Neutral Citation Number: [2011] IEHC 161

**THE HIGH COURT**

**2010 93 & 94 EXT**

**IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT,**

**2003 AS AMENDED**

**BETWEEN/**

**THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM**

**APPLICANT**

**- AND -**

**JERZY ZYCH**

**RESPONDENT**

**JUDGMENT of Mr Justice Edwards delivered on the 13th day of April 2011**

**Introduction:**
1. The respondent is the subject of two European Arrest Warrants issued by the Republic of Poland on the 4th of January, 2007 and the 18th of September 2008, respectively. Both of these warrants were received in this jurisdiction on the 8th of March 2010, and they were each endorsed for execution by the High Court on the 10th of March, 2010. The proceedings bearing record no 2010/93/EXT relate to the warrant dated the 18th of September, 2008, and the proceedings bearing record no 2010/94/EXT relate to the warrant dated the 4th of January, 2007. The respondent was arrested by Sergeant Brendan Keane of An Garda Siochàna at 57 Glenmore Park, Muirhevnamore, Dundalk, Co Louth on the 16th of June, 2010 on foot of both warrants but he does not consent in either case to his surrender to the Republic of Poland. Accordingly, this Court is now being asked by the applicant to make Orders pursuant to s. 16 of the European Arrest Warrant Act, 2003 as amended (hereinafter referred to as "the 2003 Act") directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether, in each case, it is appropriate to do so having regard to the terms of s.16 of the 2003 Act.

2. In that regard the respondent has put the applicant on full proof as regards the requirements of s. 16 aforesaid in each case. In addition the Court is required to consider in the particular circumstances of each case a number of specific objections to the respondent's surrender.

**Summary of points of objection specific to Case No 2010/93/EXT**

**(Polish Ref No's IV K 754/03 & IV K 133/04)**

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 11 (1A) (f) of the 2003 Act in as much as in section E2 thereof it describes the offence as having occurred "between January 1999 and September 29th 2003" which is too vague;

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 11(1A)(g)(iii) of the 2003 Act in as much as no detail, alternatively insufficient detail, has been supplied in respect of any sentences to which the warrant relates, and in particular whether they were suspended and, if so, the conditions upon which, and the duration for which. they were suspended;

**Summary of points of objection specific to Case No 2010/94/EXT**

**(Polish Ref No IV K 445/02)**

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 38(a)(ii) of the 2003 Act in respect of each discrete offence;

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 11(1A)(g)(iii) of the 2003 Act in as much as no detail, alternatively insufficient detail, has been supplied in respect of any sentences to which the warrant relates;

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 38(a) of the 2003 Act and is defective in that there is no evidence of correspondence with offences in Irish law (with the exception of the offence listed at Section E2 I, which appears to correspond with attempted theft). More specifically, it is not possible to determine from the description set out at Section E2, II - VI thereof with which offences under Irish law the said offences are purported to correspond.

• The European arrest warrant herein is defective in that there is no indication at Section C1 as to maximum length of custodial sentence imposable;

• The European Arrest Warrant herein is defective in that matters described at Section E1 as "Offences specified in Article 278 S1 of the Penal Code" do not constitute an offences (or offences) known to Irish law.

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 11 (1A) (f) of the 2003 Act in as much as in section E2 II thereof describes the offence as having occurred "in the year 2000" which is too vague;

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 11 (1A) (f) of the 2003 Act in as much as in section E2 IV thereof describes the offence as having occurred "in August 2001" which is too imprecise;

• The European Arrest Warrant in this case fails to satisfy the requirements of s. 11 (1) (f) of the 2003 Act in as much as in section E2 V thereof describes the offence as having occurred "in 2001" which is too vague;

**Summary of points of objection common to both cases**

• The requirements s. 10 (d) of the 2003 Act (as it was prior to the amendments effected by the Criminal Justice (Miscellaneous Provisions) Act, 2009) have not been satisfied;

• The respondent's surrender ought to be refused on the grounds that the European Arrest Warrant fails to explain prosecutorial delays; delays on the part of the issuing judicial authority and delays on the part of the applicant;

• The surrender of the respondent is prohibited by s. 37 of the 2003 Act on the grounds that his surrender would contravene the respondent's rights under the Constitution;

• The surrender of the respondent is prohibited by s. 37 of the 2003 Act on the grounds that it would be incompatible with the State's obligations to the respondent under the European Convention on Human Rights, in particular his right not to be subjected to inhuman and degrading treatment under Article 3; and his to respect for his private and family life under Article 8.

**Evidence adduced by or on behalf of the respondent**

3. Separate sets of affidavits have been filed by or on behalf of the respondent in each case. In each instance the Court has before it an initial affidavit of the respondent sworn on the 21st of July, 2010; a supplemental affidavit of the respondent also sworn on the 21st of July, 2010; an affidavit of verification sworn by the respondent on the 18th of November, 2010; a 2nd supplemental affidavit of the respondent sworn on the 10th of December, 2010; a 3rd supplemental affidavit of the respondent sworn on the 8th of February, 2011; an affidavit of Sean T O'Reilly (the respondent's solicitor) sworn on the 23rd of November, 2010 together with extensive exhibits thereto, and, finally, an affidavit of Margaret Nurkiewicz (the respondent's sister) sworn on the 25th of February 2011. I have carefully considered all of these documents and will refer to them to the extent necessary in the course of this judgment.

**Additional information from the issuing judicial authority.**

4. The applicant in his capacity as the Irish Central Authority, and pursuant to s. 20(2) of the 2003 Act, sought additional information from the issuing judicial authority on various issues arising out of an initial consideration by the applicant of the European Arrest Warrants in this case. By a letter dated the 18th of November, 2010 the issuing judicial authority, namely Judge Marek Tusiñski, President of the II Department of Criminal Matters, of the District Court of Czêstochowa, replied in detail to the applicant's queries. Yet further information was provided by the issuing judicial authority in two other letters dated the 8th of December, 2010, and the 18th of January, 2011, respectively, concerning *inter alia* the conditions upon which the respondent's sentences were suspended. In addition, yet further information was provided concerning prison conditions in Poland in a letter from the issuing State dated the 17th of December, 2010 addressed to the applicant in his capacity as the Irish Central Authority. This same letter has been produced and relied upon before this Court in a number of other cases, including *Minister for Justice, Equality and Law Reform v Sawczuk* [2011] IEHC 41, where prison conditions in Poland have been an issue. Yet more information was provided in a letter dated the 18th of January 2011 in response to matters asserted in the respondent's 2nd supplemental affidavit sworn on the 10th of December, 2010, and finally yet more information was provided in a letter dated the 18th of February 2011 in response to matters asserted in the respondent's 3rd supplemental affidavit sworn on the 8th of February, 2011 and also in the affidavit of the respondent's sister Margaret Nurkiewicz. The Court will refer in this judgment, where necessary, to the additional information provided.

