Neutral Citation Number: [2011] IEHC 106

THE HIGH COURT

2009 120 EXT

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

BETWEEN/

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

- AND -

WOJCIECH PAWEL CIECHANOWICZ

RESPONDENT

JUDGMENT of Mr Justice John Edwards delivered on the 18th day of March 2011

Introduction:
The respondent is the subject of a European Arrest Warrant issued by the Republic of Poland on the 29h of April, 2009. The warrant was endorsed for execution by the High Court in this jurisdiction on the 13th of May, 2009. The respondent was arrested at the District Courthouse, Kilcock, Co Kildare on the 29th of January 2010 but does not consent to his surrender to the Republic of Poland. Accordingly, this Court is now being asked by the applicant to make an Order pursuant to s. 16 of the European Arrest Warrant Act, 2003 as amended (hereinafter referred to as "the 2003 Act") directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether it is appropriate to do so having regard to the terms of s.16 of the 2003 Act.

In that regard the respondent has put the applicant on full proof as regards the requirements of s. 16 aforesaid. In addition the Court is required to consider in the particular circumstances of this case three specific objections to the respondent's surrender, namely:

> (i) whether, the requirements s. 10 (d) of the 2003 Act (as it was prior to the amendments effected by the Criminal Justice (Miscellaneous Provisions) Act, 2009) have been satisfied;
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> (ii) whether the respondent's surrender is prohibited by s. 45 of the 2003 Act in circumstances where he alleges that a hearing at which the suspension of sentences that had been imposed upon him was revoked, and for which hearing he claims not to have been present, constituted a trial of him in absentia;
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> (iii) whether the surrender of the respondent would be incompatible with the State's obligations under the European Convention on Human Rights, in particular the right to respect for his private and family life under Article 8.

Uncontroversial s. 16 issues
The applicant has been put on full proof by the respondent. Accordingly, as no admissions have been made, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied.

The Court has received an affidavit of Detective Sergeant Aidan Hannon sworn on the 8th of March, 2010 and has also received and scrutinised a copy of the European Arrest Warrant in this case. Moreover the Court has also inspected the original European Arrest Warrant which is on the Court's file and which bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

> (a) the person before it is the person in respect of whom the European arrest warrant was issued;
>
> (b) the European arrest warrant has been endorsed for execution in accordance with s. 13 of the 2003 Act;
>
> (c) the High Court is not required, under s. 21A, 22, 23, or 24 (inserted by ss 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005), to refuse to surrender the respondent under the 2003 Act.

The warrant is a sentence type warrant and the respondent is wanted in the Republic of Poland to serve outstanding sentences in respect of eight offences (particularised in the warrant with reference to four prosecution file reference numbers, namely file VI K 1261/04; file II K 61/04, file II K 10/05 and file II K 43/05) imposed upon him on various dates by the Regional Court in Glogów between January 2005 and March 2005. The sentences imposed and the periods remaining to be served were as follows:

> File VI K 1261/04 – 1 year imposed with 1 year remaining to be served;
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> File II K 61/04 – 1 year and 2 months imposed with 1 year, 1 month and 28 days remaining to be served;
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> File II K 10/05 – 8 months imposed with 8 months remaining to be served;
>
> File II K 43/05 – 10 months imposed with 10 months remaining to be served.

The Court is further satisfied that the European Arrest Warrant in this case is in the correct form, and that the requirements of the statute with respect to correspondence and minimum gravity are met. Although a specific objection based upon an alleged lack of

correspondence is pleaded in the respondent's points of objection this was not proceeded with at the hearing, the respondent being content to leave it on the basis that correspondence is not conceded and the applicant is therefore put on proof of correspondence. Counsel for the applicant, Ms Siobhàn Stack, sought in each instance to demonstrate correspondence with particular offences in this jurisdiction, and has satisfied this Court accordingly. Nevertheless it is appropriate in the circumstances of the case that the Court should indicate the basis on which it is satisfied as to correspondence.

File VI K 1261/04 relates to one offence corresponding to the offence of burglary in this jurisdiction. File II K 61/04 relates to two offences corresponding to assault causing harm contrary to s.3 of the Non Fatal Offences Against the Person Act, 1997, and robbery contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, respectively. File II K 10/05 relates to three offences corresponding to coercion contrary to s.9 of the Non Fatal Offences Against the Person Act, 1997; making a false report contrary to s. 12 of the Criminal Law Act, 1976; and perjury contrary to common law / alternatively making a false report contrary to s. 12 of the Criminal Law Act, 1976, respectively. File II K 43/05 relates to two offences each corresponding to theft contrary to s.4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

In addition the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No 3) Order 2004, S.I. 206/2004 (hereinafter referred to as "the 2004 Designation Order"), and duly notes that by a combination of s 3(1) of the 2003 Act, and article 2 of, and the Schedule to, the 2004 Designation Order, "Poland" (or more correctly the Republic of Poland) is designated for the purposes of the 2003 Act as being a state that has under its national law given effect to the Framework Decision.

The initial evidence adduced by the respondent
The respondent has filed an affidavit sworn by him on the 31st of January 2011. He states the following at paragraphs 7 – 11 inclusive, and at paragraphs 13 – 14 inclusive:

> "7. While I cannot remember the precise dates at this juncture I did appear before the Regional Court in Glogów in respect of the various offences set out in the European arrest warrant. In respect of the offence as the subject matter of file VI K 1261/04; file II K 61/04, file II K 10/05 and file II K 43/05 I received suspended sentences. In each case the period of deprivation of freedom which ranged from eight months to one year and two months was suspended in its entirety. I was, as a condition of the suspension, required to meet with a probation officer occasionally. Prior to my departure from Poland, I complied with this condition by meeting the probation officer. To the best of my knowledge, it was not a condition of the suspended sentence that I remain in Poland. As far as I was aware, that was absolutely no restriction on my right to travel and I was free to leave Poland.
>
> 8. Following the imposition of the suspended sentences, I was anxious to make a fresh start. I decided to leave Poland to find employment and establish a better life for myself. At that time, prospects in Ireland were good and I decided to come to this jurisdiction. I wish to reiterate in coming here, I was not seeking to evade justice or avoid any criminal proceedings in Poland. As far as I was concerned I had received my punishment for the offences for which was convicted and matters were at an end. I was young and anxious for a fresh start in a new place. I travelled to Ireland from Poland using my national identification card. I arrived in this jurisdiction on the 17th of November 2005. Since that date, I have lived openly and never sought to conceal my identity.
>
> 9. When I first came to Ireland I resided with friends in Dublin nine and I worked as a security officer in Golden discs in Henry Street, Dublin 1 for the Christmas period. I then moved to Celtic hostel in Upper Gardiner Street and I started working there as a handyman and I stayed and worked there for approximately 4 months. I met my partner Abigail Oyewole in March 2006 when I was living and working in Celtic hostel. I then left this employment and I started working in a central heating company based in Dublin and I then moved to Balbriggan, Co Dublin. I moved in with Abigail in or around September 2006 and we lived in Balbriggan for several months. We then moved to Navan County Meath and my daughter, Naomi Ciechanowicz was born on the 4th of October 2007. We lived at 81 Limekiln Woods in Navan until April 2009 and I worked for MCR building as a general labourer. In addition to this employment, I also worked as an insurance salesman with Combined Insurance Company for approximately 6 months. I then left this employment and started working in Fone Menders as a technician in or about October of 2009 and I worked there until the end of May 2010 when I was let go due to my incarceration. I applied for social welfare when I was in between jobs on three occasions and received same for approximately 3 weeks at a time on these occasions.
>
> 10. I only became aware that the suspended sentences had been reactivated when I was arrested on foot of the European Arrest Warrant as mentioned above.
>
> 11. I was very surprised to learn that the sentences had been reactivated. To this day, I am not entirely sure why this was so. I was not aware that the cases had been re-entered before the court. I was not present at the hearings nor was I represented. In so far as I am aware, if I am surrendered I will not be entitled to a rehearing in respect of the sentences."
>
> "13. Prior to going into prison I was caring for and supporting my young daughter. I was playing a very active role in her life's hand, despite my incarceration I have continued to do so. She is an Irish citizen. I am very concerned that if I am surrendered to Poland I will not get to see my daughter. I am extremely concerned that I will lose all contact with and might never see her again due to the fact that if I am incarcerated in Poland that my relationship with her mother will break down and I will therefore lose contact with my daughter.
>
> !4. I do not understand why the European arrest warrant will be issued on the 28th of April 2009 if I had been declared wanted by the Regional Court in Glogów as far back as February 2006. In this period, I have established a family and attempted to move on with my life."

Additional information from the issuing judicial authority.
At this Court's request made on the 4th of February 2011, additional information was requested by the Irish Central Authority from the issuing judicial authority concerning the circumstances of the respondent's case and in particular concerning the circumstances in which his suspended sentences were revoked. The request for additional information was transmitted on the 8th of February 2011 and the following information from the Regional Court in Glogów was received by the Irish Central Authority under cover of a letter dated the 16th of February 2011 from the issuing judicial authority, namely the District Court in Legnica, III Criminal Department.

"**Case file No II K 61/04**

Wojciech Ciechanowicz was sentenced by a judgment passed by Regional Court in Glog6w, case file No. II K 61/04, on 23rd February 2004 for offences provided in article 158§1 of the penal code and article 157§1 of the penal code in relation to article 11 §2 of the penal code and article 280§ 1 of the penal code in relation to article 283 § 1 of the penal code to an aggregate penalty of 1 year and 2 months imprisonment. Execution of the said penalty was suspended conditionally for a probation period of 3 years. At the same time the convicted person was put on supervision to be carried out by a court probation officer. Also, the civil complaint was allowed partially.

Wojciech Ciechanowicz committed successive intentional offences during the probation period, which offences were similar to those for which he had been sentenced - this was established based on information provided by the court probation officer and a copy of the sentence. The Court ordered execution of the conditionally suspended penalty of 1 year and 2 months imprisonment by a judicial decision made on 20th October 2005 due to infringement of the legal order during the probation period. The said judicial decision became final on 14th November 2005.

Wojciech Ciechanowicz participated in the court proceedings and he was present when the judgment was pronounced. After pronouncement of the judgment, the convicted person was in Poland and kept contact with his court probation officer. He also was summoned effectively to appear before the Court in the fixed date in a session to order execution of the suspended penalty - he received the summons personally, however he did not appear before the Court in the fixed date. The judicial decision ordering execution of the suspended penalty was delivered to him at his home address. The convicted person appealed against the said judicial decision but he did it after the time limit applicable to appealing against the judicial decision, therefore the appeal was rejected and the convicted person was called to appear in the penal institution.

The convicted person has not contacted the Court and the court probation officer in any manner since that time. He has not informed the Court and the court probation officer of a change of his place of residence (it was his obligation to do so), and correspondence sent. to his last known address has not been collected by him. Because the convicted person was aware of necessity of serving the penalty and did not appear in the penal institution and the decision on bringing him by the police was ineffective (in spite of searching of premises), the Court made a decision on seeking of the convicted person by wanted notice on 28th February 2006. Wojciech Ciechanowicz was sought in the territory of Poland. Upon information from police on 27th February 2009 stating that Wojciech Ciechanowicz was in England probably, steps were undertaken to issue a European Arrest Warrant.

Wojciech Ciechanowicz undertook activities through his defence counsel only on 9th February 2010 - that day the convicted person's defence counsel lodged a motion for the penalty of imprisonment to be postponed. The motion was not accepted. The judicial decision concerning this issue is still valid."

"**Case file No. VI K 1216/04**

Wojciech Ciechanowicz was found guilty of committing the offence provided in article 279§ 1 of the penal code by a judgment passed by Regional Court in Glog6w, case file No. VI K 1216/04, on 21st January 2005 and sentenced to a penalty of 1 year imprisonment.

Pursuant to article 69§ 1 and §2 of the penal code, article 70§2 of the penal code and article 73§2 of the penal code, the Court suspended conditionally the execution of the penalty of 1 year imprisonment for a probation period of 3 years and put him on supervision to be carried out by a court probation officer.

The said sentence was passed upon motion of the Public Prosecutor of the Regional Prosecutor's Office in Glog6w lodged pursuant to article 335§ 1 of the penal procedure code, and the very accused person was informed properly of the date of the court session. He did not appear before the Court in the fixed date and did not inform the Court of withdrawal of his consent to the penalty proposed in the said motion.

The judgment in case file No. VIK 1216/04 became final on• 28th January 2005, and the probation period was to expire on 2Sth January 200S.

