no issue is taken with the factual averments contained within the respondent's affidavits concerning the circumstances of her arrest and interrogation, and subsequent trial, conviction and sentencing.

43. Counsel for the respondent further submitted that the extensive country of origin information exhibited with the affidavit of Suzanne Rushe, Solicitor, describes the very serious discrimination against the Roma in Romania in the latter part of the 1990s. He submitted that the respondent's description of what happened to her is consistent with what is described in the said country of origin information.

44. Counsel for the respondent also placed much reliance upon the affidavits of Mr. Butuc, and Ms. Maldea, as providing independent support for the evidence of the respondent.

The Strasbourg Jurisprudence concerning discrimination against the Roma in Romania

45. The Court's attention was then drawn to a number of judgments of the E.Ct.H.R. concerning discrimination against the Roma in Romania in the 1990's. These included *Moldovan and others v. Romania (No.1)* (App. Nos. 41138/98 and 64320/01), 5th July, 2005; *Moldovan and others v. Romania (No.2)* (App. Nos. 41138/98 and 64320/01), 12th July, 2005; *Carabulea v. Romania* (App. No. 45661/99), 13th July, 2010; and *Cobzaru v. Romania* (App. No. 48254/99), 26th July, 2007. The Court was also referred to *Stoica v. Romania* (App. No. 42722/02), 4th March, 2008, which concerned such discrimination in the early 2000's. The Court has considered the judgments in each of these cases. It is sufficient to refer with particularity to just two of them, to illustrate the type of discrimination involved and relied upon by the respondent in this case as having being endemic and commonplace in Romania in the late 1990's.

46. In the *Moldovan* cases the E.Ct.H.R. found Romania in breach of the ECHR, referring to the general discriminatory attitude of the authorities including the police and the courts against the Roma in Romania in the 1990s. These cases concerned a revenge attack upon all of the Roma in a particular village in Romania by certain non Roma persons following a bar fight involving a number of Roma and non Roma persons which had led to the death of one, non Roma, man. Thirteen Roma homes were burnt out. It was alleged that the Romanian authorities colluded in, and failed to act following, the said revenge attack. The E.Ct.H.R noted in its judgment in *Moldovan and others v. Romania (No.2)* judgment (at paras 107 to 111) that:

"107 ...(a) despite the involvement of State agents in the burning of the applicants' houses, the Public Prosecutors' Office failed to institute criminal proceedings against them, and thus prevented the domestic courts from establishing the responsibility of these officials and punishing them;

(b) the domestic courts refused for many years to award pecuniary damages for the destruction of the applicants' belongings and furniture and justified this refusal by making allegations as to the applicants' good faith (see paragraph 71);

(c) it is only in the judgment delivered on 12 May 2003, ten years after the events, by the Mureş Regional Court, that compensation was awarded for the destroyed houses, although not for the loss of belongings;

(d) in the judgment in the criminal case against the accused villagers, discriminatory remarks about the applicants' Roma origin were made (see paragraph 44);

(e) the applicants' requests for non-pecuniary damages were also rejected at first instance, the civil courts considering that the events - the burning of their houses and the killing of some of their family members - were not of a nature to create any moral damage (see paragraphs 72 and 76);

(f) when dealing with a request from the applicant Floarea Maria Zoltan for a maintenance allowance for her minor child, whose father was burnt alive during the events, the Târgu-Mureş Regional Court awarded in its judgment of 12 May 2003, which became final on 25 February 2005, an amount equivalent to a quarter of the statutory minimum wage, and decided to halve this amount on the ground that the deceased victims had provoked the crimes;

(g) three houses have not to date been rebuilt and, as can be seen from the photographs submitted by the applicants, the houses rebuilt by the authorities are uninhabitable, with large gaps between the windows and the walls and incomplete roofs; and

(h) most of the applicants have not to date returned to their village, and live scattered throughout Romania and Europe.

108. In the Court's view, the above elements taken together disclose a general attitude of the authorities – prosecutors, criminal and civil courts, Government and local authorities – which perpetuated the applicants' feelings of insecurity after June 1994 and constituted in itself a hindrance of the applicants' rights to respect for their private and family life and their homes (see, *mutatis mutandis*, *Akdivar v. Turkey*, judgment of 16 September 1996, Reports 1996-IV, p. 1215, § 88).

109. The Court concludes that the above hindrance and the repeated failure of the authorities to put a stop to breaches of the applicants' rights, amount to a serious violation of Article 8 of the Convention of a continuing nature.

110. It furthermore considers that the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.

111. In addition, the remarks concerning the applicants' honesty and way of life made by some authorities dealing with the applicants' grievances ... appear to be, in the absence of any substantiation on behalf of those authorities, purely discriminatory."

47. The case of *Cobzaru v. Romania* concerned an alleged assault on the applicant, a Roma, by police officers in the course of an investigation by the police of a false and malicious complaint that had been made against applicant, and a subsequent cover-up by the Romanian authorities. The applicant contended that he was mis-treated in this way due to the fact that he was a Roma. In its judgment the Court referred to numerous international reports and documents that described or recorded allegations of discrimination against Roma in Romania (see paras. 44 to 52 of the judgment). It went on to find breaches of Article 3 (paras. 74 to 75) and Article 13 (paras. 83 and 84), and Article 14 (taken with Articles 3 and 13) on the basis of that the applicant had been discriminated against by the failure of the state authorities to properly investigate his complaints of mistreatment on account of his Roma ethnicity. The Court specifically stated (at paras. 98 to 101):

"98. Not only was there no attempt on the part of the prosecutors to verify the behaviour of the policemen involved in the violence, ascertaining, for instance, whether they had been involved in the past in similar incidents or whether they had been accused of displaying anti-Roma sentiment, but the prosecutors made tendentious remarks in relation to the applicant's Roma origin throughout the investigation (see paragraphs 28 and 31 above). No justification was advanced by the Government with regard to these remarks.

99. The Court has already found that similar remarks made by the Romanian judicial authorities regarding an applicant's Roma origin were purely discriminatory and took them into account as an aggravating factor in the examination of the applicants' complaint under Article 3 of the Convention in the case of *Moldovan and Others v. Romania (no. 2)* (nos. 41138/98 and 64320/00, judgment of 12 July 2005, §§ 108 to 114 and 120 and 121).

100. In the present case, the Court finds that the tendentious remarks made by the prosecutors in relation to the applicant's Roma origin disclose a general discriminatory attitude of the authorities, which reinforced the applicant's belief that any remedy in his case was purely illusory.

101. Having regard to all the elements above, the Court finds that the failure of the law enforcement agents to investigate possible racial motives in the applicant's ill-treatment combined with their attitude during the investigation constitutes a discrimination with regard to the applicant's rights contrary to Article 14 taken in conjunction with Articles 3 in its procedural limb and 13 of the Convention.

It follows that there has been a violation of Article 14 of the Convention taken together with Articles 3 under its procedural head and 13."

48. It was urged upon the Court by counsel for the respondent that s.37(1) of the Act of 2003 is mandatory in its terms. A person shall not be surrendered if the criteria under sub paragraphs (a), (b) or (c) are met.

The case based on s. 37(1)(a) of the Act of 2003

1. - Fair Trial

49. In so far as s. 37(1)(a) of the Act of 2003 is concerned, Article 6 of the ECHR provides a range of fair trial rights in criminal proceedings. Furthermore, the E.Ct.H.R has stated in *Othman (Abu Qatada) v. United Kingdom*, Application No. 8139/09, 17th January, 2012, that:

(a) an issue might exceptionally be raised under Article 6 by an expulsion or extradition decision in circumstances where the fugitive **had suffered or risked suffering** a flagrant denial of justice in the requesting country: para. 258;

(b) the term "flagrant denial of justice" has been synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein, and is "a stringent test of unfairness" which requires a breach of the Article 6

fair trial guarantees which is "so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article": paras 259 and 260;

(c) in assessing whether this test has been met, the same standard and burden of proof should apply as in Article 3 expulsion cases, i.e. it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if she is removed, she would be exposed to a real risk of being subjected to a flagrant denial of justice, and where such evidence is adduced, it is for the Government to dispel any doubts about it: para 261.

50. Counsel for the respondent submitted that the breach of fair trial rights, as asserted by Mrs. Rostas in her affidavit (which he maintains is consistent with country of origin information, and has not been put in issue by the Oradea Court in the Additional Information it has filed in these proceedings), and her disproportionate sentence, as asserted by Mr. Butuc in his affidavit (which is also consistent with country of origin information), provides *substantial grounds for believing that there is a risk* that her imprisonment in Romania on foot of the EAW will amount to a "flagrant denial of justice" for the purpose of Article 6 of the ECHR. The Court was further referred to the decision of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783, in respect of the burden and standard of proof.