**Uncontroversial s. 16 issues**

5. The respondent does not admit that the requirements of s. 16 of the 2003 Act are satisfied with respect to either warrant. Accordingly, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, both controversial and uncontroversial, have been satisfied in each case and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied.

6. The Court has before it an affidavit of Sergeant Brendan Keane sworn on the 21st of October, 2010 and it has also received and scrutinised a copy of the European Arrest Warrant in each case. Moreover the Court has also inspected both original European Arrest Warrants which are on the relevant court files, and notes that each one bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

(a) both European Arrest Warrants have been endorsed for execution in this jurisdiction in accordance with s. 13 of the 2003 Act;

(b) both endorsed European Arrest Warrants have been duly executed in this jurisdiction;

(c) the person before the Court is the person in respect of whom the European Arrest Warrants were issued;

(d) in neither case is the High Court required, under s. 21A, 22, 23, or 24 of the 2003 Act (inserted by ss 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005), to refuse to surrender the respondent.

7. The European Arrest Warrants in both cases are sentence type warrants. They must be read in conjunction with any additional information furnished by the issuing judicial authority to the executing judicial authority. The respondent is wanted in the Republic of Poland on foot of the warrant dated the 18th of September, 2008 to serve outstanding sentences in respect of two offences (particularised in the warrant with reference to two prosecution file reference numbers, namely file IV K 754/03 and file IV K 133/04) imposed upon him on the 26th of October 2004 and on the 27th of January 2005, respectively, by the Provincial Court in Czêstochowa. The sentences imposed and the

periods remaining to be served were as follows:

> File IV K 754/03 – 1 year and 3 months imposed with 1 year and 3 months remaining to be served;
>
> File IV K 133/04 – 8 months imposed with 8 months remaining to be served;

In addition, the respondent is wanted in the Republic of Poland on foot of the warrant dated the 4th of January, 2007 to serve an outstanding composite or aggregate sentence in respect of six offences (particularised in the warrant with reference to a prosecution file reference number, namely file IV K 445/02) imposed upon him on the 6th of August, 2002 by the Provincial Court in Czêstochowa. The sentence imposed was 1 year and 4 months and the entire 1 year and 4 months remains to be served.

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

**The main controversies**

9. For convenience, the Court proposes in due course to deal with the controversial issues in these cases, and in particular to consider the various specific objections that have been raised in each instance, under the various discrete headings, viz "Form"; "Correspondence"; "Minimum Gravity"; "Flight"; and "S.37 issues".

**Objections to the Form of the Warrants**

10. In relation to Case No 2010/93/EXT (Polish Ref No's IV K 754/03 & IV K 133/04) the respondent complains that the European Arrest Warrant fails to satisfy the requirements of s. 11 (1A) (f) of the 2003 Act in as much as in section E2 thereof it describes the offence in file IV K 133/04 as having occurred "between January 1999 and September 29th 2003". The respondent contends this is too vague. A similar complaint is made in relation to Case No 2010/94/EXT (Polish Ref No IV K 445/02) where the warrant describes one offence (E.2.- II) as having occurred "in year 2000", another offence (E.2.- IV) as having occurred "in August 2001", and a third (E.2.- V) as having occurred "in 2001". Again, the respondent contends these descriptions as to the date or time of the relevant offences are too vague

11. S. 11 (1A) (f) of the 2003 Act states:

> "Subject to subsection (2A), a European arrest warrant shall specify—
>
> (f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence"

12. S.11 (1A) (f) of the 2003 Act was enacted to implement Article 8 (1) (e) of the Framework Decision, which is in the following terms:

> "1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:
>
> (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;"

13. It is clear that the relevant provisions, both in the Framework Decision and in the implementing Act, do not exist in isolation. They are among a series of particulars or details that the warrant is required to contain so as to ensure that the executing judicial authority has sufficient information to enable it to determine whether an offence in the issuing state corresponds with an offence in the executing state. This Court is satisfied that in the circumstances of case IV K 133/04 sufficient particulars as to the date/time of the offence in question have been provided to enable it to address the issue of correspondence. The description of the offence alleged under Polish law makes it clear that what is alleged is the perpetration of domestic violence on his wife over a period of years, i.e., between January 1999 and September 29th 2003. Moreover, the additional information dated the 18th of November, 2010 states:

> "As to the offence of physical and mental cruelty towards his wife- the description of the offence is not very precise nevertheless in practice considering the long period of the offence it was a regular (not necessarily every-day) cruelty and it consisted in many actions against his wife within almost 4 years. If it would be one action then the Prosecutor would issue a concrete charge of an offence committed in a concrete day and it would surely be one battery. The offence of cruelty in the Polish penal law includes a number of repeated actions within a certain time."

It is clear that neither date nor time is of the essence of the offence. The bracketing of the offence as having occurred within a 45 month time frame is akin to the preferring of a sample charge in this jurisdiction in a case of historic sexual abuse where the complainant is unable to specify any date or time with particularity. This Court is not concerned with whether, in terms of any trial that may have taken place, the preferring of such a widely framed charge was a fair procedure. The Court is not entitled to look behind the conviction. It is solely concerned with correspondence and the description of the offence as having occurred within a forty five month time bracket does not present this Court with any difficulty in understanding what is alleged. Accordingly, I would dismiss the objection raised as being of no materiality in terms of the validity of the warrant dated the 18th of September, 2008.

