THE HIGH COURT

Record No. 2016 No. 183 EXT

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

RICHARD JOSEPH KINSELLA

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 26th day of June, 2017.

1. By a European arrest warrant ("EAW") dated 20th July, 2016, the Hellenic Republic ("Greece") seeks the surrender of the respondent for the purposes of prosecuting him for seven offences. The principle ground of objection is that the surrender of the respondent is prohibited under Article 3 of the European Convention on Human Rights ("ECHR") on the basis that there are substantial grounds for believing that the respondent is at real risk of being subjected to inhuman and degrading prison conditions in Greece.

A member state that has given effect to the Framework Decision
2. The surrender provisions of the European Arrest Warrant Act, 2003 as amended ("the 2003 Act") apply to member states of the European Union that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Council (EC) Framework Decision of 13th June, 2002 (2002/584/JHA) on the European Arrest Warrant and the surrender procedures between member states ("the Framework Decision"). By the European Arrest Warrant Act, 2003 (Designated Member States) (No. 5) Order 2004 (S.I. 449-2004), the Minister for Foreign Affairs designated Greece as a member state for the purposes of the 2003 Act.

Section 16 (1) of the 2003 Act
3. Under the provisions of s. 16 (1) of the 2003 Act, the High Court may make an order directing that the person be surrendered to the issuing state provided that;

(a) The High Court is satisfied that the person before it is the person in respect of whom the EAW was issued,

(b) The EAW has been endorsed in accordance with s. 13 for execution of the warrant,

(c) The EAW states, where appropriate, the matters required by s. 45,

(d) The High Court is not required under ss. 21A, 22, 23 or 24 of the 2003 Act as amended to refuse surrender,

(e) The surrender is not prohibited by Part 3 of the 2003 Act.

Identity
4. The Court is satisfied on the basis of the information contained in the EAW and on the affidavit of Sergeant James A. Kirwan, member of An Garda Síochána, that the person before the Court is the person in respect of whom the EAW is issued.

Endorsement
5. The EAW was endorsed in accordance with s. 13 of the Act of 2003 for execution in this jurisdiction on 13th October, 2016.

Section 45 of the 2003 Act
6. The respondent is sought for prosecution. In those circumstances, no issue arises pursuant to s. 45 of the 2003 Act which deals with trials in absentia.

Sections 21A, 22, 23 and 24 of the 2003 Act
7. The Court is satisfied that it is not required to refuse to surrender the respondent under any of the above sections.

Part 3 of the 2003 Act
8. Subject to ss. 37 and 38, the Court is satisfied that it is not required to refuse the surrender of the respondent in respect of any other section contained in Part 3 of the 2003 Act.

Section 38 of the 2003 Act
9. As set out at point E of the EAW, the respondent is sought for the purposes of prosecution for seven offences. The issuing member state has ticked two boxes at point E1 for the purpose of relying upon para. 2 of Article 2 of the Framework Decision in respect of all the offences. It is not therefore necessary to establish double criminality with offences in this jurisdiction. The two boxes which have been ticked are participation in a criminal organisation and illicit trafficking in narcotic drugs and psychotropic substances. The offence at paragraph A relates to becoming a member of a structured group which said group was aimed at committing several felonies contrary to the legislation on the control of drugs. The other offences concern either importing, exporting, transporting or possessing large quantities of narcotic substances.

10. The details of the offences show that it is not manifestly incorrect that the issuing judicial authority has relied upon the boxes under Article 2 para. 2 of the Framework Decision. Furthermore, in light of the significant penalties that would apply to a person convicted of these offences, which are in excess of the three year minimum maximum sentence that must be applicable before an offence can properly be designated as coming within Article 2 para. 2 of the Framework Decision, the provisions of s. 38 have clearly been met.

11. In light of the foregoing, the surrender of the respondent is not prohibited pursuant to the provisions of s. 38 of the 2003 Act.

Section 37 of the 2003 Act
12. In his points of objection, the respondent objects to surrender on the basis that, arising from the conditions of incarceration in

Greece, there is a real risk that, if surrendered, he will be subjected to flagrant and egregious breaches of his constitutional and ECHR rights; including his right to bodily integrity, to protection of the person, to dignity and to privacy. Specific reliance is placed upon the fact that the respondent suffers from serious health problems which would make incarceration in the issuing state more onerous for him than for an average inmate. The respondent claims that the level of care provided to inmates with serious medical conditions is utterly inadequate. He claims that there is a real risk that his right to life would not be sufficiently protected within the Greek penal system.

The applicable legal principles

13. The substantive law in this area is not in any doubt. Section 37 (1) (c) (iii) (II) of the 2003 Act, states that a person shall not be surrendered if there are reasonable grounds for believing that "he or she would be tortured or subjected to other inhuman or degrading treatment." The phrase "tortured or subjected to other inhuman or degrading treatment" derives from Article 3 of the ECHR and such treatment is prohibited in absolute terms.

14. The Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 IR 783 held that in accordance with the case law of the European Court of Human Rights ("ECtHR"), it is not necessary to establish that there is a probability of ill-treatment, rather a real risk is sufficient. The mere possibility of ill-treatment is however not sufficient to prevent surrender.

15. In *Rettinger* the Supreme Court set out the procedural basis for establishing whether such a real risk exists. There is an evidential burden on the respondent to adduce cogent evidence capable of proving that there are substantial grounds for believing that he or she would be exposed to a real risk of being subjected to treatment prohibited by Article 3 of the European Convention on Human Rights. The court is entitled to attach importance to reports of independent human rights organisations and to governmental sources. It is also open to an issuing state to dispel doubts raised by the respondent's evidence but in doing so, the burden is not to be taken as having shifted. The court is required to be forward looking in its approach and it also must engage in a rigorous examination of the information placed before it. The court must be mindful of the presumption that an issuing state will comply with its obligations regarding fundamental human rights.

16. Subsequent to the decision in *Rettinger*, the Court of Justice of the European Union (CJEU) decided the joint cases of *Aranyosi v. Generalstaatsanwaltschaft Bremen* (Case C-404/15, Grand Chamber, 5th April, 2016) and *Caldararu v. Generalstaatsanwaltschaft Bremen* (Case C-659/15 (PPU), Grand Chamber, 5th April, 2016). The test identified by the CJEU that must be met before surrender is prohibited is the same as that identified in *Rettinger* (and indeed other cases from the ECtHR identified in *Rettinger*); there must be substantial grounds for believing that following surrender a person will run a real risk of being subject, in the issuing member state, to inhuman or degrading treatment. The CJEU based its decision on Article 4 of the Charter of Fundamental Rights and Freedoms ("the Charter"), but there is nothing to suggest that the meaning of inhuman and degrading treatment differs between Article 3 of the ECHR and Article 4 of the Charter.

