Neutral Citation Number: [2012] IEHC 433

THE HIGH COURT

Record No. [2011 No. 252 EXT.]

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003,

AS AMENDED

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

- AND -

YVONNE DOYLE

RESPONDENT

JUDGMENT of Mr. Justice Edwards delivered on the 17th day of October, 2012

Introduction

The respondent is the subject of a European arrest warrant issued by the United Kingdom of Great Britain and Northern Ireland (hereinafter "the U.K.") on the 27th June, 2011. The warrant was endorsed for execution in this jurisdiction by the High Court (Peart J.) on the 15th July, 2011. The respondent was arrested on the 8th January, 2012, and brought before the High Court in accordance with s. 13 of the European Arrest Warrant Act 2003, as amended, (hereinafter referred to as "the Act of 2003") when a date was fixed for the purposes of s.16 of the Act of 2003. Thereafter, the matter was adjourned from time to time, mostly upon the application of the respondent, until it came on for a surrender hearing spread across various dates in July, 2012.

The hearing commenced on Thursday the 12th July, 2012, but it was not possible to conclude the surrender hearing on that date, and it was adjourned part heard to Friday the 27th July, 2012. The hearing was only briefly resumed on the 27th July, 2012, because the respondent's counsel sought a short adjournment in circumstances where they had only been served that morning with certain written legal submissions by the applicant and wanted time to consider them before responding. The Court acceded to that application and further adjourned the case until 11 am on Monday the 30th July, 2012, when it was due to conclude.

The further legal argument that the Court was due to receive on that date was in respect of a point of statutory interpretation relating to the scope of s. 24 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 (and in particular whether a driving licence is an instrument within the meaning of s. 24 aforesaid) arising from a point of objection on correspondence (point no 4) raised by the respondent in Points of Objection filed by her on the 20th June, 2012. It was anticipated that after receiving the parties further submissions on this point, and any further submissions that the parties might wish to make concerning additional information received post the hearing of the 12th July, 2012, the Court would then reserve judgment, all other points in the case having been fully argued on the 12th July, 2012.

When the matter was resumed on the morning of the 30th July, 2012, the hearing continued for another hour approximately, and was almost at an end, when the Court enquired of senior counsel for the respondent if he was continuing to maintain his objection to correspondence in the case of certain of the offences, in light of additional information that was then to hand. Counsel indicated that he was indeed continuing to maintain his objection and the Court then pressed him to engage with the additional information and to state how, in the light of that information, he could still maintain the objection in question. Counsel responded by requesting a short recess to enable him to take further instructions. The Court acceded to this request and to facilitate the taking of further instructions, the Court interposed a short application in another case.

When the matter was eventually resumed counsel for the respondent indicated that while he didn't wish to say anything further with respect to the additional information, he had received instructions to raise a completely new point, what he described as a "Damache" point (referring to *Damache v. Director of Public Prosecutions, Ireland and the Attorney General* [2012] 2 I.L.R.M. 153). His client now wished to further object to her surrender on the basis that she was arrested on foot of the European arrest warrant in this case as a result of the arresting Garda effecting an entry to her dwelling house without having first obtained a domestic warrant authorising him to so enter, allegedly in breach of her constitutional right to the inviolability of her dwelling. She would further seek to argue that s.25 of the Act of 2003 does not operate so as to confer such a power on an arresting Garda. Counsel conceded that no attempt had been made to raise an unconstitutional arrest point at any stage up until that point in time, and that it was not the subject of any Point of Objection pleaded in the case. Nevertheless, he was submitting that the matter was of primary importance and he was seeking permission to ventilate it even at that late stage. He went on to state, however, that even if the Court were disposed to allow the new point to be argued he would not be able to do so there and then, and that the case would require to be further adjourned on a part heard basis to enable him to fully research and properly plead the point, and also to give the applicant's side an opportunity to prepare any response they might wish to make.

Counsel for the applicant objected strenuously to the application, protesting that her side was not on notice of the application to add new grounds and that she could not be expected to deal with such an application other than on proper notice. Counsel's instructions were not to consent notwithstanding the proposal to adjourn the matter yet again to facilitate the applicant in addressing the proposed new point.

Moreover, the applicant was concerned that the move was possibly strategic, in circumstances where despite repeated offers by the Court to facilitate an earlier hearing, the respondent's side had previously sought, and had been granted, numerous adjournments already, including an adjournment to facilitate a change of legal team.