14. In so far as Case 445/02 is concerned, the additional information supplied on the 18th of November 2010 states*: "it is not possible to more precisely determine the time of commitment of offences described in box E, II, IV and V. Establishments of facts made in the stage of prosecutor's proceeding did not allow to establish precisely the dates when the offences were committed."* The particulars provided (including the additional information) make it clear that what was involved in each instance was an offence under Article 278 § 1 of the Polish penal code which is in following terms:

> "Whoever, with the purpose of appropriating, wilfully takes someone else's movable property shall be subject to the penalty of deprivation of liberty for a term between 3 months and 5 years."

The circumstances of each individual offence of which the respondent has been convicted is particularised. While the dates/times of

the offences described at E.2. II, IV & V respectively are not set out with precision, the month and/or year of the offence is given. It is clear that neither date nor time is of the essence of the offence. Once again, for the purposes of considering possible correspondence, the Court has no difficulty in understanding what is alleged, and would dismiss the objection raised as being of no materiality in terms of the validity of the warrant dated the 4th of January, 2007.

15. There is a further objection to the form of the warrant relating both to Case No 2010/93/EXT (Polish Ref No's IV K 754/03 & IV K 133/04) and to Case No 2010/94/EXT (Polish Ref No IV K 445/02). The respondent complains in each instance that the European Arrest Warrant fails to satisfy the requirements of s. 11(1A)(g)(iii) of the 2003 Act in as much as no detail, alternatively insufficient detail, has been supplied in respect of any sentences to which the warrant relates, and in particular whether they were suspended and, if so, the conditions upon which, and the duration for which they were suspended. The Court is satisfied that there is no substance in these objections for the following reasons

16. S. 11 (1A) (g) (iii)of the 2003 Act states:

> "Subject to subsection (2A), a European arrest warrant shall specify—
>
> (g) (iii) where that person has been convicted of the offence specified in the European arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists."

17. With respect to cases IV K 754/03 & IV K 133/04 the warrant makes clear that there were separate sentences of 1 year and 3 months, and 8 months respectively. The full amount of both sentences remains to be served. The additional information of the 18th of November 2010 clarifies the position with respect to suspensions. It specifies:

> "With judgment of 26th October 2004 in the case IV K 754/03 Jerzy Zych was sentenced to l year and 3 months deprivation of liberty, conditionally stayed the carrying out of the sentence on 3 years probation. Through decision dated 8th June 2006 the carry out of Jerzy Zych's sentence was ordered, the decision became valid on 18th July 2006."

It further specifies:

> "Through judgment of the Provincial Court of Czêstochowa dated 27th January 2005 in the case IV K 133/04 Jerzy Zych was sentenced to 8 months custodial sentence conditionally stayed the carrying out of the sentence on 2 years probation. Through Decision of the Provincial Court of Czêstochowa dated 8th June 2006 the Court ordered carry out of custodial sentence for Jerzy Zych. The decision became valid on 18th July 2006."

It further specifies (with respect to IV K 445/02):

> "For each of the offences described in the European Arrest Warrant Jerzy Zych was sentenced as follows: offence 1- 6 months custodial sentence, offence II- 6 months custodial sentence, offence III - 6 months custodial sentence, offence IV- 6 months custodial sentence, offence V- 6 months custodial sentence and offence Vl- 6 months custodial sentence.
>
> As a jointed penalty the Court sentenced him to 1 year and 4 months custodial sentence, whereas the Court conditionally stayed the carrying out of the sentence on 3 years probation.
>
> Because Jerzy Zych has fragrantly (sic) infringed the law in probation period the Court has on 15th September 2005 recalled the ahead of time conditional release."

18. It is clear from the information provided that the respondent's various sentences were all suspended on the basis that he was placed upon probation for a defined period. In its judgment in *Minister for Justice, Equality and Law Reform v Ciechanowicz* (Unreported, High Court, Edwards J., 18th March, 2011) the Court stated:

> "It is of the essence of any kind of probation supervision that the probationer should be of good behaviour and not further offend."

In addition, I said:

> "…it is also of the essence of any kind of probation supervision that the supervisor should be made aware of where the probationer is residing, and that if during the period of probation there is to be any change in where the probationer is residing the supervisor should be informed. Moreover, it is also of the essence of probation supervision that the probationer should stay in regular contact with, and be readily available to, his supervisor."

On the basis of the information supplied this Court would readily have inferred that good behaviour, non-offending and submission to a regime of supervision were conditions of the respondent's probation in each case. However, it is not necessary for the Court to rely upon inference because the additional information dated the 8th of December, 2010 puts the matter beyond doubt. It states that:

> "The basic term and condition is that the perpetrator must observe the legal order and execute duties imposed on him among other through rectify of damage and submission to supervision."

19. Further, the letter of the 8th of December, 2010 states, with respect to cases IV K 754/03 & IV K 133/04, that:

> "In the case IV K 754/03 the situation was as follows: Mr Jerzy Zych applied for voluntary submission to penalty and he himself determined its type and volume. The prosecutor and the court accepted such penalty. The convicted propose to adjudge a supervision by a probation officer and the duty to provide support for his children.
>
> As to the case IV K 133/04 the main and only reason for cancellation of the conditionally suspended penalty of deprivation of liberty was invading supervision by a probation officer. The convicted person was obligated to inform the probation officer of his activities, change of place of residence and on each new living place. The convicted person has neglected his duties, he left Poland and went to Ireland without informing the probation officer.
>
> Similar reasons have led also to cancellation of the conditionally suspended penalty in the case IV K 754/03. The sentenced person failed to fulfil supervision conditions, he did not provide support of his children and he abused alcohol.
>
> Pursuant to article 75 § 2 Polish Penal Code the Court may order the execution of the penalty if the sentenced person

> flagrantly breached the legal order, and, in particular, if he committed a new offence or evaded supervision and fulfilment of the obligations imposed."

20. The totality of the additional information further makes it clear that the respondent's suspended sentences were ordered to be implemented because he he breached his probation by evading supervision and/or by further offending. In all the circumstances the Court is satisfied that the warrants, read together with the additional information provided, do in fact provide sufficient detail in respect of the sentences to which each warrant relates, including the fact of suspension and the conditions upon which, and the duration for which, they were suspended.