17. A point of contention arose in the present case as to the procedural steps the High Court must take before it may make a determination that surrender is prohibited on the basis of an apprehended breach of Article 3 in the issuing state. Counsel for the minister submitted that if the Court makes a determination on the information before it that Article 3 may be breached, the High Court must thereafter, revert to the issuing state for assurances in respect of the particular respondent. Counsel for the respondent submitted that, in accordance with the procedural steps outlined in *Rettinger* and applied thereafter, the Court is entitled to take into account that the central authority has already sought information in respect of the Article 3 matters and that specific answers and assurances (or lack thereof) have already been given or omitted. That procedural issue will be considered later in this judgment.

The evidence before the court

The Committee for the Prevention of Torture

18. Over a period in excess of a decade, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") has expressed concern about "the persistent failure by the Greek authorities to tackle the structural deficiencies in the prison service…" (para. 4 of the 2008 and the 2012 reports). Eventually, using the procedure under Article 10 para. 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT issued a public statement on the 15th of March, 2011 on the fundamental structural issues it identified during its observation of the "steady deterioration in the living conditions and treatment of prisoners over the past decade," (para. 9). In both their 2012 and 2016 reports, the CPT drew attention to the lack of a strategic plan to manage prisons (para. 48 and para. 61, respectively).

19. In its 2012 report, the CPT also reiterated its findings from its 2009 visit as to the unsuitable material conditions, the absence of an appropriate regime and the poor provision of healthcare in the prison system. It also noted in its 2012, 2014 and 2016 reports that due to the totally inadequate staffing levels, effective control within the accommodation areas of some of the prisons visited had progressively been ceded to groups of strong prisoners. It found that these issues were compounded by the severe overcrowding within most Greek prisons (p. 6, 2016 report). In the context of international human rights treaty compliance, the issuance of a public statement by a treaty monitoring body has rightly been identified as the deployment of a "*weapon of last resort*" (see *Marku v. Greece* and *Murphy v. Greece* (joint cases) [2016] EWHC 1801 (Admin) para. 8).

20. The CPT next visited Greece in April 2013 (report October 2014). In its report, the CPT stated that the treatment of persons detained by law enforcement officials had been a focus of the CPT's activities in Greece since its first visit to the country in 1993 (para. 14). The CPT received numerous allegations of ill-treatment by law enforcement officials in the course of each visit (para. 14). The CPT stated that despite overwhelming indications to the contrary, the Greek authorities had, to date, consistently refused to consider ill-treatment as a serious problem within the Greek detention system and had not taken the required action (para. 14). The CPT reported that there was no competent and adequately resourced police inspectorate nor was there an effective independent police complaints mechanism which would lead to allegations of ill-treatment by law enforcement officials being investigated thoroughly and where appropriate, prosecuted rigorously (para. 14).

21. As regards inter-prisoner violence and intimidation, the delegation observed that this was a serious problem in all the prisons visited (para. 98). There were several cases of hospitalisation of inmates due to severe injuries inflicted by other prisoners that came to the attention of the delegation. In the view of the CPT, the existence of this phenomenon was directly linked to shortages of staff which resulted in control being ceded to groups of particular prisoners which often formed along ethnic lines within the accommodation wings (para. 98). The CPT noted that at Korydallos men's prison there were usually only one or two custodial officers in charge of a wing holding some 400 prisoners (para. 98). The CPT concluded, "it is obvious that in such conditions a prison cannot fulfil its minimum obligation of keeping prisoners – and staff – safe," (para. 98). The killing of a Polish inmate by other prisoners was said to be illustrative of that fact. The CPT again reiterated their recommendation that the Greek authorities devise an effective national strategy concerning the prevention of inter-prisoner violence and intimidation.

22. The CPT also noted that the material conditions in the prisons visited were generally very poor (para. 100). They detailed overcrowding, particularly in Korydallos men's prison. In the prisons visited there was severe overcrowding, including prisoners sleeping on mattresses or blankets on the floor (paras. 43, 45 and 101), even in the toilet areas at Korydallos men's prison (para. 101). Generally, conditions were filthy with cells being infested with cockroaches, bedbugs and garbage containers outside cells being full of food waste and overflowing as a result of a failure to empty them for some time (para. 101). Particular urgent requests were made of the Greek authorities to reduce occupancy levels at certain prisons, to ensure that in each cell/dormitory, in all establishments visited, sanitation facilities are fully partitioned, to make concerted efforts to reduce the occupancy levels in all the establishments with the objective of offering a minimum of four metres square of living space per prisoner (para. 76), and to make concerted efforts to maintain the establishments visited in a good state of repair (para. 108).

23. It should also be stated that the delegation observed that inadequate bedding and dirty mattresses were provided in Korydallos men's prison and other prisons visited and that this compounded the negative impact on the overall levels of hygiene which resulted from the (already) overcrowded conditions. The CPT delegation also noted that in all prisons, hygiene articles were either not provided at all or only in extremely limited quantities (para. 109). Prisoners are obliged to purchase such products in prison shops or rely on supplies from friends or relatives visiting them. This situation has an even greater impact on those prisoners without any relatives or friends to supply them with money or hygiene articles which is more often the case with non-Greek prisoners (para. 109).

24. The CPT made particular reference to healthcare services and reiterated its recommendation that the Greek authorities urgently re-examine the general state of healthcare services in prison establishments (para. 115). The lack of fulltime doctors in Korydallos men's prison and the very limited presence of qualified doctors to care for more than 2,300 prisoners was noted (para. 116).

