[2019] IEHC 481

THE HIGH COURT

Record No. 2018/153 EXT

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

Between/

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

-and-

MANTAS VESTARTAS

Respondent

JUDGMENT of Mr. Justice Hunt delivered on the 1st of March, 2019

General:
1. Mr. Vestartas is the subject of a European Arrest Warrant ("the EAW") issued by the Siauliai County Court, a judicial authority of the Republic of Lithuania. The EAW was issued by the Lithuanian authority on 22 November 2016, and I am satisfied that it was endorsed for execution by the High Court, and that Mr. Vestartas was subsequently arrested and brought before the High Court pursuant to the terms of section 13 of the 2003 Act. Mr. Vestartas later delivered Points of Objection to his surrender, and the section 16 hearing ultimately took place on 18 January 2019.

2. The points of objection by Mr. Vestartas put the Minister on proof of all matters required for the making of an order for his surrender. During the section 16 hearing, the points of substantial dispute were confined to firstly, whether there was correspondence between the offences set out in the EAW and offences under domestic criminal law, and secondly an objection to surrender based on the provisions of section 37 of the 2003 Act. In reality, the second point occupied most of the discussion at the surrender hearing, and was the most substantial matter in dispute between the parties. Apart from these two issues, I am otherwise satisfied that the Minister has complied with the conditions required for an order for surrender, and I propose to limit discussion to these matters.

Factual background to the warrant:
3. Mr. Vestartas is a native of Lithuania, who was born in Siauliai on 11 June 1989. His surrender is requested for the purpose of service of a sentence of 2 years, 5 months and 26 days. This represents the balance to be served of a term of imprisonment of 5 years and 8 months imposed on him by a judgment of 1 July 2006 of the District Court of Siauliai Region. A second judgment of that Court on 12 September 2011 rendered him liable to serve the balance of the sentence imposed by virtue of the earlier judgment.

4. The history of the matter is that Mr. Vestartas began to commit criminal offences at a young age. He was aged 14 on 2 September 2003, when he committed the earliest offence referred to in the EAW. Following this, he committed a large number of further offences up to 21 May 2005, when he was still under the age of 16. The EAW refers to 43 separate offences committed within the relevant period. The most serious of these are the last two offences, which were committed in April and May of 2005. The 43 offences were dealt with the Siauliai District Court in 6 separate instalments between 17 November 2004 and 1 July 2006.

5. The sentencing court followed a composition process in dealing with these offences. The sentences imposed in respect of each individual offence were continually cross-referenced against sentences previously imposed in order to ensure that Mr. Vestartas received a proportionate sentence. The judgment of 1 July 2006 imposed a final composite sentence of 5 years and 8 months imprisonment in respect of all of the offences that had been committed by him up to that date. The final sentence represented a considerable reduction from the total of the individual sentences applicable to the 43 relevant offences. As set out below, I am satisfied that the issuing authority has fully explained the nature and effect of both the 43 underlying offences, and the sentencing process applied to those offences by the successive orders of the Siauliai District Court. This appears from the comprehensive and detailed narrative set out in paragraph (e) of the EAW, and in the subsequent additional information supplied in relation to the matter.

6. Mr. Vestartas served his sentence until 1 July 2009, when he was granted a parole release from his correctional institution by a decision of the District Court of the Kaisiadorys Region. According to paragraph (b) of the EAW, his parole release was subject to the following conditions:-

> *"to register in the correctional inspection four times a month; to stay at home from 10 PM to 6 AM except for work-related cases; to restrain from leaving the limits of the residential district for more than seven days without the permit of the sentence enforcing body; to restrain from visiting public places selling alcoholic beverages if it is not related to work."*

7. This paragraph also recites that Mr. Vestartas breached the conditions of his parole because:-

> *"M. Vestartas violated the obligation to stay at home from 10 PM to 6 AM, therefore he was given a warning. However, after the warning M. Vestartas failed to stay at home during the indicated hours and register in the correctional inspection, therefore on 12 September 2011, the District Court of Siauliai Region issued a decision revoking the parole from the correctional institution and ordered M. Vestartas to serve the remaining part of the imprisonment. The serving of the remaining part of the imprisonment sentence did not commence as the convict absconded from serving the sentence."*

8. The facts set out in these extracts from the EAW are not disputed by Mr. Vestartas. The EAW also recites that he was present during his trial and for the conviction judgments and that no appeals have been made against the conviction judgments by appellate or cassation procedures. I am satisfied that the fact that he was not present at the final revocation hearing does not affect entitlement to an order for surrender in this case. In *Samet Ardic*, a judgment of 22 December 2017, the CJEU ruled on a preliminary reference from the Amsterdam District Court that a procedure to revoke a partly-suspended sentence on the grounds of infringement of conditions was not part of the original trial giving rise to the sentence, unless the revocation decision involved a change in the nature or level of the sentence initially imposed. No such change is apparent from the information available in relation to the present

case. Mr. Vestartas has not been served with the revocation order as yet, but the EAW recites that he will be served with that decision without delay after surrender.