21. The respondent further objects in relation to Case No 2010/94/EXT (Polish Ref No IV K 445/02) that the European Arrest Warrant in that case is defective in that there is no indication at Section C 1 as to maximum length of custodial sentence imposable. I am satisfied that this point is without substance. While Section C 1 has been left blank the relevant information can be gleaned from a close perusal of the warrant itself when read in conjunction with the additional information of the 18th of November 2010. Each of the offences is specified as being an offence contrary to Article 278 § 1 of the Polish penal code. As previously mentioned the terms of Article 278 § 1 are recited within the additional information and it is clear that the maximum penalty is 5 years imprisonment.

22. The respondent's final objection as to form is in relation to Case No 2010/94/EXT (Polish Ref No IV K 445/02) and it is alleged that the European Arrest Warrant in that case is defective in that matters described at Section E1 as "Offences specified in Article 278 S1 of the Penal Code" do not constitute an offence (or offences) known to Irish law. This point is entirely misconceived. Close scrutiny of the warrant indicates that there is nothing described at Section E1 (which is the tick box section of the warrant). The description complained of actually appears before section E1 commences within the general part of Section E, at item 2 under the heading "E Offence(s)". S. 11(1) of the 2003 Act provides that "A European Arrest Warrant shall, in so far as practicable, be in the form set out in the Annex to the Framework Decision". The specified form requires that in the general part of Section E, at item 2 under the heading "E Offence(s)" the issuing judicial authority should insert particulars as to "Nature and legal classification of the offence(s) and the applicable statutory provision/code" per the law of the requesting state. That is exactly what was done in this case.

**Objections to Correspondence**

23. The Court will first consider Case No 2010/93/EXT (Polish Ref No's IV K 754/03 & IV K 133/04). There are two offences here. The first, the subject of file ref no IV K 754/03, clearly corresponds in this Court's view with burglary contrary to s.12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. Pursuant to s.12 (1)

"A person is guilty of burglary if he or she—

> (a) enters any building or part of a building as a trespasser and with intent to commit an arrestable offence, or
>
> (b) having entered any building or part of a building as a trespasser, commits or attempts to commit any such offence therein"

Objection is taken that the description of the facts set out in the warrant (read in conjunction with the additional information) fails to mention entering as a trespasser and does not refer specifically to an arrestable offence. The Court has no hesitation in rejecting this argument. The facts as specified are that the respondent acting in co-operation with others "by means of pushing a window, … committed burglary to tile warehouse belonging to ….and stole 15,83 square metres of tiles." Entry as a trespasser is clearly to be inferred and the reference to stealing can only reasonably be construed as the arrestable offence of theft.

24. The facts of the second offence, the subject of file ref no IV K 133/04, as set out are that the respondent between January 1999 and September 29th 2003 "…. abused physically and mentally his wife ….by means of beating her with hands and kicking all over her body, forced to leave her house, flung insults at her using words commonly thought of as offensive, threatened to take her life" …., contrary to s. 207 item 1 of the penal code. The applicant submits that correspondence is to be found in the offence of assault causing harm contrary to the Non Fatal Offences Against the Person Act, 1997. S. 3(1) provides:

> "A person who assaults another causing him or her harm shall be guilty of an offence"

The respondent objects to this on the basis that the factual matrix underpinning the Polish offence involved a general course of conduct as opposed to a single discrete incident or a number of discrete incidents, and it was submitted that one cannot be convicted of s. 3 assault on the basis of a general course of conduct. Notwithstanding this objection, the Court is satisfied to find correspondence in the circumstances of this case because sufficient particulars are given to enable it to be satisfied that the victim was on at least one, and possibly more than one, occasion assaulted and caused harm. The non-particularisation or isolation of specific incidents is in reality a pleading point, and correspondence or non-correspondence, as the case may be, is not to be determined according to rules of pleading. As was stated in *Minister for Justice, Equality and Law Reform v Dolny* [2009] IESC 48:

> "In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."

I have no doubt that any single instance of the acts described could be prosecuted in Ireland as an assault causing harm contrary to s. 3. The offence therefore corresponds in the Court's view.

25. As regards Case No 2010/94/EXT (Polish Ref No IV K 445/02) there are six offences covered by the relevant warrant. The Court is satisfied that the first of these corresponds with attempted theft, contrary to common law, while the remaining five offences all correspond with theft contrary to s.4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. The principle objection to the correspondence of these offences was that the word "took" is used in the facts as set out, and that this does not necessarily connote theft. However, I would reject this relying on *Minister for Justice, Equality and Law Reform v Sas* [2010] IESC 16, and *Minister for Justice, Equality and Law Reform v Dolny* [2009] IESC 48. The context in which the word "took" is used in each instance makes it clear that what is being spoken of is theft as it is understood in Irish law.

**Objections based on Minimum Gravity**

26. The Court being satisfied in each instance with respect to correspondence as required by s. 38(1)(a) of the 2003 Act, it is further satisfied that the requirements with respect to minimum gravity are met in the case of the various offences listed in each warrant respectively, in as much as the relevant sentences that were imposed in respect of these offences (including where relevant composite or aggregate sentences), and which remain to be served in whole or in part, are all for periods in excess of four months of imprisonment, thereby coming with s. 38(1)(a)(ii) of the 2003 Act.

**Objection based on alleged absence of evidence of flight**

27. This is a case to which s.10 of the 2003 Act it was prior to the amendment effected by s. 6 of the Criminal Justice (Miscellaneous Provisions) Act, 2009 applies. Prior to the relevant amendment s. 10 of the 2003 Act (as substituted by s.71 of the Criminal Justice (Terrorist Offences) Act, 2005) provided (to the extent relevant):

> "10. Where a judicial authority in an issuing state duly issues a European arrest warrant in respect of a person—
>
> (a) ….
>
> (b) ….
>
> (c) ….
>
> (d) on whom a sentence of imprisonment or detention has been imposed in respect of an offence to which the European arrest warrant relates, and who fled from the issuing state before he or she—
>
> (i) commenced serving that sentence, or
>
> (ii) completed serving that sentence,
>
> that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state.".

28. Accordingly, this Court must be satisfied that the respondent "fled" Poland before commencing, alternatively before completing, the sentences variously imposed upon him for the offences to which each warrant relates. The respondent contends that he did not flee. The Court interprets the word "fled" in accordance with the Supreme Court in *Minister for Justice, Equality & Law Reform v Tobin* [2008] 4 I.R. 42 as importing more than the word "left" and as connoting an escape from justice.

