2016 IEHC 796

THE HIGH COURT

Record No. 2015/251 EXT

2015/252 EXT

2016/71 EXT

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

JANUSZ EUGENIUSZ SWACHA

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 20th day of December, 2016.

1. The surrender of the respondent is sought by the Republic of Poland pursuant to three separate European Arrest Warrants ("EAW"). The first EAW is dated 23rd March, 2012, and seeks the respondent's surrender in order to serve the outstanding period of a 1 year and 6 months sentence of imprisonment imposed upon him in respect of four offences in the nature of fraud or forgery. The second EAW was issued on 3rd April, 2012, and his surrender is sought for the purpose of prosecuting him in respect of two offences of counterfeiting currency. The third EAW was issued on 21st April, 2016, and his surrender is sought to serve a sentence of imprisonment of 1 year and 4 months imposed for the possession and sale of a gas weapon.

2. The respondent has raised four main points of objection:

> 1) In respect of the first and second EAWs, the EAWs are invalid because what the Court has before it is a "corrected version" of the European arrest warrants.
>
> 2) There is no correspondence of offences in this jurisdiction with respect to the offences set out in the third European arrest warrant.
>
> 3) The respondent's sentence on the third EAW has been aggregated on appeal with the sentence of 1 year and 6 months on the first EAW and he is no longer required to serve it.
>
> 4) In relation to each EAW, the respondent's surrender is prohibited under Article 8 of the European Convention on Human Rights ("ECHR").

Uncontroversial matters

A Member State that has given effect to the 2002 Framework Decision
3. The surrender provisions of the Act of 2003 apply to those 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 2002 Framework Decision"). I am satisfied that by the European Arrest Warrant Act 2003 (Designated Member States) Order 2004 (S.I. No. 103 of 2004), the Minister for Foreign Affairs has designated Poland as a Member State for the purposes of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003").

Identity
4. I am satisfied on the basis of the affidavit of Garda Halpin and Sergeant Kirwan, members of An Garda Síochána, the affidavit of the respondent, and the details set out in the EAW, that the respondent, Janusz Eugeniusz Swacha, who appears before me, is the person in respect of whom each of the EAWs have issued.

Endorsement
5. I am satisfied that each of the three EAWs have been endorsed in accordance with s. 13 of the Act of 2003 for execution.

Sections 21A, 22, 23 and 24 of the Act of 2003, as amended
6. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse his surrender under the above provisions of the Act of 2003, as amended, in respect of each of the European arrest warrants.

Part 3 of the Act of 2003, as amended
7. Subject to further consideration of s. 37, s. 38 and s. 45 (where appropriate) of the Act of 2003, as amended, and having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

Controversial matters

Section 38 of the Act of 2003
8. As will be referred to in more detail later in this judgment, the Polish authorities had originally sent to this jurisdiction versions of the first EAW and the second EAW in which point E.1 was completed (i.e. the issuing judicial authority was indicating it was relying on these as ticked box offences under Article 2 para. 2 of the 2002 Framework Decision). Unfortunately, these EAWs had also completed point E.2 which should only be completed when not relying upon point E.1.

9. In respect of the first EAW, I am satisfied that the issuing judicial authority has now clarified that these are offences to which Article 2 para. 2 of the 2002 Framework Decision applies. Therefore, it is unnecessary to establish double criminality or correspondence of offences. They are offences of the requisite minimum gravity. The designation of these offences as list offences is

not manifestly incorrect and the respondent's surrender is not prohibited under s. 38 of the Act of 2003.

10. In respect of the second EAW, I am satisfied that the issuing judicial authority has now clarified that these are offences to which Article 2 para. 2 of the 2002 Framework Decision applies. Therefore, it is unnecessary to establish double criminality or correspondence of offences. They are offences of the requisite minimum gravity. The listing of the offences is not manifestly incorrect and his surrender is not prohibited under s. 38 of the Act of 2003.

The third EAW
11. The third EAW seeks his surrender in respect of two offences. The detail set out at point E is that "On an unidentified date between 1999 and 2000 he sold AC [name redacted] Bus 90 GS gas weapon No K 15037-6 in spite of the fact that he did not have a required licence." The box at E.1 referring to "illicit trafficking in weapons, ammunitions and explosives" is ticked. Under E.2 which is a full description of the offence not covered by E.1, it is stated that he was "in possession" of the gas weapon without the required license. The minimum gravity term has been met in respect of the ticked box offence and the Court accepts that there is no manifest defect in the ticking of the box regarding illicit trafficking.