Correspondence:
9. The nature and legal classification of the offences set out in the detailed narrative referred to above are stated to be contrary to Articles 22, 178 (as amended on 05/07/2004 and 10/04/2003), 180 and 187 of the Criminal Code of the Republic of Lithuania, which Articles are appended to paragraph (d) of the EAW. None of the boxes set out in section I of paragraph (d) were ticked and, accordingly, section II sets out full descriptions of the offences. These are an attempt to commit an offence, two varieties of theft, robbery and destruction of or damage to property, as created by the relevant articles of the Criminal Code of the Republic of Lithuania. As this is not a "*ticked box*" warrant, the Minister is required to establish correspondence of these offences. I have abstracted a description of each of the offences from the EAW, and the suggested corresponding offence is contained in the table set out below:-

	Date of offence	**Place of offence**	**Details of offence (Summary)**	**Corresponding offence**	**Date of Judgment and length of sentence**
1	21 May 2005	Kursenai town	Used physical violence towards Valdas Stasiulis and stole an item belonging to him, causing material loss to him	Assault, theft	1st July 2006 5 years and 8 months composite
2	26 April 2005	Kursenai town	Used physical violence towards Zigmas Ratinas, stole property belonging to him including his vehicle, put him in the car and drove the car for a time with the victim locked in the back	Assault, theft and false imprisonment	30th May 2006 4 years and 9 months composite
3	28 October 2004	Kursenai town	Broke into a garage and stole a scooter	Burglary, theft	28 February 2006 (25 offences) 2 years and 6 months composite
4	2 December 2004	Kursenai town	Broke into an outbuilding and stole various items	Burglary, theft	
5	20 December 2004	Kursenai town	Broke into a house and stole various items	Burglary, theft	
6	24 December 2004	Kursenai town	Broke into a residential house under construction and stole a motorbike and subsequently also a Gaz vehicle from the basement	Theft	
7	24 December 2004	Kursenai town	Stole an Audi vehicle from a different residential house	Theft	
8	24 December 2004	Svirbuciai Village	Deliberately damaged property (an Audi car) belonging to T. Maselskis	Criminal damage	
9	25 December 2004	Kursenai town	Broke into a house and stole various items	Burglary, theft	
10	30 December, 2004	Micaiciai village	Broke into a cultural centre and stole various items	Burglary, theft	
11	30 December 2004	Kursenai town	Stole a Ford vehicle near a residential house	Theft	
12	30 December 2004	Kursenai town	Deliberately damaged the stolen Ford vehicle, (continuation of #11)	Criminal damage	

13	30 December 2004	Kursenai town	Broke into a garage through an unlocked door and stole various items	Burglary, theft	
14	31 December 2004	Kursenai town	Broke into a garage and stolen an Opel vehicle	Burglary, theft	
15	Beginning of January 2005	Pakumuls-iai village	Deliberately damaged the stolen Opel vehicle	Criminal damage	
16	3 January 2005	Pakumuls-iai village	Broke into a garage and stole a Ford vehicle	Burglary, theft	
17	4 January 2005	Kursenai town	Attempted to steal a Ford vehicle from a garage but could not do so as could not disconnect the car alarm	Attempted theft	
18	4 January 2005	Kursenai town	Broke into a garage and stolen various items, (continuation of #17)	Burglary, theft	
19	5 January 2005	Kursenai town	Stole an Audi vehicle from the yard of a residential house	Theft	
20	5 January 2005	Kursenai town	Stole a vehicle and a stereo from the yard of a residential house	Theft	
21	7 January 2005	Kursenai town	Stole two vehicles from the yard of a residential house	Theft	
22	10th January, 2005	Kursenai town	Stole a vehicle from the yard of a residential house	Theft	
23	10 January 2005	Kursenai town	Broke into a garage and stole various items	Burglary, theft	
24	10 January 2005	Kursenai town	Broke into a garage and stole an Audi vehicle and other items	Burglary, theft	
25	10 January 2005	A road in Siauliai District	Deliberately damaged the stolen Audi vehicle, (continuation of #24)	Criminal damage	
26	10 January 2005	Kursenai town	Attempted to steal a VW vehicle from a garage but could not as broke the steering wheel mechanism	Attempted theft	
27	11 January 2005	Dirvonen-ai village	Stole a VW vehicle from the boiler house of a school	Theft	
28	2 September 2003	Kursenai town	Broke into storeroom and stole two items	Burglary, theft	4 November 2005 (7 offences) 2 years composite
29	6 September 2003	Kursenai town	Broke into a garage and stole a number of items; then broke into a nearby storeroom and stole another item	Burglary, theft	
30	9 January 2004	Drasuciai village	Broke into a storeroom and stole a motorbike	Burglary, theft	
31	Date unknown in March 2004	Kursenai town	Broke into storeroom and stole miscellaneous foodstuffs	Burglary, theft	
32	6 April 2004	Kursenai town	Broke into garage and stole three bicycles and a motorbike	Burglary, theft	

33	6 April 2004	Kursenai town	Broke into garage and stole various items	Burglary, theft	
34	6-7 April 2004	Kursenai town	Broke into garage through an unlocked door and stole a VW car and various other items	Burglary, theft	
35	Date unknown in Spring 2004	Kursenai town	Broke into unlocked outbuilding and stole two bicycles	Burglary, theft	10 February 2005 (2 offences) 30 days
36	Date unknown in Spring 2004	Kursenai town	Broke into garage and stole various items	Burglary, theft	
37	5 March 2004	Kursenai town	Broke into storeroom and stole property	Burglary, theft	17 November 2004 (7 offences) 25 days
38	6 March 2004	Kursenai town	Broke into storeroom and stole property	Burglary, theft	
39	5 March 2004	Kursenai	Broke into storeroom and stole property	Burglary, theft	
40	5 March 2004	Kursenai	Broke into garage and stole property	Burglary, theft	
41	16 March 2004	Kursenai	Broke into outbuilding and stole property	Theft	
42	23 March 2004	Kursenai	Entered storeroom through unlocked door and stole property	Theft	
43	23 March 2004	Kursenai	Entered outbuilding through unlocked door and stole property	Theft	