29. While the information contained in both actual warrants was insufficient to allow the Court to infer flight, the Court now has the benefit of the additional information contained in the letters dated the 18th of November, 2010, and the 8th of December, 2010, respectively. Each of the warrants must now be read in conjunction with this additional information.

30. The additional information of the 18th of November 2010 states with respect to the offences the subject of file ref no's IV K 754/03 & IV K 133/04:

> "8. With judgment of 26th October 2004 in the case IV K 754/03 Jerzy Zych was sentenced to l year and 3 months deprivation of liberty, conditionally stayed the carrying out of the sentence on 3 years probation. Through decision dated 8th June 2006 the carry out of Jerzy Zych's sentence was ordered, the decision became valid on 18th July 2006. On 11th October 2006 the executive documentation was drafted and sent to Custody House Częstochowa. The subject did not appear in the custody so it was decided on 8th November 2006 to bring up the subject to the custody. On 13th April 2007 it was decided to request the local Police Station in Klobuck to inform on what activities were performed in order to put Jerzy Zych in prison. The Police in Klobuck replied on 23rd April 2007 that the subject is probably staying abroad and that he is requested with EAW issued in the case II Kop 42/06. The Court found out that the EAW in the case II Kop 42/06 was issued to the case with file ref. IV K 445/02. On 20tn February 2008 the Provincial Court of Częstochowa requested the District Prosecutor's Office of Częstochowa to apply the District Court of Częstochowa for issue the European Arrest Warrant against Jerzy Zych. With decision dated 18th September 2008 the District Court of Częstochowa issued the European Arrest Warrant against Jerzy Zych.
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> After carry out of the penalty was ordered on 8th June 2006 and became valid on 18th July 2006 and the subject did not appear in custody, searching of the subject was performed. With reference to information received from Police Station Klobuck on requesting the subject with EAW to the case II Kop 42/06 - IV K 445/02 the Provincial Court of Częstochowa on 20.02.2008 started the procedure to issue the European Arrest Warrant.
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> 9. Through judgment of the Provincial Court of Częstochowa dated 27th January 2005 in the case IV K 133/04 Jerzy Zych was sentenced to 8 months custodial sentence conditionally stayed the carrying out of the sentence on 2 years probation. Through Decision of the Provincial Court of Częstochowa dated 8th June 2006 the Court ordered carry out of custodial sentence for Jerzy Zych. The decision became valid on 18th July 2006. On 29.09.2006 the executive documentation was drafted and sent to Custody House Częstochowa. The subject did not appear in the custody so it was decided on 30.10.2006 to bring up the subject to the custody. On 13th April 2007 it was decided to request the local Police Station in Klobuck to inform on what activities were performed in order to bring up Jerzy Zych to custody. The Police in Klobuck replied on 23rd April 2007 that there are activities pending in order to bring up the subject to custody. Again, on the ground of Court's decision dated 1st June 2007, the Court requested the local Police Station in Klobuck to inform on what activities were performed in order to put Jerzy Zych in prison. The Police in Klobuck replied on 23rd April 2007 that there is an activation pending. With decision dated 9th October 2007 the Provincial Court stayed the proceedings and ordered searching of the subject with an arrest warrant. Through decision of the chief judge dated 9th January 2008 the Court again requested the Police Station in Klobuck to inform what activities were performed in order to bring up Jerzy Zych to custody. The Police in Klobuck replied that Jerzy Zych is staying in Ireland and the date of his return home is unknown. With a letter from 20.02.2008 the Provincial Court of Częstochowa requested the District Prosecutor's Office Częstochowa to apply the District Court of Częstochowa for issue the European Arrest Warrant against ]erzy Zych. With decision dated 18th September 2008 the District Court of Częstochowa issued the European Arrest: Warrant against Jerzy Zych.
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> After carry out of the penalty was ordered on 8th June 2006 and became valid on 18th July 2006 and the subject did not appear in custody, searching of the subject was performed. Initially locally and later on after the arrest warrant was issued on 9th October 2007 within the whole country. With reference to information received from Police Station Klobuck

on 26th January 2008, on 20.02.2008 the Provindal Court of Czêstochowa started the procedure to issue the European Arrest Warrant.

10. The District Court of Czêstochowa issued the European Arrest Warrant in the case II Kop 68/08 and forwarded it on 8th October 2008 to the National Ponce Headquarters Warsaw to start international searching especially in Ireland. I have no knowledge why the Irish authorities have received it so late."

31. The additional information of the 18th of November 2010 states with respect to the offences the subject of file ref no IV K 445/02:

"2. For each of the offences described In the European Arrest Warrant Jerzy Zych was sentenced as follows: offence 1- 6 months custodial sentence, offence II- 6 months custodial sentence, offence III - 6 months custodial sentence, offence IV- 6 months custodial sentence, offence V- 6 months custodial sentence and offence Vl- 6 months custodial sentence.

As a jointed penalty the Court sentenced him to 1 year and 4 months custodial sentence, whereas the Court conditionally stayed the carrying out of the sentence on 3 years probation.

Because Jerzy Zych has fragrantly (sic) infringed the law in probation period the Court has on 15th September 2005 recalled the ahead of time conditional release."

"4. After on 15th September 2005 a decision on order to carry of the conditionally suspended penalty was issued it was not possible to place Jerzy Zych in the convict prison because he was hiding himself. The Court on 10th April 2006 ordered searching with arrest warrant The Police did not arrest Jerzy Zych as it received information that he run away from Poland to Ireland. On 12th December 2006 the District Public Prosecutor of Czêstochowa applied for issue of a European Arrest Warrant against Jerzy Zych and the District Court of Czêstochowa allowed the motion on 7"' January 2007.

5. The District Court of Czêstochowa issued the European Arrest Warrant in the case n Kop 42/06 and forwarded it on 9" January 2007 to the National Interpol Bureau Warsaw. Why the Irish authorities have received it in 2010 I cannot explain as I have no knowledge on this."