12. Under the relevant part of s. 38(1)(a) of the Act of 2003 in so far as offences which do not come within Article 2 para. 2 of the 2002 Framework Decision are concerned, a person shall not be surrendered to an issuing state in respect of an offence unless (a) the offence corresponds to an offence under the law of the State, and (b) that a term of imprisonment of not less than four months has been imposed on the respondent in respect of the offence in the Republic of Poland and that the respondent is required under the law of the Republic of Poland to serve all or part of that term of imprisonment. In this case, it is clear that the minimum gravity terms have been met in respect of this offence. The respondent's main contention was that there was no correspondence of this offence, but it was bound up with a submission concerning s. 11 of the Act of 2003 and it is appropriate to deal with that submission at this point.

Section 11 of the Act of 2003
13. The respondent is being sought for offences of possession and sale of a weapon over a lengthy period between 1st April, 1993, and 1999-2000. A sub-issue arose about the level of detail provided in respect of those offences, namely that insufficient detail was given to comply with the requirements of s. 11 of the Act of 2003 with regard to place of commission and date of commission and detail of the offences especially as regards possession and sale.

14. In light of those issues, the Court sought further information in a detailed letter sent to the issuing judicial authority under the provisions of s. 20 of the Act of 2003. The issuing judicial authority responded with information which established that, while the indictment did not contain information regarding the place of committal, it was undoubtedly committed in Poland.

15. The additional information states that the proceedings in the case started in January 2003 and shows that when interrogated as suspects, this respondent and AC were not able to state explicitly when the respondent had the gun/pistol and when he sold the gun/pistol to AC. There was no contract of sale and no date could be ascertained. In those circumstances, the Court is satisfied that sufficient information has been placed before it to explain the long time frame of the offence and the circumstances of possession and sale. The Court therefore rejects the point of objection in so far as it concerns s. 11 of the Act of 2003.

Is the weapon a firearm in this jurisdiction?
16. The main issue was whether the weapon, i.e. "a BUS 90 GS Gas Weapon No K 15037-6" as described in the third EAW, could amount to a firearm in this jurisdiction. In the case of *Minister for Justice, Equality and Law Reform v. Szall* [2013] IESC 7, the Supreme Court (Clarke J.) stated at para. 4.17 "*in* Attorney General v. Dyer *[2004] 1 IR 40, Fennelly J. re-emphasised the principle, which can be traced back to* State (Furlong) v. Kelly *[1970] IR 132, to the effect that the comparison which requires to be conducted in order to determine correspondence is to be based on the acts or omissions which are said to constitute the offence*." Having discussed the provisions of s. 5 of the Act of 2003, the Supreme Court at para. 4.17 also held "*there is not, therefore, any material difference, so far as correspondence is concerned, between the law as it stood under the 1965 Act and the law as it now stands under the 2003 Act*."

17. The test the Court is engaged in, is not whether this is a firearm within the Polish legal system but whether the actual weapon amounts to a firearm within this jurisdiction. The starting point, therefore, is the Irish legislation in respect of possession of firearms. Section 1(1) of the Firearms Act, 1925, as amended, states:

> "In this Act—
>
> […irrelevant content omitted…..]
>
> "firearm" means—
>
> (a) a lethal firearm or other lethal weapon of any description from which any shot, bullet or other missile can be discharged,
>
> (b) an air gun (including an air rifle and air pistol) with a muzzle energy greater than one joule or any other weapon incorporating a barrel from which any projectile can be discharged with such a muzzle energy,
>
> (c) a crossbow,
>
> (d) any type of stun gun or other weapon for causing any shock or other disablement to a person by means of electricity or any other kind of energy emission,
>
> (e) a prohibited weapon,
>
> (f) any article which would be a firearm under any of the foregoing paragraphs but for the fact that, owing to the lack of a necessary component part or parts, or to any other defect or condition, it is incapable of discharging a shot, bullet or other missile or projectile or of causing a shock or other disablement, as the case may be,
>
> (g) except where the context otherwise requires, any component part of any article referred to in any of the foregoing paragraphs [or paragraph (h)]and, without prejudice to the generality of the foregoing, the following articles shall be deemed to be such component parts:

(i) telescope sights with a light beam, or telescope sights with an electronic light amplification device or an infra-red device, designed to be fitted to a firearm specified in paragraph (a), (b), (c) or (e),

(ii) a silencer designed to be fitted to a firearm specified in paragraph (a), (b) or (e), and

(iii) any object—

(I) manufactured for use as a component in connection with the operation of a firearm, and

(II) without which it could not function as originally designed,

and

(h) a device capable of discharging blank ammunition and to be used as a starting gun or blank firing gun,

and includes a restricted firearm, unless otherwise provided or the context otherwise requires; "firearm certificate" means a firearm certificate granted under this Act and, unless the context otherwise requires, includes a restricted firearm certificate, a fire-arms training certificate and a firearm certificate granted under the Firearms (Firearm Certificates for Non-Residents) Act 2000;".

