THE HIGH COURT

Record No. 2016/137 EXT

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

JURIS VINGRIS

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 17th day of July, 2017.

1. The surrender of the respondent pursuant to a European Arrest Warrant ("EAW") is sought by Latvia for the purpose of executing a sentence of six years and six months imposed upon him in respect of two offences. Three main points of objection were argued on behalf of the respondent. These are: a) a claim under Article 3 of the European Convention on Human Rights ("ECHR") concerning his safety in prison in Latvia b) a claim that to surrender him would violate his right to respect for his personal and family rights under Article 8 of the ECHR and c) due to his trial *in absentia*, it would be a violation of s. 45 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") to surrender him.

A Member State That Has Given Effect to the 2002 Framework Decision
2. The surrender provisions of the Act of 2003 apply to those Member States of the European Union ("E.U.") that the Minister for Foreign Affairs has designated as having, under their national law, given affect to the Council (EC) Framework Decision of 13th June, 2002 (2002/584/JHA) on the European Arrest Warrant and the surrender procedures between Member States ("2002 Framework Decision"). I am satisfied by the European Arrest Warrant Act 2003 (Designated Member States) (No. 5) Order 2004 (S.I. No. 449/2004), the Minister for Foreign Affairs has designated Latvia as a member state for the purpose of the Act of 2003.

Identity
3. I am satisfied on the basis of the affidavit of Seán Fallon, member of An Garda Síochána, the affidavit of the respondent and the details set out in the EAW that the respondent, Juris Vingris, who appears before me, is the person in respect of whom the EAW has issued.

Endorsement
4. I am satisfied that the EAW has been endorsed in accordance with s. 13 of the Act of 2003 for execution in this jurisdiction.

Sections 21A, 22, 23 and 24 of the Act of 2003
5. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under the above provisions of the Act of 2003.

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

Section 38 of the Act of 2003
7. The issuing judicial authority in the EAW set out considerable detail of the offences of which this respondent has been convicted. In the first offence, the respondent, together with others, is said to have intentionally inflicted intentional serious bodily injury which, as result of the negligence of the offender, caused the victim's death. The second offence is that, as a state official, the respondent committed intentional acts that manifestly exceeded the limit of rights in authority granted to him by law as a state official and that those acts caused substantial harm to state authority administrative procedure as well as to the rights and interest of a person and that the acts caused serious consequences and were associated with violence.

8. The EAW describes that on 26th July, 2002, the respondent together with other state officials, namely police inspectors, went to a house belonging to another person without any legal authority and assaulted the victim and led him out of the house. This was apparently inspired by a belief that the victim was responsible for the rape of the respondent's relative. They also assaulted the owner of the house and took him out and also placed him in a car and drove the two of them away from the house. They went to the police station with the victim and took him forcibly from the car but were told to take him from the police station and then brought him back to the car. The second man was also brought in and out of the police station but was not detained in accordance with law. The victim was violently assaulted and had at least 33 traumatic impacts on his body. The victim was later returned to the police station but left on a toilet floor without being given medical assistance. Full details of the injuries inflicted on both men are given in the European arrest warrant. The victim died as a result of his injuries.

9. The issuing judicial authority ticked the box of "murder, grievous bodily injury" in respect of the offence of inflicting serious bodily injury. This offence carries in excess of a mandatory minimum of three years imprisonment and therefore meets the threshold set out in Article 2 para. 2 of the 2002 Framework Decision. In all the circumstances, there is no manifestly incorrect designation of the first offence as a list offence.

10. The details of the second offence demonstrate correspondence with a large number of offences in this jurisdiction. The facts correspond to an offence of false imprisonment in that the victim was forcibly taken from the house and held without his consent over a lengthy period of time. There is also correspondence with various assault offences under the Non-Fatal Offences Against the Person Act, 1997 as well as the offence of burglary contrary to s. 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

11. In circumstances where the minimum sentence imposed upon the respondent is in excess of that required pursuant to the 2002 Framework Decision and s. 38 of the Act of 2003, I am satisfied that his surrender in relation to these offences is not prohibited pursuant to s. 38 of the Act of 2003.

Section 37 of the Act of 2003

Article 8
12. The respondent claims that to surrender him to Latvia in respect of this sentence would be a disproportionate interference with his right to respect for his personal and family life. He quite correctly acknowledges that his surrender is sought for a serious offence but he submits that the delay, when taken with his own family and personal circumstances, means it would be disproportionate to surrender him.

13. The respondent states that he is 39 years old, married and has been residing in this jurisdiction since the summer of 2004. His son was born in Ireland in June 2005 and another child is expected this coming August. He says that, as a result of his difficulties in gaining alternative employment following his discharge from the police force in Latvia, he made a decision to immigrate with his wife to Dublin, Ireland, where his now father-in-law had settled, in order to seek employment prospects. He says that he has been gainfully employed in the catering industry in a variety of positions which he has outlined in his affidavit. He has a consistent history of working as a chef and has worked his way up to the position of executive chef for six venues. 14. The respondent says that he has been fully integrated into the Irish community. His wife works full-time but he says that his family rely upon him financially and emotionally. It appears that his son who has lived in Ireland since birth regards Ireland as his home and is an avid GAA enthusiast.

15. The evidence demonstrates that this respondent was acquitted by a Latvian court in 2004 in respect of these offences. An appeal was taken by the prosecution and it appears that there was a series of adjournments, not least contributed to by the fact that the respondent had left Latvia and it was not until December 2013 that the appellate court in Latvia convicted and sentenced him for these offences. An appeal was taken to the Latvian Supreme Court in respect of the sentence (the respondent does not accept he was the person who instigated that appeal). The decision of the Latvian Supreme Court was given on 23rd September, 2014 whereby the sentence was reduced to one of six years and six months imprisonment. The EAW was issued on 24th March, 2016 and was endorsed on 19th July, 2016 and he was arrested on 29th July, 2016.

16. Counsel for the respondent has relied in the main on the establishment of the respondent in this jurisdiction and the delay since the commission of the offence. This Court must have regard to the principles set out in *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 and to the decision of the Court of Appeal in *Minister for Justice and Equality v. P.K.* [2016] IECA 303 and to the Supreme Court in *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17.

17. It is by now well established that a claim that surrender is prohibited by virtue of Article 8 requires a balancing of the public interest in the surrender of the particular respondent in respect of the particular matter for which his or her surrender is sought, as against his or her personal interests. The test is one of proportionality and not exceptionality. It is an assessment that must be made on a case by case basis.

18. Although a respondent does not have to establish exceptional features in his or her case, the balancing of public interest versus private interest means that it is only exceptionally that the High Court would be prohibited from surrendering a respondent on the grounds of a disproportionate interference with his or her Article 8 rights. The Supreme Court (O'Donnell J.) has stated at para. 11 in the case of *Minister for Justice and Equality v. J.A.T. (No. 2)* that:

> *"[…] it would not […] be necessary to carry out any elaborate factual analysis or weighing of matters unless it is clear that the facts come at least close to a case which can be said to be truly exceptional in its features. Even in such cases, which must be rare, it is important that the considerations raised are scrutinised rigorously."*

19. In this case, the Court is satisfied that it is not necessary to dwell at any length on the Article 8 issue. These were offences of considerable seriousness concerning the death of a person in the context of misuse of power by police officers. There is undoubtedly a high public interest in his surrender to serve the sentence imposed upon him for these offences. Furthermore, although a great deal of time has passed since the commission of the offences, much of that has been explained by virute of the initial acquittal and the subsequent efforts to ensure this respondent's presence at trial. As will be demonstrated later in this judgment, the respondent bears a degree of responsibility for that delay.