A copy of the sentence attached to a head letter of 9th March 2005 was sent to the court probation officer of Regional Court in Glog6w in order the convicted person could be put on supervision.

Putting the convicted person on supervision to be carried out by the court probation officer occurred to be impossible because the convicted person had changed his place of residence and not informed the Court and the court probation officer of it.

In such a situation, the court probation officer delivered the Court a motion for ordering Wojciech Ciechanowicz to serve the sentenced penalty of imprisonment because of his failure to comply with requirements resulting from the sentence.

The Court fixed a date for the session to examine the said motion. A summons to appear before the court in the fixed date was delivered to the convicted person effectively, but he did not appear before the court on the fixed day.

Therefore, due to apparent convicted person's evasion of supervision to be carried out by the court probation officer, the Court made ajudicia1 decision on 20th March 2006, case file No. VI Ko 101/06, ordering the convicted person to serve the conditionally suspended penalty of 1 year imprisonment.

An attempt to serve a copy of the judicial decision to the convicted person together with an instruction personally occurred to be ineffective, and the judicial decision of case file No. VI Ko 101106 became final on 21st April 2006.

It was not able to implement the described above penalty of imprisonment due to a lack of any information on a place of stay of the convicted person. Therefore, his seeking by wanted notice was decided on 7th July 2006. He was sought in the territory of the country by police.

The first information on a probable residence abroad of the concerned convicted person occurred only on 25th March 2009 when Regional Court in Glog6w was informed in writing that the convicted person had resided probably in England for

two years, by District Prosecutors' Office in Legnica.

Pursuant to the procedure applicable that time, the Court applied through District Prosecutors' Office in Legnica for issue of a EA W.

By a judicial decision passed on 28th April 2009, case file No. III Kop 34/09, District Court in Legnica issued a EAW with regard to Wojciech Ciechanowicz. Upon analyzing the dossier of all executory proceedings it is stated that Wojciech Ciechanowicz did not contact police, the court probation officer and the court in any way in order to inform of his place of residence or to justify his way of conduct.

On 9th February 2010, Regional Court of Glog6w received a motion for the penalty of imprisonment to be postponed lodged by the convicted person's defence counsel.

The Court did not accept the said motion due to the attitude of the convicted person by a judicial decision made on 7th March 2010, case file No. II Ko 373/10.

This judicial decision was appealed, but District Court in Legnica upheld it on 23rd June 2010 in case file No. IV Kzw 301/10."

"**Case file No. II K 10/05**

Regional Court in Glog6w found Wojciech Ciechanowicz guilty of committing the offences by a judgment passed on 17th March 2005, case file No. II K 10/05, and convicted him as follows:

1. article 191 § 1 of the penal code - to a penalty of 3 months imprisonment,

2. article 233§1 of the penal code in relation to article 11§3 of the penal code - to a penalty of 6 months imprisonment,

3. article 233 § 1 of the penal code in relation to article 11 §3 of the penal code - to a penalty of 8 months imprisonment,

Pursuant to article 85 of the penal code and article 86§ 1 of the penal code, the Court sentenced Wojciech Ciechanowicz to an aggregate penalty of 8 months imprisonment.

Pursuant to article 69§ 1 and §2 of the penal code, article 70§2 of the penal code and article 73§2 of the penal code, the Court suspended conditionally the execution of the said aggregate penalty of 8 months imprisonment for a probation period of 3 years and put him on supervision to be carried out by a court probation officer.

Wojciech Ciechanowski participated in person in a trial on 17th March 2005, and he appealed against the judgment in case of file No. II K 10/05 to District Court in Legnica.

District Court in Legnicaup held the appealed judgment passing a judgment on 21st July 2005, case file No. IV Ka 349/05.

The judgment in case file No. II K 10/05 became final on 21st July 2005, and the probation period was to expire on 21st July 2008.

A copy of the sentence attached to a head letter of 22nd August 2005 was sent to the court probation officer of Regional Court in Glog6w in order the convicted person could be put on supervision.

Putting the convicted person on supervision to be carried out by the court probation officer occurred to be impossible because the convicted person had changed his place of residence and not informed the Court and the court probation officer of it.

In such a situation, the court probation officer delivered the Court a motion for ordering Wojciech Ciechanowicz to serve the sentenced penalty of imprisonment because of his failure to comply with requirements resulting from the sentence.

The Court fixed a date for the session to examine the said motion.

Attempts to serve the convicted person a summons by police occurred to be ineffective. He did not stay under address he had indicated himself, and another address was unknown. He did not try to inform the Court, the court probation officer and police of his place of residence.

Therefore, due to apparent convicted person's evasion of supervision to be carried out by the court probation officer, the Court made a judicial decision on 21st March 2006, case file No: VI Ko 74/06, ordering the convicted person to serve the conditionally suspended aggregate penalty of 8 months imprisonment.

An attempt to serve a copy of the judicial decision to the convicted person together with an instruction personally occurred to be ineffective, and the judicial decision of case file No. II Ko 74/06 became final on 11th April 2006.

It was not able to implement the described above penalty of imprisonment due to a lack of any information on a place of stay of the convicted person. Therefore, his seeking by wanted notice was decided. He was sought in the territory of the country by police.

The first information on a probable residence abroad of the concerned convicted person occurred only on27th February 2009. Police established that the convicted person had resided probably in England for two years.

Pursuant to the procedure applicable that time, the Court applied through District Prosecutors' Office in Legnica for issue of a EA W.

By a judicial decision passed on 28th April 2009, case file No. III Kop 34/09, District Court in Legnica issued a EAW with regard to Wojciech Pawel Ciechanowicz. Upon analyzing the dossier of all executory proceedings it is stated that Wojciech Ciechanowicz did not contact police, the court probation officer and the court in any way in order to inform of his place of residence or to justify his way of conduct.

On 9th February 2010, Regional Court of Glog6w received a motion for the penalty of imprisonment to be postponed lodged by the convicted person's defence counsel.

The Court did not accept the said motion due to the attitude of the convicted person by a judicial decision made on 7th March 2010, case file No. II Ko 376/10.

This judicial decision was appealed, but District Court in Legnica upheld it on 23rd June 2010 in case file No. IV Kzw 301/10."