51. Counsel for the respondent also sought to make the point that the systemic discrimination against Roma in the criminal justice system in Romania in the latter part of the 1990s was such as to violate Article 14 of the ECHR. When added to the Article 6 violations, the cumulative effect is such that Mrs. Rostas' removal would violate the ECHR. Article 14 provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

52. Counsel for the respondent has further submitted that discrimination on the basis of ethnicity is particularly invidious, and this particular type of discrimination has long been condemned. Recognition of the need to combat it is exemplified by the European Union's introduction of Directive 2000/43 ('the Race Directive') to counter discrimination on the basis of race or ethnicity. Moreover, the prohibition of discrimination on the ground of race has been recognised as a peremptory norm of customary international law – see Lester, Pannick and Herberg, *Human Rights Law and Practice*, 3rd Ed., (LexisNexis, 2009) citing R (European Roma Rights Centre) v. Immigration Officer at Prague Airport [2005] 2 AC 1.

53. Thus, it was submitted that the respondent's surrender would violate section 37(1)(a) of the European Arrest Warrant Act 2003 as amended on unfair trial grounds, including discrimination in the trial process based on race.

2. - Family Life

54. Article 8 ECHR guarantees the right to respect for family life, as do the combination of Articles 7 and 24 of the Charter of Fundamental Rights of the European Union. The respondent relies upon her family rights to further contest her surrender. The respondent relies upon the line of jurisprudence from this Court deriving from its judgments in *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 (Unreported, High Court, Edwards J., 19th June, 2013), and *Minister for Justice and Equality v. R.P.G.* [2013] IEHC 54 (Unreported, High Court, Edwards J., 18th July, 2013) in which this Court conducted an extensive review of relevant Irish, English, European Court of Human Rights, and Court of Justice of the European Union (hereinafter CJEU) case law and sought to distill from that jurisprudence a series of principles for application both in that case and in future cases to attempts to resist surrender based upon Article 8 ECHR.

55. Turning to the particular facts of the respondent's case, counsel for the respondent submitted that whilst exceptionality is not required for a refusal to surrender on Article 8 grounds, the facts in this case are truly exceptional. In particular, the entire case must be seen in the context that the respondent was sentenced (in her absence) when she was aged 19 in 1996. The issuing state chose not to execute this sentence, or even inform the respondent of it (despite the fact that she continued to live in the village of Tileagd) until 2002, by which time she had, quite reasonably as a young wife and mother, developed further family life. She had three children by 2002, two of whom were not born at the time she was sentenced. Romania's inaction after 1996, then its arrest and detention of the respondent in 2002, had a devastating effect on the respondent's family life, and that of her children. She lost custody of her daughter Maria in 2002, which she has never recovered. Her life was turned upside down, and has been severely blighted ever since. This occurred, because the regime in Romania (which in 1996 was nearer in time to that of the Ceausescu regime than to that which acceded to the European Union in 2007) chose not to execute the sentence against the respondent for six years. It was submitted that Romania, by delaying execution by six years, grossly and disproportionately interfered with Mrs. Rostas' right to respect for her family and private life, particularly as regards her family established after 1996, such as to violate Article 8 of the ECHR.

56. Counsel for the respondent contends there was further delay by Romania between the 1st of July, 2002, and the 14th of January, 2006, when, again, no attempt was made to require the respondent to serve her sentence.

57. The point is made that a number of requests for additional information have been made of the Oradea Court by the Central Authority here. The replies have not put in issue the facts asserted by Mrs. Rostas and have made no attempt whatsoever to explain the delays in executing the sentence.

58. It was submitted that in the circumstances of this case the delay must be regarded as of significance in assessing the family's rights under Article 8, and in particular whether there is now any pressing social need for the respondent's rendition. It was suggested that if it was not of sufficient importance to Romania to execute the respondent's sentence in a timely manner, then it is not 'necessary' now, in 2014, to surrender her to serve a sentence passed in 1996, in circumstances where during the interim she has developed a family life through giving birth to, and nurturing, a number of children. Further, it was submitted, the 'public interest' in having the sentence enforced is greatly reduced by reason of the issuing state's unexplained delay after 1996. Any suggestion by Romania, if advanced, that it is pursuing a "legitimate aim or objective" or a "pressing social need" is greatly reduced by its own conduct. It was contended that in the circumstances of this case the proposed rendition measure, i.e., that she should be surrendered to the issuing state to serve the balance of her sentence at this point, would so disrupt the family life established by the respondent since 1996 as to be disproportionate to any legitimate aim being pursued.

59. Counsel for the respondent sought to lay emphasis on the respondent's averment that her children will go into care in Romania if she is surrendered there, thus ending not only their family life established here in Ireland, but their family life altogether. That they will go into care is supported by the statements of her doctor, as filmed by Ms. Maldea in 2007. It was submitted that relatively recent

country of origin information (i.e., the report entitled *"Life Sentence: Romani Children in State Care in Romania"*, European Roma Rights Centre, June, 2011) also supports this, and indicates that there is a risk that the children will be subjected to physical abuse, ill treatment and discrimination in care; will face inadequate care provision; and will be unlikely to ever be returned to the family.

60. It was urged upon the Court that the complete dislocation of the family, which is a likely consequence of surrender, would constitute a disproportionate interference with the right of family unity, particularly in light of the delay, and would be contrary to the best interests of the children which are a primary consideration.

61. It was submitted that the respondent and her children have already been subjected to particularly injurious, prejudicial or harmful consequences because her sentence was not executed in 1996, and the family has had to live with uncertainty since 2006. Counsel contended that they will face even worse consequences if the respondent is surrendered now, 17 years later.

62. Counsel for the respondent submitted that the actions of the issuing state after 1996 must also be seen in the context of the respondent's case that she did not receive a fair trial in 1996, as supported by the affidavit evidence, none of which has been engaged with or denied by the Oradea Court.

The case based on s. 37(1)(b) of the Act of 2003

63. It was also submitted that the surrender of Mrs. Rostas would lead to a denial of fundamental or human rights, given the egregious and fundamental defects in the criminal justice system in Romania in its treatment of Roma in the latter part of the 1990s. To surrender her to face deprivation of her liberty on the basis of a conviction rendered in a trial that had failed to respect her due process rights, and in which she had been discriminated against on the basis of her ethnicity, and in circumstances where at this point she has no remedy that she can avail of in the issuing state, would contravene her personal rights under the Constitution and in particular her rights to liberty and equal treatment.

64. The respondent also seeks to anchor that aspect of her case which is concerned with family life on her rights under Article 41 of the Constitution. It was submitted that that the wording of Article 41 of the Constitution provides stronger protection for family life rights than Article 8 of the ECHR. Article 8 guarantees the right to "respect for" family life; Article 41 provides *inter alia* that the "State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law" and "guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State".

65. It was submitted that Article 41 applies to non-citizen families. In support of this counsel cited *A.O. and D.L. v. Minister for Justice, Equality and Law Reform* [2003] 1 I.R.1, where Murray J. stated (at 82-83):

"I would first of all observe that, in my view, the protection afforded by the Constitution to the family is not dependent entirely on whether it counts among one of its members a citizen of the State. In *North Western Health Board v. H.W.* [2001] 3 I.R. 622, the judgment of this court once again pointed out that the Constitution recognises the family as a moral institution independent of the State but in respect of which the State has a duty to protect its constitution and authority. I do not believe that the decision of the court in that case (which upheld the right of the parents to refuse to submit their infant to a health screening test notwithstanding the opposite view of the Health Board) would have been any different if all members of the family were non-nationals. When a family of non-nationals is within the State it has all the attributes which the Constitution recognises as a "moral institution". I do not think that there can be any question but that the non-national children of such a family have a constitutional right to the company, care and parentage of their parents within a family unit whilst in the State and that one or both parents could not be removed from that role on grounds any different from those which the Constitution permits as the basis for removing children from the custody of their parents who are citizens."

The case based on s. 37(1)(c) of the Act of 2003

66. It was submitted that the respondent was treated less favourably because of her ethnic origin in her arrest, trial, conviction and sentence compared with other Romanians, such that her surrender is prohibited by section 37(1)(c)(ii) of the Act of 2003. In elaboration of this, it was submitted that on the basis of the affidavit evidence before the Court there are reasonable grounds for believing that she was discriminated against in the course of her questioning, trial, conviction and sentence in Romania in Oradea Court because of her Roma ethnicity. She played no active part in the proceedings, and probably suffered prejudice due to her limited understanding of the Romanian language. It was further submitted that her prison sentence was imposed in a criminal process that was deeply unfair and discriminatory.

