Neutral Citation [2015] IEHC 310

THE HIGH COURT

Record no. 2014/129 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003

Between/

The Minister for Justice and Equality

Applicant

-and-

Jason Teelin

Respondent

Judgment of Mr. Justice Tony Hunt, delivered on 15 April 2015.

Pleadings
The application in this case is for the surrender of the respondent pursuant to the provisions of s.16 of the European Arrest Warrant Act 2003 ("the Act"). The warrant in question was issued by the District Judge Loraine Morgan of the West Hampshire Magistrates Court on 18 June 2014. The respondent lodged undated points of the objection to the making of an order for his surrender. The substance of these points is as follows:-

> *1. The respondent contests the validity of the European Arrest Warrant issued herein and the applicant is put on proof of all matters related to same.*
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> *2. The surrender of the respondent would constitute a disproportionate interference with his family and personal rights under both the Constitution and the European Convention on Human Rights having regard to:-*
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> > *a) the failure of the applicant hearing to implement Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;*
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> > *b) the fact that the respondent made efforts to have his licence transferred to this State in circumstances where his prospects of successful rehabilitation are dependent on him being able to avail of family support, which support is only available to him in this jurisdiction;*
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> > *c) the refusal of the Irish Probation Services to accept supervision of the respondents licence due to an absence of resources;*
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> > *d) the fact that the legitimate aim sought by the licence/sentence imposed in respect of the respondent, namely his rehabilitation in society, is not attainable in the requesting state in the light of the respondent's unique personal difficulties and his necessity to be in a position to avail of family support.*
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> *The surrender of the respondent is therefore prohibited by s. 37 of the European Arrest Warrant Act 2003 as amended.*
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> *3. The surrender of the respondent would constitute a disproportionate breach of his personal and family rights under both Article 8 of the European Convention on Human Rights and the Constitution in circumstances where the respondent's entire family life is based in Ireland. The surrender of the respondent would also breach his right to freedom of movement. The surrender of the respondent is therefore prohibited by s.37 of the European Arrest Warrant Act 2003 as amended.*
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> *4. The respondent was neither present nor given an opportunity to make representations in respect of the purported revocation of his licence. The surrender of the respondent to face the consequences of that purported revocation would therefore constitute a breach of his rights under both the Constitution and the Convention and the surrender of the respondent is therefore prohibited by s.37 of the Act.*
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> *5. The warrant the subject matter of these proceedings does not contain all required or sufficient details, is internally inconsistent and does not make sense on its face and is not, therefore, a valid warrant within the meaning of the Act. The requirements of s.11of the Act and the Framework Decision have not been complied with and the respondent's surrender on the warrant is therefore prohibited.*

By letter dated 3 December 2014, the respondent clarified that the personal rights in issue include:-

> *"the respondent's right to respect to his private and family life; the respondent's right to freedom of movement; the respondent right to procedural fairness in decision-making; the respondent's right to reasonable and expeditious implementation of EU provisions designed to benefit persons such as him; the respondent's right to equivalence as against citizens of other EU states whom can already benefit from the implementation of such provisions."*

Facts
The background to the warrant issued in this case is that on 8 April 2010 at the Crown Court in Bournemouth, the respondent was sentenced to a period of imprisonment of seven years for an offence of inflicting grievous bodily harm with intent, contrary to s.18 of the Offences Against the Person Act 1861. The description of the offence indicates that the respondent was aged 17 at the time, and that his actions essentially consisted of stabbing his victim in the head with a screwdriver in the course of an argument, causing a 2-inch puncture wound to the brain.

That offence was committed on 3 July 2009. On 7 April 2014, the respondent was released on licence, subject to conditions as to

maintaining contact with his supervising officer and as to residence, which were not observed by the respondent. On 18 April 2014, the Secretary of State for Justice, pursuant to his powers under section 254 of the Criminal Justice Act 2003 (as amended by the Criminal Justice and Immigration Act 2008), revoked the licence and recalled the respondent to prison. Accordingly, the respondent was deemed by the United Kingdom authorities to be unlawfully at large.

The warrant is expressed to be a conviction type warrant, and the remaining sentence to be served is stated therein as expiring on 6 July 2016, with any period for which he remains unlawfully at large not counting towards the sentence. The respondent was present for his conviction and sentence at Bournemouth Crown Court.

The warrant also records that the respondent was previously recalled to prison in March 2013 after 2 months on licence, owing to concerns about his substance misuse and possible involvement in a fight. The National Offender Management Service assessed that he posed a high risk of serious harm to the public; that he might have been abusing substances and that his mental health was unstable without his prescribed medication, which he might not have been taking.

The warrant was received by the applicant on 20 June 2014 and endorsed by the High Court for execution on 1 July 2014. The respondent was arrested on foot of the warrant on 16 July 2014 by Garda Donna O'Sullivan, a member of An Garda Siochana attached to Navan Garda Station, and was brought before the High Court by her on the same day.