10. The shorthand references in the fifth column above are to assault contrary to section 2 of the Non-Fatal Offences Against the Person Act 1997, false imprisonment contrary to section 15 of the same Act, theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, burglary contrary to section 12 of the same Act, attempted theft contrary to common law and damaging property contrary to section 2 of the Criminal Damage Act 1991. I am satisfied on the basis of the full descriptions in the narrative set out in the warrant, which is too lengthy to warrant reproduction here, and as summarised in the fourth column above, that each of the 43 offences listed in the table corresponds with an offence in Irish law. The location of the offences numbered 37 and 38 was furnished by the requesting State by way off additional information dated 3 May 2018.

11. I have set out the details of the offences underlying the warrant in some detail, because in a case where a number of offences are aggregated for the purpose of a composite sentence, as in this case, all of the aggregated offences must be corresponding offences, otherwise an order for surrender would not be possible. As I am satisfied that each individual offence set out above corresponds with an offence in Irish law, there is no bar to surrender on this ground.

12. Minimum gravity is also not an issue, given the sentences actually applicable to the last 2 offences, the sentences potentially applicable to the remaining 43 offences, and the disjunctive drafting of the terms of section 38(1)(a) of the 2003 Act, as explained by the Supreme Court (Macken J.) in *Minister for Justice, Equality and Law Reform v. Dus,* a judgment of 31 July 2009. Consequently there is also no bar to surrender on this ground.

The section 37 objection:

13. The points of objection lodged on behalf of Mr. Vestartas plead that his proposed surrender is prohibited by section 37 of the Act of 2003, because of the cumulative, inordinate and unjustified delay of approximately 12 years between the dates of the offences and the issuing of the EAW, and the further period of over 20 months before it was executed in this jurisdiction on 29 July 2018. It is also pleaded that his proposed surrender would constitute an impermissible interference with his rights to family and private life under Articles 40.3.1 and 41.1 of the Constitution and Article 8 of the European Convention on Human Rights, particularly in the light of the considerable period of delay involved.

14. As noted above, the balance of the sentence to be served by Mr. Vestartas was activated by court order in October 2011. The EAW seeking his surrender was issued on 22 December 2016. After receipt of the EAW in April 2018, the Minister acted very promptly. The EAW was endorsed by Donnelly J. on 14 May 2018 and the respondent was arrested on 28 July 2018. He was brought before the High Court on 29 July 2018, when he was remanded in custody until the next day, when he was granted bail, on which he has remained to date. Therefore, I do not find that the period after April 2018 is relevant to any consideration of delay in this case.

15. The Central Authority also properly identified the potential issues with the EAW, and the Minister issued a request for further information on 11 October 2018. The Lithuanian authorities were requested to explain the lapse of time between the decision of the District Court to revoke parole in 2011 and the issue of the EAW in 2016, and the lapse of time between issue of the EAW and transmission to the Central Authority in Ireland on 5 April 2018.

16. The Lithuanian authorities responded to this invitation by means of a letter from Siauliai Regional Court dated 24 October 2018. The portion of this letter material to the issue of the passage of time is as follows:-

> *"Mantas Vestartas did not fulfil his obligations imposed by the court after his release from the imprisonment institution (did not appear for registration in the penitentiary institution, was not found at home). In addition to that, Mantas Vestartas did not fulfil the obligation imposed by the court not to leave outside the region of his residence for more than 7 days, since it was established that he went abroad and the European Arrest Warrant was issued with his regard. Therefore, being aware of the obligations imposed to him and the consequences of non-fulfilment of such obligations, Mantas Vestartas intentionally failed to comply with them and went abroad. The aforementioned order of Siauliai District Court of 12 September 2011, became final on 07 October 2011 and on 10 October 2011 was transferred for enforcement to Siauliai County General Police Department. Mantas Vestartas was placed on a wanted list. On 02/12/2013 the Ministry of Justice of the Republic of Lithuania issued the European Arrest Warrant with regard to Mantas Vestartas since in the course of the search it was established that he resides in Ireland. On 09 December 2016, Siauliai District Court received a notice regarding modification of the European Arrest Warrant issued from the International Law Department of the Ministry of Justice of the Republic of Lithuania. On 16 December 2016, Siauliai District Court asked to issue the European Arrest Warrant. On 21 December 2016, Siauliai Regional Court issued the European Arrest Warrant with regard to Mantas Vestartas which was submitted to the International Relations Board of the Lithuanian Criminal Police for enforcement."*

17. The factual matters relied on by Mr. Vestartas in connection with his grounds of objection are set out in his affidavit sworn on 14 September 2018. Paragraphs 10 to 17 of the affidavit depose that he has resided with his partner and two children at an address in Edenderry, Co. Offaly for approximately five years. They signed a further lease of their home for two years from early 2018. His daughters were born in Dublin in 2015 and 2007, and both attend pre-school and primary school in Edenderry. Both children are Irish citizens and have always lived in Ireland. Mr. Vestartas is in loco parentis in relation to the older of the two girls, and states his intention to continue so to act. His relationship with his partner has now continued for approximately seven years. His partner has no previous convictions and works in a retail outlet in Edenderry. Both he and his partner have become well-settled in the Edenderry area, and intend to continue to raise their children there.