67. Thus, counsel for the respondent argued, if the respondent is returned to Romania on foot of the EAW it is submitted that "*there are reasonable grounds for believing that ... in the ... punishment ... in the issuing State ... she will be treated less favourably than a person who is not of ... her ... ethnic origin, or who ... speaks a different language than ... she does*", contrary to section 37(1)(c)(ii) of the Act of 2003.

68. It was submitted that this difference in treatment arises necessarily from the fact that the punishment she will undergo was imposed in a criminal process that discriminated against the respondent on the basis of her Roma ethnicity. Moreover, the trial was conducted, the conviction was recorded and the sentence was imposed at a time when Romania was years behind and below the standard of human rights protection required by member states of the European Union.

69. Counsel for the respondent has submitted that the principle of mutual respect between Member States cannot apply when the respondent was tried and convicted in a criminal justice system that has been greatly discredited and pre-dated Romania's accession to the EU by more than 10 years.

70. It was further submitted that the respondent's arrest, trial, conviction and sentence were unfair because of the prejudice against Roma in the Romanian criminal justice system in the latter half of the 1990s, and her fair trial rights were seriously violated, such that her surrender would breach her rights under the European Convention on Human Rights and/or the Constitution and be prohibited by s. 37(1)(a) and/or (b) of the Act of 2003.

The case based on the EU's legal order and fundamental rights

71. Counsel for the respondent contends that the recognition of fundamental human rights has always been part of EC or EU law. Whilst the original EC Treaty did not make any reference to fundamental rights, the Court of Justice acknowledged their importance, as early as 1969, in the case of *Stauder* [1969] E.C.R. 419 (at para. 7 of the Court's judgment). The following year, in the *Internationale Handelsgesellschaft* case, [1970] ECR 1125, (at para. 4 of the judgment) the Court of Justice stated that fundamental human rights are 'enshrined in the general principles of Community law and protected by the Court'. In 1994, the Court stated: 'respect for human rights is ... a condition of the lawfulness of Community acts' - Opinion 2/94, Accession of the EC to the ECHR (at paras. 33 and 34).

72. The Court was asked to note that the Lisbon Treaty, in amending the basic Treaties, put to the forefront the values on which the EU is based.

73. Article 2 of the Treaty on European Union ('the TEU') states:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

74. Article 6 of the TEU provides:

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

75. The Court was further asked to note that the Charter of Fundamental Rights includes the fair trial rights protected by Article 6 of the ECHR: see Articles 47 to 50. The Charter also prohibits discrimination: Article 21.

76. Moreover, the Framework Decision also emphasises the importance of respect for fundamental rights and Article 6 of the TEU.

77. Recital (8) of the Framework Decision states:

"Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender".

78. Recital (12) of the Framework Decision states:

"This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media."

79. Article 1 of the Framework Decision then provides (underlining added):

"1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

80. Thus, it was submitted, the application of section 37 to the particular facts of the respondent's case is in line with the EU's legal order and the requirement that the Framework Decision operate in a manner that recognises and protects fundamental rights.

The Applicant's Case

81. Counsel for the applicant contends that all of the preconditions for surrender under the Act of 2003 are satisfied.

Response to the objections raised

82. Counsel for the applicant referred to the respondent's assertion that there are reasonable grounds to believe that she was discriminated against as a Roma during her prosecution and conviction in Romania. This assertion is grounded upon the affidavits of both Suzanne Rushe and Irina Maldea. The applicant submits that the affidavit of Ms. Rushe, whilst it set forth a substantial amount of information which refers to the perceived discrimination suffered by Romas in Romania, does not illustrate any evidence to the court that there has been any discrimination against the respondent herein. It was contended that the affidavits of Ms. Maldea again yield little in the way of evidence that the respondent has suffered discrimination as a result of her ethnicity. The content of these affidavits give evidence of Ms. Maldea's experience and knowledge of the respondent and her family. It was submitted that this is of little benefit to the issues herein as Ms. Maldea only became aware of the respondent family when they had already arrived in Ireland and thus cannot be first hand knowledge of any mistreatment or discrimination alleged to have occurred some years previously and in another country. Rather, it amounts to no more than the assertion of Ms. Maldea's belief in the truth of respondent's account. Furthermore, there is no evidence to state that the respondent would face any discriminatory treatment upon her surrender to serve the remaining portion of her sentence in Romania. The principles enunciated in *The Minister for Justice Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783, affirming the principles set out by the E.Ct.H.R in *Saadi v. Italy* (Application No.37201/06, judgment of 28th February, 2008), require that the court should conduct a rigorous examination as to whether there is a real risk of the breach of rights at issue, and furthermore that the burden should rest upon the party seeking to prove that they are facing mistreatment if surrendered to the requesting State. The mere possibility of ill treatment will not be sufficient to establish an applicant's case. However, the Court may attach importance to reports of independent international human rights organisations and governmental sources. Counsel for the applicant submitted that the respondent cannot, on the evidence she has adduced, satisfy the *Rettinger* test. The affidavits sworn by Ms. Rushe and Ms. Maldea are insufficient to satisfy the requirements of the test. It is further submitted that, in so far as the respondent's own evidence is concerned, at no point has she specified the nature of any alleged mistreatment or discrimination that she claims to have suffered or given any details of specific incidents. It was submitted that, in failing to display any specificity with regard to her claims, the respondent's evidence does not exhibit the required cogency.

83. Counsel for the applicant also sought to respond to the respondent's contention that the issuing state cannot, in the circumstances of this case, benefit from the 'high level of confidence' enjoyed between member states as Romania was not part of the European Union at the time of the conviction. In response to this, it is the applicant's submission that as Romania is now a member state, it automatically benefits from all aspects of membership. Furthermore, whilst the conviction does in fact predate Romania's inclusion in the European Union, the European Arrest Warrant which is the subject matter of the herein proceedings was issued in 2012, at which point Romania had been a member state for a period of five years. The Applicant submits that this effectively invalidates the respondent's objection. In addition, the respondent was resident in Romania until 2009 when she moved to Ireland. The position is that the respondent, who was resident in an EU member state, namely Romania, for a period of five years, left that EU member state in 2009 to move to another EU member state, namely Ireland, and has remained resident in Ireland to the present date. It was submitted that the respondent may not seek to claim any retrospective exclusion from any aspect of EU membership. As the respondent would have been aware of the status of Romania as a member state when she left there and took up residence in Ireland, another member state (indeed benefiting from the rights of free travel and residence within the European Union) it was submitted that the respondent is bound by all facets and consequences of such membership. Thus, it was submitted, the respondent may not seek to both benefit from EU membership on the one hand in order to reside in Ireland, and on the other hand seek to evade surrender through denial of the consequences for her of that membership.

84. In response to the respondent's claim that her surrender would violate her rights under the Charter of Fundamental Rights, including those protected by Articles 7, 20,21,47,48 and 49 of the Charter of Fundamental Rights, the applicant refutes all claims that the allegedly apprehended infringement will arise. With regard to Articles 47, 48 and 49 of the Charter of Fundamental rights, counsel for the applicant has submitted that the respondent cannot seek to rely upon these rights in this case as there is a conviction and sentence in place. Furthermore, by part serving the given sentence on two separate occasions, without seeking to challenge it in any way, or asserting the invalidity of the underlying conviction at that time, the respondent by her acquiescence endorsed the legality of the proceedings against her in Romania. Counsel for the applicant submitted that had there been a concern at that time regarding the legality of the prosecution, it was still open to the respondent to seek to appeal, something which she did not do according to the documentation provided by the issuing state. It is contended that as the criminal proceedings have been finalised, and all that remains is for the balance of the sentence to be executed, the presumption of innocence and right to a defence under Article 6 ECHR and Article 48 is moot at this juncture. The same argument is put forward in relation to the right to a fair trial under Article 47 of the Charter. Referring to the previously discussed alleged discrimination suffered by the respondent, the applicant reiterates that the burden rests upon the respondent to show that discrimination or degrading treatment was suffered during the course of proceedings, or that her trial was unfair.