"**Case file No. II K 43/05**

Wojciech Ciechanowicz was sentenced by a judgment passed by Regional Court in Glog6w, case file No. II K 43/05, on 1st March 2005 for offences provided in article 278§ 1 of the penal code in relation to article 91 § 1 of the penal code to a penalty of 10 months imprisonment. Execution of the said penalty was suspended conditionally for a probation period of 3 years. At the same time the convicted person was put on supervision to be carried out by a court probation officer.

The convicted person did not stay in his permanent address and did not inform his court probation officer of his present place of residence. Due to evasion of supervision to be carried out by the court probation officer, the Court ordered execution of the conditionally suspended penalty of 10 months imprisonment passing a judicial decision on 21st March 2006. The said judicial decision became final on 11th April 2006.

Wojciech Ciechanowicz participated in the court proceedings and he was present when the judgment was pronounced. However, after pronouncement of the judgment, the convicted person evaded contacting his court probation officer and did not indicate his place of residence. He was summoned properly to appear before the Court in a fixed date in a session to order execution of the suspended penalty - however he did not collect the summons *from* the post office and did not appear before the Court in the fixed date. The judicial decision on execution of the suspended penalty was delivered to him at his home address and it was recognized as delivered effectively pursuant to article 139 of the penal procedure code.

Wojciech Ciechanowicz has not contacted the Court and the court probation officer in any manner since the time when the judgment became valid. He has not informed the Court and the court probation officer of a change of his place of residence (it was his obligation to do so), and correspondence sent to his last known address has not been collected by him. Because the convicted person was aware of necessity of serving the penalty and did not appear in the penal institution and the decision on bringing him by the-police was ineffective, the Court made a decision on seeking of the convicted person by wanted notice on 8th June 2006. Wojciech Ciechanowicz was sought in the territory of Poland. Upon information from police on 27 th February 2009 stating that Wojciech Ciechanowicz was in England probably, steps were undertaken to issue a European Arrest Warrant.

Wojciech Ciechanowicz undertook activities through his defence counsel only on 9th February 2010 - that day the convicted person's defence counsel lodged a motion for the penalty of imprisonment to be postponed. The motion was not accepted. The judicial decision concerning this issue is still valid."

Further evidence adduced by the respondent

The respondent sought, and was granted, leave to file a further affidavit for the purposes of responding to the additional information supplied by the issuing judicial authority. Pursuant to such leave he then filed an affidavit sworn by him on the 1st of March 2011. He says the following at paragraphs 3 to 12 inclusive, and at paragraphs 15 & 16 thereof:

"3. As I set out in paragraph 9 of my previous affidavit, I have settled in Ireland with my partner Abigail and we had a child, Naomi, who is now three years of age. We are engaged to marry. We are due to marry on April 11th in Navan. I do not have any documentation to corroborate the fact that marriage arrangements are in place but will obtain them if required stop

4. If I am surrendered to Poland it will be difficult for me to see my family. My fiance is a South African National. She must therefore apply for a visa to visit Poland. She has visited Poland before. We applied for a visa for three months. Eventually a visa was granted for three days. This took a lot of effort on her behalf and from my father in Poland. The visa took over two months to obtain. Abigail has three other children and I am no longer in a position to finance such a visit. I am therefore very worried that my surrender to Poland will have a serious effect on my family life.

5. As stated in the additional information (at page 2, paragraph 3) I liaised with my probation officer is required by the court in Poland. I cannot recall the name of the probation officer. He was in his 30s and had short brown hair. My mother, on my behalf, has made many enquiries to discover his name to no avail. My mother tells me that he no longer works at the office of the probation service and his identity could not be established by on her visit to that office.

6. In the additional information it is stated that (in relation to cases numbered VI K 1261/04, file II K 10/05 and file II K 43/05) I did not liaise with the court probation officer. However it is stated that (in relation to case numbered II K 61/04,) that I did liaise "... and kept contact with his court probation officer". I'm not aware of the different probation officer was assigned in relation to the other cases but I always complied with the requirements to liaise with my probation officer at all times.

7. The contacts with the probation officer took the form of his visits to the family home. He would sometimes indicate this in advance by putting a note in the door indicating the date and time he would call in. This enabled me to make sure I was present when he called, which I always was. For the first six months of my probation supervision, he called in approximately once a month. After that his visits were less frequent. I was always present for his visits. His first visit was a few weeks after I was placed on probation supervision.

8. I was due to pay an amount of 500 Polish Zloty (about €125) by way of compensation to the injured party in case. The amount was paid in instalments of 50 Zloty. The instalments were paid by deposit in the Post Office. The probation officer and monitored this and I showed him receipts for the lodgments as they were made.

9. I was living in the family home with my parents and my brother. The address is Poland 67-200 Glowgów, Serby ul., Kwiatowa 30. In May 2005, I managed to secure the promise of work in construction in the nearby town of Wroclaw for the summer. I discussed this with the probation officer in advance of going. As I had no money to pay the compensation, I proposed this as a possibility to raise the money to complete the compensation. He agreed with this proposal and approved it.

10. I then worked in Wroclaw for a month or two as agreed with the probation officer. This was in summer 2005. I did not have an address in Wroclaw as I was living in temporary accommodation on the building site where I worked. I then returned to the family home. On a further visit by the probation officer in late 2005, I showed him a receipt for the final instalment of the compensation money.

11. In late 2005, I had finished my studies but was unable to find further work. My father was not happy with me not working and being idle in the family home. I was anxious to make a new start. I had met a girl who told me of the possibility of work in Ireland. She had a friend who worked in Smithfield in Dublin and would be able to help me replace him in his job. My father obtained for me a one-way ticket to Ireland and €80 cash.

12. Before leaving for Ireland, I met with my probation officer to discuss the matter and obtain his approval. As always, we met in the family home. I told him of my proposed immigration to Ireland and showed him the ticket. He made enquiries with my neighbours and with my mother to see if I was remaining out of trouble, which I was. He then had a private discussion with my parents. I was asked to leave the room for this. After this meeting the probation officer emerged and wished me luck and bid me goodbye. I left Poland soon thereafter in November 2005. I returned to Poland to visit sometime in 2006. I spoke with my mother then and she told me there were no letters or messages for me. At all times I travelled openly using my Polish national identification card."

"15 In the additional information references are made to be travelling to England and residing there (at page 2, paragraph 3, page 4, paragraph 2, page 6 paragraph 4, page 7, paragraph 4). I was in England once on a school trip when I was 12 years old. I have not been there since.