18. Mr. Vestartas has worked in the construction industry for two employers since 2012. The affidavit refers to an official dealing for which he used his own name, and he deposed that he has used his own name on all occasions since his arrival in Ireland. The affidavit also sets out that he has acquired two criminal convictions since his arrival in Ireland, which were accepted at his bail hearing as being minor in nature. He deposed that the first conviction was a road traffic offence for no insurance and the second conviction was for illegally dumping cut grass. As far as I am aware, the Minister has not taken issue with any of these averments, or applied to cross-examine the deponent, and I am prepared in those circumstances to accept the facts put forward by him in considering his objections to surrender.

19. Counsel for Mr. Vestartas submitted that his objection to surrender based on Article 8 of the European Convention on Human Rights was the primary point taken by him in this matter. His argument in support of this objection had a number of components, which I summarise as follows:-

> (a) Mr. Vestartas was a child in law at the time of the offences;
>
> (b) the delays by the Lithuanian authorities were exceptional, particularly when viewed against the age and lifespan of Mr. Vestartas;
>
> (c) there was a general requirement to be expeditious in taking such steps, which was particularly acute having regard to the facts of the instant case;
>
> (d) Mr. Vestartas had applied himself constructively during his time in Ireland and had been of good behaviour save for the two minor matters referred to above;
>
> (e) delay and the approach of the Lithuanian authorities to the request for further information demonstrated that the public interest in surrender on the unique facts of this case was low;
>
> (f) the gravity of most of the offences committed by Mr. Vestartas was low, with the obvious exception of the last two offences, which attracted significant terms of imprisonment. All of the previous offending had resulted in the initial imposition of suspended sentences, which were presumably activated as part of the composition exercise referred to above;
>
> (g) Mr. Vestartas had actually served a portion of the final aggregate sentence of approximately two and a half years, and this sentence was served by him at a relatively young age;
>
> (h) in the circumstances, being recalled to serve the balance of his sentence at this remove would have a disproportionate impact on his personal and family life.

Counsel for Mr. Vestartas placed particular reliance upon the judgment of the High Court (Edwards J.) in *Minister for Justice and Equality v. T.E.*, delivered on 19 June 2013.

20. Counsel for the Minister submitted that the objections raised by Mr. Vestartas were not made out on the facts of the case, and I summarise the ingredients of her argument as follows:-

> (a) because a conviction warrant was involved in this case, the public interest in surrender remained strong;
>
> (b) the offending in question was persistent and had escalated with the passage of time, culminating in the commission of serious offences meriting the imposition of significant terms of imprisonment, and the revocation and aggregation of suspended sentences imposed for the previous less serious offending;
>
> (c) the age of Mr. Vestartas at the time of the relevant events in Lithuania did not permit me to look behind the facts relating to his prosecution in Lithuania;
>
> (d) there was nothing exceptional on the facts relating either to delay or to his private life which distinguished the facts

of this case, or rendered them so exceptional as to justify a refusal of surrender;

(e) a period of delay and the contemporaneous development of a private and family life were features of many such cases;

(f) his family life had been conducted in this jurisdiction in the full knowledge of his default in legal obligations owed in his country of origin.

Counsel for the Minister relied upon the judgments of the Supreme Court in *Minister for Justice and Equality v. Ostrowski* [2014] 1 I.L.R.M. 88 and *Minister for Justice and Equality v. J.A.T. No. 2* [2016] IESC 17/1, together with the judgment of the High Court (Donnelly J.) in *Minister for Justice and Equality v. Schoppik*, delivered on 8 October 2018.

Discussion:
21. I do not propose to cite lengthy extracts from the judgments opened by counsel in support of their respective arguments. The cases mentioned above are well-known to practitioners in this field. The relevant extracts appear in many other judgments in cases dealing with the issue of whether a proposed surrender constituted a disproportionate interference with the rights respected by Article 8 ECHR. The starting point of the analysis is that Mr. Vestartas must be surrendered under the 2003 Act so long as the provisions of the Act have been complied with. This includes the requirement in section 37 that the proposed surrender is not incompatible with the State's obligations under the ECHR, or in contravention of the Constitution.

22. In almost all cases of surrender, the family rights protected by Article 8 of the Convention will be affected. It is only in an exceptional case that Article 8 rights will outweigh the requirement to surrender. The facts must demonstrate the likely existence of harmful consequences, peculiar to Mr. Vestartas, which are of such significance as to outweigh the public interest in ordering his return. Surrender is not precluded by matters falling within the expected consequences which might flow from, and which are inherent to, the operation of the surrender process itself.

23. Where resistance is offered to surrender by virtue of a convention or Constitution right, the court must conduct a fact-specific inquiry into all relevant matters so that a fair balance can be struck between the rights of the public and those of the person in question. Such an exercise is not governed by any pre-determined approach or pre-set formula. Each of the competing interests must be measured and balanced. In this context, the interests of the public, underpinned by weighty considerations such as freedom and security, will virtually always merit significant value; the weight of individual interests will have greater variability. Consequences inherent in the surrender process, without more, attract a much lower value than consequences with a real and substantial effect on the individual concerned.