85. Addressing the family rights issues raised, and the subsidiary issues of delay and proportionality raised by counsel for the respondent in that context, counsel for the applicant points to the fact that the sentence was part served by the respondent before she left Romania to come to Ireland in 2009. The reasons advanced for seeking the various adjournments of execution of the sentence were that she had to care for her young family. As a result, the respondent was most recently incarcerated in 2006. It was submitted that the respondent's acquiescence and seeking of interruptions or adjournments stopped the clock running on any delay claim that may have otherwise been valid. The respondent, in leaving the jurisdiction in 2009, brought about further extensive delay in the execution of the remainder of the sentence by her own actions and as such may not seek to rely upon this delay in support of her family rights based objection to surrender. It was further submitted that having already had 16 years to care for her family in their early years, child rearing and minding no longer affords her a valid reason for adjournment, postponement, interruption or suspension of the sentence, and it is reasonable and proportionate that the issuing state should now require her to serve the balance of the sentence still remaining to be served. Moreover, the respondent abused the forbearance shown to her by the Romanian court in departing from Romania. As such, the alleged delay in the proceedings is not something upon which the respondent can legitimately seek to rely in support of her family rights based objection to surrender.

86. Finally counsel for the applicant has also submitted that the respondent may not seek to rely upon any Constitutional rights afforded to Irish citizens as she and her family were not resident in this jurisdiction at the time of her conviction and as such may not seek to avoid serving the sentence passed by virtue of reliance upon Irish Constitutional rights.

The Court's Decision

87. In *Minister for Justice, Equality and Law Reform v. Marjasz* [2012] IEHC 233, (unreported, High Court, Edwards J., 24th of April, 2012) this Court acknowledged that, notwithstanding the principle of mutual recognition, it might be possible, in an exceptional case, for a respondent to resist surrender on foot of a European arrest warrant seeking his or her surrender for the purpose of executing a sentence, on the basis that the underlying conviction was the result of an unfair trial. However, I went on to state:

"The Court would add, however, that this jurisdiction is likely to be exercised very sparingly indeed, and only in cases where it has been established by the clearest and most cogent evidence that there was a truly egregious unfairness in the circumstances of the underlying trial, and where there is also evidence that all possible remedies / avenues of review / appeals in the issuing state have been tried without success and have been exhausted.

It follows from what the Court has just said that in a conviction case the Court will, in general, be most reluctant to engage in any review of the trial process leading to the conviction on foot of which the warrant is based to determine whether it was fair and lawful. The default and starting position in all cases will be that the Court must proceed upon a presumption that the trial leading to the conviction in question was fair and respected the respondent's fundamental rights, and that in the event of him having some complaint in regard to the fairness of the trial that led to his conviction that it was incumbent upon him, at the material time, to seek an effective remedy in regard to that before the courts of the issuing state. The Court's views on this should perhaps be elaborated on further.

While the statutory presumption provided for in s.4A of the Act of 2003 does not operate to expressly vouchsafe the fairness and validity of any trial that may have resulted in such a conviction, this Court considers that a separate non-statutory and, of course, rebuttable presumption that any such conviction was the result of a fair trial nonetheless arises.

The Court considers that the non-statutory presumption just referred to arises in the following circumstances. It has first of all to be borne in mind that while the statutory presumption arising under s. 4A of the Act of 2003 does not have retrospective effect so as to validate past events, it does nonetheless apply to how an issuing state conducts itself generally in any European arrest warrant proceedings as well as to anything that may happen post surrender if indeed there is to be surrender in the particular case. The statutory presumption therefore has an impact in every case in two ways. First, it is to be presumed that the issuing state and the issuing judicial authority will comply with the requirements of the Framework Decision, which inter alia expresses itself in recital 12 as respecting fundamental rights. Secondly, the issuing state and the issuing judicial authority are in this Court's view to be regarded as being subject to a duty of utmost good faith (*uberrimae fidei*), both in terms of any actions taken by them under the Framework Decision (including the issuing of a European arrest warrant) and of any communications to the central authority in the executing state and /or to the executing judicial authority in connection with a European arrest warrant. If their actions and communications are to be accepted at face value and recognized, the authorities in the executing state must be able to have faith in them. So if the principles of mutual trust and confidence, and mutual recognition, respectively, are an aspect of the currency of the European arrest warrant system, and metaphorically speaking represent one side of its coinage, then a requirement that an issuing state / issuing judicial authority be subject to a duty of utmost good faith in terms of any actions taken by it under the Framework Decision, and any communications with the executing state / executing judicial authority, represents the other side of that coinage.

Accordingly, having appropriate regard to the implications of the s.4A presumption for the way in which an issuing state / issuing judicial authority is required to conduct itself; the principles of mutual trust and confidence between member states; the further principle that there should be mutual recognition of judicial decisions and actions; and the aforementioned duty of utmost good faith, this Court considers that it is entitled to expect in respect of any conviction which is the subject of a European arrest warrant that the issuing judicial authority would not knowingly seek a respondent's rendition in circumstances where he had not received a fair trial (as judged against widely accepted norms such as those expressed in provisions such as Article 6 of the European Convention on Human Rights, to which instrument all member states operating the European arrest warrant are signatories; alternatively Article 47 of the Charter of Fundamental Rights which is also binding on such member states post the coming into force of the Lisbon Treaty), and that it is therefore to be presumed that the respondent did in fact receive a fair trial that respected his fundamental rights. Such a presumption is, of course, capable of being rebutted in any particular case but the Court would require to have adduced before it very cogent and compelling evidence tending to rebut that presumption before it would be put upon enquiry and be justified in seeking to look behind the presumption.

There are also very sound practical and logistical reasons why a Court in an executing state should be very reluctant and slow to embark upon any such enquiry. In most cases the court in an executing state would be singularly ill-equipped to judge such an issue, not being intimately familiar with the laws and procedures of the issuing state, and not having access to the evidence or to transcripts of evidence, or to the exhibits, or to the court record, not to mention the very significant language and translation difficulties that would arise in many cases. A very similar point was made by the Supreme Court in *Minister for Justice Equality and Law Reform v. Stapleton* [2008] 1 I.R. 669, albeit in the somewhat different context of an attempt by a respondent to resist his surrender for prosecution purposes on the grounds that there had been culpable prosecutorial delay in the case and that the proposed surrender would lead to a breach of his expeditious trial right. In his judgment in that case, Fennelly J. said at p. 692:

"on the facts of the case, it is demonstrably more efficient and more convenient that those matters be debated before the courts of the country where the respondent is to be tried. The prosecuting and police authorities as well as other witnesses are available to and amenable to the jurisdiction of the courts of that country. Documentary evidence, of the type demanded by the respondent, will be more readily available there. If not, its absence may be more readily explained. There may, in addition, be arguments or points of domestic law, whether based on precedents or otherwise, which the respondent can advantageously argue or rely upon which may not be available to him in this jurisdiction and of which an Irish court might not necessarily be aware. I would echo and adapt the words of Simon Brown L.J. in *Woodcock v. Government of New Zealand* [2003] EWHC 2668 (Admin), [2004] 1 W.L.R. 1979 and say that the English courts "will have an altogether clearer picture than we have of precisely what evidence is available and the issues likely to arise."

88. Accordingly, the starting point for this Court is that, for the very reasons set forth in the cases of *Marjasz* and *Stapleton*, it should exhibit great reluctance, and be very slow, to embark on any enquiry into the fairness of the underlying conviction in this case. That having been said, it seems clear from the judgment of the E.Ct.H.R in *Othman (Abu Qatada) v. The United Kingdom* (Application No. 8139/09) that in an exceptional case such an enquiry may be appropriate and, indeed, required in the interests of justice and the upholding of a requested person's fundamental rights.

89. It should be recorded that although the decision in the *Othman (Abu Qatada)* case had been promulgated shortly before this Court's judgment in *Marjasz*, it was not opened to this Court. It seems to the Court that the threshold for intervention indicated in *Marjasz* requires to be modified in one respect in the light of the *Othman (Abu Qatada)* case, a matter the Court will return to a little later in this judgment .

90. It requires to be stated that the *Othman (Abu Qatada)* case was not concerned with a proposed extradition for the purposes of executing a sentence, and with the fairness of the underlying conviction. On the contrary, that case related to an extradition request from Jordan addressed to the United Kingdom for the purpose of recovering the requested person so that he might be retried for an offence for which he had previously been convicted in absentia and it was concerned, inter alia, with whether he could expect to receive a fair re-trial. However, the judgment of the E.Ct.H.R in *Othman (Abu Qatada)* is said to be relevant to the present case because it advances the proposition, at paragraph 258, that an issue might exceptionally be raised under Article 6 by an expulsion or extradition decision in circumstances where the fugitive "**had suffered** or risked suffering a flagrant denial of justice in the requesting country" (this Court's emphasis).