18. The issuing judicial authority replied to a question from the central authority seeking "more detail in relation to the actual weapon" by stating "[…] please find an expert opinion included in the case file, which may be helpful in finding answers to your questions.". What was included was a ballistics report which had obviously been complied for the purpose of the proofs required for the trial in Poland. To that extent, it is not as helpful as it could be. Understandably, the ballistics expert did not directly address the Irish legislative provisions, e.g. is this a lethal weapon or firearm from which any shot, bullet or other missile can be discharged; if an air gun, did it have a muzzle energy greater than one joule; or, was it designed for the discharge of any noxious liquid, noxious gas or other noxious thing.

19. All that had been stated in the third EAW forwarded to this jurisdiction was that it was a gas weapon. The word "firearm" was not used. Words in an extradition warrant are *prima facie* to be given their ordinary and popular meaning unless they are used in a context which suggests that they have a special significance (*Minister for Justice, Equality and Law Reform v. Dolny* [2009] IESC 48). A firearm in its ordinary and popular meaning is a gun that would come within the meaning of the Firearms Acts. In the present case, the word "pistol" or "gun" was used in the further information but that information also included a ballistics report. In light of the description of it as a gas weapon and the totality of the further information sent by the issuing judicial authority, it is necessary to scrutinise the context in which those words have been used in order to assess whether this amounts to a firearm in this jurisdiction.

20. The Polish ballistics report states that it is a gas weapon and issued for firing shots with gas or alarm cartridges of 8mm calibre. The pistol can also be used for firing flare lights – with a special cap, screwed to the exhaust end of the barrel. On enquiry from the Court, counsel for the minister found it difficult to point to any evidence which would satisfy the Court that this was a firearm or prohibited weapon under the Irish provisions. He sought the opportunity to have a further request made.

21. Counsel for the respondent objected strongly to that request. He maintained that correspondence had not been made out and that should be the end of the matter. He also maintained, in any event, that it was doubtful if this report related to the weapon in question. He pointed to a date upon which this weapon was seized as being January 2003, but the Court found that this accords entirely with the information from the judicial authority that this investigation only began in January 2003. Furthermore, it is stated in the report that the case concerns illegal possession by AC, the person who is named by the issuing judicial authority as the person the respondent sold the weapon to.

22. Counsel for the respondent also stated that different case numbers are used and points to 206/03 and 26/03 as referred to in the report. It can be noted that the 26/03 is the case number relating to AC. Counsel also referred to the title of this weapon as being BUSS 90 GS No K15037- G, thus an extra S at the end of BUS and a G instead of a number 6. The Court does not accept that this is a fatal mistake. That may well be a typographical error. Ultimately, however, this Court has to operate on the basis of mutual trust. The Court has been told that this is the report on the weapon for which this respondent was convicted. The Court has no grounds for refusing to accept what the issuing judicial authority has stated.

23. Of greater concern to the Court was whether it should permit a further request for information to be made from the issuing judicial authority. This Court has a discretion to seek further information and this is a discretion which must be exercised judicially. The respondent submitted that the issue of correspondence is something that the Court has to be alert to from the outset and must be satisfied of in each case, regardless of whether a respondent objects or not. That is clearly correct, as even on an issue of consent to surrender under s. 15 of the Act of 2003, the Court must be satisfied that surrender is not prohibited under the terms of s. 38 of the said Act. There is also a corresponding duty on the minister to be alert to these difficulties and to seek information from the issuing judicial authority where appropriate. In *Minister for Justice and Equality v. Sadiku and Gherine* [2016] IECA 65, the Court of Appeal gave the issue of correspondence as an example of where further information may be required.

24. It is the view of this Court that s. 20 of the Act of 2003 does not mean that there is only one opportunity for a court to seek further information. The court has jurisdiction to seek the further information it considers necessary in order to decide whether an order of surrender should be made. One of the tasks of the court is to examine the application not only in light of the facts available, but also in light of information it might obtain by request of the issuing judicial authority for further information under the very clear power provided for in s. 20 of the Act of 2003. That is not a time limited power. In deciding whether to seek further information, the Court must act on the basis of reason and also in the overall interests of justice.