24. The first part of the inquiry is to measure the public interest. An application for surrender by means of an EAW arises pursuant to membership of a detailed collective structure, creating mutual rights and obligations which, in themselves, create a high level of public interest in the implementation of the EAW process. This case also engages the specific public interests that those convicted should serve their sentences, that such persons should not enjoy sanctuary or immunity, and that the public be aware of the State's commitment to honour reciprocal international obligations. The weight of the public interest in the individual case may be adjusted in either direction by reference to case-specific factors.

25. I am satisfied that factors affecting the weight of public interest in this jurisdiction include the actions or inactions of the requesting State, and the particular history and purpose of the request for surrender in the individual case. This is not a case where the level of public interest is governed by the need to ensure either prosecution of a suspect, or the service ab initio of a sentence by a convicted person. It is well-established that a significant public interest arises when surrender is sought for either of these purposes. In this case, there were numerous prosecutions, following which Mr. Vestartas served 3 years of a substantial composite sentence of 5 years and 8 months imposed at the conclusion of a lengthy and considered prosecution process. He was obviously considered suitable for parole after serving approximately half of his sentence, and was released on the conditions set out above. The grant of parole implies that Mr. Vestartas had progressed positively during his time in custody.

26. The public interest that applies in the case of a paroled convict is different to that which applies where a suspect is required for prosecution or where a convict is required to commence service of their sentence. The primary purpose of a grant of parole to a prisoner is to further the distinct public interest in the rehabilitation of offenders, particularly those who commenced offending at a tender age. In general, this purpose is secured by supervising the transition from custody to society, by reducing the impulse to commit further offending, and by avoiding the unnecessary continued imprisonment of those considered unlikely to re-offend and who meet the conditions for parole. I presume that the conditions attached to the grant of parole in this case were designed with these objectives in mind.

27. The conditions devised for Mr. Vestartas by the authorities were, in effect, registration, restriction of movement, abstinence and curfew. In my view, the gravity of the breach of condition is relevant to the level of public interest in the case of a paroled offender. The balance of the sentence was activated in this case for breach of the conditions imposed in the parole grant, and not due to any re-offending on his part. It is not to his credit that he failed to comply with these conditions, and left Lithuania knowing that he was in default and, therefore, liable to have the balance of his sentence activated. Nonetheless, it appears to me that, on the facts of the specific case, it is relevant to take account of the fact that the service of a significant period in custody at a young age has apparently had the desired effect on him, notwithstanding his non-compliance with the conditions of his parole. His conduct since he came to Ireland, whilst not perfect, is markedly different from his teenage crime spree in Lithuania between 2003 and 2005. To all intents and purposes, he has worked peaceably and led a settled life as a responsible adult member of society since his arrival in Ireland.

28. Therefore, I believe that the objective of rehabilitation has been demonstrably established as a fact by events since the release of Mr. Vestartas from prison in June 2009. Despite unpromising beginnings, he has over the last decade progressed into a generally responsible member of society. The evidence suggests that the public interest in rehabilitation of the particular young offender has been fulfilled. In fact, it is a reasonable inference from the evidence that his lengthy incarceration in Lithuania as a teenager has discouraged him from serious re-offending since his release from prison. Therefore, rehabilitation plays little or no part in the assessment of public interest in surrender in this case. The remaining public interest is therefore confined to ensuring further punishment for offences committed long ago, or for his failure to comply with parole requirements imposed and breached a decade ago.

29. In my view, the nature and extent of this remaining public interest is significantly lower than that applicable to cases where the EAW was issued to secure prosecution or the service of a sentence after conviction. It is also less than the public interest that would apply to a request for surrender of a paroled offender who has breached his conditions by re-offending. I am satisfied that, on the

particular facts of this request, the limited nature of remaining public interest in surrender is such that I can further consider the effect of the passage of time, and balance the private interests invoked by Mr. Vestartas.

30. Where lapse of time or delay arises as an issue, it is necessary to first identify the relevant time period or periods, and then to consider the explanations or reasons underlying the periods in question. As far as I can ascertain from the information supplied, Mr. Vestartas served three years of the five year and eight month composite sentence finally imposed on him on 1 July, 2006, as he was granted parole on 22 June 2009 and released on 1 July 2009. Thereafter, he did not comply with the conditions of his parole, although this was not formally revoked until the court order in September 2011. It appears that he came to Ireland in late 2011 or 2012. In the meantime, he was placed on a wanted list in Lithuania, and the authorities did not establish his whereabouts until 2013. The additional information suggests that an EAW was issued by the Ministry of Justice of Lithuania at that time, although the EAW actually relied upon in this case was not issued until December 2016, and not transmitted to Ireland for execution until April 2018.

31. The passage of these periods of time is a matter of significant concern. The period between the grant and the revocation of parole was not addressed at all by the requesting state, although if that was the only period of unexplained delay it would not, of itself, be particularly significant. It appears from the information available that Mr. Vestartas was still amenable to the Lithuanian authorities at that time, as they were monitoring his conduct and knew that he had not fulfilled the conditions of his parole, which led to the matter being returned to the relevant court in 2011. The period between the court order of 2011 and the location of the accused in Ireland by the Lithuanian authorities in 2013 is not relevant, because it was caused by Mr. Vestartas leaving Lithuania, and the authorities cannot be criticised for undue delay during that time.

32. The most significant concern that arises concerns the period of time between 2013, when Mr. Vestartas was located by the authorities, and 2018, when a EAW was transmitted to Ireland for the first time. Despite the specific and proper request by the Central Authority for an explanation by the Lithuanian authorities of this period, their reply as reproduced above is distinctly uninformative. There additional information discloses for the first time that an EAW warrant was issued in 2013, but does not address in any meaningful fashion why it was necessary to wait until April 2018 to send a warrant to Ireland, or why it was necessary to wait for 3 years until the second EAW issued in December 2016, despite knowledge of the whereabouts of Mr. Vestartas. The response is completely silent as to the reason, if any, for inaction over the 3 years in question.