16. I was never present for an application to revoke any of the suspended sentences imposed on me. I was never put on notice of any such application nor was I aware of them at all until I was arrested on foot of the European Arrest Warrant in January 2010. I did not receive any summons to appear. I was not aware of the necessity of serving the penal sentence as stated in the additional information."

The main controversies

Alleged non- satisfaction of s. 10 criteria – the "no flight" contention.
This is a case to which s.10 of the 2003 Act it was prior to the amendment effected by s. 6 of the Criminal Justice (Miscellaneous Provisions) Act, 2009 applies. Prior to the relevant amendment s. 10 of the 2003 Act (as substituted by s.71 of the Criminal Justice (Terrorist Offences) Act, 2005) provided (to the extent relevant):

"10.—Where a judicial authority in an issuing state duly issues a European arrest warrant in respect of a person—

(a) ….

(b) ….

(c) ….

(d) on whom a sentence of imprisonment or detention has been imposed in respect of an offence to which the European arrest warrant relates, and who fled from the issuing state before he or she—

(i) commenced serving that sentence, or

(ii) completed serving that sentence,

that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state.".

It has been argued by the respondent that before he can be surrendered to the issuing state this Court must be satisfied that he "fled" Poland before commencing, alternatively before completing, the sentences variously imposed upon him for the offences to which the warrant relates. The respondent contends that he did not flee. The applicant does not disagree that the Court must be satisfied as to flight.

Both the applicant and the respondent have referred the Court to, and rely upon, the decision of the Supreme Court in *Minister for Justice, Equality & Law Reform v Tobin* [2008] 4 I.R. 42. In his judgment in that case Fennelly J (*nem diss),* upholding the conclusion of Peart J in the High Court that it would do violence to language to interpret the word "fled" in s. 10 (d) as meaning simply "left" so as "to cover persons such as the respondent in that case who did not flee within the meaning normally attributed to that word, and who left legitimately having availed of a procedure in place to deal with just such a departure …", stated :

"34. 'Fleeing' necessarily implies escape, haste, evasion, the notion of movement away from a pursuer. Nothing in citations from the Oxford Dictionary suggests otherwise. *The Shorter Oxford Dictionary on Historical Principles* (3rd ed.) provides the following four meanings:-

1. to run away from or as from danger; to take flight;

2. to withdraw hastily, take oneself off, go away …

3. to make one's escape …;

4. to disappear, vanish …

35. Peart J. also considered the Irish version, not of the Act, but of the framework decision. Since the word is the same, it is of some interest to note his citation from Dineen's *Irish - English Dictionary* of 1927 to show that the phrase, 'ar a dteitheadh' means 'on the run' and 'avoiding arrest'.

36. The respondent's leaving of Hungary could not reasonably be described as 'fleeing' or 'flight' in accordance with any generally understood meaning of the word. I agree with Peart J. that to apply the term to the actions of the respondent in the present case would do violence to language."

The applicant further relies upon the decision of the Supreme Court in *Minister for Justice, Equality & Law Reform v Stankiewicz* [2009] IESC 79. Giving judgment in that case Geoghegan J (*nem diss*) cited with approval the following passage from the Supreme Court judgment of Macken J (with whom Murray C.J. agreed in a separate judgment, and Finnegan J concurred) in *Minister for Justice, Equality & Law Reform v Sliczynski* [2008] IESC 73. Macken J had stated:

"All of the factors germane to whether a person can be said to have fled must be taken into account. That includes the motivation of the person sought to be returned to the requesting Member State, which is almost inevitably likely to be a subjective motivation. So also the court must take into account other material factors, such as whether the sentence was suspended, and where the suspension of the sentence was subject to terms, whether those terms were known to the convicted person and whether those terms were complied with. It is telling to recall that the appellant admits he was convicted and sentenced on the first three charges in his presence, and has not challenged the content of the letters exhibited in Mr. Doyle's affidavit. He must therefore be understood to have known and appreciated the significance of the terms attaching to the suspension of those sentences.

The court then must determine whether, objectively speaking, bearing in mind all of these factors, it can be reasonably concluded that the appellant "fled" within the meaning of the subjection. If it were the case that the subjective motivation, as averred to on affidavit, had to be accepted as being conclusive of the question whether a person fled within the meaning of the section, it seems to me that this would always or almost always "trump" any information or material factor presented to the Court and upon which it could be objectively found that a person had fled the requesting state. In the present case, it was a term of the suspension – not denied by the appellant – that he would reside at a particular place, would notify the probation officers or responsible authority of his whereabouts and, in particular, would notify it of any intention to leave Poland. It is axiomatic that if the terms and conditions of a suspended sentence are not met, there is a likelihood of the suspensions being lifted and the sentences having to be served."

Ms Siobhan Stack B.L., representing the applicant, points to the application of those principles by Geoghegan J in *Stankiewicz* and she places reliance upon certain remarks made and conclusions drawn by him in the circumstances of that case, viz:

"Put simply when the appellant departed for Ireland in March 2005 he had already committed the later offence. That meant that at the very least he was in potential danger of the suspensions in relation to the earlier offences being lifted. He would have known that he would have to be notified of any applications to have that done. But equally he knew that he had to give the authorities an address for service of documents which indeed he did. He must be taken to have known or ought to have known that under Polish law any such proceedings against him would go ahead in his absence if he did not appear. Irrespective therefore of whether he authorised the lawyer who did in fact appear for him or not, in my view, by not ensuring he would receive the notifications, he must be taken to have been evading justice. As has been pointed out in the judgments he cannot simply make assertions of innocence. There would be a heavy onus of proof on him which of course was discharged by Mr Tobin in his case."

Reliance is specifically placed on Geoghegan J's finding that the fact that Mr Stankiewicz committed an offence subsequent to the offences for which he had received suspended sentences "*meant that at the very least he was in potential danger of the suspensions in relation to the earlier offences being lifted*", and further that as a result of that he must have known, or be taken to have known, certain things. This Court is now invited to reach similar conclusions in the circumstances of the present case.