25. In the present case, the question asked of the issuing judicial authority was quite open ended and the issuing judicial authority understandably may have been of the view that the ballistics report would answer this Court's questions. This is a case where the issuing judicial authority has been very helpful. Furthermore, the circumstances surrounding the proceedings in this jurisdiction do not show any particular or significant delay. The initial arrest of the respondent was on 18th April, 2016, in relation to the first and second European arrest warrants. His arrest on this third EAW was on 9th May, 2016. The cases have proceeded reasonably quickly and points of objection were served on 6th September, 2016. An early hearing date was given and on receipt of further information, a quick date for continued hearing was also given.

26. What was quite important in the view of this Court was that, despite the best efforts of the Court, it was not possible to finalise judgment on all of the EAWs that appear before the Court on the date of the rehearing, namely 24th November, 2016. The Court was obliged to adjourn the matter for the purpose of giving judgment. In those circumstances, the Court ruled that there was no prejudice to this respondent, other than the possibility of surrender on this matter still being open to the court, as he will be due to come back before the court on another date. The Court has considered the issue of delay, but it is clear that the respondent fled from Poland knowing that he was to serve this sentence, outlined in the third European arrest warrant. There was no injustice or oppression in seeking further information and putting the matter back for a short period of time.

27. The Court observes that it is disappointing that the minister did not give immediate attention to the information which had returned from the issuing judicial authority and sought further clarification herself. If a further request had been sent immediately on receipt of that information, it is possible that information could have been obtained before the date for the resumed hearing.

28. In the circumstances, the Court decided to make a final request to the Polish authorities to seek information regarding the precise information required. The Court adjourned the matter for resumed hearing on 20th December, 2016, with the reply to that request the only outstanding matter for consideration. The following questions were asked of the issuing judicial authority:

> a) Is this weapon a lethal firearm or other lethal weapon of any description from which a shot or bullet can be discharged?
>
> b) Is this an airgun with a muzzle energy greater than one joule?
>
> Or
>
> Is it a weapon incorporating a barrel from which any projectile can be discharged with a muzzle energy of greater than one joule? For confirmation, muzzle energy means the energy of a projectile discharged by the firearm or weapon measured at its muzzle in joules.
>
> c.) Is this a weapon designed for the discharge of a noxious gas, noxious liquid or other noxious thing?

29. The issuing judicial authority took great care to respond in detail and in time for the resumed date and this Court is grateful for the assistance provided. The issuing judicial authority sent back a very detailed opinion from the expert in weapons and ballistics in the Province Police Headquarters in Lublin.

30. This report stated "8mm-calibre "BUSS" 90 GS gas pistols (i.e. such pistols as the one described in the quoted opinion) are structurally adjusted to discharging 8mm-calibre alarm cartridges or gas cartridges containing striking charges such as chemical substances causing tear effect (e.g. marked with "CS – 2-chlorobenzalmalononitrile of "CN" – phnacyl chloride) and chemical substances causing irritating effect (e.g. marked with "PV" – the so-called pepper spray (nonivamide) or "MPK" – morfolid of pelargonic acid) just like the cartridges used during the test." There were no traces of home-made alterations or repairs aimed at changing the weapon's calibre or purpose and its mechanism functions in a way which made it possible to discharge shots using 8mm-calibre cartridges (gas or alarm ones), typical of this type of weapon. The report concluded that the weapon is a gas firearm designated for discharging chemical incapacitating substances (of tear or irritating effect).

31. The report also concluded that this is not an airgun and the muzzle energy could not be judged. It does not discharge "combat equipments" and only medical evidence could outline the degree of danger from a possible direct hit from a substance discharged from the muzzle at a short distance. The Court is satisfied on the evidence that the only possible way this weapon could amount to a firearm in this jurisdiction is if it is a prohibited weapon*, i.e.* "a weapon designed for the discharge of a noxious gas…".

32. Counsel for the respondent submitted that the important emphasis was on "designed for the discharge…". He pointed to the phrase "…are structurally adjusted…" and submitted that this should cause the Court to pause as it could not be said that it was therefore designed for the discharge of the incapacitating chemicals.

33. The Court is satisfied on the evidence produced by the issuing judicial authority that it is a weapon that has been designed for the discharge of a noxious gas. The gases it was designed to discharge are chemically incapacitating substances and are therefore noxious gases. It was clearly designed for that purpose as it has not been altered for that purpose. The phrase "structurally adjusted" must be read in the context that "no traces were found of home-made alterations or repairs aimed at changing its calibre of purpose…" Furthermore, the conclusion of the ballistics expert is that it was "a gas firearm designated for discharging chemically incapacitating substances…".

34. The Court is satisfied that there is correspondence in this jurisdiction with the offence of possession of a firearm without a firearm certificate contrary to s. 2 of the Firearms Act, 1925, as amended. It is unnecessary to consider if there is correspondence with any other offence. The respondent's surrender, therefore, is not prohibited under s. 38 of the Act of 2003.