20. Most importantly, however, on his own personal side, there is no evidence of any impact or consequence upon him or his family that is particularly injurious prejudicial or oppressive. Every extradition of a person will inevitably cause hardship to an individual and also to his or her family. Undoubtedly, the respondent's wife and his son will suffer the loss of a husband and father respectively. This is a usual consequence of extradition. Nothing in the facts of the case demonstrates that this case comes even close to the rare situation where Article 8 considerations require surrender to be prohibited.

21. In the view of the Court, it is not disproportionate to surrender this particular respondent to serve the sentence imposed upon him for the serious offences which he has committed.

Section 45 of the Act of 2003
22. Section 45 of the Act of 2003 deals with the position where a person has been tried *in absentia*. Where certain conditions are met, the High Court is permitted to surrender a person even though the trial has been held in his or her absence. In the present case, the issuing judicial authority has certified at point (d) 3.2 that "being aware of the schedule trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial". As required by s. 45 of the Act of 2003 and as interpreted by the Court of Appeal in *Minister for Justice and Equality v. Palonka* [2015] IECA 69, the issuing judicial authority gave information as to how the relevant condition had been met.

The facts
23. The conviction in this case was handed down after the prosecution appealed the first instance acquittal. It is uncontested that he was present at his initial trial. The respondent says that the lawyer who in fact appeared at the appeal hearing had no mandate to represent him.

24. Unfortunately, it is necessary to set out in a certain amount of detail the information that was provided to this Court both by the issuing judicial authority and by the respondent. In the EAW, the issuing judicial authority stated as follows:

> "On 1 December 2006 the court of appellate instance – Riga Regional Court sent a court summons to the accused J. Vingris, to Ireland (address: 11 Tramway Court, Sutton, Co. Dublin, Ireland), regarding the court session of the appellate instance of 22 March 2007. The court summons regarding the court session of the appellate instance of 22 March 2007 the accused received in person on 18 October 2007. The court session of 22 March 2007 was deferred.
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> On 24 April 2007 the court of appellate instance repeatedly sent a court summons to the accused J. Vingris, to Ireland,

regarding the court session of 17 – 19 December 2007. On 14 December, 2007 J. Vingris's wife informed that J. Vingris cannot arrive at the court session of 17 December 2007 due to the fact that his leg is in a cast. The court session of 7 December 2007 was deferred until 23- 25September 2008.

On 18 December 2007 the court of appellate instance repeatedly sent a court summons to the accused J. Vingris, to Ireland, regarding the court session of 23– 25 September2008. On 16 April 2008 the court of appellate instance received back the court summons sent on 18 December 2007 due to the fact that J. Vingris refused to receive the said summons. From the competent authority of Ireland there was received a confirmation given by the witness John McLoughlin (Dzons Makloglins) regarding the fact that J. Vingris cannot be encountered at the following address: 11 Tramway Court, Sutton, 15 Co. Dublin, Ireland; but it was established that J. Vingris works in a hotel. The witness indicated that he had met the accused J. Vingris at the hotel, who had accepted the summons but refused to sign a document confirming the receipt of the said summons. The court session of 23September 2008 was deferred until 29June 2009 due to the non arrival of the accused persons J. Vingris and A. Lipnickis.

On 6 October 2008 the court of appellate instance repeatedly sent a court summons to the accused J. Vingris, to Ireland, regarding the court session of 29 June, 2009. The court session of 29 June 2009 was deferred until 24 November, 2009 due to the non-arrival of the accused J. Vingris and the victim O. Nikolajeva at the appellate instance.

The court of appellate instance sent a court summons to the accused J. Vingris, to Ireland, regarding the court session of 24 November 2009. The mentioned court summons was returned with a notification that it was not possible to encounter the addressee at the mentioned address. The court session of 24 November 2009 was deferred until 15 February 2010. On 15 February 2010 the court decided to try the case while the accused J. Vingris is absent (in absentia) in accordance with s. 465 [of the Criminal Procedure Law].

On 16 January 2012 there was submitted a recusal regarding I. Amolina, judge of the court of appellate instance, and during the trial of 17 January 2012 the judge I. Amolina was replaced by the judge S. Kalnina. On 1 February 2012 summons were sent to J. Vingris regarding the court session of 12 September 2012, which was sent to both addresses - 11 Tramway Court, Sutton, Co. Dublin, Ireland and to the possible J. Vingris's place of work at the hotel. The mentioned summonses were returned with a notification that it was not possible to encounter the addressee at the indicated addresses. On 12 September 2012 the court of appellate instance, pursuant to Section 465 of the Criminal Procedure Law, took a decision to try the case in the absence of the accused J. Vingris (in abstentia).

This decision was based on the fact that the court is not aware of J. Vingris's whereabouts, and it is not possible to ensure his presence at the court session.

Juris Vingris was informed about the court sessions at the appellate instance – Riga Regional Court by a sworn advocate Valentina Olhova, with whom he had concluded an agreement regarding ensuring his defence within the criminal case of the appellate instance (order No. 38161). The sword (sic) advocate V. Olhova participated during the examination of the criminal case at the appellate instance.

At the cassation instance - Supreme Court Juris Vingris had concluded an agreement regarding ensuring his defence with the sworn advocate Aleksandrs Berezins (order No. 28134) and sworn advocate Jelena Kvjatkovska (order No. 29627).

The cassation instance - Supreme Court, having examined the criminal case in a written procedure, took a decision of 23 September 2014."

25. On 18th November, 2016, the respondent swore an affidavit in which he said that he had left Latvia freely and with the knowledge of the Latvian authorities. He says that the EAW is wholly incorrect in stating that he was aware of the trial resulting in his being found guilty and he absolutely refutes that he gave a mandate to any legal counsellor to represent him at the trial. He says that he was informed in general terms prior to leaving Latvia of a possible intention of the Latvian state to appeal his acquittal. He said he remained in contact with Ms. Olhova on a very sporadic basis until 2008 and had no contact with her since 2008. He says that his last communication with Ms. Olhova was following the encounter with a member of An Garda Síochána in or about 2008 who tried to serve him with papers while he was working at the Bailey Court Hotel in Howth, Co. Dublin. He says that the Gardaí never provided any explanation that the papers contained a court summons or court order. He says that he refused to receive the said papers as a signature was required and he expressed his wish for a solicitor to be present for any signature. He says that he informed the Gardaí of his correct address which was then 5 Hoey Court, Clongriffin, Dublin 13. He says that he stopped working for that hotel in July of 2008.

26. According to the respondent, the last time he communicated with Ms. Olhova was when he told her about this encounter and she advised him that he was correct not to receive documents without legal advice. He says that the lawyer never had a mandate from him. He says that he did not receive court summonses of 1st December, 2006 or that of 24th April, 2007. He does, however, say the following: "I say and believe and am informed that my wife did alert the Courts in Riga that I had a bad leg injury. I had injured my knee and was immobile and housebound. I obtained a medical note from my General Practitioner and this was also sent to the Latvian Courts". The respondent also goes on to say that he did not receive any court summons of 18th December, 2007, or of 6th October, 2008 or any summons concerning the hearing of 24th November, 2009. He says he never received communication from any party regarding the court hearing dated 15th February, 2010 or any subsequent dates in January 2012, February 2012 nor any date before or after. He says he was not informed of the judgment of the judicial panel of criminal cases of the Riga Regional Court in December 2013 or of the decision of the Supreme Court of 23rd September, 2014.