25. The CPT returned again to Greece in April 2015 and the report in relation to that visit was released in March 2016. In respect of prison establishments, the CPT found as follows at p. 6 of its 2016 report:

> "The findings of the 2015 visit highlight that the main problems of overcrowding and chronic shortage of staff persist and that the Greek prison system is reaching breaking point. These two overarching problems compound the many additional serious shortcomings in the prisons visited, and particularly the insufficient and inadequate provision of healthcare services. The situation has now deteriorated to the point where over and above the serious ill-treatment concerns under Article 3 of the European Convention on Human Rights, there are very real right to life issues under Article 2 ECHR, in as much as vulnerable prisoners are not being cared for and, in some cases, are being allowed to die. The CPT acknowledges the recent steps taken by the Greek authorities which have resulted in a noticeable reduction in the prison population. Nevertheless, further efforts need to be made to promote alternatives to imprisonment and to move away from the current situation whereby prisons in Greece are merely acting as warehouses. To this end, the CPT welcomes the Ministry of Justice's commitment to devise a strategic plan for the prison system and recommends that such a plan be drawn up within six months, following a needs assessment and consultation with all relevant parties.
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> While almost no allegations of physical ill-treatment of inmates by staff were received, inter-prisoner violence and intimidation remains a serious problem; cases of hospitalisation of inmates due to severe injuries inflicted by other inmates were a feature in all the prisons visited. This was particularly the case at Korydallos men's prison, where wings of some 350 to 400 prisoners were staffed by only one or two custodial officers – a situation that could be likened to a boiling cauldron left to simmer away with violent eruptions every few months. The time has come for the Greek authorities to recognise the extent of the problem and to tackle it forcefully, by devising an effective national strategy to prevent inter-prisoner violence and intimidation. This will require radically increasing staffing levels, introducing a dynamic security approach and rigorously investigating and prosecuting the perpetrators.
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> The living conditions in the prisons visited were generally very poor and the 1999 Prison Law provisions on accommodation standards and norms for safe environment to be provided to each prisoner are simply no longer adhered to. Some of the conditions encountered, notably at Korydallos Prison Hospital and at Nafplio Prison, can easily be considered as amounting to inhuman and degrading treatment. As regards the general daily routine in prisons, the range and number of purposeful activities and work opportunities available remains totally insufficient. The Committee makes specific recommendations to address the current conditions and requests that the Greek authorities provide a clear time table with specific benchmarks regarding their implementation.
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> The CPT is particularly concerned that there has been no improvement in the provision of health-care services in prisons. Underlying the widespread deficiencies is a severe shortage of health-care staff and a complete lack of integrated management of health-care services. The Committee recommends that the Ministries of Justice and Health jointly review the state of health-care services in prisons and draw up a detailed plan to ensure that prisons meet the general principle of equivalence of care. Further, a series of recommendations are made *inter alia* to reinforce health-care staffing levels, guarantee medical confidentiality and ensuring that HIV-positive prisoners are treated equally with other prisoners. The Greek authorities should also put in place a practice of carrying out effective investigations into deaths in custody, starting with the cases raised in the report by the CPT.
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> The situation in Korydallos Prison Hospital was so drastic at the time of the 2015 visit, notably in terms of overcrowding, extremely poor hygiene and understaffing, that the place could be compared to a dumping ground for sick prisoners who are subsequently neglected and not provided with care required. The Greek authorities should take immediate steps to undertake, as a matter of urgency, a full review of the prison hospital and put in place a plan to resurrect it as a place of care.
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> Moreover, the committee makes recommendations to urgently review and increase staffing levels in all prisons, improve prisoners' contact with the outside world and introduce a formal complaints system."

26. The CPT again reiterated their concerns about ill-treatment by police officers towards persons held in police custody. They urged the Greek authorities to fully acknowledge the extent of the widespread and deep-rooted problem of police ill-treatment and called for a comprehensive strategy and determined action to address this phenomenon (p. 5). The delegation noted that investigations into ill-treatment by the police often do not meet the basic requirements of effectiveness as defined by the case law of the ECtHR and the relevant standards of the Convention on the Prevention of Torture.

Case law of the European Court of Human Rights

27. Korydallos Prison Hospital has been the subject matter of cases before the ECtHR in which Greece has been found to be in breach of Article 3 of the ECHR due to the conditions there and the lack of effective treatment for its prisoners.. In *Lavrentiadis v. Greece*, (App. No. 29896-13, 22nd September, 2015) the applicant's placement in Korydallos Psychiatric Hospital for Prisoners for eighteen

months caused a deterioration in his health to such an extent that Article 3 was found to have been breached. In *Martzaklis & Ors v. Greece* (App. No. 20378-13, 9 July, 2015) the ECtHR found that there were inadequate conditions and sanitation facilities in Korydallos Prison Hospital and also held that there were failures in respect of the medical treatment provided.

28. A particularly egregious case was that of *Tsokas & Ors v. Greece* (App. No. 41513-12, 18 May, 2014). In that case the applicant (later deceased) was detained in Tripoli Prison where, after repeated requests he was transferred to Tripoli Hospital and diagnosed with oral cancer. However, he was not treated and a period of time later was transferred to Korydallos Prison Hospital where he received a routine examination but again, no treatment. It was only later that he was transferred to a public hospital and diagnosed with stage 4 metastatic cancer. Only then did he receive chemotherapy. The ECtHR found that there was a violation of Article 3 due to the failure to provide timely medical care. Damages were awarded to his next of kin.

29. In *Singh & Ors v. Greece* (App. No. 60041-13, 19th April, 2017) the applicant and 34 other prisoners complained about the conditions of their detention in Korydallos Prison. Although the ECtHR noted that the applicants and the government were in dispute as to factual elements surrounding the condition of the applicants' detention, the ECtHR found that there was no need to establish the veracity of each and every allegation because "*it finds a violation of Article 3 on the basis of facts presented to it which the respondent government have failed to refute*" (para. 52). The ECtHR noted that the government submitted no information on the size of the cells where the applicants were held or the number of persons accommodated in those cells. The ECtHR held that it followed that the detainees had approximately two square metres of personal space or less and that this accorded with the findings of the CPT regarding the problem of overcrowding in Korydallos Prison.

30. In view of those findings and the relevant positions enunciated in its case law, the ECtHR found that a strong presumption of a violation of Article 3 arose in the case at issue. Given the length of their detention in Korydallos Prison, the CPT's finding and the absence of any convincing information from the government to the contrary the ECtHR accepted, "*the applicant's argument that Korydallos Prison was filled beyond its design capacity during the course of their detention to the point of imposing a flagrant lack of personal space on the applicants*" (para. 56). The ECtHR said that "[i]*t is also clear that such scarcity of space cannot be seen as short, occasional and minor within the meaning of the court's case-law* (see *Mursic v. Croatia*)," (para. 54), (Mursic (App. No. 7334/13, 20th October, 2016)). This was sufficient for the ECtHR to conclude that the strong presumption of a violation of Article 3 could not be rebutted.