The primary evidence of the respondent relating to the application is set out in his affidavit sworn on 12 November 2014. He confirms that he was 17 years old when he committed the offence the subject matter of the warrant and states that he was on a brief holiday in the United Kingdom at the time. He was released on licence from prison in January 2013 on condition that he remained in the United Kingdom and resided at a hostel.

The respondent has no close family or friends in the United Kingdom and both of his parents reside in Ireland. Accordingly, when he was initially released from prison in January 2013, he found it extremely difficult, as he was effectively living with strangers and found his isolation very difficult. He was apparently exposed to a negative peer group and bad behaviour in his hostel.

With a view to repatriating himself and moving closer to his family, he sought to have his probation bond transferred back to Ireland so that he could reside here. Efforts were made on his behalf to have the Irish probation service accept transfer of his licence. In this respect, the respondent's affidavit exhibited a variety of correspondence and medical and other reports.

The respondent's general practitioner, Dr Joan Gilsenan, confirmed that the respondent has a long history of depression and anxiety resulting in chronic trichotillomania, requiring a low dose of a benzodiazepine. She also expressed a view that *"the support of his family with whom he is currently living is also extremely important in facilitating his rehabilitation."* This report was issued in July 2014.

Since June 2014 the respondent also attended Rita Kenny, Psychotherapist, for counselling. Her report expressed the opinion that the respondent presented with extreme anxiety disorder, anti-social personality disorder and trichotillomania. She had previously counselled the respondent when he was a teenager at the local school in Navan, when he presented as a young man with severe mental health issues. She also noted the importance of family support to the respondent, together with his complaint that the isolation of being on his own in England without any support had a detrimental effect on his mental health. She assessed the respondent as being in a high-risk category for suicide and self harm. She opined that returning the respondent to a prison setting in England could place him at risk of suicide and would not be in his interest in addressing his mental health issues.

The nature and extent of the respondent's difficulties were also evidenced by a report of 12 September 2002 by Stephanie Castle, Clinical Psychologist, to whom the respondent was referred for evaluation by his school principal when he was aged 10, due to behavioural and academic difficulties. He was diagnosed in the Borderline/Mild Learning Disability range. Problems with behaviour, emotional disturbance, attention span, restlessness and learning were identified during clinical interviews and through relevant testing. It was noted at that time that he might also be experiencing depression with suicidal ideation.

At the hearing, the applicant objected to reference to these reports, which were exhibited in the affidavit of the respondent, on the basis that they represented hearsay evidence and ought to have been evidenced by way of affidavits from the individuals concerned. This is not a sound objection, in circumstances where there does not appear to be any basis for disputing the troubled nature of the respondent or his personal history.

The court is entitled to inspect such documents when exhibited in an affidavit, and to attribute such evidential weight as may be appropriate having regard to all of the known circumstances of the case. The matters set out in these reports are substantially corroborated by the correspondence set out immediately hereunder. The processing of these applications is not assisted by technical objections of this nature, relating to matters that cannot seriously be said to be in issue, or by requiring medical attendants to swear affidavits that add nothing to their signed reports.

The course of events arising after the respondent was first released from prison on licence is illustrated by a letter dated 2 October 2014 from James Dixon of the Bournemouth Probation Office to the solicitor for the respondent. In view of the objections by the applicant to medical reports furnished by the respondent, it is worth quoting extensively from that letter:-

> *"As you will be aware, Mr Teelin was sentenced to 7 years imprisonment on 8 April 2010 for an offence of Grievous Bodily Harm. The assault occurred on 3 July 2009, during a short visit to his aunt's address in Bournemouth.*
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> *Mr Teelin was released from prison in January 2013 and is subject to licence conditions until July 2016. Initially he resided at a Probation hostel in Weymouth, Dorset. It was acknowledged that he found the transition quite difficult, particularly because he had very little support in England as all of his close relatives are in the Republic of Ireland. In view of this, it was considered by Probation that it might improve Mr Teelin's long-term chances of rehabilitation if he were to return to Ireland prior to his licence expiry date in 2016. Consequently I emailed Emer Hanna (Senior Probation Officer in Ireland) on 17 October 2012 to ascertain the process for transferring a case from England to Ireland. On 27 December 2012 she responded with the following:*
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> *"I have spoken with the Senior Probation Officer for the Navan area and she has consulted with her Regional Manager. As they have staff shortages until the end of 2013 they regrettably are not in a position to offer supervision to Mr Teelin at this stage. They stated that they would review this position as soon as the staffing situation improves. I am sorry that we are unable to be of immediate assistance in this case."*

At the start of March 2013, Mr Teelin was recalled to prison due to concerns about his behaviour in the community. When he was released again in April 2014, I contacted Emer Hanna to establish whether Mr Teelin could be supervised in Ireland and awaited a response. It was agreed with Mr Teelin that if he demonstrated good behaviour for approximately 3 months whilst residing at the probation hospital in Weymouth, Dorset, transfer of his licence to Ireland would be seriously considered. Unfortunately Mr Teelin was only at the hostel for a couple of weeks before he walked out and returned to Ireland of his own accord.