The applicant submitted further that O. 98, r. 5(1) of the Rules of the Superior Courts requires Points of Objection to be filed within 4

days before the date fixed for the purposes of s. 16 of the Act of 2003 and further requires such Points of Objection to contain a statement in summary form of the grounds and of the material facts on which the respondent relies to resist the execution of the European arrest warrant. Points of Objection in this case were filed on the 20th June, 2012. It was urged that if the respondent now wished to amend her pleadings then, unless the applicant was prepared to consent, which he was not, the respondent required the leave of the Court to do so pursuant to O. 28, , r.1 alternatively r. 6, of the Rules of the Superior Courts. Moreover, pursuant to O. 52, r. 1, such an application is required to be brought by a motion on notice to the applicant.

In circumstances where the applicant was not willing to consent, the Court indicated that it was not disposed to entertain a late application to add new grounds at that point in time in circumstances where the application did not comply with the Rules of the Superior Courts. Counsel for the respondent then raised the possibility of issuing, and filing, a formal notice of motion and grounding affidavit seeking leave to amend his client's Points of Objection in a manner that complied with the Rules and some discussion took place as to when, if such a motion were allowed to be brought, it might be heard given that the respondent was a person in custody who was not in good health. Counsel for the respondent further raised the possibility of making a fresh bail application. The Court did not rule on these issues on that date but rather, at the further request of the respondent's side, adjourned the matter overnight, to facilitate certain further enquiries being made, and the taking of yet further instructions.

On the following day, the 31st July, 2012, it was indicated to the Court that the respondent was not yet ready to make a fresh bail application but would possibly do so to a vacation judge in the days or weeks to come. The Court then agreed, with some reluctance, to allow the respondent to issue and serve a formal notice of motion and grounding affidavit, seeking leave to amend her existing pleadings. After much discussion as to when that motion should be made returnable for, it was directed that the motion should be made returnable for the 8th of August when three High Court judges were expected to be sitting at a vacation sitting, one of whom was Peart J. who was very experienced in extradition. This Court indicated that it was sitting on the 5th September, 2012 and asked to be apprised on that date of the outcome of the motion. The Court indicated that if leave to amend were granted by a vacation judge it would resume the case and hear arguments on the new issue at 2pm on the 1st October, 2012. The substantive case was then formally adjourned part heard to the 1st October, 2012.

The Court duly sat for the purposes of a vacation sitting on the 5th September, 2012. The Court was informed that the proposed motion was duly served for the 8th August, 2012, and the matter was listed before Peart J. on that date but that unfortunately the matter was not reached and was adjourned back to this Court's list on the 1st October. The respondent was not in all the circumstances seeking an earlier hearing of the motion, but wished to proceed with a fresh bail application. That bail application then proceeded before this Court on the 5th September, 2012, but was ultimately refused.

The matter came before this Court again on the 1st October, 2012, when the Court was ready to hear the respondent's adjourned motion seeking leave to amend her Points of Objection. On that date senior counsel, who had appeared for the respondent on all occasions in July, informed the Court that he was appearing as a matter of courtesy, but that his instructions, and those of his instructing solicitors, Messrs Michael E. Hanahoe & Co.. had been withdrawn. In the circumstances they were seeking leave to come off record. The Court was then addressed by a solicitor, Ms. Anne Fitzgibbon, who informed the Court that she had been recently retained by the respondent and wished to be allowed to come on record. The Court, with some reluctance, acceded to both applications.

The Court then enquired of Ms. Fitzgibbon, the solicitor for the respondent as to whether she was in a position to proceed with the motion. She indicated that she was not, as she had not yet received a complete set of papers from the former solicitors, and she required time in any event to instruct counsel and read herself fully into the matter. The Court informed Ms Fitzgibbon that it would afford a short time in which to do that, but that it would be a period of days rather than weeks, and that it would not allow the changing by the respondent of her legal team for the second time to hold up a hearing of the case to conclusion. The Court then directed that the motion should be listed for hearing on Friday the 12th October, 2012, and declared that if the motion were successful, it would resume the substantive hearing on Monday the 15th October, 2012.

The motion hearing ultimately proceeded on Friday the 12th October, 2012 and the motion was refused. The Court indicated that it would give its reasons in a written judgment to be delivered on the 17th October, 2012 and will now proceed to do so.

The motion papers
The respondent's notice of motion seeks an order amending the Points of Objection filed in these proceedings on behalf of the respondent. It was grounded upon draft amended Points of Objection, an affidavit of Terence Hanahoe sworn on the 3rd August, 2012 and an affidavit of the respondent herself sworn on the 11th October, 2012.