33. Even if there is an excuse for the significant period of delay of 3 years, which for some reason has not been clearly articulated, it is a reasonable expectation that the underlying situation might have precipitated timely action by the Lithuanian authorities when they finally issued the EAW at the end of 2016. A pressing social need in Lithuania for the surrender of Mr. Vestartas should have been evidenced by speedy action by the competent authorities, even at that late stage. Unfortunately, the matter went into abeyance again, for a further period of 16 months. A period of delay of this length must be assessed in context, on a case-specific basis. Viewed against the background of the history this case from 2009 to 2016, the additional delay of 16 months required to transmit the EAW to Ireland acquires significance, and unless adequately explained, is in danger of also being regarded as inordinate, unreasonable and excessive.

34. With this in mind, it both surprising and disappointing that the information supplied to the Central Authority pursuant to the request makes no reference at all to the period between December 2016 and April 2018. In any system devised and operated by humans, delays and oversights can occur. Such matters can be dealt with on the basis of mutual respect if they are explained or justified in a reasonable manner. The complete absence of any reply by the Lithuanian authorities to the specific request for information made by the Central Authority in relation to this issue is hardly in tune with the concept of mutual respect which underlies the EAW edifice. The unexplained delays involved in processing this case by the Lithuanian authorities are not in keeping with the underlying objective of the system, which is to seek and effect speedy surrender between member states.

35. I have concluded that the prolonged and largely unexplained inaction of the Lithuanian authorities, both prior to 2011 and more significantly, from 2013 to 2016, and again from 2016 to 2018, does not signify a pressing social need in Lithuania for the return of Mr. Vestartas, or a profound interest in bringing his case to a reasonably expeditious final conclusion. Their approach may be contrasted unfavourably with the prompt actions of the Irish authorities in bringing Mr. Vestartas into the system upon receipt of the EAW in April 2018. The final and totally unexplained period of delay after 2016 is particularly culpable, given the prolonged history of the matter prior to that time. The delay, and the troubling attitude to reasonable requests to justify or explain that delay, further reduces the already limited public interest in surrender of Mr. Vestartas.

36. The material provisions of section 37 of the Act of 2003 prevent the surrender of a person under the Act if this would be incompatible with the State's obligations under the European Convention of Human Rights or under the Constitution. Mr. Vestartas claims that surrender would cause a disproportionate interference with the rights set out in paragraph 3(b) of the notice of objection, as recited above. The test and approach to be applied to such a claim has now been clearly enunciated by the Supreme Court decision in Ostrowski, which clearly stipulated that an exceptional case must be established to permit such rights to set aside the normal requirement to surrender.

37. It is a reasonable conclusion that the exercise of ordinary family or personal rights is inevitably compromised by the usual or inherent consequences of surrender. Consequently, in broad terms, surrender must take place unless there is some exceptional feature relating either to the public or private interests in a case which renders surrender disproportionate. Disproportion cannot usually arise on facts where the public interest remains strong and the private interests are not extraordinary. For the reasons set out above, I am satisfied that there is a significant dilution of the public interest that would otherwise ordinarily apply in such a case, is present in this case, it is permissible to balance the private interests asserted by Mr. Vestartas against the modified and weakened public interest in surrender.

38. The loss of family contact, the potential loss of employment and/or housing, and adverse economic effects on the family unit are not normally factors that weigh heavily against surrender, as such features are generally inherent in the process. If the public interest remained strong, there would be nothing in the material placed before the court by Mr. Vestartas to justify a finding of disproportion in his favour. The sole feature of particular interest in this case is young age of the children for whom he is now responsible. The potential effect of the loss of contact with their father for almost 3 years at this time of their life is obvious, particularly in the case of the child who was born in 2015. Although the evidence on this aspect of the case is general in nature, it is reasonable to conclude that their best interests would be vindicated by the continued provision of care and support by a present father.

39. These family circumstances are not unusual, but are deserving of respect, particularly the interests of the youngest child. In my view, surrender would have been proportionate, reasonable and inevitable if the Lithuanian authorities had acted with reasonable dispatch upon their discovery that Mr. Vestartas was in Ireland in 2013. A first EAW was issued, followed by unexplained inaction for 3 years, during which time Mr. Vestartas, who was aged 24 in 2013, has moved on with his life in a generally positive and responsible manner. If surrender had been sought and granted in 2014 or 2015, it is possible that Mr. Vestartas might not become a father at

that time, or at least, his sentence would have been completed while his child was too young to notice his absence. That is not the position now, and one of the risks of inaction is that private interests may increase during any period of delay. In this case, it cannot be said that little or nothing had changed in his life during the period of delay. He has applied himself very positively during that time, considering his previous history of criminality and incarceration. That would be commendable in any case, and is particularly so on the facts of this case, where a young offender and conduct appears to have been rehabilitated in his new life.