31. In the case of *Logothetis & Ors v. Greece* (App. No. 740-13, 25th September, 2014), the ECtHR found a breach of Article 3 of the ECHR in respect of the applicants' detention in Nafplio prison. This was held to be such a breach on the basis of the lack of sufficient personal space for the applicants.

The respondent's evidence in this case

32. Apart from relying on the CPT reports and decisions of the ECtHR referred to above, the respondent also relied upon a report of George Pyromallis who is a criminal lawyer in Greece. He is a highly qualified lawyer, having also been a member of the Greek committee for the drafting and translating of the statute of the International Criminal Court. He has cooperated with Fair Trials International since 2007 and is a member of the legal experts advisory panel of same. He was asked to consider whether there was a possibility of the respondent being held at either Korydallos or Nafplio prisons, and if convicted where the likely prison location for serving the sentence would be. He was also asked to give a factual description of the conditions in prison including his own experience of clients and to give his opinion on whether the respondent, as a man wanted for drug trafficking offences and someone who has resisted extradition, would be likely to be detained in prison or granted bail.

33. Mr. Pyromallis said that there were 34 custodial institutions in Greece which were split into three categories; general, special and therapeutic. General custodial institutions were further divided into type A (for inmates awaiting trial, for inmates detained in relation to debts and for convicted inmates who serve short term prison sentences) and type B (for inmates convicted to long term prison sentences, lifers included).

34. Mr. Pyromallis said that as a person against whom an EAW has issued, the respondent's detention as a pre-trial detainee will take place in one of the custodial institutions of type A to which Korydallos Prison and Nafplio Prison belong. He said that there were thirteen prisons of type A and that in the case of the respondent he believes that there is a "real possibility that his detention will take place at Korydallos or Nafplio prison for the following reasons:"

> (1) Korydallos Prison is the biggest prison in Greece, located in Athens where the trial will take place and originally, it was intended to be a prison for pre-trial detainees,
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> (2) The respondent's co-defendants were detained there,
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> (3) Nafplio prison is the nearest prison of type A to Athens.

35. In respect of his place of detention if convicted, Mr. Pyromallis said that the respondent would probably serve a sentence in one of the type B prisons which included prisons which have been the subject of reports by the CPT and three of which seemed to be overcrowded according to official data provided by the Ministry of Justice. Mr. Pyromallis also noted that in relation to two of those prisons, the ECtHR, in two decisions given in 2016, found Greece in violation of Article 3 in respect of the conditions of detention there.

36. The conditions of detention in Korydallos Prison were well known to Mr. Pyromallis from his clients who had been detained there. He referred to information provided by the Ministry of Justice in November 2016 which reported that the said penitentiary facility was holding 1,597 inmates for an official capacity of 800. Korydallos Hospital was holding 167 inmates for an official capacity of 60 and Korydallos mental hospital was holding 240 inmates for an official capacity of 160. He said that according to the statistics relating to prisoners drawn up by the Ministry of Justice in November of 2015, 55% of the total number of prisoners are foreigners and 21% are incarcerated for drug related crimes. He also said that it was worth noting that because of the lack of space in Korydallos Prison, new prisoners are usually detained in police station cells, even for months at a time. Mr. Pyromallis further asserted that detention in police stations is a common occurrence and it could last from several days to several months. Police stations do not offer suitable accommodation for lengthy periods of detention. He referred to a number of decisions of the ECtHR in 2014 and 2013 in which it was held that holding pre-trial detainees in these type of police detention centres amounted to a violation of Article 3 of the ECHR.

37. As well as referring to the CPT reports and recent information made available by the Ministry of Justice, Mr. Pyromallis was able to give information from his own observations of Korydallos Prison. He said that the consultation area in the prison gives him an unrestricted view of one wing and he confirmed that the cells are very crowded places, often accommodating more than four persons in circumstances where the prisoners are obliged to spend many hours per day in the cell. He said that there are beds, a table and a

chair so that they can eat in turns and a toilet seat without any kind of divider and, as such, a sheet is used. There is a sink in each cell which they have to use for washing dishes, cutlery or even their clothes. He also said that the facility does not meet the minimum standards of hygiene as the area is very dirty with cockroaches, bloodsuckers and mice wandering around and the common bathrooms are gruesome. This is in combination with the fact that inmates are not provided with elementary individual items such as toothpaste or soap. He also said that it was not safe in Korydallos Prison, as carrying money was dangerous and therefore, even buying products that were provided in the shop was not possible.

38. Mr. Pyromallis also confirmed that there were grievous deficiencies in the prison healthcare system. He said that according to an oral complaint made by an inmate in November 2016, there were only six doctors for the 2,000 inmates of both the hospital and prison in Korydallos. He said that as far as he knew the same conditions also existed in Nafplio Prison which was also overcrowded, albeit a significantly smaller prison.

39. Mr. Pyromallis also stated that under Greek law lengths of pre-trial detention vary according to the nature of the alleged offences, ranging from six months to one year and that in exceptional circumstances the maximum length of pre-trial detention was eighteen months. He said that pre-trial detention may be ordered if there are strong indications that the accused had committed an offence and is deemed a flight risk or it is thought highly likely that he will commit other offences if released. A person would be deemed a flight risk if they have no known residence in the country, if they have taken preparatory actions to facilitate escape, they have been a fugitive in the past or they have been found guilty of helping a prisoner escape. He said that although the law stated that pre-trial detention should only be imposed as an exceptional measure, according to defence lawyers, pre-trial detention has become the norm although he did note that recent legislative reforms mean that this is beginning to change. He said that although he was not aware of the details of the respondent's case, he had no doubt that the respondent would be in jail for at least twelve to fifteen months awaiting trial as he had a residence outside Greece, an EAW had been issued for him, the EAW was issued for a drug related crime and he had fought his extradition. This would be enough to render him a fugitive status and therefore to be considered a flight risk. He also said that drug cases are the ones where pre-trial detention is most often imposed in Greece.