27. In a request dated 14th December, 2016, which enclosed the affidavits and exhibits, the central authority asked the issuing judicial authority if it could "explain the basis for the statement at Section (d)(4) as it is disputed by the Respondent.".

28. The issuing judicial authority replied on 15th December, 2016 repeating that the respondent had an agreement with the sworn advocate Valentina Olhova regarding his defence of the criminal case against him and enclosing the attached order as to the warrant of attorney. They also repeated and enclosed the attached orders concerning the Supreme Court representation. That document is headed "The Latvian Collegium of Sworn Advocates". It gives the stamp and address of Valentina Olhova and is said to be Agreement No. 26. It then has a heading Warrant of Attorney No. 38161 and is dated 2nd April, 2004. It states that the assignment is "to defend in the criminal case at the appellate instance" and it names four persons therein, one of whom is the respondent.

29. By letter dated 15th December, 2016, the central authority sought further information from the issuing judicial authority arising out of that correspondence as to whether Ms. Olhova had appeared in court at the *in absentia* appeal hearing of the 15th February,

2010 to defend the respondent and also whether she had the agreement of the respondent to do so. They also asked whether one or both of the advocates had actually represented the respondent in the cassation case before the Supreme Court which involved a written procedure.

30. By reply dated 19th December, 2016, the issuing judicial authority sent a letter from the Riga City Latgale Suburb Court in respect of the respondent. This letter said that the respondent "concluded an agreement on the defence with the sworn advocate Ms. Olhova". The issuing judicial authority states that "there is no evidence that J. Vingris has revoked the agreement." A number of court hearing dates, ranging from 4 October 2004 to 29 November 2013, were listed and the issuing judicial authority stated that in all such hearings the sworn advocate Ms. Olhova:

> "participated as the defence counsel of J. Vingris. In the case materials, as of 13.01.2012 there are applications from other accused persons [three named] on their refusal from the services provided by the sworn advocate V. Olhova as on 12.01.2012 the agreement with the sworn advocate V. Jackevics was concluded. It is not clear why the sworn advocate V. Olhova indicated that there was no agreement with J. Vingris because she appeared in person in all such court hearings at the appellate instance. In the case materials, on 4 February 2014 the warrant of attorney for the sworn advocate A. Berezins was submitted to ensure the defence of Juris Vingris at the cassation instance, and on 14 February 2014 the warrant of attorney for the sworn advocate Jelena Kvjatkovska was submitted. At the cassation instance, the criminal case hearing was held within the written procedure."

31. Further clarification was requested and by the reply dated 21st December, 2016, the same Latvian court replied saying that there was information in the case materials indicating that on the 4th February the agreement was concluded between the respondent and the sworn advocate A. Berizans and that on 13th February the Riga Regional Court received the cassation application by Mr. Berezins. The case materials then show that on 14th February the agreement was concluded between the respondent and the sworn advocate J. Kvjatkovska. The hearing was carried out under written proceedings.

32. A letter of Ms. Olhova dated 10th February, 2017 was relied upon by the respondent. This appears not to be a sworn letter although it appears that the translator's signature was notarised. In that letter, Ms. Olhova said that, in the interests of clarity, she was confirming that she acted in the initial proceedings under the mandate from the respondent whereby he was acquitted of all counts. She then went on to say as follows:

> "I was very concerned when these proceedings were appealed by the Prosecution to the Court of Appeal, as there had been no significant issues at the original hearing. The evidence and the case the State against Mr. Vingris had been fabricated. During the said period, Mr. Vingris had not been present in the country. Mr. Vingris was convinced that the decision on his criminal prosecution was a direct result of his, as police officer's, success, investigating high-level corruption in the Republic of Latvia. Listening to the evidence and seeing how the process was done, I would also presume to believe it.
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> I understand, that the criminal justice system in Ireland works differently from the system here in Latvia. As a lawyer in my native country, I can assure you that once you have received the mandate from the accused person in criminal proceedings, it is your procedural obligation to attend all the court sittings up to the completion of the case. Whereas I participated in the original case, my duty was to participate in the proceedings before the appeal court as well, irrespective of the current absence of mandate. This is a common practice. Furthermore, both the prosecution and the Court have been aware that after the acquittal of Mr. Vingris, there has been no relevant mandate at my disposal."

33. By a further letter dated 19th May, 2017, Ms. Olhova sent over further information to this Court. In this document, Ms. Olhova gives a great deal more information that she ever gave before. She accepts for the first time that the respondent gave her a mandate. She says that the respondent and others:-

> "[…] gave OLHOVA the verbal task to perform the defence […] in the court of second instance of the Republic of Latvia – Riga Regional Court Judicial panel of Criminal proceedings.

During the period from 4 October 2004 to 17 December 2007, the cooperation in the CASE of OLHOVA and the accused […] including VINGRIS, was regulated by the norms laid down in the Advocacy Law of the Republic of Latvia as in force during the said period."

34. Ms. Olhova then refers to an alteration in the norms of the advocacy laws whereby they were amended to provide that sworn advocates are not entitled to refuse to fulfil the agreement reached or the task given without the specification of "substantiated reasons". In her view, this gave her the right to demand that the accused persons sign with her a written agreement in accordance with the Regulations in Latvia thereby ensuring she receives the amount specified in the arrangement for the services provided in the framework of cases. She says that due to the fact that she lost contact with the respondent from 18th December, 2007, he did not execute any payments for the work performed by her in the case and did not give her tasks for future progress of the case. She says that on 23rd September, 2008, she announced to the court in Latvia that she was no longer performing his defence. She says that she continued only to defend three people and not him. She says that there was no solicitor's advocacy regarding him on various dates. However, she says that starting from 25th January, 2013, the court demanded that she be present at the scheduled hearings of the case to perform the defence of Vingris. Ms. Olhova pointed out that this was contrary to her claims that, for six years, he had not had contact with her and he had given her no tasks, that no settlement had been concluded between her and him since 23rd July, 2008, that since 17th December, 2007, she had received no payment for her services and that the court in Latvia had not affirmed her as his Latvian state paid sworn advocate. She said that it was not her duty to perform the respondent's defence in the case without remuneration.

35. She then went on to say that "the COURT disregarded the said OLHOVA'S arguments, demanded OLHOVA'S presence in the scheduled court hearings in the CASE, but OLHOVA without remuneration for the work in the CASE from either VINGRIS or the State of LATVIA, in the period from 25.01.2013, to 13.11.2013(in six court hearings), did not perform defence in the CASE within the framework of wishes voiced / tasks given by VINGRIS, because since 17.12.2007, OLHOVA was unaware of such." Ms. Olhova submitted that this is a "disregard of [the respondent's] rights specified under Articles 6, 13, 14, and 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms during the adjudication of the CASE."

Analysis

36. Counsel for the respondent submitted that there were two aspects to her submission that the relevant condition as contained in the Table to s. 45 of the Act of 2003 had not been complied with. She complained that, in the first place, the respondent had not been notified of the trial and, in the second place, that he was not, in fact, defended by a lawyer as that was clear from the information provided by Ms. Olhova. She submitted that it bore particularly scrutiny as he had been acquitted at trial and he had

walked away. She submitted that there was a clear distinction between apprehension of an appeal and notice of an appeal. She said one could have an apprehension of an appeal but not knowledge of such an appeal.