32. The Court has already quoted extensively from the additional information dated the 8th of December, 2010 which sets out that it was a condition of the suspension of the respondent's sentences that "*the perpetrator must observe the legal order and execute duties imposed on him among other through rectify of damage and submission to supervision".*

33. In *Minister for Justice, Equality & Law Reform v Sliczynski* [2008] IESC 73. Macken J stated:

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

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

34. The additional information makes it clear in the Court's view that the sentences were required to be served because he evaded supervision and/or further breached his probation by re-offending.

35. The respondent asserts in his affidavits sworn on the 10th of December, 2010 that he kept in touch with the probation service, and that it was not a term of his probation that he should remain in Poland, and that he travelled to Ireland to make a better life for himself. He has averred that:

"I say that my mother visited me in Ireland in the summer of 2006 and that during her stay here, we made telephone contact twice with the Polish probation service who were therefore fully aware that I was at that point residing in Ireland and who did not raise any objection to same, nor did they ask for an Irish address for me. They did ask that I keep in touch with them if I returned to Poland.

I say that my mother died in May 2007 and that my sister, who lives in Poland, made contact with the probation service in Poland on my behalf after her death. They were at that point still aware that I was residing in Ireland and again, raise no objection to same nor sought an Irish contact address for me.

I see that therefore the Polish authorities were well aware that I was residing outside the jurisdiction all along yet a delay of upwards of three years was allowed to lapse before the European arrest warrant was ultimately served on me in Ireland in June 2010."

36. Pursuant to yet a further request for additional information the issuing judicial authority was asked to respond if it could to the respondent's assertions. The issuing judicial authority provided the requested further information in a letter of the 18th of January 2011 and stated as follows:

"....kindly please be informed that according to a memorandum drafted by the Probation Officer on 14. 04. 2005, the sister of the convict informed that her brother Jerzy Zych is staying abroad in Ireland where he left on 2. 04. 2005 but she did not give his address. She only obliged herself to forward her brother the information on the necessity to contact the

Probation Officer what he has never done.

The Probation Officer has on 21. 11. 2005, 10. 12. 2005, 29. 12. 2005, 23. 01. 2006 and 20. 02. 2006 contacted the convict's family to inform him on the necessity to contact the Probation Officer but with no effect. The convict family has never gave out the address of the convict Jerzy Zych and neither did he."

37. The respondent, in rejoinder to the letter from the issuing judicial authority dated the 18th of January 2011, deposed in a 3rd supplemental affidavit sworn on the 8th of February, 2011 to the following matters:

"I beg to refer to the letter from Częstochowa District Court dated 18th of January 2011 recently served on my solicitor by the State, when produced.

In response to the assertion therein that I never contacted my probation officer after moving to Ireland, I say that this is incorrect. Both prior to my leaving Poland for Ireland and after I had arrived in Ireland I have been in touch with my probation officer. I met her in her offices in Poland sometime towards the end of 2004 and again at that location prior to leaving for Ireland but I cannot say at this remove with any degree of certainty when the second meeting occurred. To the best of my recollection it was either at the end of 2004 or the beginning of 2005.

I say that I was also in touch with my probation officer who I believe to have been Ms Elzbieta Glowacka back in Poland by telephone from Ireland in August or September 2005 (again I cannot be more precise given the passage of time). This phone call occurred while my sister Margaret Nurkiewicz was actually at the probation office in Poland. She made a call to me during a meeting with my probation officer and the probation officer also came on the phone during that call and I spoke to her. I say that at that point I did not have a permanent address to give the probation officer since I had not been long in Ireland and was staying with various friends, but I offered to give her my Irish mobile phone number in the meantime. She declined to take it.

In relation to the list of dates quoted in the letter hereinbefore referred to, on which it is asserted that the probation service in Poland attempted to contact members of my family, my mother came to Ireland for a visit towards the end of 2005 and stayed for three months. She passed away from cancer approximately one month after her return to Poland in 2006. I therefore believe that she was not in Poland for some of these dates or else was gravely ill at the time and thus not contactable by the Polish probation service."

38. In addition, the respondent filed an affidavit sworn by his sister Margaret Nurkiewicz, sworn on the 25th of February, 2011 in which she deposes:

"I beg to refer to the letter from Częstochowa District Court dated 18th of January 2011 recently served on my brother's solicitor by the State, when produced.

I say that at this remove I cannot say with any certainty whether or not I spoke to my brother's probation officer in Poland on the 14th of April 2005. I do know however that I measure on at least three occasions during 2005, in the spring, autumn and winter of that year. I cannot be more specific as to precise dates at this remove.

I say that I now live in Ireland permanently but while I was living in Poland I lived on the same street but not in the same house as my mother.

I see that during my second meeting with my brother's probation officer, who I believe to have been Ms Elzbieta Glowacka, by which time he was then in Ireland, I informed the probation officer that he was at that time living in Ireland. I rang my brother while at this meeting with the probation officer and put him on the phone to her directly. I offered to give her his Irish mobile phone number after this call, but she declined to take it."

39. The issuing judicial authority was then yet again asked to respond if it could to the respondent's further assertions. (Although nothing turns on it, this request was made, and was responded to, in the period between the filing of the respondent's 3rd supplemental affidavit and the filing of his sister's affidavit. It is not of any consequence because the substance of what the sister was prepared to say, and the fact that she was prepared to say it, was conveyed in the respondent's 3rd supplemental affidavit.) The issuing judicial authority provided the requested response by way of further information set out in a letter of the 18th of February, 2011. In that letter Judge Marek Tusiński states:

"I would like to explain that after the judgement became valid it is the court that executes the valid sentence and a probation officer is only a person to assist the court by performing the activities ordered by the court. It is for me hard to believe that the probation officer who supervises the convicted person upon order of the court could in any way give even an implied consent to departure of a convicted person abroad in the supervision period without informing the court. Such departure is nothing more than an escape from duties imposed on the convicted person.

A probation officer who would not report this fact to the court, exposes himself to a charge of an inadequate execution of these duties and in the consequence to a disciplinary proceedings. Therefore I can hardly believe Mr Zych who claims that the probation officer refused to take his telephone number from him when he allegedly spoke to her. The convicted Jerzy Zych was supposed to inform on his intention to leave abroad first of all the court which executes the sentence and request its consent to go. In the Polish Penal Code there is a provision which allows the court to alter the duties or exempt the convicted person from the duties. Mr Jerzy Zych did not use this opportunity and just escaped from Poland in order to make a further execution of the valid sentence impossible.