The draft amended Points of Objection contain an additional Point No 7 which is in the following terms:

> " The surrender of the Respondent is prohibited by reason of the fundamental deficiencies in the hearings under s. 13 of the 2003 Act and under s. 16 of the said Act, in that:
>
> (i) There is no power, contained in s. 25 of the 2003 Act or otherwise for gardai to enter a dwelling for the purpose of arresting a person who is the subject of a European arrest warrant. Consequently, the arrest of the applicant at a dwelling by Sergeant Gary Gordon on the eighth day of may 2012 amount to a breach of her constitutional rights to liberty, to privacy and to the inviolability of dwelling.
>
> (ii) The proceedings herein are tainted and vitiated by the said breaches of the Respondent's constitutional rights. The High Court has both an inherent jurisdiction and a positive duty to vindicate the Respondent's rights by restoring her to the position she would have been in if her rights had not been so invaded. The proceedings herein should therefore be struck out.
>
> (iii) The surrender of the Respondent upon termination of the present proceedings would be prohibited under s. 37 of the 2003 Act by reason of the foregoing."

The grounding affidavit of Terence Hanahoe sworn on the 3rd August, 2012, states:

> "3. I say and believe that the respondent was arrested by Sgt Gary Gordon at 4 Hazeldene, Blackwater, County Wexford on the 8th January 2012. I say and believe that her arrest followed upon an entry to her dwelling which occurred without consent. I say and believe that Sgt Gordon gave evidence to this effect in a bail application on the 2nd February 2012.
>
> 4. I say and believe that the respondent was brought before the High Court for a hearing under s.13 of the European

Arrest Warrant Act 2003 on the 13th January 2012. I say and believe that Sgt Gordon gave evidence to the court of arresting the respondent and gave evidence of her identity. I say and believe that Sgt Gordon gave evidence of having executed the said warrant; heavy-handed the endorsed warrant into Court.

5. I say that your deponent's office came on record on the 2nd February 2012 and that we were not representing the respondent at the time of her arrest. I say and believe that Points of Objection were filed on 20 June 2012 and that the matter was set down for a s.16 hearing on the 20th June 2012. I say that on the same date, after hearing submissions, Edwards J adjourned the matter to the 27th of July 2012 for further legal argument and for the applicant to seek clarification on an issue from the Central Authority in the UK. I say that on the said date, the matter was adjourned to the 30th July for further legal argument.

6. I say and believe that on the 30th July during the course of the said hearing, the respondent instructed her legal advisers that she wished to raise an argument relating to the fact that her arrest on the 8th January 2012 may have been unlawful. I say and believe that Senior Counsel for the applicant so indicated to the court and outlined briefly the arguments in support of the contention that the proceedings herein had been tainted by reason of the purported unlawful arrest of the respondent.

7. I say counsel for the applicant responded briefly to the said submission and indicated that, in any event, she was not in a position to fully address the argument at that time and in the absence of amended Points of Objection and grounding evidence. I say and believe that Edwards J then adjourned the matter to the following morning for mention, so that the respondent could consider applying for bail pending resolution of the issues that have been raised.

8. I say and believe that on the following morning, counsel for the applicant indicated that she was objecting to the admission of any new Points of Objection. It was suggested by Edwards J that he would rule on this issue on 5th September when he would be sitting anyway; and that he would then finish the s.16 hearing in early October.

9. I say and believe that the respondent consented to this course of action, but that counsel for the applicant was unavailable to argue the matter in September. I say that accordingly, the motion hearing was adjourned to the 8th of August for hearing before this Honourable Court.

10. I say that it is accepted that the argument raised by the respondent during the course of the s. 16 hearing was not included in the initial argument made by her legal advisers or in the Points of Objection. I say that this omission was not for tactical reasons or in order to delay the proceedings herein. I say that the significance of the issues raised by the respondent herself on the 30th July had not been appreciated or considered by the respondent's legal advisers prior to that date.

11. I further say that the proposed argument relates to matters of fundamental importance, including the liberty of the respondent, the inviolability of the dwelling and the integrity of the proceedings herein. Accordingly, I respectfully submit that the balance of justice is in favour of allowing the issues to be argued fully. I therefore pray this Honourable Court to grant the release sought out in the Notice of Motion filed herein."

Further, the affidavit of the respondent herself, sworn on the 11th October, 2012, states:

"I beg to refer to the Notice of Motion and affidavit of Terence Hanahoe dated the 8th of August 2012 when produced.

I say that the additional point of objection inserted at number seven of the draft amended points of objection when produced was raised by me with my legal advisers in March of 2012. The issue came to my notice because a fellow prisoner discovered the legal point in a publication in the library at An Dóchas Centre and gave the information to me."