37. In the case of *Minister for Justice and Equality v. Fiszer* [2015] IEHC 664, this Court referred to the difference between the wording of point (d) 3.1(a) and 3.1(b) on the one hand of the Table in s. 45 of the Act of 2003 and point (d) 3.2 on the other hand. Points (d) 3.1(a) and 3.1(b) referred to the "scheduled date and place of the trial" whereas point (d) 3.2 refers to "the scheduled trial". As stated in *Fiszer* at para. 27:-

> *"[…] [t]he emphasis in point 3.1a and point 3.1b is on the actual date for the trial, whereas under point 3.2 it is on the anticipation of the trial."*

38. The respondent seeks to rely on the fact that he only had an apprehension of an appeal in this case and was not aware of the scheduled trial. It is abundantly clear from the respondent's less than forthcoming affidavit that he was aware that proceedings were before the court in Latvia; the reasonable inference to draw from his wife's contact with the Riga court is that the respondent and his wife knew that he was before the courts in Riga in respect of the appeal in this matter. His failure to give any detail as to why his wife was contacting the Riga court is entirely disingenuous and self-serving.

39. Furthermore, the evidence establishes that during the initial period in the aftermath of the acquittal and after the appeal had been lodged, he had been in contact with his own lawyer in respect of that appeal. The issuing judicial authority made reference in the EAW to the respondent having given his lawyer a mandate. The details of that mandate dated April 2004 were sent over and shows that she was mandated to defend him at the appellate hearing. The fact of that mandate has now been confirmed by the respondent's lawyer as correct, despite some disingenuous statements (which are discussed further below). He remained in contact with that lawyer until, at least, some time in 2008. He was well aware of the impending appellate proceedings but on the advice of his Latvian lawyer he was not prepared, at a minimum, to sign for receipt of any court summons or as he says himself, to receive a court summons.

40. The EAW states that the respondent was served with notice of the date of the trial in Ireland. This Court has also had the benefit of the evidence of retired Garda John McLoughlin who swore an affidavit in these proceedings. That affidavit was sworn in response to the respondent's affidavit which rejected what was said in the European arrest warrant. Mr. McLoughlin stated that he spoke to the respondent on 6th March, 2008 at the Bailey Court Hotel and that the respondent accepted service of the summons although he did not wish to sign same. At the time the detective had endorsed on his receipt of service that the respondent had refused to sign on the advice of his solicitor on 6th March, 2008.

41. Taking into account the deliberate evasiveness of the respondent about any knowledge of the appellate proceedings, I have no doubt that the evidence of Mr. John McLoughlin is correct. This respondent was served with the summons in respect of the proceedings but he failed to sign for receipt of these documents. Furthermore, the respondent's evidence is that he had a discussion with his lawyer in the aftermath of that and a proper inference to draw from that is that he must have been made aware of the scheduled trial because his lawyer would have been aware of that fact.

I am satisfied that the respondent was well aware that there was a scheduled trial and that he had given a mandate to his lawyer.

42. The main issue in the case is whether that lawyer actually defended him in court. This requires consideration of the issue surrounding the mandate. This Court has difficulty with the manner in which Ms. Olhova, the Latvian lawyer, has communicated with the Court. This Court will leave aside that she has cast significant aspersions on the *bona fides* of the Latvian authorities without providing specific evidence. The important consideration is whether the respondent was represented by his lawyer in the Latvian court pursuant to the mandate and thereby defended by her. From the outset Ms. Olhova has been less than forthcoming with information.

43. The first statement made by Ms. Olhova was, on any reasonable interpretation, a statement that she did not have a mandate to act for the respondent following his initial acquittal in the subsequent proceedings that followed thereafter. She did however, qualify that to a certain extent by saying that she had no instructions to act in the proceedings after 2008. The reference to "after 2008" was, at least, some indication by her that there was an engagement with the process subsequent to the acquittal but prior to the conviction on appeal; yet she failed to indicate that she had in fact appeared for him throughout the appellate proceedings

44. Her subsequent letter of 10th February, 2017, was unfortunately once again less than forthcoming and, indeed, amounts to a direct failure to tell the Court the true position as regards her appearance in the appeal court arising from the madate that the respondent originally gave. It is only in her final letter that she accepts that she had a mandate to act in the initial aftermath of the acquittal in the appeal proceedings although she claimed that she then had a right to "come off record," (as it would be termed in this jurisdiction), because of "substantiated reasons". The true position is that her "substantiated reasons" were not accepted by the Latvian court and she was required to act for the respondent in the appeal. She complains that she has had no further instructions from him since in or about 2007 and no communication from him since about 2008. By the end of her communications with this Court, Ms. Olhova's main complaint boils down to the respondent's rights to a fair trial were not respected.

45. Counsel for the respondent submitted this is a different case to the scenarios in both *Minister for Justice and Equality v. Fiszer* and *Minister for Justice and Equality v. Tulis* [2015] IEHC 806 as the difference here was that the respondent was acquitted at first instance. In the view of the Court, that is irrelevant in the situation where the respondent has failed to deal with the fact that he gave this lawyer a mandate after his acquittal for the purpose of appearing for him in the appeal. On the evidence before this Court, the mandate was never withdrawn and indeed the evidence ultimately produced by the respondent's lawyer shows that the Latvian court treated the mandate as still subsisting. There may have been an issue with fees and subsequent instructions, but the mandate was never withdrawn. Although the respondent may not have communicated with his lawyer, he never withdrew the mandate from his lawyer and she was required to appear and did appear for him "to defend in the criminal case at the appellate instance."

46. The respondent in this case did not seek to argue that his surrender was prohibited on the basis of lack of a fair trial. As per the decision in *Minister for Justice, Equality and Law Reform v. Brennan* [2007] 3 I.R. 732, that would require proof of egregious circumstances, amounting to a clearly established and fundamental defect in the system of justice in the issuing state. It is not difficult to see why such an argument was not made because, at a basic level, the ground work for such an argument had not been laid. Both the respondent and his lawyer had deliberately and consistently avoided, if not evaded, dealing with the giving of instructions by him with regard to the appeal. In that regard, the respondent himself denied that he had given any mandate, but it appears that his lawyer's view is that an initial mandate was given but could not be continued due to lack of fees and lack of communication. No attempt was made by his Latvian lawyer to give any details as to any areas covered in the new trial which she was not able to deal with on the basis of the initial instructions she had received. Furthermore, there was no engagement with the

question as to whether this could be challenged in the Latvian courts as a breach of his rights under the European Convention on Human Rights. Most importantly, however, the Court is quite satisfied that this was a matter which the Latvian court was entitled to deal with in accordance with its own criminal procedure. It was a situation which was clearly provided for in Latvian law.

47. In all the above circumstances, there was no egregious breach of fundamental rights. The Latvian system provided and required that a lawyer who was given a mandate act in accordance with that mandate. There was a system in place for applying to the court to say the lawyer is no longer bound by the mandate. The Latvian court heard and dismissed that application.

48. Counsel for the respondent submitted that s. 45 of the Act of 2003 and the provisions of the 2002 Framework Decision as amended by the 2009 Framework Decision are designed to protect defence rights. She submitted that what occurred here in Latvia was a breach of the respondent's defence rights. The Court rejects that the evidence in this case shows any breach of defence rights. As stated above, a mandate was given and the Latvian court adjudicated in accordance with its own procedures that the respondent's lawyer had to continue to act in accordance with that mandate. The respondent, having knowledge of his scheduled trial was represented at his trial by a lawyer in accordance with the mandate he had given. In those circumstances there is no breach of defence rights.