40. The exceptional features of this case are that Mr. Vestartas engaged in a spree of offending in Lithuania between 2003 and 2005, at a time when he was aged between 14 years and 1 month and 15 years and 10 months. His young age would not have precluded prosecution in this jurisdiction at that time, but I consider that age remains an important factor in this case, because there is a strong public interest in the rehabilitation of such offenders. In fact, he received a substantial custodial sentence, and was imprisoned from age 17 to age 20. Despite non-compliance with parole conditions on his release, he has not become a serious recidivist, unlike so many who are imprisoned at that age. The passage of time and the progress of rehabilitation have completely undermined any remaining public interest in extradition or further incarceration in this case.

41. The period of delay in this case occurred over a substantial and important period of Mr. Vestartas' life, which he used to best advantage by attending positively to the important business of rehabilitation. In that context and as an example of the particular effect of delay in this case, by the time the authorities finally issued a warrant in December 2016, Mr. Vestartas had acquired employment, housing, a partner, and responsibility for two young children. His youngest child was then aged 1 year and 9 months. When the warrant eventually arrived in Ireland in April 2018, she was almost 3, and she is now nearly 4 years old. In the ordinary way, the attachment of a young child to her father will increase radically during those years.

42. Therefore, I am satisfied that delay is a powerful factor militating against surrender in the particular circumstances of this case. Although care must be taken not to characterise delays as blameworthy or culpable in the absence of information, in this case there was a clear and reasonable request to the relevant authorities to deal with these matters. In my view, the totally unexplained failure to transmit the EAW for 16 months, on top of the previous delays, was culpable, inordinate and inexcusable. The final period of delay tips the scales against surrender in this case, given the manifest weakness of the public interest.

43. I am satisfied that, having regard to the exceptional factual features of this case, the public interest factors that would ordinarily compel surrender are so heavily and unusually compromised that the adverse effects of surrender on him and his children, particularly his youngest child, are sufficiently weighty to render his proposed surrender an unwarranted and disproportionate interference with the Article 8 rights of all concerned. To hold otherwise would deprive the concept of respect for family and personal rights of all meaning, and would give insufficient weight to the relevant public interest in the proper rehabilitation of young offenders.

Conclusion:
44. In these circumstances, I uphold the section 37(1) objection set out in paragraphs 3(a) and (b) of the Points of Objection, and as a consequence, there will be an order refusing the surrender of Mr. Vestartas on foot of the EAW of 22 December 2016.

Addendum to judgment, delivered on the 27th of May, 2019
1. Following the delivery of the judgment set out above, the Minister sought a certificate of leave to appeal the refusal of the surrender to the Lithuania on foot of the European Arrest Warrant in question.

2. Section 16(11) of the 2003 Act, as now substituted by section 10 of the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012, provides as follows:-

> *"An appeal against an order under subsection (1) or (2) or a decision not to make such an order may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal."*

3. The focus of the limited basis for appeal provided by statute in this matter is not the strength of the grounds of appeal, or the probability or otherwise that the challenged decision is correct. It is the point of law involved in the decision, not the manner in which that point was determined. The point of law raised must be of exceptional public importance. It is insufficient that a point of law arises; exceptionality is a clear and significant additional requirement. It follows that the law covered by the exceptional point must be in a state of uncertainty, such that it is in the public interest that the law be clarified so as to enable the courts to administer justice in future cases. Exceptionality in this context does not arise simply because the point would be applicable on the facts of other cases. Nor is exceptionality found simply because there is uncertainty. There must be uncertainty not only in the sense that the question as to a point of law is raised, but in a sense over and above this, for example, in the daily operation of the law in question.

4. The Minister requests that I certify the following points of law:-

> *(1) where a person arrested under the European Arrest Warrant Act 2003, objects to being surrendered on the basis of a disproportionate interference with his right to respect for his private and family life under Article 8 of the European Convention on Human Rights, where the High Court is assessing the nature and strength of the public interest in surrender:*
>
> > *(a) to what extent (if any) is it relevant that the requested person is returning to serve the balance of a part served sentence because of a breach of his parole conditions, rather than to serve a sentence ab initio?*
> >
> > *(b) to what extent (if any) is it appropriate for the High Court to assess the gravity of the breach of parole conditions which resulted in the revocation of parole?*
> >
> > *(c) to what extent (if any) is it appropriate for the High Court to consider whether or not the requested person has achieved rehabilitation since being released on parole?*
> >
> > *(d) to what extent (if any) is it relevant that the requesting State has omitted to explain various periods of administrative delay?*
> >
> > *(e) the what extent (if any) is it relevant that the respondent's family life in Ireland was established in the knowledge that his continued residence in this State – and, therefore, the persistence of his family life – was precarious?*

(2) Did the High Court correctly identify and/or correctly apply the principles governing the issues of delay and proportionality to the facts and circumstances of this case?

5. It may be useful to recall that the issues determined by this judgment were the points of objection to surrender lodged by Mr. Vestartas, as set out in paragraph 13 of the judgment. Mr. Vestartas understandably relied heavily on the issue of delay in this case, both on a standalone basis, and as part of the objection founded on section 37 of the 2003 Act and on the State's obligation to respect his family and other rights under Article 8 of the European Convention on Human Rights. In this case, surrender was not refused on the basis of delay alone, inordinate and unexcused as it was. Delay was a significant component of the balancing exercise which I believed that I was entitled to carry out pursuant to the principles enunciated by the Supreme Court in the *Ostrowski* decision.