Submissions on behalf of the respondent

It was submitted by the solicitor for the respondent that the Court should grant the relief sought "in the interests of justice". She commenced by outlining the chronology of these proceedings. The respondent was arrested on the 8th January, 2012. The Points of Objection were filed on the 20th June, 2012 and the matter was listed for a s. 16 hearing on the 12th July, 2012. In the original Points of Objection it is stated (twice) that the respondent reserved the right to raise further points in the future. It is stated near the start of the document that the respondent reserved the right "to take objection upon such other points as might arise on receipt of further documentation and/or information from the applicant or otherwise", and at point (6) that the respondent relied upon "such further Points of Objection as may be permitted by this Honourable Court". The solicitor for the respondent went on to further point out that in this case additional information was served by the applicant on the 23rd July, 2012 to clarify what she characterised as "discrepancies in the warrant between the charges set out and the circumstances giving rise to those charges." While accepting that this additional information related to a completely different issue to the point which the respondent now wished to ventilate, the solicitor for the respondent was placing reliance on the fact that additional information was "permitted" as she put it, and effectively was seeking to rely upon this as representing some form of precedent in terms of the case and also on the basis that equality of arms required that the respondent should likewise now be permitted to amend her pleadings.

It is convenient to address this part of the submission immediately. To make that argument is to completely misunderstand the nature of the European arrest warrant procedure. The first thing that the respondent's side does not appear to appreciate is that the European arrest warrant procedure is unique. It is not an adversarial proceeding but neither is it a wholly inquisitorial procedure. It is, as the Supreme Court has characterised it, sui generis but it has more in common with an inquiry than with an adversarial procedure. The procedure specifically allows for, and envisages, the introduction of additional information by the Central Authority at any time up to the delivery of judgment, the only qualification, necessarily arising on foot of principles of natural justice, being that a respondent must be afforded a reasonable opportunity of responding to such additional information. This entitlement is an express statutory one arising under s. 20(1) of the Act of 2003 in circumstances where the Court of its own motion decides it needs additional information and requests it; and under s. 20(2) where the Central Authority decides that it should take the initiative in that regard. Indeed, in *Minister for Justice, Equality and Law Reform v. Sliczynski* [2008] IESC 73 (Unreported, Supreme Court, 19th December 2008) the Supreme Court per Murray C.J., (as he then was) made it clear that the High Court shall also receive and take into account additional information supplied by an issuing judicial authority entirely of its own initiative and without any request having been made by it, either by the Court, or by the Central Authority. Accordingly, to attempt to compare the receipt of additional information to a request to amend pleadings and introduce additional grounds of objection is not to compare like with like. It is to compare apples with oranges, and does not represent a valid comparison.

Returning to the submissions of the solicitor for the respondent, she continued that the affidavit of the respondent shows that she first raised the point with her legal advisors in March, 2012. She then referred to para. 10 of Mr. Hanahoe's affidavit where he states:

> "I say that the significance of the issues raised by the respondent herself on the 30th July had not been appreciated or considered by the respondent's legal advisers prior to that date."

She requested that the respondent should not be penalised because it was not raised at an earlier stage by her then legal advisors.

The solicitor for the respondent then referred the Court to the decision of the Supreme Court in *Damache v. Director of Public Prosecutions, Ireland and the Attorney General* [2012] 2 I.L.R.M. 153..

It is important to digress here to outline what the Damache case was about. Serendipitously, it has just been reported in the Irish Law Reports Monthly and the report comes with a headnote which succinctly summarizes the issues that were considered and decided upon in that case. The head note to the I.L.R.M report states:

> "S. 29(1) of the Offences Against the State Act 1939, as inserted by s.5 of the Criminal Law Act 1976, provided as follows:
>
> "Where a member of the Garda Síochána not below the rank of superintendent is satisfied that there is reasonable ground for believing that evidence of or relating to the commission or intended commission of an offence under this Act or the Criminal Law Act, 1976 , or an offence which is for the time being a scheduled offence for the purposes of Part V of this Act, or evidence relating to the commission or intended commission of treason, is to be found in any building or part of a building or in any vehicle, vessel, aircraft or hovercraft or in any other place whatsoever, he may issue to a member of the Garda Síochána not below the rank of sergeant a search warrant under this section in relation to such place."
>
> On March 8, 2010 a detective superintendent involved in the investigation of certain offences suspected to have been committed by the appellant granted to a detective sergeant a search warrant in relation to the appellant's home pursuant to s.29(1) of the 1939 Act , as amended. The warrant was executed on March 9, 2010 and on March 15 the appellant was charged with certain offences. By way of judicial review, the appellant brought an application seeking a declaration that s.29(1) of the 1939 Act , as amended, was contrary to the Constitution on the basis that it permitted a garda who was actively involved in an investigation to determine whether a search warrant should issue in relation to the said investigation. By a decision of May 13, 2011 the High Court (Kearns P.) refused the application ([2011] IEHC 197).
>
> ***Held*** by the Supreme Court (Denham C.J., Murray, Hardiman, Fennelly and Finnegan JJ.) in allowing the appeal and granting a declaration that s.29(1) of the 1939 Act was repugnant to the Constitution:
>
> (1) Although the issuing of a search warrant was an administrative act, it must be exercised judicially and legislation permitting the issuance of a search warrant must be construed strictly. Simple Imports Ltd v Revenue Commissioners [2000] 2 I.R. 243 considered.
>
> (2) The literal interpretation of s.29(1) of the 1939 Act , as amended, did not preclude a superintendent in charge of an investigation from issuing a search warrant in relation to that investigation. People (DPP) v Birney [2007] 1 I.R. 337 affirmed.
>
> (3) It was a well established principle that the person issuing a search warrant should be an independent person. Ryan v O'Callaghan unreported, High Court , Barr J. , July 22, 1987 and Byrne v Grey [1988] I.R. 31 considered.
>
> (4) Entry into a home was at the core of potential State interference with the inviolability of the dwelling. In providing that the dwelling of every citizen is inviolable and shall not be forcibly entered, save in accordance with law, art.40.5 of the Constitution precluded methods of entry which ignored the fundamental norms of the legal order postulated by the Constitution. People (Attorney General) v O'Brien [1965] I.R. 142 , People (Attorney General) v Hogan (1972) 1 Frewen 360 and Director of Public Prosecutions v Dunne [1994] 2 I.R. 537 considered.
>
> (5) Subject to possible exceptions, such as a matter of urgency, the procedure for obtaining a search warrant should adhere to fundamental principles encapsulating an independent decision maker, in a process which may be reviewed. The process should achieve the proportionate balance between the requirements of the common good and the protection of an individual's rights. So as to be able to assess the conflicting interests of the State and the individual in an impartial manner, the person authorising a search warrant should be independent of the issue and act judicially. Camenzind v Switzerland (1997) 28 E.H.R.R. 458 and Hunter v Southam Inc. [1984] 2 S.C.R. 145 considered.
>
> (6) For the purposes of issuing a search warrant, a garda who is part of an investigating team is not an independent person on matters related to the investigation. In permitting a search of the appellant's home on foot of a warrant which was not issued by an independent person, s.29(1) of the 1939 Act , as amended, was repugnant to the Constitution."

Returning again to the submissions of the respondent's solicitor, she makes the point that *Damache* raises an important constitutional point of law in the context of the respondent's case, and that were the Court to refuse her application she would have to take such further steps as she was advised, which might include seeking an inquiry into the lawfulness of her detention under Article 40.4.2 of the Constitution. She relies in particular on the fact that the arresting Garda did not have a domestic search warrant issued by an independent person and obtained on foot of a procedure that adhered to fundamental principles encapsulating an independent decision maker, in a process which may be reviewed. She contends that, in the circumstances, there was a violation of the respondent's dwelling at the time of her arrest in breach of Article 40.6 of the Constitution and accordingly that that arrest was unlawful, that any evidence seized at the time was unlawfully obtained, and that the respondent's subsequent detention was, and continues to be, unlawful.

In response to a challenge from the Court suggesting that the European arrest warrant, having been endorsed by the High Court, provided the arresting Garda with the necessary authorisation, the solicitor for the respondent indicated that she could not agree. She pointed to s. 25 of the Act of 2003 and made various submissions in regard thereto. Before rehearsing these submissions it may be helpful to set out the terms of section 25. The section states:

> "25.—(1) A member of the Garda Síochána, may, for the purposes of performing functions under section 13 or 14, enter any place (if necessary by the use of reasonable force) and search that place, if he or she has reasonable grounds for

believing that a person in respect of whom a European arrest warrant has been issued is to be found at that place.

(2) Where a member of the Garda Síochána enters a place under *subsection* (1), he or she may search that place and any person found at that place, and may seize anything found at that place or anything found in the possession of a person present at that place at the time of the search that the said member believes to be evidence of, or relating to, an offence specified in a European arrest warrant, or to be property obtained or received at any time (whether before or after the passing of this Act) as a result of or in connection with the commission of that offence.