49. This is entirely different from the situation in *Tulis* where no mandate had ever been given. In the present case, there is no doubt that a mandate was given and also now, even on the evidence of the respondent's lawyer, there is no doubt that an application to be discharged from that mandate was heard and rejected by the Latvian Court. There is also no doubt on the evidence that the respondent himself did not cancel the mandate; his evidence is that he never gave one at all but that has been rejected by this Court. In all of those circumstances, this Court is quite satisfied to accept the certification by the issuing judicial authority that the trial in absentia took place in the circumstances set out in point (d) 3.2 of the European arrest warrant.

50. In so holding, this Court finds the Latvian court's position has always been consisted in that a mandate was given and that the lawyer appeared to defend him whereas the respondent's position has, on his own evidence, and that of his lawyer, been inconsistent, contradictory and generally evasive. Sufficient information supporting the certification was given by the issuing judicial authority – the Court rejects that the issuing judicial authority was required to indicate that a challenge to the mandate had been made and rejected in the national courts. If the challenge had been accepted then of course the issuing judicial authority would not have been in a position to make the certification it did make in this case. The details required to be provided are those which show how the conditions were met, these have been provided here as regards knowledge of the trial, the madate to the lawyer and that she did indeed defend him at trial. The role of the executing judicial authority is not to act as a court of appeal against a decision not to revoke a mandate or not to allow a lawyer "come off record." Once the condition has been met and shown to be met by the issuing judicial authority that is sufficient to require the executing judicial authority to order surrender.

51. The Court is satisfied, therefore, that the requirements under s. 45 of the Act of 2003 have been complied with in this case and that his surrender is not prohibited under s. 45 of the Act of 2003.

52. The Court of Justice of the European Union ("CJEU") has also dealt with the issue of s. 45 of the Act of 2003 and how an executing judicial authority should approach the situation where one of these exceptions is being relied upon. As the CJEU said at paras. 50-51 of the judgment in *Openbaar Ministerie v. Pawel Dworzecki* (Case C-108/16 PPU, Fourth Chamber, 24th May, 2016):-

> *"Furthermore, as the scenarios described in Article 4A(1)(a)(i) of Framework Decision 2002/584 were conceived as exceptions to an optional ground for non-recognition, the executing judicial authority may, in any event, even after having found that they did not cover the situation at issue, take into account other circumstances that enabled it to be sure that the surrender of the person concerned does not mean a breach of his rights of defence.*

In the context of such an assessment of the optional ground for non-recognition, the executing judicial authority may thus have regard to the conduct of the person concerned. It is at this stage of the surrender procedure that particular attention might be paid to any manifest lack of diligence on the part of the person concerned, notably where it transpires that he sought to avoid service of the information addressed to him."

53. The evidence establishes that this respondent sought to avoid information addressed to him. He said that he was not taking the documentation on the advice of a solicitor and indeed he confirmed that when he spoke to a solicitor about it, she advised him not to take the service of any documentation. There can only be one reason as to why he was being served with documentation in Ireland and that was related to the ongoing appeal. Undoubtedly the respondent was avoiding service of the notice of the appellate hearing. Moreover, if he did not communicate with his lawyer about the scheduled trial when he spoke to her about the attempt at service, it was a wilful choice on his part to remain ignorant. Furthermore, it is abundantly clear that he had knowledge from an early stage that the appeal was proceeding and that is evidenced by his conversations with his own lawyer, his giving of a mandate to her, and the fact that his wife contacted the Latvian court when he could not attend on one occasion. He had given a mandate and he never formally withdrew that mandate but he chose to not stay in communication with his own lawyer. There is clearly a manifest lack of diligence on his part and on that basis also, his claim that s. 45 of the Act of 2003 prohibits his surrender is rejected.

Article 3 of the European Court of Human Rights

54. The respondent claimed in his points of objection that surrender would contravene s. 37 of the Act of 2003, his constitutional rights and his ECHR, in particular Article 3 thereof, where his personal circumstances were such that he would be subject to torture, inhuman and degrading treatment if surrendered to the issuing state. In his first affidavit to the Court, the respondent gave his belief that the Latvian prison system would be unable to provide secure detention for him in circumstances where his employment as a detective had resulted in many convicted persons being detained and he would be a target for attack. He said there was only one place where former policemen who have allegedly committed a crime could be detained and that is Matisa prison in Riga. He said that detainees who are in police protection such as informants within a gang are also detained at Matisa prison which is an open prison. He said that he would fear for his safety should he be detained there as his potential co detainees would be persons who he had previously arrested. He said there was no alternative prison in Latvia to detain him. No other affidavit was filed by him nor were any reports from international bodies drawn to the attention of the central authority or of the court prior to the initial hearing in this matter.

55. As counsel for the respondent informed the court at the initial hearing that she was not pressing the Article 3 point on behalf of her client, this Court drew the attention of the parties to a previous case which the Court had dealt with concerning the treatment of vulnerable prisoners in Latvia. The High Court drew the attention of the parties to the judgment of *D.F. v. Latvia* (App. No. 11160/07, 29th October, 2013) of the European Court of Human Rights. The matter was put back for further consideration by the parties. The respondent took the opportunity to swear a further affidavit outlining his particular concerns about incarceration in Latvia and in particular in Matisa prison. He said that he was particularly vulnerable to attack including fatal attack as he had been a member of an

elite and specialised detective unit created in 2000 which dealt with informants and organised crime. He said that a number of those gang members and other informants remain in the prison population and represent a huge threat to his safety. He said he believed the prison, which is the only prison where an ex-policeman can be detained, is entirely open in terms of its layout and his safety simply could not be ensured.

56. The respondent then went on to say that "it now appears relevant that my mother was present at Bison Bar in Dublin in 2014, where I was working as head chef, when Mr. Ringolds Melkis and Mr. Ivars Straume visited looking for me. I say and believe and am informed that these two persons, who were previous colleagues of mine communicated to my mother a threat to kill me. I say and believe that these two ex policemen are detained in custody in Latvia and will seek to give effect to their threat if I am surrendered to Latvia. I say that I previously communicated this instruction to my solicitor but was informed that same was not necessarily relevant matter hence same is now being known to the court in this affidavit." The respondent also went on to say that through his extensive dealings with the justice and penal system in Latvia the corruption of state officials is extensive and effective and by the level of that corruption, he is particularly vulnerable to attack and death.

57. Using its powers under s. 20 of the Act of 2003, this Court requested the central authority to request the issuing state to comment on para. 92 of the judgment in *D.F. v Latvia* insofar as those issues may concern this particular respondent if he is surrendered (*i.e.* what measures will be taken to prevent possible ill treatment of this category of vulnerable prisoner, if there is a specific prison or section of a prison in which he would be placed, *etc.*). The Court also enquired if there were any specific guarantees that the Latvian authorities were prepared to give or were in a position to give with respect to this particular respondent. This could include a guarantee that his particular situation as a former police officer has been communicated to the prison authorities or will be communicated as soon as surrender is agreed. The central authority's request also included a copy of the affidavit in which the respondent contended that he was particularly vulnerable to attack and in which he had stated that there was a threat against him.

58. By letter dated 27th March, 2017, the issuing judicial authority responded by forwarding a letter from the prisons administration. That letter advised that in Riga Central Prison, a separate section had been created where prisoners who were former employees of the law enforcement authorities or their close relatives as well as persons who contributing to solving criminal offences committed by other individuals, were held. The letter set out the procedure for placing prisoners in that special section. This occurs on the basis of an application after the examination of the circumstances mentioned in the submission or on the basis of information provided by the competent authorities ensuring the security of those prisoners. The issue regarding the transfer of imprisoned persons to the special section can be considered after receiving an application made by the relevant person himself/herself. The prison administration also said "the administration hereby informs that J. Vingris will be placed in the Riga Central Prison and until the conclusion of the examination he may be isolated from the following persons located in the Riga Central Prison; Ringolds Melkis and Ivars Straume".