91. It is appropriate to quote in full the relevant section of the judgment of the E.Ct.H.R in *Othman (Abu Qatada)*. Dealing with the merits of the case based upon an alleged violation of Article 6 of the Convention, the Court said (at paras 258 to 261 inclusive):

"258. It is established in the Court's case-law that an issue might exceptionally be raised under Article 6 by an expulsion or extradition decision in circumstances where the fugitive had suffered or risked suffering a flagrant denial of justice in the requesting country. That principle was first set out in *Soering v. the United Kingdom*, 7 July 1989, § 113, Series A no. 161 and has been subsequently confirmed by the Court in a number of cases (see, inter alia, *Mamatkulov and Askarov*, cited above, §§ 90 and 91; *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 149, ECHR 2010 ...).

259. In the Court's case-law, the term "flagrant denial of justice" has been synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (*Sejdovic v. Italy* [GC], no. 56581/00, § 84, ECHR 2006 II; *Stoichkov*, cited above, § 56, *Drozd and Janousek* cited above, § 110). Although it has not yet been required to define the term in more precise terms, the Court has nonetheless indicated that certain forms of unfairness could amount to a flagrant denial of justice. These have included:

- conviction *in absentia* with no possibility subsequently to obtain a fresh determination of the merits of the charge (*Einhorn*, cited above, § 33; *Sejdovic*, cited above, § 84; *Stoichkov*, cited above, § 56);
- a trial which is summary in nature and conducted with a total disregard for the rights of the defence (*Bader and Kanbor*, cited above, § 47);
- detention without any access to an independent and impartial tribunal to have the legality the detention reviewed (*Al-Moayad*, cited above, § 101);
- deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country (*ibid.*).

260. It is noteworthy that, in the twenty-two years since the *Soering* judgment, the Court has never found that an expulsion would be in violation of Article 6. This fact, when taken with the examples given in the preceding paragraph, serves to underline the Court's view that "flagrant denial of justice" is a stringent test of unfairness. A flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article.

261. In assessing whether this test has been met, the Court considers that the same standard and burden of proof should apply as in Article 3 expulsion cases. Therefore, it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if he is removed from a Contracting State, he would be exposed to a real risk of being subjected to a flagrant denial of justice. Where such evidence is adduced, it is for the Government to dispel any doubts about it (see, *mutatis mutandis*, *Saadi v. Italy*, cited above § 129)."

92. Returning now to this Court's judgment in *Minister for Justice, Equality and Law Reform v. Marjasz*, I stated therein that the jurisdiction to refuse surrender in a conviction type case on the grounds of concerns about the fairness of the underlying conviction should be exercised sparingly, and only in cases where it has been established by the clearest and most cogent evidence that there was a truly egregious unfairness in the circumstances of the underlying trial, and where there is also evidence that all possible remedies / avenues of review / appeals in the issuing state have been tried without success and have been exhausted. That statement requires modification as a result of the decision in *Othman (Abu Qatada)* to the extent that what must be established is not the actual unfairness of the trial process leading to the conviction in the requesting country but rather the establishment of substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice in the course of that trial process.

93. In the present case the respondent contends that she was wrongfully convicted of robbery in circumstances where effectively she had been afforded no effective defence and was given no opportunity to make her case. It is contended that her treatment at the hands of the police and prosecuting authorities in Romania, combined with the circumstances in which her subsequent trial was conducted, amounted to a nullification of her fair trial rights and right to equal and fair treatment before the law. On the contrary, it is claimed, the cumulative circumstances in which she was falsely accused and unfairly tried, caused a flagrant denial to her of the justice to which she was entitled.

94. The Court has only the respondent's mere assertion as to her innocence and in so far as she provides a narrative at all concerning the events that are said to have occurred on the train it is, to say the least of it, short on detail. The Court is singularly ill-equipped to assess the credibility of the respondent's narrative concerning the central event and her part in it, or rather her lack of any part in it if indeed she is truthful. Accordingly this Court is neither competent *ratione materiae* nor, for that matter, *ratione temporis* to assess the soundness of the respondent's conviction. Moreover, it is not part of the function or remit of this Court to attempt to do so. The most that it can do is to note that the respondent has for many years protested her innocence, and the wrongfulness of her conviction, at least amongst her own community, and also to others prepared to listen such as Ms. Maldea, Mr. Culleton, and Mr. Butuc, and that she continues to protest her innocence.

95. However, in so far as the respondent provides a narrative concerning the subsequent investigative and trial process to which she

was subjected, the Court can more readily scrutinise the intrinsic fairness of those processes in circumstances where it has not just the benefit of the respondent's own narrative concerning what she says happened to her, but also the benefit of certain extrinsic evidence concerning Romanian society and its criminal justice system, and how ethnic minorities and in particular Roma were treated by the authorities in Romania, at the material time.

96. The robbery at the centre of this case occurred on the night of the 3rd/4th of August, 1995. The respondent was arrested two days later, and the trial took place the following year. The sentence was handed down on the 9th of December, 1996. The historical and geopolitical context in which all of that occurred was that Romania was in a transitional phase between the communist dictatorship of Nicolae Ceausescu, who was deposed in a popular uprising and executed in late 1989 having been in power since the 1960's, and western style democracy which began in earnest in 1996 with the election of the first non-communist government in November of that year. It is important to appreciate that although Ceausescu was removed in consequence of a revolt within the Romanian communist party in 1989, Romania actually continued under communist government until November 1996. It is a matter of public record that it ratified the ECHR in 1994, and applied for membership of the European Union ("the E.U." or "the Union") on the 22nd of June, 1995.

97. Country of origin information in the public domain, and in particular "Agenda 2000 – EU Commission Opinion on Romania's Application for Membership of the European Union", Brussels, 15th July, 1997, (DOC/97/18) ("the Agenda 2000 report") indicates that following Romania's application to join the Union the Commission then set about assessing Romania's suitability for membership with reference to the criteria agreed at the European Council in Copenhagen in 1993, the so called "Copenhagen criteria". The accession of Romania was delayed for nearly a decade due to, inter alia, ongoing concerns about respect for fundamental rights, official corruption, weaknesses in the judicial system, the need for improvements in the protection of individual rights against the police and the secret services as well as in the operation of the penal system, and the need for better integration and protection of ethnic minorities, particularly the Roma who constituted a significant minority that were not well integrated and experienced widespread discrimination. It was not to be until late 2004 that Romania was deemed fit and suitable to be allowed to proceed to accession to full membership of the EU. The Brussels European Summit (16-17 December, 2004) finally endorsed the closure of negotiations and "noted with satisfaction that progress made by Romania in implementing the acquis (of the Union as expressed in the Treaty, the secondary legislation and the policies of the Union) and commitments entered into as regards, in particular, Justice and Home Affairs and Competition, has made possible to close formally all the outstanding chapters with Romania on 14 December 2004 and accordingly looked forward to welcoming it as a member from January 2007". Romania finally joined the EU as a full member on the 1st of January, 2007.

98. While there is no reason to doubt that by the time Romania acceded to full membership of the EU there had been significant progress towards developing a more fundamental rights based culture in Romanian life, particularly at official level, and that there had also been improvements in the areas of justice and home affairs, the work that had to be done in that regard was considerable, and Romania had started from a position that was very far behind what was acceptable in terms of the standards required to be demonstrated for EU membership. It is indeed to that country's considerable credit that it achieved the changes it did over the space of a decade. However, it was allowed to proceed to full membership in 2004 effectively on the basis of "good work done, but more to do". What is particularly relevant from this Court's perspective is that the events central to the case now before it all took place at the very start of the period during which that process of necessary reforms was being undertaken, and as a matter of likelihood, before significant progress had been made.

99. All of the country of origin information reviewed by this Court is consistent in the picture that it paints concerning the state of the Romanian criminal justice system and judicial system. For example, the EU Commission's Agenda 2000 report of 15th July, 1997, states with respect to the structure of the judiciary that the department of public prosecutions, which is headed by a Prosecutor-General appointed by the President, is under the umbrella of the Minister of Justice. It noted that prosecutors had extensive powers and that large areas of prosecutors' activities were not subject to judicial control. It further characterised the Romanian judicial system as "not working satisfactorily". Several organisations were noted to have reported cases of inhumane and degrading treatment by the police and the report characterised this as "particularly alarming because Romania has no provision for punishing such actions." It further noted with respect to minority rights and the protection of minorities that:

"The Roma, who account for a considerable percentage of the population (1-1.5 million, depending on the estimates), are the victims of discrimination in many areas of everyday life. They are quite often assaulted by police officers or members of the public, offences that go unpunished. Besides the discrimination they suffer from the rest of the population, sociological and cultural factors account to some extent for their very difficult social situation."

100. In 1999, the European Commission against Racism and Intolerance's "*Country-by-Country Approach, Report on Romania*", CRI (99) 9 stated, at p. 9, section I (Legal Provisions), C (Criminal Law provisions) para. 10:

"Many abuses have been committed against minority groups, particularly, Roma/Gypsies, both by members of the police forces and by individuals."