40. In answer to a response from the Ministry of Justice, which included a reference to the ability of a prisoner to request a transfer to another prison, Mr. Pyomallis stated that complaints regarding the prison conditions, in general, never lead to the transfer of the detainee to another prison. He said otherwise the competent authorities would have to deal with hundreds of such requests on a daily basis. He said that to his knowledge the central committee of transfers does not evaluate the fact that the applicant has been surrendered to Greece following the execution of an EAW. He said there was no special treatment provided for those detainees nor is their status as a detainee who has been surrendered as a result of an EAW supposed to be a criterion for the approval of a transfer application. He said there were no specific wings or prisons in the Greek penitentiary facilities where extradited persons are detained. He said he had represented numerous clients who have been extradited to Greece and detained in Greek prisons and none of them had ever been treated specially as a result of their legal status.

41. Mr. Pyromallis also stated that no reference had been made by the Greek government in their response to his report as to any improvement(s) in the healthcare services provided in prison establishments. Mr. Pyromallis also referred to some of the Greek cases outlined above. In respect of prison conditions, he said that the Ministry had not made reference to the remarks and recommendations outlined in the CPT report nor had the Ministry addressed whether the Greek authorities have managed to comply with those or not. He also referred to further determinations by the ECtHR in respect of Greek prison conditions. He referred also to the ad hoc visits to Greece in July and April of 2016 in respect of which reports have not yet been published. He also referred to the fact that experts in an EAW are not allowed to visit Greek prisons for the purpose of independently verifying its conditions.

The Greek response to the CPT reports

42. In its response to the 2012 report (the 2011 ad hoc visit) the Ministry of Justice, Transparency and Human Rights observed that two crucial elements were missing from the CPT's otherwise useful and constructive criticism (p. 75). It was said that the two elements place very important obstacles in the way of the Ministry's sincere efforts to improve the correctional system. One obstacle was the increase in immigration flows as a result of increasing political instability and humanitarian crises in the international political scene and, secondly, the well known fiscal problems that their country had faced in the past eighteen months. They said "it is self evident that the lack of financial resources implies insurmountable obstacles to the implementation of an effective correctional policy, as with any other public policy" (p. 75).

43. In its most recent response to the 2015 visit, the Ministry stated that the "serious problem of prison overcrowding, which troubles not only Greece but many countries in Europe, requires synthetic actions which could compound to a long term solution." The Ministry outlined initiatives that were being taken to relieve prison overcrowding. They referred to the Committee for the Reform of the Penal Code preparing a new draft which includes considerable reform of the system of penalties. The Ministry asserted that serious efforts were being made for the wider use of electronic monitoring which had been recently introduced as a pilot measure. There were legislative emergency measures for relieving prison overcrowding and for the release of vulnerable prisoners, although (the delegation recognised that) it remains a big challenge to keep prison population below 10,000 prisoners which would allow for upgrading of prison conditions and would permit the Ministry to seriously address the overcrowding issue. They were hoping to introduce an online system which would allow for even distribution of prisoners among prison establishments.

44. With regard to the serious issue of staff shortage, the Ministry stated that all efforts were being made to increase staffing levels despite the acute austerity measures and ban on recruitments. Prison staff were included in the positions of the mobility within the public sector programme and there was a well reasoned proposal for the emergency recruitment of a minimum number of 500 employees which included prison staff, scientific staff, medical and nursing staff, being devised in order to be forwarded for exceptional approval by the government. The possibility of recruiting staff in cooperation with the Ministry of Health was being examined as part of a plan for the full implementation of the Special Peripheral Medical Centres in prisons. The issues of the appointment of educational and training staff were being examined. The Ministry asserted that cooperation as regards staff training among various organisations was being organised at the time of the response.

45. The issue of healthcare was regarded as a top priority. It was stated that efforts had been made to recruit medical staff for the prisons. They referred to a drop in the number of overall inmates. They did acknowledge the issue of staff shortages, stating that retirements were not being replenished with equal recruitment. Various measures to reduce violence were being put in place insofar as penal legislation had become stricter; separation of prisoners on various grounds was being implemented in order to prevent violent outbursts, and there were regular and unannounced investigations by the Body for Inspection and Control of Detention Establishments.

Response of the Greek state to requests for information in this case

46. Exercising its authority under s. 20 of the Act of 2003, the central authority furnished to the Greek issuing judicial authority (the public prosecutor) the points of objection and affidavits supporting them and asked for any comments the issuing state may wish to

make. A reply was made by the Minsitry for Justice. The Ministry said it had not officially been able to decide on the detention establishment to which the respondent will be sent "since only the competent prosecuting authorities are responsible for dealing with such issues (prosecutor detention order is usually issued for a detention establishment within the relevant judicial district)". The Ministry referred to the possibility of making a transfer request. The Ministry stated "as regards the standards of living space, such as a cell with natural lighting, personal space of three square metres inside the cell, access to sanitation, access to medical facilities, access to the courtyard for exercise, access to education and leisure facilities, it is noted that all the above are provided where possible to all prisoners, especially it should be mentioned that detainees are no longer sleeping on mattresses on the floor."

47. The Ministry also stated that any particular problems, medical or otherwise the respondent suffered from would have to be addressed directly by the appropriate correctional authorities. As regards healthcare for all detainees, the Ministry asserted that there is, without exception, guaranteed medical and pharmaceutical care of a level equivalent to that of the remaining population. Every inmate is examined by the establishment's physician upon his admission and henceforth every six months and can, at any time, demand an examination from the establishment's physician or from a physician of his choice. In the event of chronic diseases, the detainee is entitled to solicit medical treatment from his own private physician, in the presence also of the establishment's.

48. The Ministry stated that if in a particular establishment there is no permanent medical staff, the needs are covered on a 24-hour basis by visits of outside physicians and nurses who are summonsed by the director of the establishment and are compensated for each visit by him. Detainees who are sick are admitted to the establishment's recovery room or restricted in special sections. If their condition demands that they are admitted to a special therapeutic establishment, detainees will undergo the necessary nursing measures of treatment. Detained patients whose hospitalisation is not possible in the recovery establishments of their correspondent detention establishments or in the special therapeutic detention establishments are referred, according to their particular condition, to a state hospital. Detainees needing hospital care are transferred to public hospitals and/or psychiatric hospitals.