It is hard for me to judge the credibility of Mr Zych's and his sister's statements made upon the Irish authorities, as I am not called for that. Privately I can only say that I have huge doubts in respect to its credibility."

40. Unlike Judge Tusiński, whose private views are not something of which this Court can legitimately take cognisance, nor will it do so, this Court is concerned with the credibility of the respondent and his witnesses. All things being equal the Court is entitled to rely upon information as to matters of fact provided by the issuing judicial authority (as opposed to its opinions) and to assume this information is true and accurate. This is clear from the judgments in *Minister for Justice, Equality and Law Reform v Sliczynski* [2008] IESC 73. While a respondent bears no onus of proof, and more particularly no onus of disproving facts asserted by the issuing judicial authority, he does bear an evidential burden which he must discharge before the Court would be put upon its enquiry as to the truth and accuracy of facts asserted by the issuing judicial authority. It is not sufficient for a respondent merely to assert a different set of facts, or to disagree with the facts as asserted by the issuing judicial authority. The Court must be satisfied that he has done more than provide mere assertion and has, by

means of cogent evidence, raised an issue tending to cast doubt on the information provided by the issuing judicial authority. Has the respondent done that in this case. For reasons I will explain, I do not think so.

41. This Court has, for its own reasons, significant doubts concerning the credibility of the respondent's account and the supporting account provided by his sister.

42. First, the accounts provided of contacts made with the probation officer are for the most part unsupported assertion. While the sister's affidavit could be said to support the respondent's account, she is his sibling and therefore cannot be viewed as providing "independent" support for what he says. Secondly, the respondent's account is neither internally nor externally consistent with other evidence. The internal inconsistencies are significant. For example, in his 3rd supplemental affidavit the respondent attempts to cast doubt on information suggesting that his probation officer had attempted without success to contact him on a series of specified dates. He does so by claiming that "*my mother came to Ireland for a visit towards the end of 2005 and stayed for three months. She passed away from cancer approximately one month after her return to Poland in 2006. I therefore believe that she was not in Poland for some of these dates or else was gravely ill at the time and thus not contactable by the Polish probation service.*" However, in his 2nd supplemental affidavit, sworn some months previously, he had sworn that his mother visited him in Ireland in the summer of 2006 and that during her stay here, they had made telephone contact twice with the Polish probation service. He further swore that "*my mother died in May 2007 and … my sister, who lives in Poland, made contact with the probation service in Poland on my behalf after her death*". It is simply not credible that he could be mistaken as to the date of death of his mother or as to the period during which she was ill. Further, the sister claims that her contact with the Polish probation service on her brother's behalf was in the spring, autumn and winter of 2005. The account is not externally credible either. Even without specific evidence in regard to this, it stretches credulity to breaking point for the Court to be asked to believe that a person under a Court imposed regime of probation supervision would receive the *imprimatur* of his probation officer to leave the country and take up residence at an unspecified address on foot of a mere promise to stay in touch and without any reference to the Court that imposed the regime of supervision. The Court's instincts in this regard are wholly supported by the information contained in the letter from the issuing judicial authority dated the 18th of February 2011, and in particular the statements to the effect that in Poland a probation officer merely carries out the court's directions, and has no discretion to vary a supervision regime without reference to the Court, and would expose himself to a charge of an inadequate execution of his duties and the possibility of disciplinary proceedings if he failed to report the fact that a probationer had gone abroad.

43. Thirdly, while the issuing judicial authority is in a position to specify precise dates when attempts were made without success to contact the respondent, the respondent and his sister are conversely unable to specify with precision any of dates on which it is alleged they made contact with the probation service.

44. Fourthly, the respondent who faces possible imminent surrender has a motive to lie.

45. The Court is satisfied in all the circumstances that the respondent has failed to provide cogent evidence to cause the Court to doubt the information provided by the issuing judicial authority. The Court is satisfied that he did not notify his probation officer that he intended leaving the country, neither did he notify his new address nor did he stay in contact with his probation officer or supervisor. Further there is clear evidence that when the authorities went to look for him for the purpose of arresting him for the purpose of having him serve his sentences he could not be found. The Court has no hesitation in inferring that he fled from justice in the circumstances outlined.

**Objection based on s. 37 issues.**

46. The respondent further objects to his surrender on the grounds of delay and complains that the European Arrest Warrants fail to explain prosecutorial delays; delays on the part of the issuing judicial authority and delays on the part of the applicant.

47. There is no requirement that a European Arrest Warrant should contain an explanation for any delays that may have occurred. That is not to say that issues based upon culpable prosecutorial delay cannot be ventilated before the appropriate forum, or that the respondent is precluded from seeking an effective remedy in vindication of his right to expedition in the criminal process under article 6 of the European Convention on Human Rights, again before the appropriate forum. However, it has been made clear by the Supreme Court in *Minister for Justice, Equality and Law Reform v Stapleton* [2008] 1 I.R. 669, and indeed in my own judgment in Minister for Justice, Equality and Law Reform v Adam [2011] IEHC 68, that the appropriate forum is before the Courts of the issuing state. I would therefore dismiss the objection to surrender on the grounds of delay, and or on the grounds of failure to explain delay.

48. The final ground upon which the respondent opposes his surrender is a claim that his surrender is prohibited by s. 37 of the 2003 Act on the grounds that it would be incompatible with the State's obligations to the respondent under the European Convention on Human Rights, in particular his right not to be subjected to inhuman and degrading treatment under Article 3; and his to respect for his private and family life under Article 8; alternatively, on the grounds that it would be incompatible with the State's obligations to the respondent under the Constitution.

49. While the respondent's solicitor has put extensive country of origin information before the Court, downloaded from the internet, suggestive that historically there has been a problem with overcrowding in Polish prisons, the most up to date information is that provided by the issuing judicial authority which shows that, as of the 17th of December, 2010 the mean population density in correctional facilities in Poland was 97.3% I have previously commented in *Minister for Justice, Equality and Law Reform v Sawczuk* [2011] IEHC 41, where the same information was relied upon, that:

> "The Court has been impressed by the level of detail supplied, by the references to the data sources unpinning the claims made, by the fact that the relevant data is in the public domain and may be accessed via the internet, and by the up to date nature of the information in question, and in the circumstances has no hesitation in attaching considerable weight to it."