101. In its second report on Romania, adopted on 22nd June, 2001, and published on 23rd April, 2002, the European Commission against Racism and Intolerance stated:

"46. Nevertheless, grave problems meanwhile persist throughout the country as regards police attitudes and behaviour towards members of the Roma/Gypsy community. ECRI deplures in particular that cases of police violence against members of the Roma/Gypsy community, including the use of firearms, continue to occur, and have led to serious and sometimes lethal injuries. Police raids on areas where Roma/Gypsy communities are living, often at night and with no authorisation, are also relatively common: persons thus apprehended, including women and children, are then taken to the police station for questioning. Such raids, which are often violent, are reported in the press and on the television as an example of police action against criminality: no measures are taken by the media to conceal the identity of the persons affected by such raids. On the contrary, the fact that Roma are involved is often stressed and exploited to feed the general prejudices and stereotypes mentioned elsewhere in this report. It has been reported to ECRI that some police controls carried out in trains, ostensibly in order to identify persons travelling without tickets or persons begging, target mainly Roma/Gypsies.

"47. Such abuses, although well-documented and reported to the authorities by non-governmental organisations and individuals, do not appear to be thoroughly investigated or sanctioned: cases which are investigated are usually dismissed. In this respect, ECRI draws attention to its general policy recommendation No 1 in which it advocates the setting up of an independent investigatory mechanism to look into reports of police abuses and with power to take action where necessary. ECRI also stresses that the police authorities must take immediate action to prevent organised actions

on the part of the police such as raids or indiscriminate arrests in which innocent people are treated as criminals.

- Judiciary

48. Although no reliable data appear to exist in this area, it has been reported that members of the Roma/Gypsy community are also discriminated against before the courts, where they are likely to receive harsher sentences than others accused of similar crimes. ECRI feels that this issue should be the subject of research and investigation, and that steps should be taken to ensure that judges receive special training in non-discrimination in order to overcome such prejudices. ECRI feels that the introduction of the new anti-discrimination legislation provides an opportune moment for such training, both to raise awareness of the legislation in itself, and to raise issues of discrimination and prejudice as they may affect the day-to-day decisions made by the courts."

102. On 1st May, 1995, Amnesty International published a report on Romania entitled "*Broken Commitments to Human Rights*", which documented gross discrimination against the Roma including in the criminal justice system. It stated *inter alia*:

"Racial prejudice and the neglect of the needs of the Roma community is evident not only in Romania but throughout the region. The rise of nationalism in Romania since 1990 has had a particular impact on the Roma. Amnesty International has documented human rights violations ranging from imprisonment solely because of ethnic background, to a nationwide pattern of police failure to protect Roma from racist violence. The responsibility for these human rights violations ultimately lies with the Romanian Government and other national authorities, including the General Prosecutor of Romania."

103. On 9th August, 2000, Amnesty International published a further report stating that police brutality was still systematic in Romania with police officers singling out Roma for rough treatment.

104. By way of further illustration, in 2001, the European Roma Rights Centre published a report on Romania entitled "*State of Impunity: Human Rights Abuse of Roma in Romania*", which included the following (at section 3.5):

"Police violence against Roma in Romania persists in an environment in which racist stereotyping of Roma is rampant. The relationship between Roma and the police in Romania is burdened from the outset by the widely held belief that Roma are criminals. Police abuse proceeds from a basic suspicion of guilt of the Roma by police officers, as well as an overall tendency to use force as a component of criminal investigations. Judicial authorities tacitly endorse such practices by lending undue weight to confessions in criminal cases, as well as by their inactivity in prosecuting officers for reported physical abuse of suspects. The status of the police as an organ of the military, and its concomitant position within the jurisdiction of military courts, also contributes to its insulation from accountability. Magnified by frequent occurrence at every step of the criminal justice system, subtly or intensely biased decisions produce an overall effect of denial of justice where Roma are victims and officers are alleged perpetrators.

It appears that high-ranking Romanian officials are not only oblivious to their responsibility to counter racism, but themselves contribute to perpetuating anti-Romani sentiment by public defamation of Roma. On December 4, 1999, Brigadier General Mircea Bot, then-head of the Bucharest police department, made a number of defamatory comments with regard to the Roma in an interview for the Romanian daily newspaper *România Liberă*. General Bot made extensive comments on "Gypsy criminality and Gypsy gangs" and asserted that "up until now Gypsy people were used to stealing and robbing", while "now" they are focused on "financial criminal acts [...]". In the conclusion of the interview General Bot stated that "there are Gypsies who are born criminals, and [...] do not know anything else than to commit criminal acts." The article was printed along with a list of "the addresses of Gypsy criminals in Bucharest." The ERRC is not aware of any adequate disciplinary measures taken against General Bot in response to his public racist statements."

105. Further, in November, 2001, the Center for Documentation and Information on Minorities in Europe - Southeast Europe (CEDIME-SE), published a report "*MINORITIES IN SOUTHEAST EUROPE Roma of Romania*", which stated at pp. 10-11:

"The execution of Ceaușescu in 1989 brought new hope for Romania's citizens but, as in the case of the abolition of slavery, Roma discovered that their situation did not improve very much or at all and, in many cases, became markedly worse. Roma have been the most affected by the transition to a market economy because of the lack of a qualified labor force, which leads to a high rate of unemployment within that population (see section 1.2). Those who worked in the state-owned agricultural households have no jobs anymore, since these lands have been given back to their owners, so most of them own no land though the law (Law on Land and Estate, No.18, February, 1991 has stipulated that each family has to get a piece of land) (Pons, 1999: 50).

Romania's law allows them to form associations and publish newspapers, but they also became the scapegoats for the rest of the population as the country struggled with the transition to a market economy. Violence against Roma, which had not been a feature of communist Romania, became more widespread and even tolerated. It began in March 1990 when the miners were called to Bucharest to 'defend' the government, after which they went to Roma neighborhoods and carried out indiscriminate attacks (Kenrick, 1998: 140). The same month saw inter-ethnic clashes in Târgu-Mureș, in the aftermath of which a disproportionate number of Roma were arrested and tried, despite evidence that they had not even been present ..."

And at pp. 23-32:

"2.3.1 Relations with the state

Community violence and the search for employment meant that previously settled Roma communities have been forced to abandon their homes. In cases of community violence they are, of course, denied the choice of returning. Many communities have therefore ended up settling on the outskirts of towns and cities in makeshift accommodation (ERRC, 1998: 26). Contact with authorities tends to be limited to local and regional health and educational services and, of course, the ever-present police. Amnesty International has documented cases in which Roma have been assaulted by police in public, actions which reinforce the belief that violence against Roma is not a crime (Amnesty International, 1995:25).

Since 1990 there have been over 30 conflicts in Romania in which Roma have been either injured, sometimes fatally, or driven from their homes. Such incidents typically begin as an argument between one or several Roma and one or several

non-Roma and often escalate to the point where whole communities are involved. Romanian authorities have consistently denied the inter-ethnic nature of such incidents, but the fact that no one has been seriously punished for committing such a crime against a Roma clearly shows the attitude of the state (Weber, 1998: 221). Research conducted by Helsinki Watch in 1991 found that not only was there a lack of protection for Roma communities under threat of attack, but one of the most pressing human rights concerns at the time was the absolute failure of state authorities to prosecute non-Roma for crimes perpetrated against the minority (Helsinki Watch, 1994: 6).

At the beginning of the 1990s, Helsinki Watch claimed that there was no political will in Romania to combat racial violence against Roma and to afford sufficient protection to Roma victims of crime (Helsinki Watch, 1994: 5). They also observed several cases in which authorities displayed overtly anti-Roma sentiments, such as the assertion that the burning of Roma homes is "in the public interest." Statements such as this make the racial prejudice of authorities quite clear (Helsinki Watch, 1994: 8).