While I have no difficulty with the idea that this Court is bound as a matter of law to adopt the approach advocated by Macken J, I have some difficulty with the submission by Ms Stack, presented in the course of her legal argument, to the effect that the Court can attach significance to what were, at the end of the day, findings of fact in the *Stankiewicz* case. She places particular reliance upon Geoghegan J's acknowledgment in that case that where a person is the subject of a suspended sentence imposed by a Polish Court, and that person has committed another offence, then under Polish law it is at least possible (and perhaps it may even be mandatory) that the suspension of the earlier sentence will be revoked. That may well be the case, but having regard to Macken J's judgment *(nem diss*) in the Supreme Court in *Minister for Justice, Equality & Law Reform v Slonski* [2010] IESC 19, I believe it is still necessary for the Court to receive either direct evidence of that fact, or sufficient indirect or circumstantial evidence to allow it to draw an inference that that is the case. The same is true with respect to the establishment of matters such as the conditions upon which a respondent's sentence has been suspended; the reasons for revocation in the particular case; whether a respondent was free to leave the country; or whether he was obliged to stay in touch with, or be available to, the Court, or the prosecuting authorities, or a probation officer. The matters I have mentioned are intended to merely illustrate the Court's point and are not to be taken as constituting an exhaustive list. The evidence in regard to such matters was deemed sufficient in the *Sliczynski* and *Stankiewicz* cases, respectively. It was considered to be insufficient in the *Slonski* case. Accordingly, every case must depend upon its own facts, and the relevant facts are to be established from the evidence placed before the Court in any particular case.

In this matter the court is concerned with four separate prosecutions bearing different file numbers, but the pattern of behaviour of the respondent was the same in all four cases. In each instance he was sentenced to a term of imprisonment which was then suspended conditionally. In each instance, because of a failure to comply with certain of the conditions of the suspension, the suspension was subsequently lifted and the respondent was required to serve his sentence. The information provided does not go so far as to list exhaustively what were the conditions of the suspension in each case, but sufficient information is provided to enable the Court to directly establish, alternatively to infer, the existence of at least some of the conditions in each case.

In relation to all of the cases the Court has been told that the respondent was "put on supervision to be carried out by a court

probation officer". Moreover, the respondent acknowledges in his first affidavit that that was so.

It is of the essence of any kind of probation supervision that the probationer should be of good behaviour and not further offend. In addition, a specific complaint is made about the respondent's further offending in case II K 61/04. This Court has no hesitation in inferring that good behaviour and non-offending were conditions of the probation in each case. The additional information establishes that the respondent was present when the sentences were imposed and conditionally suspended in cases II K 61/04, II K 43/05and II K 10/05. While he was not present when the sentence in case no II K1216/04 was imposed and conditionally suspended, the additional information states that he had been informed of the Court hearing but failed to turn up for it. Moreover, he had gone to ground by the Court date and could not be contacted thereafter. In the circumstances the Court is satisfied that in relation to cases II K 61/04, II K 43/05 and II K 10/05 he knew that he was required to be of good behaviour and should not further offend. In relation to case no II K1216/04 he would have known of this requirement if he had bothered to turn up for Court, or if he had made contact with the Court ex post facto to ascertain what had occurred in his absence. In circumstances where he received due notification of the hearing date and failed to turn up, or make subsequent contact, he cannot now be heard to complain about what occurred in his absence.

Further, it is also of the essence of any kind of probation supervision that the supervisor should be made aware of where the probationer is residing, and that if during the period of probation there is to be any change in where the probationer is residing the supervisor should be informed. Moreover, it is also of the essence of probation supervision that the probationer should stay in regular contact with, and be readily available to, his supervisor. That the suspensions of the respondent's sentences were subject to further conditions of this type in the respondents cases is, in relation to cases II K 61/04 and II K 43/05, expressly confirmed in the additional information provided; and in relation to the other two cases, i.e. II K1216/04 and II K 10/05 respectively, is to be readily inferred from all the circumstances. Although it is not stated expressly that he was obliged to notify a change of address or stay in contact in the latter two cases, the fact that he was placed on probation is expressly stated, and a specific complaint is made in the additional information that in those cases he failed to notify a change of address or to stay in contact. In the circumstances the Court readily infers the existence of the further conditions requiring notification of change of address and staying in contact in cases II K1216/04 and II K 10/05.

Once again, because he was present when the sentences were imposed and conditionally suspended in cases II K 61/04, II K 43/05and II K 10/05 the Court is satisfied that would have known of his obligation to notify any change of address and to stay in contact in each of those cases. In relation to case no II K1216/04 he would have learned of his obligation to notify any change of address and to stay in contact if he had turned up for Court, or if he had made contact with the Court ex post facto to ascertain what had occurred in his absence. In circumstances where he received due notification of the hearing date and failed to turn up, or make subsequent contact, he cannot now be heard to complain about anything that occurred in his absence.

The Court notes that the respondent contends that as far as he was aware there was absolutely no restriction on his right to travel and that he was free to leave Poland. The Court does not regard that as credible in circumstances where it is acknowledged by the respondent that he was subject to probation supervision. Moreover, the Court notes the respondent's contention that he did regularly liaise with his probation officer, that the probation officer regularly called to his home, that he moved temporarily within Poland from Glogów to Wroclaw in Summer 2005 with his probation officer's consent, that he was saving money towards compensation in a Post Office under the supervision of his probation officer to whom he would produce lodgement receipts, and that when he could not get work in Poland he emigrated to Ireland to get work with the blessing and imprimatur of his probation officer. Yet, despite all these alleged transactions and contacts he cannot name his probation officer. He is also not sure if the same probation officer was assigned in each of his cases. It there was more than one he cannot name any of them. Moreover there is not one jot of corroboration of what he says, nor one piece of documentation tending to support what he says in any way. Despite this he asserts that his subjective motivation for leaving Poland was not to evade justice but rather it was for the purpose of finding employment and starting a new life. In this Court's view these averments as contained his affidavits are simply not credible. While it is not a matter for this Court to adjudicate on whether or not he breached the conditions upon which his sentences were suspended; suffice it to say that this Court, noting that it was the view of the regional Court in Glogów that he had done so, is satisfied that prima facie evidence exists that in all four cases there were breaches of the obligation to notify any change of address and to stay in contact, and that in case II K 61/04 (at least) there is also prima facie breach of the condition to be of good behaviour.

The Court is satisfied in all the circumstances of this case that the respondent has not discharged the heavy onus upon him to adduce cogent evidence in support of his contention that he did not flee and did not leave Poland with a view to evading justice. The Court is satisfied that the available evidence establishes on the balance of probabilities that the respondent did flee Poland in the "Tobin" sense and that he left that country in order to evade justice and to avoid serving the sentences for the offences to which the European Arrest Warrant in this case relates.