59. The prison authority also gave information about the process by which convicted persons are allocated to specific institution. This is determined by the head of the administration taking into account the medical security and prevention of crime criteria. Also taken into account are the requirements of the sentence serving regime imposed on the convicted person and the number of vacant places in the deprivation of liberty institutions. The administration indicated that in making a decision regarding this specific deprivation of liberty institutions for the respondent, the administration will take into consideration the information acquired during the examination as well as the criteria mentioned in the relevant section of the Latvian Code. Furthermore, it was also stated that the respondent had a right to apply to the Prosecutor General's Office in order to be granted the status of specially procedurally protected person.

60. In the period between the hearings of this application for surrender, the respondent made an application to the Prosecutor General for a special protection status. This application was based upon the threats made against him by the aforementioned persons as they believe that the respondent had been "guilty in the caused situation." The application was also based on the fact that the respondent would have to serve out his sentence "where gypsy community representatives, whose national traditions oblige to revenge for the deceased brother following the principle 'blood for blood' – *the victim/the deceased of the CASE was a gypsy community representative […]*".

61. The respondent's Latvian lawyer, Ms. Olhova ,in her statement dated 19th May, 2007, also said that as his former defender and "[…] having a good knowledge of the actual circumstances of the CASE and the circumstances of the people imprisoned in the Central Prison of Latvia […]can allege that […]" Latvia cannot guarantee the security of the respondent's life and health. She claims that he would serve his sentence isolated from other prisoners and that will mean he would be kept in solitary confinement contrary to the ECHR. She also claims that the officials of the General Prosecution Office and the management of the prisons had refused to give any specific guarantees to her or to the respondent or to the respondent's Irish solicitors he would be able to serve his sentence in a Latvian prison without threat to his life and health from other prisoners or corrupt prison employees. It is noteworthy that Ms. Olhova appeared to be acting for him at this point in time as she clearly said that no guarantee had been given to her. Furthermore, her allegation as regards the issue of solitary confinement was not pursued by the respondent at the hearing and, in the view of this Court, there is no basis for making any further enquiry in that regard.

62. Ms. Olhova sent a further document dated 22nd May, 2017. She said that she was not entitled to act as an expert as an individually practising attorney at law but she said that she could provide information and detailed comments on safety conditions in Riga Central Prison. She repeated what she said about the threats. She referred to Unit 5 of Riga Central Prison which is the only specialised prison in Latvia, but said it had (1) joint eating premises, (2) joint WCs, showers, (3) joint territory to take walks and (4) joint medical aid premises. In her view, this created favourable conditions for retaliation against the respondent from others who have expressed real threats to him or who "by national customs, are imposed an obligation to take revenge for dead Roma man."

63. The application to assign the status of the person protected by a special procedure was rejected by the Prosecutor General's Office as appears from a document exhibited by the respondent's solicitor. The Prosecutor General considered the application and also documents from the prison administration in Riga Central Prison as well as other documents and stated that the respondent has not provided true testimony on his activity or on the activity of the co-accused parties. The Prosecutor General stated that the "possible conflict with the convicts Ivars Straume and Ringolds Melkis as occurred due to other reasons and is not related to the testimony in the criminal proceedings." The Prosecutor General referred to a letter of Riga Central Prison administration, which stated that there was no current information confirming that Ivars Straume and Ringolds Melkis will somehow attempt to express threats to the respondent's life or health as their goal was to be released from prison as soon as possible by complying with all internal regulations. The Prosecutor General's view is that there is no real information providing reasonable grounds to believe that there is a threat and therefore assigning the respondent a status of person protected by a special procedure cannot be applicable. The decision records that the respondent is entitled to submit a complaint to the Latvian Supreme Court in relation to the finding.

64. The respondent also relied upon a statement from an independently practising sworn advocate from Lithuania, one Aigars Krikis. He says that he has carried out legal and factual work in the detention centre in the Republic of Latvia in general and in connection with the respondent. Mr. Krikis says that he makes his conclusion based on what he says is a relevant circumstances, *i.e.* it is not

being denied that the respondent has been threatened and is in real fear for his health and life from the other convicted parties in the case..

65. Mr. Krikis gave details about the numbers of detention centres in Latvia, the numbers of detained persons and accepts that the numbers of prisoners have decreased due to changes in the justice system in recent years. He states that prisoners have limited access to re-socialisation and rehabilitation processes and that needs and risk assessment is not provided. Although the decrease in the number of imprisoned persons has improved Latvia's international reputation as well as improving security by allowing more flexible placement of prisoners within detention centres, he says the changes in numbers of prisoners do not affect those issues concerned with infrastructure of the detention centres in order to effectively provide re-socialisation.

66. Mr. Krikis confirms that the only unit for placement of persons convicted of bribery or other crimes committed by policemen, customs officers, border guards, prosecutors or government clerks is Unit 5 in Riga Central Prison. He says that this unit is on the common territory of Riga Central Prison with each unit being separated by special fencing. He says that during the daytime, the fences stay open and work brigade prisoners freely move across the whole territory and usually accompanied only by one prison guard. They carry out various maintenance tasks on the territory of the prison including Unit 5 and prisoners are able to communicate verbally with each other through the cell windows and are even to able to exchange different objects by throwing them out the window. He also talks about how parcels can be exchanged between different units in the prison. He says that persons entering Riga Central Prison are checked in a very superficial way and says only once was he thoroughly checked.

67. Mr. Krikis says that the only way to direct and/or indirect contact in Unit 5 between the respondent and other convicted persons in the case, would be to place him in a single person cell. He then says this is not proposed in the conviction of this case, even though during walks, medical care, food delivery, *etc.*, it would be impossible to avoid the direct and/or indirect contact between the respondent and other convicted persons in the case. Mr. Krikis goes on to state that "Romany – gypsy traditions, in respect of blood revenge for the death of brother in respect of Vingris and in relation to the victim of the case – in relation to the circumstances of the death of the Romany gypsy". He then says that the ratio between the Romany gypsy prisoners and other nationalities in the population of the Republic of Latvia is relatively high.

68. He then gives his conclusion which is that placing the respondent in Latvia's detention centre including Unit 5, that he would be faced with real potential threat to his health and real potential threat to his life. He then goes on to say that if the prison cannot provide protection for the respondent, that would be a breach of the respondent's right to life as well and that he would be subjected to humiliating treatment.

69. Counsel for the respondent relied upon the evidence before the Court in submitting that there were substantial grounds for believing that the respondent is at real risk of being subjected to inhuman and degrading treatment. She based it on two issues: one being the threat from his co-excused and the second being the threat from Roma prisoners. She criticised the response from the Latvian authorities and characterised it as a statement which simply said that they have a prison which might allow for separation but the respondent may not necessarily go there and that, secondly, even if he goes to that prison he might be separated but they will not tell the court that will occur. The issuing state was only prepared to say that there was an application for special status. She submitted that the respondent had now been rejected for the application of special status.