(3) Subject to *subsection.* (4), a member of the Garda Síochána, who has reasonable grounds for believing that evidence of, or relating to, an offence specified in a European arrest warrant, or property obtained or received at any time (whether before or after the passing of this Act) as a result of, or in connection with, the commission of that offence is to be found at any place, may enter that place (if necessary by the use of reasonable force) and search that place and any person found at that place, and may seize anything found at that place or anything found in the possession of a person present at that place at the time of the search that the member believes to be such evidence or property.

(4) (a) A member of the Garda Síochána shall not enter a dwelling under *subsection* (3), other than—

(i) with the consent of the occupier, or

(ii) in accordance with a warrant issued under *paragraph* (b).

(b) On the application of a member of the Garda Síochána, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

(i) evidence of, or relating to, an offence specified in a European arrest warrant, or

(ii) property obtained or received at any time (whether before or after the passing of this Act) as a result of or in connection with the commission of that offence,

is to be found in any dwelling, issue a warrant authorising a named member of the Garda Síochána accompanied by such other members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of the issue of the warrant, to enter the dwelling (if necessary by the use of reasonable force) and search the dwelling and any person found at the dwelling, and a member of the Garda Síochána who enters a dwelling pursuant to such a warrant may seize anything found at the dwelling or anything found in the possession of a person present at the dwelling at the time of the search that the member believes to be such evidence or property.

(5) A member of the Garda Síochána who is performing functions under this section may—

(a) require any person present at the place where the search is carried out to give to the member his or her name and address, and

(b) arrest otherwise than pursuant to a warrant any person who—

(i) obstructs or attempts to obstruct that member in the performance of his or her functions,

(ii) fails to comply with a requirement under *paragraph* (a), or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(6) A person who—

(a) obstructs or attempts to obstruct a member of the Garda Síochána in the performance of his or her functions under this section,

(b) fails to comply with a requirement under *paragraph* (a) of *subsection*.(5), or

(c) gives a false name or address to a member of the Garda Síochána,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000, or to imprisonment for a period not exceeding 6 months, or to both.

(7) In this section "place" includes a ship or other vessel, an aircraft, a railway wagon or other vehicle, and a container used for the transporting of goods."

The solicitor for the respondent submitted that while s. 25(1) and s. 25(2) do authorise a member of An Garda Síochana to enter "any place", the word "place" in those provisions must be construed as not including a dwelling in circumstances where s. 25(4) goes on to grant members of An Garda Síochana an express power to enter a dwelling only in very limited and prescribed circumstances, which did not obtain in this case, and also in circumstances where the word place is defined for the purposes of the section in s. 25(7) as including "a ship or other vessel, an aircraft, a railway wagon or other vehicle, and a container used for the transporting of goods." She submitted that a dwelling is conspicuously absent from the definition of place in s. 25(7).

The solicitor for the respondent also submitted that the court should construe s. 25 strictly, and she cited the case of *Aamand v. Smithwick* [1995] 1 I.L.R.M.61 in support of that.

The Court's attention was also drawn to a passage in the recent text book by Forde & Kelly, *Extradition Law and Transnational Criminal Procedure* suggesting that a domestic search warrant might indeed be required for the entry of a dwelling to effect an arrest on foot of a European arrest warrant and the Court has had regard to that.

In conclusion she submitted that the point which the respondent wished to make was not just an arguable point, but a strong arguable point, and that the interests of justice required that she should be granted the amendment and leave that she was seeking.

Submissions on behalf of the applicant
Counsel for the applicant, Ms. Emily Farrell B.L., commenced by laying emphasis on the fact that the proposed new issue was raised for the first time on the 30th July, that being the Monday of the last week of Trinity term, the day before the last day of the legal year and two days before the commencement of the long vacation. She reminded the Court that I had suggested to senior counsel for the respondent on that occasion, that if he truly believed that his client was in unlawful detention since her arrest in January, 2012 the appropriate step for him to take was for him to apply before another judge of the High Court for relief under Article 40.4.2 of the Constitution. Senior counsel exhibited a marked reluctance to take that step, even though he acknowledged that if the point were to be determined in the context of the case at hearing there would inevitably be significant further delay during which his client would remain in custody (unless she could persuade this Court, or a vacation judge, that there were sufficiently changed circumstances to permit her to be admitted to bail).