Whether the respondent's surrender is prohibited by s. 45 of the 2003 Act
S. 45 of the 2003 Act provides:

> 45.— A person shall not be surrendered under this Act if—
>
> (a) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and
>
> (b)(i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence, or
>
> (ii) he or she was not permitted to attend the trial in respect of the offence concerned,
>
> unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered—
>
> (I) be retried for that offence or be given the opportunity of a retrial in respect of that offence,
>
> (II) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and
>
> (III) be permitted to be present when any such retrial takes place.",

The respondent contends that as the hearings at which the suspensions of the various sentences imposed upon him were revoked were conducted in his absence, in circumstances where he says that he was not notified of those hearings, and the relevant Orders

were made *in absentia,* s. 45 of the 2003 Act applies and the Court is prohibited from surrendering him unless the issuing judicial authority gives an undertaking in writing that he will receive re-hearings after due notification. The respondent has argued that any hearing the outcome of which might be the possible revocation of a previously suspended sentence must be regarded as a "trial" within the meaning of s. 45 because it bears many of the essential characteristics of a trial. The respondent urges that among those characteristics are:

- the tribunal receives evidence and makes findings of fact;
- the consequences could result in deprivation of liberty;
- the respondent has the entitlement to fairness of procedures

While counsel for the respondent, Mr Dwyer B.L., accepts that the decision in *Minister for Justice, Equality & Law Reform v McCague* [2010] 1 I.R. 456 (upon which the applicant relies) represents a binding precedent he contends that the *McCague* case is distinguishable upon its facts from the circumstances of the present case, and he has invited the Court to extend the definition of trial to the facts of the present case.

The applicant has argued strenuously that s. 45 has no application to the circumstances of an application for revocation of the suspension of a sentence. S. 45 refers to a person being *"tried for and convicted of the offence specified in the European arrest warrant."* According to counsel for applicant s. 45 refers to a process leading to conviction. The respondent in the present case was convicted long before the hearings of which he complains and s. 45 has no application to those hearings.

Counsel for the applicant, Ms Stack B.L., places strong reliance upon the *McCague* case, which she contends is directly in point. That case concerned a person who was wanted for trial in the U.K. on conspiracy and fraud offences. Although he had been notified of his trial date in the days immediately preceding the trial an adjournment was sought on the basis (*inter alia*) that the respondent was medically unfit to attend. A short adjournment was granted to facilitate an independent medical examination but the respondent failed to attend. The trial proceeded in his absence. He was convicted and his sentencing was deferred to a later date. It was common case that he was not notified of the sentencing date. As the respondent was understood to be in Ireland a European Arrest Warrant was issued seeking his surrender to the U.K.. He objected to his surrender on various grounds including, *inter alia*, that his surrender was prohibited by s. 45 of the 2003 Act.

In the course of argument before the High Court in the *McCague* case counsel for the respondent had referred to Article 5.1 of the Framework Decision which provides:

> *"5. The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:*
>
> > *1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;*
> >
> > *2. ……"* (emphasis added)

In that context, counsel had submitted that the reference in this Article to "***the*** *date and place of the hearing which led to the decision rendered in absentia"* must refer to the sentence hearing since it refers back to *"where the European arrest warrant has been issued* ***for the purposes of executing a sentence****",* and that the reference to an opportunity for a retrial must equally include a rehearing of that sentence hearing which led to the decision rendered in absentia, namely the sentence which the European arrest warrant seeks to enforce. In so far as s. 45 of the Act has given effect to this Article, he submitted that there was no real distinction between s. 45 of the Act and Article 5.1 of the Framework Decision, and that s.45 must therefore be seen as requiring an undertaking to be given at least in respect of the sentencing hearing, in circumstances where it was common case that the respondent was never separately notified of the date, time and place at which his sentencing hearing would take place.

Addressing this argument, Peart J states at paragraph 68 of the report of his judgment (at p. 485):

> "In my view the terms of s.45 of the Act are very specific and unambiguous. It refers to not being present for the trial of the offence and not to being present when sentenced for the offence. Given the terms of Article 5.1 of the Framework Decision this cannot even be seen as an accidental omission. In any event, there was no requirement that legislative effect be given to Article 5.1 at all. It is an optional provision for any member state to make provision for in its domestic legislation giving effect to the Framework Decision. On the facts of this case no undertaking is required in respect of a re-trial given that the defendant was notified of the date and place of his trial, and thereafter chose to be absent. In view of the clear words used in this section, the right to be present at a sentence hearing, separate from the right to present at trial, as referred to in relation to the respondent's arguments under s. 37 of the Act, does not come into play under this point of objection under s. 45 of the Act."

In the present case the Court considers that Ms Stack B.L. is correct that the *McCague* case represents a binding precedent which this Court is obliged to follow. Although it is true to say that the facts in *McCague* were somewhat different to the facts of the present case (in following principal respect, viz the present case relates to hearings concerning whether suspensions of sentences should be revoked; as opposed to a hearing at which a sentence was to be imposed, which was the situation in *McCague*'s case), I nonetheless consider that the *McCague* case cannot be sufficiently distinguished from the present case in terms of the statutory interpretation point to justify this Court in refusing to follow it. The High Court has previously decided in *McCague* that a sentence hearing does not come within the definition of trial for the purposes of s.45. The respondent has not sought to argue that *McCague* was wrongly decided, or that s.45 was wrongly interpreted in that case. Therefore it seems to this Court to follow as a matter of logic that if a sentence hearing does not come within the definition of trial for the purposes of s.45, a hearing concerning whether the suspension of a sentence should be revoked also cannot come within the definition of trial for the purposes of s.45.

Moreover, and in any event, the Court would remark that even if such hearings could be said to come within the definition of a "trial" for the purposes of s.45, s. 45(b)(i) requires that there should have been no notification to the respondent, (S.45(b)(ii) has no application in the circumstances of this case). In this case there is cogent evidence from the issuing judicial authority, and which the

respondent has not credibly shown to be unreliable, that correspondence was sent to his last known address by the Regional Court in Glogów for the purpose of notifying him of the hearings concerning whether suspensions of his sentences should be revoked. It was not the fault of that court that he did not receive notification in circumstances where in breach of the conditions on which his sentences were suspended he failed to notify the change of his address; or failed to collect post, or to have post collected at, or forwarded from, the address that he had provided; and where he otherwise failed to stay in touch with either the Court or his probation officer. It seems to this Court that in such circumstances he cannot be heard to complain that he was not notified.