49. The second report of Mr. Pyromallis was sent to the issuing state with an invitation to comment. As requested by the public prosecutor's office, the Ministry replied, dated the 10th of April, 2017, stating that:

> "reducing the prison population is a humanitarian issue that reflects on the duty of a democratic state to care for its citizens especially the most vulnerable, while adhering to the basic principles of security for prisoners and staff, humanism and resettlement. Recent legislative initiatives (…) have resulted to a considerable decline in prison population through early release provisions and special release measures for disabled and seriously ill prisoners, while they also landmark the beginning for a more global approach to the penitentiary system.
>
> More specifically the number of prisoners have dropped by 19% (from 11,798 in 1/1/2015 to 9,573 in 2/5/2017) and remains until today steady. This stabilisation is considered particularly important for further interventions to improve living standards in prisons and for purposes of ensuring the necessary conditions for the proper administration of the prison system. The decongestion of prisons is expected to continue through recent law…which prolonged the beneficial provisions of law…."

50. The Ministry referred to general improvements in the Greek prison system which was also noted in a recent press release by the Council of Europe referring to prison overcrowding noting the reduction therein. The Ministry went on to say that the reduction in prison overcrowding had led to considerable relief and subsequent improvements of living conditions in prisons. Moreover, overcrowding relief measures were combined with initiatives aimed at improving living conditions and supporting rehabilitation, through refurbishment of existing establishments, health services enhancements, development of educational training, athletic and cultural activities for inmates, training programmes for staff and strengthening transparency and accountability.

51. With respect to improving health services in the prison, the Ministry said they had established close cooperation with the Ministry of Health for the purposes of planning comprehensive interventions for the rationalisation of the healthcare system at both the primary and secondary level. They referred specifically to the recruitment of eleven doctors in 2016, four of which were appointed to Korydallos Prison Hospital. They referred to various improvements at Korydallos Prison Hospital, including the interior of the building being fully renovated. They said also that a number of initiatives in the field of correctional staff, including initial and lifelong training had been undertaken, aimed at developing human resources and empowering prison personnel in performing their tasks in cooperation with both the CPT and the Criminal Law Cooperation Unit of the Council of Europe.

52. The final piece of correspondence from the Ministry of Justice was in reply to a request from the central authority for comments in respect of exhibited photographs taken from the internet by the solicitor for the respondent in respect of Korydallos Hospital and in respect of the issue of inter-prisoner violence which had not been addressed in Mr. Pyromallis's report but was of considerable concern to the CPT. The Ministry replied promptly, stating that the situation in Korydallos Prison Hospital had improved significantly. They said that the improvement of living conditions and of the level of medical services as well as the improvement of general hygiene conditions at Korydallos Prison Hospital had been documented on several occasions by report following an inspection of the premises by the Directorate of Hygiene Audit and Environmental Hygiene of the Region of Piraeus. They also referred to the stabilisation of the population of Korydallos which was at 170 persons. They also said that they had recalculated the capacities of the prison establishments on the basis of the Council of Europe standard and that showed that the capacity of Korydallos Prison Hospital amounts to 253 people which guarantees that the respondent would not be detained in circumstances which would infringe the provision of Article 3 of the ECHR.

The evidence regarding the plaintiff's health

53. The respondent swore an affidavit stating that he had been diagnosed with melanoma. The respondent exhibited a report from Dr. Rupert Barry, consultant dermatologist and mohs micrographic surgeon. Dr. Barry performed an excision of a mole which was, on examination, found to be a superficial spreading malignant melanoma. As part of a routine follow up procedure, the respondent is seen every three months in the dermatology department.

54. This superficial malignant melanoma is complicated by the fact that the respondent has dysplastic mole syndrome which means that he has an increased risk of developing melanoma, particularly in the setting of heavy ultra violet radiation exposure. Usually a person is seen quarterly for the first year and on a six to twelve month basis thereafter but because of the respondent's situation it is advisable that he have quarterly review by an experienced dermatologist or plastic surgeon for the next five years at least and possibly longer, depending on whether he develops any further melanomas.

55. The respondent has been advised to avoid sun beds, sunbathing, to minimise his exposure to sunshine and use regular, daily high factor sunscreen from April to September in Ireland. He is stated to be at significant risk of developing further melanomas and will require ongoing regular medium term dermatology assessment as well as a long term overview. At the hearing of this application, counsel for the respondent told the court that he had been informed by his client that he had in fact undergone a number of excisions

since that time and that he was scheduled for another one.

56. Further complicating the respondent's condition is that he has had three separate road traffic incidents which have resulted in significant injuries. In 2002 he suffered a herniated disc when he was hit by a drunk driver. It appears that as a result of that, he ended up having lower back pain and discomfort and left sided leg pain and underwent a laminectomy and a discectomy operation in India. He was then involved in another road traffic accident on the 28th of April, 2013. As a result of this he says he suffered quite severe lower back pain and pain radiating down his leg. He has been seen by a consultant neurosurgeon. He has had an MRI scan of his lumbar spine carried out and also nerve conduction studies in respect of the fact that he complained of left sided foot weakness. The neurosurgeon's view is that he sustained a soft tissue type of injury to his thoracic and lumbar spine as a direct consequence of the accident. As far as his left sided leg pain is concerned he seems to have had pre-existing injuries, however, as a direct consequence of the accident he appears to have developed what appears to be left L5 and S1 nerve root pain. Mr. Nagaria finds it difficult to explain his left sided foot weakness. Overall Mr. Nagaria is of the view that he has a 30% chance of requiring further surgical intervention in terms of a spinal fusion and further decompression. This carries with it the usual surgical risks relating to spinal surgery.

57. His final accident took place in April of 2014 and the respondent says that he suffered a shoulder injury. He has a tear of the superior and posterior labrum which is in keeping with his clinical features of biceps labural complex problems. Surgery is also indicated in respect of this matter.

58. The respondent says that arising from the stress of his various health problems and the effects of ongoing physical pain and due to other historic issues in his life, his mental health has suffered considerably. He exhibited a report from a psychotherapist. He says that he is hoping to have follow up treatment to help cope with suicidal ideation that he has been experiencing and that he takes an anti-depressant and also diazepam to cope with anxiety. He is also on various pain and anti-inflammatory medication for his physical injuries. There is no report from any medically qualified person confirming his mental health injuries.

The submissions on behalf of the Minister for Justice and Equality
59. Counsel for the minister accepted that there had been repeated and heavy criticism of the CPT in respect of prison conditions, particularly at Korydallos and Nafplio prisons. Counsel submitted that these conditions could not be said to be identical now as "the Greek authorities have demonstrated that they are trying to move in the direction the CPT requires." Counsel relied upon the information provided by the Ministry to show that the issues were being currently addressed. In particular reliance was placed on the reduction of persons in prisons.