6. I believe that this balancing exercise was carried out in accordance with the principles enunciated in *Ostrowski* and *J.A.T. (No. 2).* In that regard, the questions posed at sub-paragraphs (a), (b) and (c) of ground 1 above do not present any new point of law, let alone a point of exceptional public importance. In assessing the public interest, the type of warrant involved is always a relevant consideration. Indeed, in this case, counsel for the Minister during the original application relied heavily on the public interest that attaches to conviction warrants such as that in question, and the principle that there was an equally weighty public interest in those who are sentenced validly by a competent court being returned for the purpose of serving that sentence.

7. The fact that the warrant in this case related to a convicted person who had already served a significant portion of a significant sentence was a factual matter relevant to the evaluation of the weight of the public interest in relation to this particular conviction warrant, as was the nature of the breach of parole condition that triggered the belated issue of a warrant in this case. If the factual situation had been different, and the request for surrender been triggered by, for example, serious reoffending on the part of Mr. Vestartas, no doubt counsel for the Minister would rightly have laid particular emphasis on such a factor as weighing heavily in favour of the public interest in surrender in such circumstances.

8. Likewise, the question posed at ground 1(c) does not raise a discrete point of law, whether of exceptional public importance or otherwise. The issue of rehabilitation is a factual matter closely related to consideration of the purpose for which the particular warrant was issued. This is always a relevant consideration. The apparent achievement of rehabilitation in the case is not a standalone factual or legal matter, but is a by-product of the fact that since moving to Ireland, over the long periods of delay in the case, Mr. Vestartas has been, generally speaking, of good behaviour, particularly when contrasted with his troubled early years in Lithuania. It is simply another fact which was relevant to an assessment of the balance of interests conducted by reference to the particular facts of the case. It was considered in the context of the public interest in surrender in this jurisdiction and not as part of any consideration of, or comment upon the domestic considerations of the requesting State. As indicated at paragraph 29 of the judgment, the issue of delay fell to be considered at part of the sequence of these matters in assessing the weight of the public interest in the balancing exercise referred to above.

9. In relation to the suggested ground of appeal at 1(d), I consider it well-established by the Supreme Court authorities referred to above that delay can be considered in the context of the effects and consequences of a particular period of delay on the facts of the individual case, particularly in the context of balancing the public and private rights relevant to an objection of the type made by Mr. Vestartas in this case. In cases where delay is raised as an issue, it is common for the Minister acting as central authority or the High Court acting as the Judicial Authority under the 2003 Act to seek details of the reasons behind any period or periods of delay identified as being relevant during a surrender hearing under this legislation. If such information is sought, I am satisfied that it is relevant to consider such information as the requesting authority chooses to submit pursuant to such a request. In this case, the request for information was effectively ignored. As alluded to in the judgment, if information had been provided as to the reasons for delay, such information would necessarily have been considered in the context of the overarching application of the principle of mutual respect that underpins the EAW system. Consequently, I do not consider that the principle of whether such explanation should be considered or the extent to which they apply in the particular case raises a point of law of novelty or significance, much less a point of exceptional public importance. If the relevance of delay as a consideration was ever in doubt in this area, the recent judgments of the Supreme Court in *Finnegan v. The Superintendent of Tallaght Garda Station and another*, *15 May 2019* put this point beyond doubt.

10. In relation to the ground proposed at paragraph 1(e), it is a common feature of such cases that requested individuals have left another country under a legal cloud, whether in the form of an investigation, a sentence, or a parole regime, and set up home or business in this jurisdiction. The background, facts and consequences of such decisions in the individual case are the factors that will be relevant where it is appropriate to conduct the balancing exercise referred to in the Supreme Court authorities set out above. In most cases, this will not be a particularly relevant fact, because departure from another jurisdiction is an almost universal feature of such cases, and is in itself insufficient to displace the starting presumption that refusal of surrender on the Article 8 basis is an exceptional step. What follows from that situation in the individual case is that which is of possible relevance in such circumstances. Accordingly, I do not consider that a separate point of law of exceptional public importance arises under this heading either.

11. So far as suggested ground number 2 is concerned, I am satisfied that the decision in this case amounted to no more than my application of the principles enunciated in the Supreme Court judgments to the facts of the case. If I erred in the application of those principles, that does not of itself give rise to a right to appeal. Other non-binding decisions of the High Court on different sets of facts are entitled to the utmost respect, and should be followed where the essential facts are identical. The facts of this case are not identical to Schoppik or any other previous decision. It seems to me that this suggested ground is ultimately directed as to whether my decision is correct, rather than whether it involved a point of law or exceptional public importance, the resolution of which is required to assist in the administration of justice in this case, as well as in all future cases.

12. In my view, even applying a reasonable degree of latitude to the application of the statutory threshold for an appeal, it has not been met in this case, and I therefore, respectfully decline to grant the certificate sought.

13. Finally, I think it appropriate to remark in the light of the application for an appeal certificate that I do not see that this judgment should have any significant precedential value for other or future such cases. Borrowing from the words of O'Donnell J. in *J.A.T. (No. 2),* it is a case which is based on factors which "*when weighed cumulatively, are powerful…the decision in this case is exceptional and even then close to the margin".* Each of the factors referred to in this judgment is specific to this case.

14. Perhaps the closest and most appropriate analogy arises from the principles governing the proper approach to circumstantial evidence. In this case, none of the factors in themselves were of sufficient weight to justify refusal of surrender in the balancing of interest exercise. The cumulative weight of the individual and specific factors was sufficient to achieve that end, albeit by a small margin. Unless the facts of another or subsequent case replicated precisely the unusual combination found in this case, I very much

doubt that the law as it stands and as it was applied in this case could produce the same result on a different set of facts.