Section 45 of the Act of 2003

35. A question of whether the respondent was present at trial only arises where the respondent is sought to serve a sentence or detention order. This only arises for consideration in respect of the first EAW and the third European arrest warrant.

36. In respect of the first EAW, it is clearly indicated that the respondent was present at his trial. There is no reason to prohibit his surrender under s. 45 of the Act of 2003 with respect to this first European arrest warrant.

37. In respect of the third EAW, it is also indicated that he was present at his trial. There is no reason to prohibit his surrender under s. 45 of the Act of 2003 with respect to this third European arrest warrant.

The validity of the first and second European arrest warrants

The background to the European arrest warrants

38. In order to understand properly the point at issue, it is necessary to set out in a little detail the background to the first and second European arrest warrants. The EAWs that have been endorsed have been described by the Polish issuing judicial authority as "corrected versions."

39. The first EAW is dated 23rd March, 2012. This EAW was endorsed by the High Court on 24th November, 2015. The first EAW states at point I that the name of the judicial authority which issued the warrant is "District Court in Zamosc Second Penal Division."

Under the heading "name of its representative", the name Zdzislaw Lukasiewicz is indicated. At point K.1 in answer to the heading "signature of the issuing judicial authority and/or its representative", the name Zdzislaw Lukasiewicz is indicated in block capitals. Under the heading "Post held", it is stated "President of the Second Penal Division of the District Court in Zamosc". The warrant is in fact signed by "Tadeusz Bizior, [President of Second Penal Division of District Court]".

40. The difference in signature came about in circumstances where an initial EAW dated 23rd March, 2012, was sent to this jurisdiction in 2015. The central authority sent a request under s. 20 of the Act of 2003 seeking a completed new form (d) in the EAW pursuant to the Council (EC) Framework Decision of 26th February, 2009 (2009/299/JHA) on the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial ("the 2009 Framework Decision"). This letter also sought clarification as to whether the issuing judicial authority was relying on the list offences as ticked in E.I because E.II had also been completed in the original format of the EAW as then sent.

41. By reply dated 8th October, 2015, from the President of the issuing judicial authority, Tadeusz Bizior, it was confirmed that the respondent had attended in person at the trial and then attended a hearing held by the court of appeal. It was clarified that it was a mistake that E.II had been filled in and the issuing judicial authority was relying on E.I. Finally, it was stated that *"[w]e will send you the corrected version of the EAW immediately. Since the judge who issued EWA (sic) No II Kop 19/12 on 23 March 2012 has died, the corrected version of the EAW has been signed by another judge*." It was the "corrected version" of the EAW that was endorsed by the High Court.

42. The second EAW was issued on 3rd April, 2012, and was endorsed by the High Court on 24th November, 2015. When the EAW was originally sent, an issue had also arisen regarding the completion of both E.I and E.II therein. This second EAW was also issued by the same now deceased judge. In circumstances similar to those set out in respect of the first EAW, the president of the Second Penal Division of District Court in Zamosc, Tadeusz Bizior has now signed "the corrected warrant number II Kop 24/12".

The submissions

43. Counsel for the respondent asked rhetorically "who is it that issued each EAW? Is it the now deceased judge or Judge Bizior?" He submitted that it was the deceased judge who issued the EAW but a corrected version has now been sent by another judge. In his submission, the appropriate way in which to deal with this was to send over a fresh EAW rather than seek to correct the original matter, or alternatively, the issuing judicial authority could have sent the information over. In particular, he submitted that the fatal flaw on the EAW is that it is now dated from a time when it was not in fact signed by the current judge.

44. Counsel for the minister submitted that these EAWs were received in the State and that they purported to be EAWs issued by a judicial authority in the issuing state. He referred the Court to s. 12(8)(a) of the Act of 2003, as amended, which states:

> "In proceedings to which this Act applies, a document that purports to be-
>
> (a) A European arrest warrant issued by a judicial authority in the issuing state
>
> …..
>
> *shall be received in evidence without further proof."*

The Court's analysis and determination

45. On the face of each of these EAWs, it is stated that "this warrant has been issued by a competent judicial authority". The identity of the issuing judicial authority has also been identified on the face of each EAW – it is the District Court in Zamosc, Second Penal Division. These documents certainly purport to be EAWs issued by a judicial authority in the issuing state. The Court has received them as such when it endorsed the EAWs, but the Court also accepts that a respondent is entitled to make a challenge to the validity of any EAW that has been received in evidence.