Action taken by authorities since 1990 has also reflected this attitude. Following the violence in the Transylvanian town of Târgu-Mureş on March 19 and 20, 1990, Helsinki Watch observed that the prosecutor's office seemed to be attempting to make scapegoats of the Roma who were present at the time. According to the prosecutor's office, of the thirty-one individuals under investigation following the violence (which began as an inter-ethnic clash between Romanians and Hungarians), twenty-four were Roma. A further number of Roma were arrested for offences such as the possession of weapons and disturbance of the peace. The latter were tried under Decree 153, dating from 1970, and directed against "parasites" of the socialist order." In addition to the fact that this decree was considered an extremely abusive tool invented by the Ceauşescu regime, its use violates due process. The legal counsel representing seven of the Roma defendants stated that their trial began the day after they were arrested. In addition, there were witnesses present who testified to the innocence of the defendants, while one of the witnesses for the prosecution nullified his earlier statement by saying that he had been drunk and could remember nothing of the events of March 20, and then it emerged that the second witness had a long history of convictions and was himself in jail for his involvement in the violence. The Roma themselves gave testimony that contradicted their statements, which they had been unable to read due to a lack of education. One of the defendants also claimed that he had signed the statement under duress. Despite all of this, the defendants were given sentences ranging from three months of work with a penalty to five months in prison. The legal counsel attested to the fact that she was threatened after agreeing to represent the Roma and that the other Roma arrested after March 20 were not represented by counsel at all. They all received the maximum sentence of six months (Helsinki Watch, 1990: 7).

... In a 1993 report, the International Helsinki Federation for Human Rights (IHF) observed that Romanian authorities tended to brand groups of Roma as "criminals," thus ensuring that the issue of attacks on Roma communities became, instead, a debate about crime committed by Roma. IHF was also told that rebuilding Roma houses, which were destroyed, was contingent upon the non-filing of charges against the guilty parties. The IHF found this, coupled with the legitimization of crimes against Roma by stereotyping Roma communities as inhabited by criminals, as particularly worrying, as such sentiments expressed by individuals in authority serve to encourage racist violence (IHF, 1993: 3-4). The situation is further exacerbated by the fact that the Romanian police publish crime statistics imputing specific offences to Roma. The only other group to be singled out is foreigners who commit crimes in Romania. The authorities also tend to make general comments about the criminal activity of the Roma minority as a whole, which fuels anti-Roma feeling and heightens the possibility of community violence..."

106. The Court's attention was also drawn to a report from 2003, published by Penal Reform International, entitled "*Discrimination against Roma in Criminal Justice and Prison Systems in Romania*". It includes the following:

"... access to justice (including the general requirement of fairness at all stages of the judicial process) for indigent defendants in criminal cases and for indigent parties in civil cases is clearly doubtful. Although guaranteed by the Article 21 of the Constitution, free access to justice is illusory for those who cannot pay for a defence attorney or representative. As many Roma have limited resources, they are often the victims of this defect within the legal system." (at page 13).

"Studies carried out by intergovernmental organisations and NGOs indicate that Roma suffer from discrimination on a large scale within the legal system in various countries in Europe. Romania is not an exception." (at pages 13-14).

"In practice, however, court files are never translated into the mother tongue of the parties, and some experts also suggest that oral interpretation is often insufficient to ensure a thorough understanding of the court proceedings, the evidence or the content of the case. Moreover, as noted above, many Roma have limited financial resources, and are obliged to rely on the inadequate legal representation which is offered by the state. As a result, in practical terms, these persons (and others who must rely on State legal assistance) do not benefit from equal access to justice and the right to properly defend themselves" (page 15).

"Where a minority is systematically discriminated against on a daily basis, there is the danger that even well-intentioned individuals can "forget" that an analysis of gestures, thoughts, expressions and so forth translates into what can be defined as discriminatory practice. In a country such as Romania, which has widespread corruption, it is difficult to find an institution or social sub-system which is unaffected by the diseases of discrimination and corruption. By the same logic, it is unlikely that in a general environment which discriminates against the Roma minority that the criminal justice system would be unaffected.

The large number of Roma within criminal justice institutions is significant in itself. This does not mean that all Roma defendants who appear in the courts are innocent, or that they are accused simply by virtue of the fact that they are discriminated against. The causes of crime within the Roma minority are fundamentally the same as those identified amongst Romanians or Hungarians. The disproportional number of Roma in the criminal justice system is attributable to factors such as their pervasive poverty, marginalisation, and low levels of education. There is, therefore, clearly the need for an analysis of the reasons for which criminal accusations are more easily made against Roma. There is also the need to examine the extent to which remand custody is applied more frequently to Roma than to other defendants, especially since it is an accepted fact that remand custody often leads to difficulty in obtaining non-custodial sentencing alternatives. Finally, there needs to be an analysis of the extent to which sentence length is greater for Roma compared to other similar cases for non-Roma defendants". (pages 17-18).

"Other discrimination includes the fact that Roma defendants are more often kept in custody before the trial and for

longer periods, and are given more severe sentences than non-Roma. In prisons, the percentage of Roma is higher than other groups, and also compared to the declared Roma population at the national level.

At the community level, the support given by families to Roma prisoners is smaller than in the case of the other prisoners, mainly because of the economic hardships with which they are confronted". (pages 30 to 31).

107. In addition, it is also a matter of public record that the E.Ct H.R. has found in a number of cases that the Romanian authorities have violated the principle of non-discrimination in relation to Roma rights, including in the cases of *Moldovan and others v. Romania* (No.1) (App. Nos. 41138/98 and 64320/01), 5th July, 2005; *Moldovan and others v. Romania* (No.2) (App. Nos. 41138/98 and 64320/01), 12th July, 2005; *Carabulea v. Romania* (App. No. 45661/99), 13th July, 2010; *Cobzaru v. Romania* (App. No. 48254/99), 26th July, 2007; and *Stoica v. Romania* (App. No. 42722/02), 4th March, 2008, to which the Court was referred by counsel for the respondent. In addition, this Court notes the further cases of *Lacatus and others v. Romania* (App. No. 12694/04), 13th February, 2013; *Gergely v. Hungary* (App. No. 23364/03), 31st October, 2006; *Kalanyos v. Romania* (App. No. 57884/00), 26th April, 2007 and *Tanase and others v. Romania* (App. No. 62954/00), 26th May 2009, where similar issues arose.

108. At the time of her arrest two days after the alleged robbery the respondent was a young (18-year-old) woman of Roma ethnicity, who was indigent, uneducated and illiterate and whose first language was Roma, although she had some limited understanding of Romanian. She was eight months pregnant at the time, and claims to have been unwell. Her contention is that on the day of the robbery she had travelled by train to a maternity hospital some distance away from her village for a late pregnancy check-up and was returning home when the incident occurred. The respondent contends that while she was on the train another passenger, who had previously been to Hungary, was robbed of a quantity of money, sugar and oil by two other persons, an Alexandru Venczel and a Stela Rostas. The respondent acknowledges that Stela Rostas is from the same village as the respondent. The respondent is adamant that she was not involved in that robbery and is completely innocent of it. However, later on, the actual perpetrators sold sugar and oil to the respondent who took it home. Two days later the respondent's home was searched by the police, who found therein a bottle of oil bearing the label of a Hungarian producer. At this point the respondent claims to have been arrested and taken to the police station for interrogation.

109. It will be recalled that her evidence was to the effect that she protested her innocence to the police but was told to "Shut up. You are a gypsy. You are a liar." She claims that the man who was assaulted and robbed on the train was brought into the room and asked if he recognised her and he said that he did not. She contends, however, that the man in question was then informed by a policeman that she was one of the persons who had stolen from him, and that the police had found some of the stolen goods in her home. She states that the police officer kept saying that she was guilty, and that she was Roma and a liar. The respondent also claims to have been assaulted with a baton by a policeman while returning from the toilet, notwithstanding that she was eight months pregnant. The respondent further contends that she was instructed to sign a number of documents notwithstanding that she could neither read nor write and that nothing was read out to her. It seems reasonable to infer, if this account is true, that the documents may have contained confessional material to be used against her later. The respondent claims to be uncertain as to whether she actually signed a statement. She contends that she does not think that she did. However, she states that she was desperate to get out of the police station because she felt very weak due to her pregnancy and the threatening behaviour of the police officer.

110. Clearly it is impossible for this Court to form any view as to whether the events described by the respondent actually occurred. The only information concerning what actually occurred in the police station consists of the respondent's mere assertion. However, what can be said is that the type of conduct and incident that she describes is consistent with the type of ill-treatment and abuse of Roma suspects by the police in Romania that is documented and described in country of origin reports from a wide range of respected and reliable sources as having been commonplace at the material time. Moreover, the respondent was promoting this account while she was still in Romania in 2007, ever before she had come to Ireland and ever before there was a European arrest warrant for her arrest. In the circumstances, and particularly given the historical context, the Court cannot foreclose on the possibility that the respondent's account may indeed be true. However, it can say no more than that.