60. Counsel submitted that the evidence of Mr. Pyromallis only established a real possibility instead of a probability that the respondent would be detained in either Korydallos or Nafplio prisons. Counsel referred to the number of prisons to which the respondent could be sent and submitted that the uncertainty as to which prison the respondent might be sent to did not alter the evidential burden which is placed upon the respondent to establish, by cogent evidence, substantial grounds for believing that on surrender he is at real risk of being subjected to inhuman and degrading treatment. Counsel also noted that only three of the prisons to which the respondent could be sent to on sentencing were said to have been overcrowded as of November 2016.

61. Counsel submitted that some of the information of Mr. Pyromallis appeared outdated. For example, Mr. Pyromallis stated that people slept on mattresses whereas the Ministry said that nobody slept on mattresses any longer. In respect of the respondent's health conditions,counsel for the minister queried just what it was that he complained of with respect to his back, in light of the medical reports. In respect of his dermatologic condition it was accepted that he had needs in that regard. Counsel submitted that the healthcare in the Greek prison system had been found seriously inadequate in the past but significant improvements have and continue to be made. Counsel notes that it is accepted that he is entitled to the same healthcare as that of civilians and that prisoners may be transferred to the civilian hospitals for treatment. Counsel submitted it was not disputed that the respondent would be entitled to avail of medical care from his own doctors while in the prison system.

62. With respect to inter-prisoner violence, counsel submitted that it was not established that other prisons in Greece suffered the same deficiencies as Korydallos and Nafplio. As regards detention in police stations, counsel submitted that was premised on the basis of lack of space in prisons. However it was submitted that the lack of space had been remedied and that there was a difficulty in seeing any necessity for holding him in a police station for months.

Analysis and determination of the Court
63. Contrary to the submission on behalf of the minister, the Court is satisfied that the evidence which has been presented and synopsised above is "objective, reliable, specific and indeed properly updated" (See *Aranyosi* and *Caldararu*, para. 89). The CPT reports, the judgments of the ECtHR, the responses of the Ministry to the CPT reports, the evidence of Mr. Pyromallis and indeed some of the responses of the Greek authorities in this case all point to systemic and generalised deficiencies within the Greek prison system. The origin of those deficiencies appears to have pre-dated the financial crash of 2007/2008. It is undoubtedly the case that the particular financial burden under which the Greek authorities operate has exacerbated the situation with regard to prison conditions. As the ECtHR has observed however, in a number of decisions, lack of resources cannot be used as an excuse for treatment which violates Article 3 of the ECHR as the right to be free from torture and inhuman and degrading treatment is an absolute right.

64. The complaints made by the respondent in this case are fourfold. The first is that the material conditions in the prisons themselves are such that a violation of Article 3 of the ECHR occurs. The second is that there is severe inter-prisoner violence as there is a completely inadequate ratio of prison officers to prisoners. Third is that the healthcare system for prisoners is utterly inadequate. The final issue is that ill-treatment in police detention centres is endemic. The response of the minister may be reduced, without unfairness, to a submission that overcrowding has been reduced, not all prisons have been condemned, assurances have been given that conditions have improved and the Greek authorities have demonstrated "they are trying to move in the direction the CPT requires".

65. Where conditions are so bad that they violate Article 3, the good intentions and *bona fides* of the appropriate authorities cannot excuse the breach. If the Court was to hold otherwise, the Court would be violating its duty to protect the fundamental rights of those people who appear before it. Counsel for the minister has urged upon the Court, that the Court must be forward looking in its approach to Article 3 issues. The Court is mindful of that requirement. The duty to be "forward looking" demands consideration of how the particular requested person will be treated in the issuing state, rather than simply focusing on how other people may have been treated in the past. Importantly however, the term "forward looking" does not mean and could not mean, by virtue of the absolute nature of Article 3, that the court must have regard to the fact that at some point in the future, the issuing state will comply with its obligations even though it cannot guarantee respect for Article 3 rights from the moment of surrender of the reqeusted person.

66. The Court rejects the minister's contention that there is no evidence that this man will be held in Korydallos or Nafplio prisons. Indeed, it is not the test that there must be evidence as a matter of probability, although this Court accepts that such evidence exits in this case i.e. it is likely he will be held in one or other of those prisons. The evidence in this case, including that from the issuing state, points to him being held in either of those prisons because of the very matters identified above. As a matter of law, all that is required to be demonstrated is substantial or reasonable grounds that there is a real risk that he will be held in those prisons. Although Mr. Pyromallis used the term "the possibility", it is clear that from what he states, and from what is confirmed by the Greek authorities, he will in all likelihood be held in Korydallos as it is the biggest prison in Greece, it is located in Athens which is the place where the trial will take place and the respondent's co-defendants were also held there. Nafplio is also likely as it is the nearest prison of type A status to Athens. The real risk of the respondent being kept in one or other of those prisons has amply been demonstrated by the evidence.

67. This Court is satisfied that the evidence outlined above establishes that the material conditions in Korydallos and Nafplio prisons have been and remain, inhuman and degrading. Indeed the Court is satisfied that the Greek Ministry did not unequivocally state in its response that the respondent will not be exposed to such conditions. All that was said was that as far as possible, persons will not be exposed to these kinds of conditions. That is an entirely inadequate response in the context of the repeated and sustained heavy criticism of the CPT and the ECtHR in respect of the prison system in general in Greece and Korydallos and Nafplio prisons in particular. Furthermore, it is an inadequate response to specific criticism of these prisons for the Ministry to rely upon a reduction in the overall prison population. The Court has taken specific note that despite a request for assurances that this respondent would not be sent to Korydallos and Nafplio prisons, no such response was given nor was it stated in categorical terms that neither of those prisons were overcrowded or that the material conditions were not such as was described by Mr. Pyromallis.

68. It is also abundantly clear that there is a general and specific problem with inter-prisoner violence within the Greek penal system. There is an ongoing staff shortage and without very clear confirmation that this has been remedied, there is a very real risk that a prisoner will be subjected to inter-prisoner violence. Although a risk of inter-prisoner violence can never be wholly excluded within a prison system, just as it cannot be excluded within a given society, there is a requirement on authorities to take certain minimum steps to prevent such violence. At a minimum, the provision of a higher ratio of prison officers to prisoners is required.