70. Counsel also criticised the Latvian state for not addressing the issue of Roma nationality in either its reply to this Court or indeed in the application for special status. She accepted that she had no evidence from an expert in relation to Roma traditions. She submitted however that there was no denial from the Latvian authorities that the respondent had a real fear for his life. She submitted that the state of the evidence was that the respondent was a clearly vulnerable person with a high level of involvement with the police. There have been threats to kill him. She submitted that there was a letter from this State asking for specific information and that in her submission there was no basis for the conclusion that there was anything approaching a guarantee in that letter; therefore if he was to be surrendered it would be in the face of no guarantee from the Latvian authorities. She submitted that the Latvian authorities were obliged to satisfy this Court that the real risk will be addressed but that they have not done so. She relied on the case of *D.F. v. Latvia*..

71. In response, counsel for the minister submitted that this was a case being made solely on the basis of the respondent being a police officer. It was submitted that this Court was aware that there was a separate unit in the prison for police officers and that there was a guarantee that he would be isolated. In the submission of the respondent, the word "may" had to be read as a guarantee. She submitted that although there was criticism of the procedure, there was in fact a system.

72. Counsel also referred to the importance of the facts in this case. She submitted that from 16thSeptember, 2002 to 5th June, 2003, this respondent had spent time in Latvian detention institutes. No complaint had been made by him and, indeed, it is accepted that he made no complaint at this time. It is a long time since he had been a police officer and he had never filed an affidavit of concern regarding the Roma population. Furthermore, she referred to the fact that there was no affidavit from his mother in this regard. She also said that the alleged threat was extremely vague as not even a date of threat had been given. She referred to the decision of the Prosecutor General who, on the basis of the information of the prison as to the genuine nature of the threat, had viewed it as not credible.

73. Counsel referred to the decisions in this jurisdiction, in particular *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783 and the fact that a mere possibility of a threat to life or inhuman and degrading treatment would not be sufficient to prohibit surrender. The court had to consider the level of danger in this regard.

Analysis and Decision of the Court

74. In accordance with the decision of the Supreme Court in *Rettinger* and the decision of the CJEU in the joined cases of *Aranyosi and Caldararu* (C-404/15 and C-659/15 PPU) of 5th April, 2016, this Court must refuse surrender if it has been established that there are substantial reasonable grounds for believing that a particular respondent would be at real risk of being subjected to inhuman and degrading treatment in the issuing state. There is no legal burden placed upon a respondent in this regard but in accordance with the decision of *Rettinger*, there is an evidential burden on him or her.

75. The CJEU determined in *Aranyosi* and *Caldararu* that the executing judicial authority must initially rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing member state that demonstrates that there are either systemic or generalised deficiencies or which may affect certain groups of people or certain places of detention. The CJEU said that the executing judicial authority is entitled to have regard to judgments of international courts and also reports and documents produced by bodies of the Council of Europe or under the aegis of the United Nations.

76. In this case, the Court had an initial concern arising out of the decision of the ECtHR in *D.F. v. Latvia* that as a vulnerable person

within the meaning of the law applicable to Article 3 (as a former police officer going to prison), that there might be an absence of a systematic approach to dealing with him. It was in that context that the issue was drawn to the attention of the parties and that ultimately further information was sought from the issuing state. The Court made specific reference to para. 92 of the judgment of the ECtHR in that case. In that paragraph the ECtHR noted that requests to law enforcement agencies seeking confirmation that there had been previous collaboration with the police could turn into a lengthy and heavily bureaucratic procedure. The ECtHR suggested that there was a lack of coordination among investigators, prosecutors and penal institutions to prevent possible ill treatment of detainees who, owing to a record of informing in respect of criminal offences, had become particularly vulnerable. The ECtHR observed that it had previously identified and criticised the absence of a systematic approach to dealing with the difficulties faced by police informers in Latvian prisons (*J.L. v Latvia*, Appl. no. 23893/06, 17 April 2012).

77. In the present case, the respondent had initially made his case on Article 3 on the grounds that he would be in danger from co-detainees that he had previously arrested. This was on the basis that informants who were previously gang members would also be held in the prison where he would be held, which was an open prison. It is noteworthy that this aspect of the case has not really been pursued and that the respondent ultimately grounds his objection on the threats from his former co-accused and on the basis of a generic threat from all Roma persons.

78. As regards the issue of a threat from those of Roma ethnicity, this Court categorically rejects that the respondent has made any evidential case for this submission. The respondent, through statements from lawyers in Latvia and submission of counsel in these proceedings, has made an entirely unsubstantiated claim that persons of "Roma nationality (sic)" have a tradition of blood revenge for the death of another person of Roma origin and that he is at risk from all and any prisoner of Roma ethnicity. This statement was placed before the Court without any indication of an expertise on behalf of the persons making this statement to speak of Roma culture or traditions. Indeed, the reference to "Roma nationality" would appear to indicate that these lawyers from Latvia do not have a basic knowledge of the Roma community which is that they are an ethnic group rather than a nationality. Most importantly, however, to put forward such a generalised unsubstantiated statement about an entire ethnic group's so-called homicidal traditions is to invite this Court to engage in a process of open discrimination against Roma people in general. This Court categorically rejects such an invitation.

79. Furthermore, in the specifics of this case, it is striking that the respondent spent about nine months in custody in Latvia previously in relation to these offences and did not make a single complaint of threats from any person, whether they be of Roma ethnicity or otherwise. Moreover, there is nothing to suggest that his co-accused who were also police officers involved in the death of the victim have been assaulted, and clearly from the evidence they have not been murdered while in custody. The Court rejects this objection to his surrender as it does not meet the evidential threshold required to substantiate a claim of real risk of being subjected to inhuman or degrading treatment.

80. The respondent's second ground is based on his allegation that a threat was made to kill him by his co-accused in 2014 to his mother. His objection, as acknowledged by Mr. Krikis, his independent Latvian lawyer, is based upon this ground being true. This Court must initially assess whether this evidence is credible and, if so, whether it amounts to a substantial ground for showing that he is at real risk of inhuman and degrading treatment.

81. As stated above, the information as to this threat only came about when the Court raised the issue of Article 3 of its own motion. The respondent explains this by saying that he had raised it with his legal advisors but that he had been informed that it was necessarily a relevant matter. If that averment is accepted, it means that his legal advisors did not consider that a threat made in 2014 apparently to his mother by his co-accused could have any relevance to a request for his surrender in late 2016/2017. That was an understandable reaction from his lawyers.

82. The Court is prepared to proceed on the basis that he did raise the threat with his solicitors when faced with the prospect of surrender on the European arrest warrant. The fact that he raised the threat at that stage, does not make it obligatory for this Court to accept that what he says about the threat is the truth; it falls to this Court to assess, for the purpose of assessing whether it might form a ground for prohibiting his surrender, whether what the respondent claims is credible.

83. The evidence presented to this Court is by way of hearsay, the threat having been made to his mother and not to the respondent. There is no explanation as to why his mother did not give this evidence herself. No explanation such as the death of his mother, her illness, her presence outside the country or her unwillingness to become involved was proffered. This is a matter that this Court is entitled to take into account. Furthermore, there is no evidence from any other person present in Bison Bar. Such a person might perhaps be able to describe how the mother of the respondent had seemed shocked when two foreign nationals had come looking her son. There is no evidence that any complaint, formal or informal, was made to any person at that time by the respondent or indeed by his mother. One would have expected a threat to kill to be communicated to An Garda Síochána or to the Latvian authorities. No explanation has been given as to why there was no such communication.