Whether the surrender of the respondent would be incompatible with the State's obligations under the European Convention on Human Rights, in particular the right to respect for his private and family life under Article 8.

The sole remaining issue is therefore whether the surrender of the respondent is prohibited by Part 3 of the 2003 Act, or by the Framework Decision (including the recitals thereto.) In that regard s. 37(1) of the 2003 Act, which is within Part 3 aforesaid provides that a person shall not be surrendered under the 2003 Act if, *inter alia*, his or her surrender would be incompatible with the State's obligations under (a) - (i) the European Convention on Human Rights and Fundamental Freedoms or (ii) the Protocols to that Convention (listed at s. 37(2)). In this case the respondent contends that his surrender would in all the circumstances of the case breach his right to respect for his private and family life under Article 8 of the Convention.

The respondent has sought to rely upon the decision of this Court in *Minister for Justice, Equality and Law Reform v Gorman* [2010] IEHC 210, and the Court's attention was drawn in some detail to the respondent's personal circumstances as set out in his affidavits. It was submitted that his surrender would, in the circumstances of this case, represent a disproportionate interference with his private and family life notwithstanding any legitimate aim being pursued by the issuing state.

Counsel for the applicant has argued that that the respondent's purported reliance upon his article 8 rights is inappropriate and misconceived in the circumstances of this case. She has drawn the court's attention to what she characterises as the seminal Irish case on Article 8 rights, namely the case of *Agbonlahore v Minister for Justice, Equality & Law Reform* [2007] 4 I.R. 309, and in particular to paragraph 13 of the reported judgment of Feeney J in that case. Feeney J stated:

> 'Article 8 does not protect private or family life as such. In fact it guarantees a "respect for these rights". In view of the diversity of circumstances and practices in the contracting states, the notion of "respect" (and its requirements) are not clear cut; they vary considerably from case to case: (see *Abdulaziz and Others v. United Kingdom* (1985) 7 E.H.R.R 471 at para. 67). The main issue which has concerned the European Court of Human Rights in relation to the concept and scope of "respect" is whether such obligation is purely a negative one or whether it also has a positive component. The court has stressed on many occasions that the object of article 8 is essentially that of protecting the individual against arbitrary interference by public authorities and that such is a primarily negative undertaking but that nevertheless it has on occasions indicated that there may in addition be positive obligations upon states that are inherent in effective respect for article 8 rights. There have been occasional challenges to deportations on the ground of interference with article 8 rights. Those challenges have almost always been based on interference with "family life" rather than "private life". In *Abdulaziz and others v. United Kingdom* the court held, at p. 497, that whilst there might be positive obligations to respect the family, a State "had a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resource of the community and of individuals ...".'

The applicant has also referred the Court to, and relies upon, the judgment of Peart J in conjoined cases of *Minister for Justice, Equality and Law Reform v Mareka*, and *Minister for Justice, Equality and Law Reform v Miziak* [2010] IEHC 402

As I have previously stated in *Minister for Justice, Equality and Law Reform v Puskas* (unreported, High Court, Edwards J, 4th March, 2011) the *Gorman* decision depended very much upon its own particular facts. The facts of the present case are very different from those in *Gorman*, something that was also true in *Puskas*. Nonetheless, *Gorman* is of considerable assistance in as much as Mr Justice Peart sets the approach that a court such this should adopt in considering whether an order for the surrender of the respondent would constitute a breach of this State's obligations under the Convention or its Protocols. He said:

> "It seems to me to follow that for the purposes of the present application for the respondent's surrender, this Court is required to consider the following questions in arriving at a conclusion as to whether an order for the surrender of the respondent to the United Kingdom would constitute a breach of this State's obligations under the Convention or its Protocols: (1) does surrender constitute an interference with the respondent's private/family right; (2) if so, is that interference one that is in accordance with law; (3) if further so, is the interference, by surrender of the respondent, in pursuit of a legitimate aim or objective; (4) and further if so, whether that interference is necessary in a democratic society (the latter meaning that it is justified by a pressing social need) and proportionate to the legitimate aim pursued."

I have adopted the approach commended by Peart J in my consideration of the respondent's case and I am satisfied that I must answer each of the relevant questions in the affirmative. Although the respondent's surrender would constitute an interference with his family life any such interference would be in accordance with law. Moreover, I believe that his surrender is being sought in pursuit of a legitimate aim or objective, namely the entitlement of the Polish authorities to seek to have the respondent serve out the sentences imposed upon him in the public interest, particularly in circumstances where suspensions of his sentences have been revoked for breaches of the conditions upon which they were suspended. Finally, I am satisfied that in the circumstances of this case the proposed interference is justified by a pressing social need and that it is proportionate to the legitimate aim that is being pursued.

On the question of proportionality, once again in this case I find myself in agreement with the sentiments expressed by Fennelly J in *Minister for Justice, Equality and Law Reform v Gheorghe* [2009] IESC 76. Fennelly J said:

> "Like Peart J, I would also dismiss the third ground of appeal in *limine*. It is a regrettable but inescapable incident of extradition in general and, as in this case, surrender pursuant to the system of the European arrest warrant, that persons sought for prosecution in another state will very often suffer disruption of their personal and family life. Some states have historically refused to extradite their own nationals, but that is a special case. The Framework Decision expressly provides that, in Article 1, that it does not *"have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in article 6 of the Treaty on European Union."* No authority has been produced to support the proposition that surrender is to be refused where a person will, as a consequence, suffer disruption, even severe disruption of family relationships."

I find that those remarks are apposite to the respondent's case. I am satisfied that there is no question of a failure to "respect" the respondent's article 8 rights in the circumstances of this case. First, I do not consider that any issue arises in the circumstances of this case concerning his right to respect for his private life. Secondly, as regards his right to respect for his family life, the position is

that the State has *"a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resource of the community and of individuals …",* as was pointed out in Feeney J in the *Agbonlahor* case. The Court is satisfied that the proposed surrender of the respondent is both a proportionate response to legitimate aims of, and within the margin of appreciation enjoyed by, the issuing State and the executing State, respectively.

In all the circumstances the Court is satisfied that the surrender of the respondent is not prohibited by Part 3 of the 2003 Act, or by the Framework Decision (including the recitals thereto.)