69. In respect of prison detention, counsel for the minister may be correct that prison number reductions should reduce the necessity to rely on police detention centres. However, the minister's argument falls down insofar as Korydallos and Nafplio prisons are concerned because the figures available to the Court, which are not disputed by the Greek authorities, demonstrate that those prisons are overcrowded. Moreover, the Court observes that the ECtHR has decried the failure of the Greek authorities to address the specifics of the cases brought against them. In the view of this Court, the answers of the Greek authorities in the present case are wholly lacking in specifics.

70. As regards healthcare, the criticisms of healthcare in the Greek system were of a systemic nature. In respect of Korydallos Prison Hospital however, the Court does accept that materially, conditions have changed there. The Greek Ministry has given a statement that the interior was renovated and the photographs exhibited on behalf of the respondent would appear to be no longer relevant. The Court is however concerned that the lack of doctors available in the entire prison system and in Korydallos with regard to both the prison and the hospital, is far from sufficient.

71. It is also far from clear that there is any real integration at present between the prison service and the public hospitals so as to ensure the health and welfare of those prisoners who require health services. This man has a very specific skin condition that requires regular check ups by a specialist dermatologist. This is a matter of life and death for him and, in light of the manner in which it has been recorded that other prisoners who required life saving treatment have been treated, this Court believes that there is a real risk that this man, by virtue of his specific melanoma, is at real risk of being subjected to inhuman and degrading treatment. This primarily arises from the fact that without a clearly demonstrated functioning healthcare system available to prisoners, the respondent will be in fear of being deprived of the care needed to preserve his life. Such fear can, of itself, amount to inhuman and degrading treatment.

72. The Court has noted that the respondent is entitled to be examined by a doctor of his choice but the Court notes that this has to take to place in the presence of a doctor of the establishment. In the absence of a clearly demonstrated commitment to making such a doctor available for these regular three monthly check ups, the Court is of the view that there would be a real risk that he will be subjected to inhuman and degrading treatment by virtue of his specific dermatologic condition.

73. The respondent's health condition is also compounded by his injuries as a result of his road traffic accidents. In combination with his dermatologic condition, the lack of a demonstrably functioning health care system available to prisoners, such that he can be guaranteed coordinated access to treatment that he requires within an adequate period of time, also establishes that there is a real risk that he will be subjected to inhuman and degrading treatment if surrendered to Greece.

The requirement to request further information from the Greek authorities

74. As stated above, counsel for the minister submitted that, if the Court was to form an initial view that there was a real risk that he would be subjected to inhuman and degrading treatment, the Court had to revert to the issuing judicial authority pursuant to Article 15 (2) of the Framework Decision. At para. 95 of *Aranyosi* and *Caldararu*, the CJEU stated, in respect of the determination that the executing judicial authority had to make in relation to Article 4 of the Charter of Fundamental Rights and Freedoms (Article 3 ECHR), that there be a request of the judicial authority of the issuing state "that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State."

75. The minister submitted that the information already obtained in reply to the request issued by the central authority under the provisions of s. 20 subs. 2 of the 2003 Act was not to be considered the fulfilment of this court's obligation under the Framework Decision as imposed by the CJEU in *Aranyosi* and *Caldararu*. In that regard, counsel submitted that the procedure envisaged by *Rettinger* had to be revised.

76. Counsel for the respondent submitted that in a system such as ours, which reflected adversarial aspects and which already permitted the central authority to receive the kind of information envisaged in *Aranyosi*, there was no doubt that the right of response given to an issuing state had been respected in this case. Counsel submitted that the question of fair procedures had been fulfilled in this regard and that the CJEU could not have intended that a process which gave time for all relevant information to be placed before the court would have to be further delayed because the court would have to request the same information that it had just been supplied with.

77. In this case, the Court does not have to determine whether it *must* make such a request having reached the above conclusions regarding the real risk of a breach of the respondent's Article 3 rights. This is because the Court considers that the specific

information which must be given to the Court for the purpose of answering issues arising in respect of prison conditions was not made entirely clear to the issuing state in this particular case. For example, the Greek Ministry in its reply stated that only the competing prosecuting authorities are responsible for dealing with the detention establishment in which a person will be held. It remains unclear if the prosecuting authority can make a determination in this case that he will not be held in either Korydallos or Nafplio prisons or if the public prosecutor was requested to indicate such a determination. Coincidentially, the public prosecutor is the issuing judicial authority in this case.

78. In the view of the Court, the public prosecutor as issuing judicial authority, should be asked if an assurance can be given that the respondent will not be held in either Korydallos or Nafplio prisons. If so, the issuing judicial authority should be asked to identify which prison the respondent will be held in. If another prison is indicated, the particular details of the capacity of that prison, the current population of that prison, the ratio of prison officers to prisoners, the conditions of detention in the prison including cell size, hygiene facilities and general cleanliness of that prison, should be given. An assurance should be given that his Article 3 rights will be respected in that prison. The issuing judicial authority should also be asked to give an assurance that the respondent will not be held in a police detention centre.

79. The issuing judicial authority should also be asked to give an assurance that, in respect of his personal healthcare, the respondent will have access to either a dermatologist of his choice or a prison provided dermatologist every three months and that should he require excision, that excision will be provided within the timeframe as determined by the dermatologist as necessary. There should be an assurance that a prison doctor will be made available to accompany him to his private appointments if required. In respect of his other health conditions, there should be a specific guarantee that he will have all required access to healthcare.

80. In light of the time that has already passed and the fact that these issues have at least in general terms been raised already with the Greek authorities I am of the view that the Greek authorities should be given four weeks to answer those questions.

Addendum

The central authority by letter dated 27th June, 2017 forwarded this Court's request under s. 20 of the Act of 2003 for various assurances in relation to the respondent's Article 3 rights to the Greek authorities. The Greek authorities replied by letter dated 25th July, 2017 but did not give the assurances that the Court required. Instead they referred generally to their previous replies in these proceedings. In those circumstances the Court's concerns regarding the protection of the respondent's Article 3 rights were not alleviated. The Court therefore found that there was a real risk that, if surrendered, the respondent would be subjected to inhuman and degrading treatment contrary to his Article 3 rights. The Court made an order refusing the surrender of the respondent to Greece on foot of this European arrest warrant.