46. It is important to commence with the 2002 Framework Decision and the Act of 2003 as to what must be specified therein. Under Article 8 of the 2002 Framework Decision, the EAW must be in the form set out in the Annex to the 2002 Framework Decision (as now amended by the 2009 Framework Decision). In that form, the judicial authority which issued the warrant is required to be identified, along with the name of its representative. The signature of the representative is also required. Under the Act of 2003, s. 11 requires that the EAW be in the form set out in the Annex as far as is practicable and that it must specify, amongst other items, the name of the judicial authority that issued the European arrest warrant.

47. In this case, the first and second EAWs identify the issuing judicial authority but they also identify as its representative a man who has not now signed the version of the EAWs which have been transmitted to this jurisdiction. The role of the judge who has signed the new versions is, however, identical to the role of the judge who signed the original warrants; he is the President of the Court that is the issuing judicial authority. The reason why the signatures are different have been clearly set out: The EAWs, as originally signed, contained errors which required to be corrected, but at that time the judge who had issued the originals was deceased and corrected versions were sent.

48. These corrected versions purport to be EAWs which do not include the original signature but include the original date of issue. These corrected versions do not include the date upon which they have now been signed. Indeed, that latter fact is why these EAWs can be described as corrected versions of the EAW rather than entirely new European arrest warrants.

49. The Court is satisfied of the following in respect of each of the first and second EAWs:

> a) That it has been issued by a competent judicial authority,
>
> b) That it purports to be an EAW from Poland,
>
> c) That an explanation is given as to why the particular EAW is not signed by the original judge who has been indicated as the representative of the issuing judicial authority and as the signatory,
>
> d) That an explanation has been given as to how the present EAW has come into existence, i.e. being a corrected version but the original judge is deceased.

e) That it is now signed by a representative of the issuing judicial authority who has the same role as that of the judge who is indicated as the representative of the issuing judicial authority.

f) That the fact that it is a corrected version of an EAW is also clear on its face.

50. The Court does not find it helpful to consider what an Irish Court would have done in the same circumstances, nor to consider how an Irish court might "correct" or indeed "amend" an incorrect original order or decision. What this Court must do is to focus on its role and function in the execution of EAWs as provided for by the Act of 2003 which implements the 2002 Framework Decision. Under the 2002 Framework Decision, it is recognised that the European arrest warrant is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which is the "cornerstone" of judicial cooperation. The mechanism of the European arrest warrant is based on a high level of confidence between member states. These principles of mutual recognition, mutual trust and a high level of confidence are reflected in s. 12(8) of the Act of 2003.

51. A document which purports to be a validly issued European arrest warrant must be accepted as such. The Supreme Court (Murray C.J.) in the case of *Minister for Justice, Equality and Law Reform v. O Fallúin* [2010] IESC 37 dealt with the requirement that an EAW be "duly issued" as contained in s. 10 of the Act of 2003 as originally enacted. It was stated:

> *"Where it is established that a judicial authority within the meaning of the Act of 2003 has in fact issued the European Arrest Warrant in question it seems to me that it should be considered to have been "duly issued" within the meaning of that section. Neither the Act nor the Framework Decision in my view can be interpreted as permitting, let alone requiring, the courts of the executing state to embark on what would be in effect a judicial review of the validity of an order of the court or judicial authority of the requesting state according to the law of that State. I do not consider that there is anything within the Framework Decision and in particular the Act of 2003 which envisages that our courts would conduct a judicial inquiry in order to determine whether as a matter of German law, French law, United Kingdom law, Latvian law, or as the case may be, a European arrest warrant produced and authenticated as having been issued by the relevant judicial authority is valid. Issues concerning the validity of an order of a court within the meaning of its own national law invariably fall to be tried and determined by the courts of that country. It would be invidious, to say the least, if the court of one country were to pass judgment on the validity of an order or act of a court in another country under the latter's national law and set it aside as not having the effect which it purports to have on its face. Accordingly I do not consider that the use of the word "duly" in the Act of 2003 (though now removed by an amendment in the Criminal Justice (Miscellaneous Provisions) Act 2009) was ever intended to have such a meaning or effect which would require our courts, in the field of public law to exercise an unprecedented form of jurisdiction."*

52. This Court must accept at face value the validity of these EAWs from Poland. To do otherwise, except perhaps in the most egregious cases as indicated in the *O'Fallúin* case, would be to set at nought the principles of mutual trust and mutual confidence as set out above. The issue of whether these corrected versions of the EAWs are valid is one that is purely a matter for the Polish authorities. The Court observes that this issue is entirely different to the issue which arose in the case of *Bob-Dogi* (Case C-241/15, Second Chamber, 1st June, 2016) where the Court of Justice of the European Union ("CJEU") held that the existence of a domestic arrest warrant was a requirement of the 2002 Framework Decision and that its absence affected the validity of the European arrest warrant. That concerns a specific requirement of European law as to its validity, whereas what is at issue here is the validity of the purely internal procedures adopted in Poland for the issuance of these European arrest warrants.