Counsel for the applicant then submitted that there is clear Supreme Court authority to the effect that a change in legal team is not good grounds to amend a statement of grounds in a judicial review, and she submitted that an analogous approach was apposite in the proceedings such as the present. The authority referred to was *S.M. v. Minister for Justice, Equality and Law Reform & Ors* (unreported, Supreme Court, McCracken J., 3rd May, 2005). Counsel submitted that Points of Objection in a European arrest warrant case are comparable to a statement of grounds in a judicial review, and more so than to a statement of claim in a civil action. She urged upon the Court that this view had indeed been expressed by my predecessor in this court, Peart J., in the case of *Minister for Justice, Equality and Law Reform v. Skowronski* [2006] IEHC 321 (unreported, High Court, Peart J., 31st October, 2006) and counsel quoted the following passage from the judgment in that case:

> "This Court has said on previous occasions that the purpose of Points of Objection is to put the applicant on notice in a sufficiently precise and clear manner of just what points of objection will be relied upon at the hearing of the application, and that it is not appropriate or sufficient to simply file a document called Points of Objection but which contains to a large extent merely unspecific allegations of non-compliance with various requirements of the European Arrest Warrant Act, 2003 as amended or the Framework Decision. I have noted before that the application for an order under s. 16 of the Act is not to be treated in the same manner as a civil action where very frequently fairly meaningless pleadings are exchanged, on the basis that eventually in replies to particulars some meat so put on the flesh and the other party at last knows what case it has to meet. In such applications, Points of Objection serve the purpose only to put the applicant on notice in a meaningful way of what case is being made to oppose the application. Fair procedures require this, and it must always be remembered that these are not criminal proceedings where the accused is under no obligation to disclose in advance of the trial what his or her defence might be. Rules of procedure have been provided for."

Counsel for the applicant submitted that the Rules of the Superior Courts provide for Points of Objection to be filed within 4 days before the date fixed for the purposes of s. 16 of the Act of 2003. She accepted that the date in question was in practice almost always treated as a notional hearing date only, and that cases are usually adjourned from time to time until a hearing is ready to proceed. She further accepted that the time for filing of Points of Objection was in those circumstances usually extended under O. 122, r.7 of the Rules of the Superior Courts. Nevertheless, she submitted, what the Rules require is that Points of Objection should be filed before the hearing date. In this case the respondent was arrested in January, 2012 and the s.13 hearing took place on the 13th January, 2012. She subsequently changed her Solicitors in early February, 2012. However, no Points of Objection were filed by her first firm of solicitors and so that change of solicitors has no direct bearing on the matter. Time for filing Points of Objection was extended again and again by the Court and eventually Points of Objection were delivered on the 20th June, 2012, by her second firm of solicitors. *The Damache v. Director of Public Prosecutions, Ireland and the Attorney General* [2012] 2 I.L.R.M. 153 decision had been delivered on the 23rd February, 2012, and had received extensive publicity, yet no *Damache* type point was contained within the Points of Objection as filed. Counsel for the applicant submitted that it was significant in that regard that the respondent now claims to have raised the point with her legal advisors in March 2012. Yet her former solicitor contends that the matter was first raised on the 30th July, 2012.

Counsel for the applicant submitted that the amendment and leave being sought should not be allowed in the circumstances. The hearing was for all intents and purposes over, and the Court had been on the point of reserving judgment, when this new issue was raised for the first time. The Rules have not been complied with. The Court should take into account the conflict between the respondent's own late affidavit and the affidavit of her former solicitors. The Court should further take into account that the respondent has already procured significant delays to date by the stratagem of dismissing two previous legal teams. It would only serve to further delay matters to allow a new point to be ventilated at this late stage in circumstances where the point was a bad one and highly likely to be unsuccessful. The attitude of the applicant would be less vehement if there was an ostensible substance to the point being raised, but counsel for the applicant was satisfied, and hoped to be in a position to persuade the Court, that the point was barely arguable and was at any rate so weak that the interests of justice did not require the making of the amendment, and the granting of the leave, now being sought.

Counsel for the applicant then turned to the merits of the point being canvassed, submitting that the strength, or otherwise, of that point was a very material factor that the court should take into account.

Counsel for the applicant urged upon the Court that the respondent was not arrested otherwise than in accordance with law. She was arrested under s. 13(3) of the Act of 2003, which provides that the European arrest warrant, which had been endorsed by the High Court *"may .... be executed by any member of the Garda Síochána in any part of the State…."*.

Section 25 of the Act of 2003 provides for entry into *"any place"* for the purposes of effecting an arrest under s. 13 or 14 of that Act. In addition, s. 25(3) provides for the entry into *"any place"* for the purposes of searching it, to obtain evidence of, or relating to the commission of an offence specified in a European arrest warrant, or property obtained as a result of, or in connection with that offence. Section 25(3) is expressly subject to the limitation contained in s. 25(4), that a member of An Garda Síochána shall not enter *"a dwelling"* under s. 25(3) without the consent of the occupier or in accordance with a warrant issued by the District Court.