111. The evidence is that the respondent was charged fairly quickly and about one month later she attended court for the first time. She says that she went there on several occasions but cannot remember precisely how many. She did not see any witnesses give evidence during the course of her case. She saw the victim once in court and he did not give evidence on that occasion. She heard no evidence given against her. She was assigned a state-funded lawyer and she recalls that his first name was Marian. Although she could not recall his surname, it has been established by Mr. Butuc following his review of the court file that the lawyer's name was Petru Marian, and that he is now deceased. The respondent's claim is that this lawyer never met with her, or even spoke to her, prior to her appearance in court. When they were in court he said very little to her. The respondent believes that he did not advance any defence on her behalf. She does not know if her then lawyer put forward the fact that she was maintaining her innocence. However, she states that she did not hear him assert her innocence and that she herself was never asked if she had been involved in the offence. The respondent contends that she was never asked to plead guilty or not guilty. Indeed, she contends that she was never given an opportunity to say anything in court. She gave no evidence. She says that the only time she was asked about the incident on the train was on the occasion on which she had been interrogated in the police station. Further, the proceedings were conducted in Romanian, a language of which the respondent has some understanding but which is not her first language.

112. Again, it is impossible for this Court to form a definite view as to whether the trial, and particularly her defence, was conducted in the manner described by the respondent. In terms of its specifics the account given by the respondent is mere assertion, and that account provides at best a very partial and incomplete picture. That having been said, the right to an effective defence is a fundamental right and if her account is true, incomplete though it be, there would be significant grounds for concern about the fairness of her trial. However, there is more. The Court is provided with further assistance by the evidence of Mr. Butuc. While he was not present in Court for the hearing of the particular case, he was a regular practitioner in the Romanian criminal courts at the material time. He had personal knowledge of both the judge in question, and the respondent's lawyer. In addition, he has reviewed the Court file and has noted it to be incomplete, and in particular that certain key documents such as the defendants' statements (the Court understands Mrs. Rostas to have been tried at the same time as Alexandru Venczel and Stela Rostas) and the statement of the injured party are missing. He has expressed the view that the respondent's account "is consistent with the system as it was then and the way Roma were treated at that time". His remarks with respect to both the late judge, and the respondent's former lawyer, though measured and restrained, are nonetheless particularly telling.

113. The Court is also inclined to attach some importance to Mr. Butuc's opinion that the sentence imposed on the respondent was disproportionate in light of the sentencing practice at the time. It is perhaps concerning that the issuing judicial authority has asserted that according to the judicial record certificate the respondent "appeared with criminal antecedents", in circumstances where the respondent herself contends that she had no previous convictions and the file as reviewed by Mr. Butuc does not disclose any previous convictions. There has been no engagement by the issuing judicial authority with Mr. Butuc's evidence in that regard, and no copy of the said alleged antecedents, or particulars in respect thereof, have been produced.

114. Finally, it is the respondent's assertion that she was not informed of her right to appeal. The issuing judicial authority places much emphasis on the respondent's failure to appeal. The records show that no appeal was lodged in the immediate aftermath of her conviction, either by the respondent herself or by her state appointed lawyer. The respondent asserts, but it is mere assertion, that she simply did not know that she could appeal, and that nobody told her. It seems that in 2002, while in prison, the respondent did request some form of case review, however Mr. Butuc's evidence is that "the corresponding file, together with the trial file can no longer be found". The Court feels compelled in the particular circumstances of this case to approach the matter on the basis that the respondent cannot be criticised for failing to avail of possible remedies / avenues of review / appeals in the issuing state of which she claims to have been unaware in circumstances where the essence of her case is, *inter alia*, ineffectual representation at a level representing a nullification of her right to an effective defence as guaranteed by Article 6 ECHR.

115. While the evidence of Mr. Butuc cannot be regarded as corroborative of the respondent's account of her trial, and the manner in which she was represented at it, it does provide significant supporting evidence in the sense of indicating that her account is consistent with his own experience of how such cases were dealt with at that time. More generally, the respondent's account is also consistent with the picture painted by the extensive country of origin information already referred to. Clearly, the Court is not in a position to judge definitively whether or not the respondent received a fair trial. However, once again, the Court cannot foreclose on the possibility that the respondent's account in regard to the circumstances of her trial may indeed be true, and that she may indeed have been subjected to an unfair trial. Moreover, when speaking of "possibility" the Court is not to be taken as merely acknowledging a remote or theoretical possibility. On the contrary, the Court considers that the available evidence, notwithstanding its incompleteness and all of its inadequacies, is nonetheless cogent and raises a real and significant concern that the respondent may not have had a fair trial. In the Court's view, while it is impossible to determine definitively whether the respondent in fact received a fair trial, there is sufficient supporting evidence demonstrating the consistency of her narrative with what is known to have been commonplace in Romania and its criminal justice system at the material time, and concerning the manner in which persons of Roma ethnicity were frequently ill-treated and discriminated against by police and officials within that system, to give the Court substantial grounds for believing that there is a real risk that the respondent has suffered a flagrant denial of justice in the requesting country.

116. In this Court's judgment in *Minister for Justice, Equality and Law Reform v. Marjasz*, previously referred to, I also expressed the view that, with respect to requests for rendition on foot of a European arrest warrant so that the requested person may be required to serve a sentence, a non-statutory and, of course, rebuttable presumption arises that any such conviction was the result of a fair trial. It is appropriate to record my view that that presumption has been comprehensively rebutted in the circumstances of this case having regard to the consistency of the narrative with what is known about the Romanian criminal justice system, and discrimination against Roma in Romania, at the material time. The Court having therefore been put on its enquiry, finds that its concerns have not been alleviated by any additional information from the issuing state. In truth, there has been little engagement with the substance of the evidence adduced by and on behalf of the respondent on the crucial issue of the fairness of her trial, beyond counter assertion that it was indeed fair. Accordingly, the Court having been put on its enquiry, and at the end of that enquiry having substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice in the requesting country, it is appropriate to uphold the s. 37(1)(a) objection raised by the respondent, and to regard the respondent's surrender as being prohibited in the circumstances.

117. It bears remarking upon that the present case is highly exceptional in its facts and circumstances, not least in terms of the passage of time since the offence itself and the trial, conviction and sentencing of the respondent, and also the geopolitical context in which those key events occurred. As such it represents a rare case in which the Court considers that it has a duty to intervene as executing judicial authority to prevent surrender on the grounds of the respondent possibly having been subjected to an unfair trial. Moreover, the mere fact that the Court considers that, on the evidence before it, there are substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice with respect to a trial that took place in a very different Romania from today's Romania, can have no implications beyond the case presently before the Court. It represents a decision on the facts of the particular case before the Court which facts are unlikely to be exactly replicated. In so far as future cases are concerned, whether an objection to a respondent's surrender based upon the unfairness of an underlying conviction could similarly succeed would depend on the nature and strength of the evidence adduced in the particular case.

The family rights issue

118. The Court is not disposed to uphold the objection based upon alleged interference with family rights or the right to respect for family life, either as guaranteed under the Constitution, under Article 8 ECHR or under the Charter of Fundamental Rights. In considering this issue the Court has sought to apply the jurisprudence developed in its judgments in *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 (Unreported, High Court, Edwards J., 19th June, 2013), and *Minister for Justice and Equality v. R.P.G.* [2013] IEHC 54 (Unreported, High Court, Edwards J., 18th July, 2013). In doing so it has engaged in a rigorous examination of the evidence, both for the purpose of assessing the public interest in the respondent's extradition, and the extent to which the proposed extradition measure would interfere with the rights of the respondent and children. I have also considered the best interests of the children concerned and have treated them as a primary consideration.

119. In doing so I have concluded that I must approach the exercise upon the assumption that the respondent's trial was fair and that the conviction is accordingly sound. Approaching it in that way, it is clear that there is a substantial public interest in the respondent's extradition, and in circumstances where the lengthy time that has elapsed was in circumstances where Romanian law provides for postponements where the nurture of a young child requires it, and the respondent has benefited serially from that, there remains a pressing social need for her rendition. Moreover, the respondent's roots in this jurisdiction are relatively shallow. Notwithstanding the various matters that she has put forward in her affidavits there is no reason to believe that her rendition would have profoundly injurious or extraordinary consequences for her, or her family. She has an extensive social and family network and her concerns about the possibility of her younger children being taken into care are, in the Court's view, more perceived than real.

120. In all the circumstances of the case the Court has concluded that the proposed rendition measure would not be disproportionate to the legitimate aim being pursued by the issuing state. The Court is not therefore disposed to uphold the respondent's objections under this heading.

Conclusion:

121. The Court must refuse to surrender the respondent on the basis that to do so would be incompatible with this State's obligations under the European Convention on Human Rights, in circumstances where the Court considers that there are substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice with respect to her trial in Romania resulting in the conviction and sentence to which the European arrest warrant relates.