53. In this case, there is no evidence even to suggest that the procedure adopted by Poland would invalidate these EAWs as a matter of Polish law. The Court will also observe that to suggest that the Polish judicial authority should have issued a fresh EAW or simply sent on the required information, is not a submission that is based on any evidence with regard to Polish law. This Court is bound to accept that within Poland, the procedure adopted is considered to be a valid procedure and that the corrected versions amount to valid European arrest warrants. The Court must accept that the issuing judicial authority took the view that it was legally correct to advance this process in the manner in which it did. The manner in which a European arrest warrant may be issued as "corrected" is a matter of procedural autonomy for the issuing state.

54. Having stated the above, it is not the case that a court in this jurisdiction is bound to accept all documents which purport to be EAWs as valid. I have mentioned the *Bob-Dogi* case above. In this jurisdiction, s. 11 of the Act of 2003 governs the form and content required of a European arrest warrant. The Supreme Court in the cases of *Minister for Justice, Equality and Law Reform v. Connolly* [2014] 1 I.R. 720 and *Minister for Justice and Equality v. Herman* [2015] IESC 49 have stated that EAWs must be of unambiguous clarity with regard to essential matters before surrender should be ordered. In Connolly, for example, it was held that it was absolutely essential that the offence or offences for which the person is wanted is or are specified.

55. The Court is satisfied in the present case that the requirements of s. 11 of the Act of 2003 have been complied with. There is no ambiguity with regard to essential matters. The issue has been about the validity of the process adopted in Poland and not about the essential features of the European arrest warrant. What was essential to identify was the name of the issuing judicial authority and that has been done. In so far as there is a difference between the statement as to the name of the representative of the issuing judicial authority and the representative who has signed these corrected versions, the reason for that has been made clear. In the circumstances, the Court is satisfied that it was not practical due to the death of the original judge for these "corrected versions" of the EAWs to be signed by the original judge.

56. Put simply, there is no lack of clarity in this matter; an issuing judicial authority has issued two EAWs in 2012 for this respondent. The President of the issuing judicial authority has corrected the original EAWs, as the original judge who signed them has since died. He has signed the corrected versions of the original EAWs and it is on those corrected versions the Polish judicial authority rely. There is no ambiguity as to the essential matters, the name of the judicial authority, the date of the EAWs or the reason why a different judge has signed them instead of the judge who issued the original version of the European arrest warrants.

57. The Court is satisfied that there is nothing in the 2002 Framework Decision or in the Act of 2003 or s. 11 of the Act of 2003 in particular that requires an issuing judicial authority to issue either, a fresh EAW or to provide additional documentation by other means in order to correct an inaccuracy in the EAW as originally issued. The manner in which an EAW is "corrected" is properly a matter for the issuing judicial authority. A "corrected version" of an EAW may be accepted as a European arrest warrant within the meaning of the Act and the 2002 Framework Decision.

58. In the circumstances, the Court is satisfied that these are valid EAWs on which the Court must exercise its functions under s. 16 of the Act of 2003.

The sentence imposed

59. The respondent on affidavit stated that his two sentences had been merged on appeal to the court of appeal in Poland. He said that he had conducted his own appeal, apparently in respect of the sentence of 1 year and 6 months on the first European arrest warrant. He said that he requested the appeal court to consolidate the prison sentence imposed in respect of the offences set out the first EAW with the sentence he received in respect of the third EAW, and stated "it is my belief that the Appeal Court did so and that I do not have to serve this sentence." This belief appeared to be based upon a claim that he was serving the sentence imposed on foot of the third EAW when the sentence the subject matter of the first EAW was imposed.

60. The central authority sent a request dated 2nd June, 2016, to the issuing judicial authority in respect of the third European arrest warrant. This request referred to information in the third EAW that the respondent had the entire 1 year and 4 months sentence left to serve but that point F stated that he had served part of the sentence, had a break in service and failed to report back. The central authority requested clarification as to how much of the sentence he had left to serve.

61. For some unexplained reason, it appears that the letter from the respondent's solicitor and his affidavit were sent to the issuing judicial authority without being specifically alluded to in the request for information by the central authority. When such documents are sent without specific reference to them in a letter of request from the central authority, it is bound to cause confusion for the issuing judicial authority. What is the issuing judicial authority being asked to do? To respond to all the criticism made in the correspondence/affidavit of a respondent? That is not the purpose of the s. 20 procedure and, in the view of the Court, the central authority should take great care in drafting and transmitting its requests. If an affidavit or points of objection are being sent to an issuing judicial authority or issuing state, the specific passages that require to be addressed should be highlighted in the letter of request.