84. The Court also takes into account that the threat has been presented in the respondent's affidavit in a manner which is virtually without any context. The respondent simply says that these previous colleagues of his communicated to his mother a threat to kill. It is also unusual, to say the least, that two persons who were criminal associates of the respondent in Latvia, would make their way to Ireland simply to communicate a threat to kill. It is noted that the respondent's application to the General Prosecutor goes somewhat further than his affidavit and states that they made the threat as they believed that the respondent was "guilty in the caused situation". Nonetheless there is no plausible reason as to why the co-accused would really want to make that threat as the case was finished by that time and there was little if anything to be gained at that stage by a threat to kill the respondent.

85. The Court notes that the application to the Latvian court states that the threat was made on a specific day, 28th September, 2014. That is not stated in the affidavit of the respondent and no explanation is given as to how he can be so specific in his application to Latvian court. It is of note that 28th September, 2014 is less than a week after the confirmation by the Supreme Court in Latvia of the sentences against all concerned. Furthermore, the application to the Prosecutor General states "further the names of the persons will be announced, introducing them to the Court of the Republic of Ireland as witnesses". That is an indication by the respondent that there were more witnesses to this incident, but as stated above no witnesses have been produced and indeed no other names, other than his mother, have been put before this Court.

86. In this Court's view, the averment regarding the threat to kill in the affidavit is not credible. It is an entirely self-serving averment, the essence of which amounted to an allegation of a serious criminal offence and more pertinent to an assessment of its credibility it amounted to a serious threat to his life. There is no evidence that this respondent made any complaint to the Gardaí for the purpose of having these people prosecuted or perhaps, even more importantly, for the purpose of insuring his safety. He has given no evidence of any changes in his life he made as a result of the threat e.g. a change of routine or extra alarms. It is also a hearsay statement and the person to whom the threat was made has not given evidence of it, nor has any explanation as to why not

been forthcoming to the Court. The details of the threat and the date of the threat were not given in the respondent's affidavit and there is no explanation as to why other details were provided in the application to the Latvian court. In all the circumstances, the Court rejects it as unbelievable.

87. In those circumstances, there is no basis for the respondent's contention that he is at real risk of inhuman and degrading treatment due to threats from his co-accused. The Court, however, wishes to make it clear that even if the Court accepted that such a threat may well have been made or that there was a real risk that it had been made, the Court does not consider that substantial grounds have been made out to show that there is a real risk of inhuman and degrading treatment. The mere fact that a person complains that they are at a particular risk because of some factual situation related to his or her personal circumstances or to the particularities of the case, does not require the executing judicial authority to insist that such an allegation be taken at face value without any further consideration by the issuing state.

88. There may of course be some cases where the existence of vulnerability is unquestionably established, for example, in the case of a person with an obvious and clear mental or physical disability or in the case of an acknowledged police informant. In those circumstances the focus of the executing judicial authority will quite correctly be on how an issuing state will treat such a person. Where however, there may reasonably be an issue as to, for example, the extent to which a respondent has particular medical needs or whether a person has an otherwise good claim to be a vulnerable person, the executing judicial authority cannot require guarantees that a person will be treated in a particular way. An example of a clear case where a psychiatric condition was well established and certain minimum treatment was required is that of *Attorney General v. Bukoshi* [2017] IEHC 113. There was no doubt in that case as to the diagnosis of the respondent and therefore particular assurances were required from the Albanian authorities.

89. In the present case, there is no requirement to give a guarantee that this respondent will be held separately from his co-accused because, in the specific context of this case, which includes a very late claim of an alleged threat and a previous incarceration without any such threat, the question of whether such separation is required is a matter that can only be definitively resolved by the authorities in the issuing state. What is required, however, is for this Court, as executing judicial authority and especially in the context of the *D.F. v. Latvia* case, to be satisfied that a specific procedure has been set up for the purposes of insuring the safety of the respondent on his any surrender to Latvia.

90. In this case, it is undoubtedly the situation that there is a special section in Riga Central Prison where former employees of law enforcement agencies or their close relatives as well as persons who contributed to solving criminal offences, may be placed. People are placed there on the basis of an application after the examination of the circumstances mentioned in submissions. It appears that the application can come from the competent authorities or indeed from the applicant himself or herself. In the view of the Court, the administration has guaranteed that the respondent will be placed in Riga Central Prison for the purposes of carrying out that examination. The reference to "may be isolated" from his co-accused must be read in the context that there will be an examination of the security situation for this respondent on his return. The Court understands the position to be that the isolation of the respondent from others will form part of this examination and for that reason "he may be isolated" from them. In the view of the Court, it has been clearly indicated that the prison administration will take into account issues such as medical, security and prevention of crime matters, as well as the information acquired during of their examination. 91. The prison administration also advised in their reply that this respondent had a right to apply to the Prosecutor General for special status. That application was made and that application was ruled on promptly. The fact that it was rejected does not, in the circumstances of this case, give rise to a real risk for the safety of this respondent. On the contrary, the decision shows that the Prosecutor General sought further information from the prison about the respondent's co-accused and acted on the basis of that information, as well as that received in the application.

92. The fact that such information was acted on promptly is in stark contrast to the situation which arose in *D. F. v. Latvia* and the earlier case of *J. L. v Latvia*. In those cases, there was inertia on the part of the Latvian authorities in deciding who was a vulnerable prisoner. The facts of this case also show that the decision of the Prosecutor General is not final as there is a process by which he or she can appeal to the Latvian Supreme Court. Furthermore, as the letter from the prison administration makes clear, he can in fact apply as a prisoner for detention in a specific deprivation of liberty institution. There is now clearly established in Latvia a process for this determination. The Latvian authorities are alive to the issue of vulnerable prisoners. The precise manner in which his application is dealt with is, in the circumstances a matter for the Latvian authorities to deal with.

93. The Court has also taken careful note of the evidence of Mr. Krikis. His evidence falls woefully short of what is necessary to provide substantial grounds that the conditions of detention in Unit 5 of Riga Central Prison amount to a systematic violation of Article 3 rights. He purports to show that there is a certain mixing of prisoners through work groups or medical units and that there are verbal exchanges between prisoners as well as exchanges of objects. He complains about a lack of procedure in the prison. What Mr. Krikis does not provide any evidence of, is of attacks on individuals in Unit 5 by persons outside of that unit or indeed by those within the unit. Any lapses of security do not appear to have been sufficient to lead to outbreak of lawlessness within Unit 5 leading to assaults against its occupants.

94. Therefore, even if the Court had accepted the respondent's complaint as to the threat having been made, the Court is not satisfied that the information before it establishes that there are deficiencies which are either systemic or generalised and affecting former law enforcement officials or certain places of detention. Furthermore, the Court is not satisfied that there is any particular risk to this respondent simply arising from his occupation as a police officer or from his co-accused that would amount to substantial grounds for establishing that he is at real risk of inhuman and degrading treatment. The Latvian authorities have shown through their responses to this Court and indeed through the determination already made in respect of this respondent that, it has a systematic approach to dealing with issues of vulnerable prisoners and that such responses will not become enmeshed in lengthy and heavily bureaucratic procedure. That was the specific point of concern of the ECtHR in *D.F. v Latvia* and of this Court when it asked for the issue of vulnerability to be addressed. This issue has been comprehensively addressed by the Latvian authorities. In all the circumstances, this Court rejects this point of objection by the respondent to his surrender.Conclusion

88. For the reasons set out above, the Court has rejected each of the points of objection raised by this respondent to his surrender to Latvia. The Court, being otherwise satisfied that the provisions of s. 16 of the Act of 2003 have been complied with, may make an order for the respondent's surrender to such other person as is duly authorised by Latvia to receive him.