I see no reason to take a different view in this case, notwithstanding the material exhibited by the respondent's solicitor. The issuing judicial authority's information is the most up to date and the Court must be forward looking.

50. Moreover, the Supreme Court has said in *Minister for Justice, Equality and Law Reform v Stapleton* [2008] 1 I.R. 669 that a Court must proceed on the assumption that the courts of the issuing state will respect human rights and fundamental freedoms.

51. Further, in Minister for Justice, Equality and Law Reform v Rettinger [2010] IESC 45 the Supreme Court was required to consider two questions certified by Peart J in the High Court as follows. He asked :

"(a) Where a respondent relies upon section 37(1)(a) of the European Arrest Warrant Act 2003 in order to prevent his surrender to a requesting State by reason of an apprehended breach of his rights under Article 3 of the European Convention on Human Rights and adduces evidence capable of establishing substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 were he to be surrendered, does the onus of proof then shift back to the applicant to adduce evidence in order to dispel any doubts as to the treatment the respondent would face if surrendered?

(b) Where a respondent relies upon section 37(1)(a) of the European Arrest Warrant Act 2003 in order to prevent his surrender to a requesting State by reason of an apprehended breach of his rights under Article 3 of the European Convention on Human Rights, is the respondent required to prove that there is a probability that, if surrendered, he will suffer treatment contrary to Article 3, or is it sufficient for him to show that, on the balance of probabilities, there is a real risk that he will suffer such treatment?

In directly addressing these issues in the course of his judgment in the Supreme Court, Fennelly J stated:

"The first question asks whether the onus of proof shifts back to the Minister once the respondent to the application *"adduces evidence capable of establishing substantial grounds"* for his complaint. The second asks whether the burden of proof required him to show, as a matter of probability, that he **would** (meaning "would probably") suffer treatment prohibited by Article 3 or whether it would be sufficient for him to show, also as a matter of probability, that *"there is a real risk that he will suffer such treatment."*

A partial answer to these questions can be found in the very wording of section 37(1)(c) of the Act of 2003. According to the section, it is sufficient to establish that *"there are reasonable grounds for believing that" the person would be "subjected to ……inhuman or degrading treatment." The European Court in Soering spoke of "substantial grounds for believing that the person concerned, if extradited, would face a real risk of being subjected to torture or to inhuman or degrading treatment…"* Each test focuses, firstly, on the quality of the evidence or "*grounds*" and, secondly, on the level of risk. In practice, the two elements are closely connected and will, in many cases, merge into a single test. The subject-matter of the enquiry is the level of danger to which the person is exposed. There is no discernible difference between "*reasonable grounds"* and "*substantial grounds."* It is equally clear that it is not necessary to prove that the person will **probably** suffer inhuman or degrading treatment. It is enough to establish that there is a *"real risk."* The 13th recital to the Framework Decision speaks of "*serious risk;"* the term "*real risk*" is consistently used by the European Court in its case-law, including *Soering* and *Saadi*. It is appropriate to the seriousness of the subject matter. It would be absurd to require a person threatened with expulsion to a state where he may be exposed to inhuman or degrading treatment, not to mention torture, to prove that he would probably suffer such treatment. It must be sufficient to establish "real risk."

Denham J, in concurring with the judgment of Fennelly J, suggested the following approach:

"(i) A court should consider all the material before it, and if necessary material obtained of its own motion.

(ii) A court should examine whether there is a real risk, in a rigorous examination.

(iii) The burden rests upon an applicant, such as the appellant in this case, to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR.

(iv) It is open to a requesting State to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from an applicant as to conditions in the prisons of a requesting State with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the applicant were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the ECHR. On the other hand, the requesting State may present evidence which would, or would not, dispel the view of the court.

(v) The court should examine the foreseeable consequences of sending a person to the requesting State.

(vi) The court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to governmental sources, such as the U.S. State Department.

(vii) The mere possibility of ill treatment is not sufficient to establish an applicant's case.

(viii) The relevant time to consider the conditions in the requesting state is at the time of the hearing in the High Court. Although, of course, on an appeal to this Court an application could be made, under the rules of court, seeking to admit additional evidence, if necessary."

52. I think it is worthy of note that the respondent is not claiming any personal knowledge of Polish prison conditions. Neither has he proffered evidence by way of affidavit from any third party individual, or organisation, with recent first hand experience of Polish prison conditions. His case is based solely on the internet downloads exhibited in the affidavit of his solicitor.

53. I have carefully considered the evidence put forward in the affidavits of the respondent's solicitor, as well as the additional material emanating from the issuing state, and having paid due regard to the approach commended in *Rettinger*, I find that I am not satisfied that the respondent has demonstrated that substantial grounds exist for believing that if he is returned to the issuing state he would be exposed to a real risk of being subjected to inhuman or degrading treatment or punishment contrary to Article 3 of the European Convention on Human Rights and Fundamental Freedoms.

54. In so far as the respondent has raised an objection based on an alleged failure to respect his right to family life under Article 8 of the Convention his evidence does not remotely approach that which would be required to justify this Court's intervention, having regard to the relevant authorities including *Agbonlahore v Minister for Justice, Equality & Law Reform* [2007] 4 I.R. 309; *Minister for Justice, Equality and Law Reform v Gheorghe* [2009] IESC 76; *Minister for Justice, Equality and Law Reform v Gorman* [2010] IEHC 210; *Minister for Justice, Equality and Law Reform v Ciechanowicz* (Unreported, High Court, Edwards J., 18th March, 2011); *Minister for Justice, Equality and Law Reform v Bednarczyk* (Unreported, High Court, Edwards J., 5th of April, 2011) and *Minister for Justice, Equality and Law Reform v F.L.J.* (Unreported, High Court, Edwards J., 8th of April, 2011)

55. In the circumstances the respondent has not demonstrated that his surrender would be incompatible with the State's obligations under the Convention in that respect, or indeed in any other respect, and in the case of both warrants the Court is disposed to direct his surrender to the issuing state pursuant to s. 16 of the 2003 Act.