Counsel for the applicant submitted that the plain and ordinary meaning of ss. 13(3) and 25(1) permit the entry into any place within the State for the purposes of executing a European arrest warrant and that the term "any place" does not exclude a dwelling from the definition thereof. Such entry may take place by the use of reasonable force, if necessary. She further submitted that it is clear that the Oireachtas intended to restrict the power to enter a dwelling for the purposes of *obtaining evidence rather than arresting* a person under s. 13 or 14 and that this was done expressly by the clear words of s. 25(3) and (4). Section 25(4) clearly indicates that the Oireachtas intended to include a dwelling in the interpretation of *"any place"* in section 25. A warrant may be issued under s. 25(4)(b) where the District Judge is satisfied that there are reasonable grounds for believing that relevant evidence or property is to be found in the dwelling in question.

Counsel for the applicant further submitted that to interpret s. 25 as excluding the power to enter a dwelling for the purposes of

executing a European arrest warrant would be to interpret that section in a perverse or absurd manner. Such an interpretation would fly in the face of the words used therein, which words are clear and unambiguous, and the clear intention of the Oireachtas.

The Court's Decision
The Court agrees with counsel for the applicant that Points of Objection in a European arrest warrant case should be treated as being more akin to a statement of grounds or points of opposition in a judicial review, than to a statement of claim, or a defence, in a civil action. As has been pointed out, that was also the view of Peart J in *Skowronski,* and I see no reason to deviate from it.

The Court has considered the submissions by both parties' legal representatives and considers that it must refuse the application for the following reasons. The new point that the respondent now seeks to argue was not raised and pleaded at the appropriate time in accordance with the Rules of the Superior Courts. While the Court has power, in the exercise of its discretion, to overlook that if the interests of justice require it, the Court is not satisfied that the interests of justice require the granting of the amendment and leave being sought in the circumstances of this case. While not wishing to express a definitive view on the issue, in circumstances where the matter has not been fully argued before me at a surrender hearing on the basis of a formal Point of Objection made in time, and properly pleaded in accordance with the Rules, the Court is nonetheless satisfied, based upon the necessarily limited argument that it has heard in the context of hearing this motion, that the new point, to the extent that it is stateable at all, is very weak and would have poor prospects of success if permitted to proceed. The Court has carefully considered s.25, both in its own stead and in the context of the Act of 2003 as a whole, and has applied to it the long established rules of statutory construction, and I am satisfied that, even giving to it the strict construction that the solicitor for the respondent submits I should give to it, it is clear and unambiguous in its terms. It seems to the Court to clearly bear the construction contended for by counsel for the applicant.

In particular, s.25 (4) makes it clear that "any place" can include a dwelling. There is nothing to suggest that the words "any place" as used in s.25(3) (to which s. 25(4) is referable and must be read in conjunction) are to bear a different meaning to the same words when used in s. 25(1) and s.25(2) respectively. Moreover, the definition of "place" in s. 25(7) says that it "includes" a ship or other vessel, an aircraft, a railway wagon or other vehicle, and a container used for the transporting of goods. The purpose of s.25 (7) is quite clear. The concept of a place in normal parlance imports a fixed location or an immovable structure, such as land or buildings. Vehicles or vessels are normally spoken of as being in or at a particular place but are not normally spoken of as constituting a place in themselves. The purpose of s.25(7) is clearly to indicate, for the avoidance of doubt, that for the purposes of s. 25 a "place" includes a ship or other vessel, an aircraft, a railway wagon or other vehicle, and a container used for the transporting of goods.

The Court has also taken into account the manner in which these proceedings have been conducted to date. The respondent, who is in ill health and remains in custody, and about whose welfare the Court has expressed genuine concern, has resisted every offer made to her to expedite a hearing of her case. Moreover she has sacked her legal team, twice. The Court will decline to express any view as to whether these changes of legal representation were strategic, and an effort to frustrate the Court's mandate under the Framework Decision to deal with cases such as this expeditiously, so as to seek to put off the evil day, so to speak. Nevertheless, it remains the fact that she has, by her conduct in these proceedings, strategic or not, already succeeded in delaying the bringing of these proceedings to a conclusion to a significant extent, and the Court was not therefore disposed to lightly contemplate a situation that would inevitably give rise to yet further delay.

For all of these reasons the Court did not consider that the interests of justice required the granting of the relief sought, and the Court therefore refused the application.