62. In its reply of 24th June, 2016, the issuing judicial authority referred to "your letter of 30 May 2016" which was in fact the letter from the respondent's solicitor to the central authority asking for clarification of matters concerning the appeal. The issuing judicial authority made a reply which covered both the first and third European arrest warrants. The issuing judicial authority pointed out that, in the course of the proceedings underpinning the first EAW, the respondent had started to serve a sentence of imprisonment in another matter. In respect of the offence set out in the third EAW, it appears that during the course of those proceedings, the respondent started to serve a sentence in another matter, other than those in the first or third European arrest warrants. It is also important to note that the issuing judicial authority stated that he had not in fact started to serve the sentence imposed on the third European arrest warrant. Thus, this Court finds that the respondent has not served any part of the sentence imposed on the third European arrest warrant.

63. The issuing judicial authority also stated *"[h]aving analysed the available data on punishability, we cannot confirm that the sentences made by Sad Rejonowy (Regional Court) in Bilgoraj in cases Court File Ref. No II K 206/03 and II K 210/03 have ever been combined into one aggregate sentence."*(emphasis in original). There was considerable argument as to the meaning of this response. Counsel for the respondent submitted that it meant that the respondent's belief that the sentence had been aggregated and part served had not been disproved by the issuing judicial authority. On the contrary, counsel for the minister submitted that it was clear that the available data did not show an aggregation. After the initial hearing of this matter, the Court wished to clarify precisely which of the offences underpinning the EAWs the respondent had appealed and a further request was sent to the issuing judicial authority.

64. The issuing judicial authority in respect of the first EAW stated that the respondent had appealed that matter and that it was on 7th June, 2004, that the District Court gave its judgment upholding the appealed judgment from the Regional Court. In respect of the third EAW, the issuing judicial authority replied to say that he had not appealed this sentence at all.

65. The Court is satisfied that the respondent has not produced any evidence to justify his claim that his sentences have been aggregated and that he is not due to serve the sentence on the final matter. Indeed, the information provided by the issuing judicial authority establishes that the data from the Polish Court to which he appealed does not confirm his claim, i.e. the available data does not support the claim of the respondent. Furthermore, his claim was based upon the view that he was serving the sentence on the third European arrest warrant. From the information provided by the issuing judicial authority, it has been established that the respondent was not serving the sentence the subject matter of the third EAW as he has claimed.

66. Finally, this Court is satisfied that there is no reason on the evidence in this case to set aside the trust which this Court must place in the issuing judicial authorities of Poland, when they inform this Court, through the transmission of these EAWs, that the respondent is lawfully sought for the purpose of serving the sentences set out therein. In the circumstances, the Court rejects this point of objection.

Section 37 of the Act of 2003

67. The respondent raised issues under Article 8 of the European Convention on Human Rights. He relied upon what is set out in his affidavit. He said that he has been living in Ireland since 2005 and that he separated from his wife in 2014. He had been working as a cleaner of rental cars at Dublin Airport at the time of his arrest. He complained mainly of the delay. There is little or no explanation of the delay by the Polish authorities but on the other hand, this is a man who, on his own affidavit, clearly knew that sentences had been imposed. He left Poland knowing that the sentences had been imposed.

68. The Court is of the view that this is a case where the respondent's circumstances are so unremarkable that he does not overcome the threshold to ask the Court to go through the particularly elaborate factual analysis as set out in the tests in *Minister for Justice and Equality v. P.G.* [2013] IEHC 54. This approach was indicated by O'Donnell J. in *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17. While these are not offences of serious crimes of violence, they cannot be described as minor or trivial offences, especially when viewed cumulatively.

69. The reality in this case is that despite the delay, there remains a high public interest in the surrender of the respondent in respect of all these series of offences for which he has been convicted and the offence for which he is sought for prosecution. It is clear that he left Poland knowing that he had the two sentences to serve. As against the public interest, the respondent's own personal circumstances are entirely unremarkable. Undoubtedly, any surrender will interfere with the life he has built for himself here, but that is a natural and normal part of any extradition. He has not pointed to any particularly injurious, prejudicial, harmful or severe consequence. In light of the high public interest in his surrender, his own circumstances do not establish that it is disproportionate to surrender him.

Conclusion

70. In light of the conclusions above, the Court may make an order for the surrender of this respondent to the person duly authorised by Poland to receive him on foot of each of the European arrest warrants on which his surrender is sought.