Had he been arrested in England, Mr Teelin would now be in prison and it is likely that he would remain there until 2016. The parole board would review his suitability for re-release before that date, but given that he has already been recalled on two occasions, there would be significant concerns about the likelihood of him complying with his licence conditions in future.

In my opinion there would be clear advantages to Mr Teelin serving the remainder of his custodial sentence in Ireland. He is a young man with a history of mental health problems and therefore I think that regular contact with his family would greatly assist in keeping him stable and focused. It would also give him more opportunity to make plans and prepare for release to his home area."

The position of The Probation Service in this jurisdiction is set out in an email from the Senior Probation Officer at Navan on 26 February 2013, confirming that the office at Navan was not in a position to offer voluntary supervision to the respondent at that juncture as they were currently operating at 50% of their overall staffing capacity. The matter had been referred to senior management prior to that date, who had concluded that the Service had reluctantly decided to decline the respondent's request as they *"simply do not have the resources in Meath to do so"* and their International Desk had been so instructed and would be making contact with the United Kingdom authorities on that basis.

The respondent asserts in his affidavit that his prospects of coping with a return to the United Kingdom without the support of his family are much reduced, that his entire family life and future is based in Ireland and that any prospect of stability and rehabilitation in his life lies here. He expresses his concern as to the detrimental effect of surrender on his well being, mental health and family life. On the basis of his long-established difficulties, it is reasonable to accept these propositions, which are also broadly supported by the correspondence from Mr Dixon.

The respondent deposes in his affidavit that as he was reluctantly refused voluntary supervision by the Irish authorities on the basis of a lack of resources, and in the light of the likely expense of a considerable amount of state resources in relation to this application for rendition, he made a request of the applicant to reconsider the allocation of resources by, in effect, making provision for arrangements to have him serve out the period of his licence under supervision in this jurisdiction.

The reply to this request was that the applicant's role is to facilitate the High Court in performing functions under the Act, and that the matters raised by the respondent in relation to probation were extraneous to these proceedings, and were more properly to be addressed by the respondent to the United Kingdom authorities in the event of a surrender on foot of the warrant.

He also complains that he was not consulted in any way by the Secretary of State in the United Kingdom in advance of the decision to revoke his licence. The affidavit concludes with a request to the court to *"vindicate my personal and family rights and my right to freedom of movement by refusing to order my surrender herein."*

The respondent was granted bail after a contested application on 22 July 2014, on conditions relating to residence, signing on and the lodgement of €5000. His mother, Patricia O'Reilly, gave supportive evidence on his behalf on that application, and the bail money was subsequently lodged by her brother, the respondent's uncle.

The bail granted to the respondent was subsequently revoked, as the respondent was in custody when the application and objection came on for hearing on 8 December 2014, when the applicant was represented by Ms. Cathleen Noctor and the respondent was represented by Mr. Diarmuid Collins.

At the commencement of the hearing, the respondent's mother was present in court and wished to hand in a letter. After consultation with counsel, she was requested by the court to wait until the end of the hearing before addressing or submitting the letter to the court. At that stage, it transpired that her sole concern was that the respondent was attempting to assume possession of the bail money provided by his uncle.

Once this matter was resolved to her satisfaction during a further hearing on 18 December 2014, she left court and took no further part in the proceedings. She did indicate that she was open to the possibility of becoming available again to support her son in the future, but presumably only if the apparent rift between them was repaired. However, at a subsequent hearing, the respondent's mother confirmed that she would provide support for the respondent if certain conditions laid down by her were met by him. At the hearing in December 2014, there was further legal argument, and the respondent submitted a further affidavit setting out additional details of family members resident in Ireland.

This affidavit was submitted at the request of the court, in the light of the fact that it was obvious that the respondent's mother was not willing at that juncture to provide practical or moral support to the respondent, and the notion of family support in his particular situation was an essential element of the case pleaded by the respondent. In February 2015, the respondent also added an oral objection based on a risk of ill-treatment on his return to prison, based on ineffective and inappropriate treatment for his trichotillomania during the initial part of his sentence.

Submissions
In relation to paragraphs 2, 3 and 4 of the objections, the respondent submitted that the court ought to exercise discretion to refuse surrender in circumstances where it was alleged that this would constitute a disproportionate interference with the specified rights of the respondent in the individual circumstances disclosed by the facts of the case.

In this regard, Mr Collins referred to the Preamble and Article 5 of the Council Framework Decision on probation matters (2008/947/JHA), the decisions of the High Court in ***The Minister for Justice, Equality and Law Reform -v- Anthony Patrick Gorman [2010] 3 I.R. 583*** (Peart J.), ***The Minister for Justice and Equality -v- T.E. [2013] IEHC 323*** (Edwards J.), and ***The Minister for Justice, Equality and Law Reform -v-Thomas Martin McCague [2010] 1 I.R. 456*** (Peart J.). He submitted that the structure suggested by the Framework Decision was relevant to an assessment on the facts of the case of the proportionality of the surrender sought by the applicant.

In relation to paragraphs 1 and 5, the respondent submitted that the arrest warrant in question was defective in parts B, C and E thereof. In this regard, Mr Collins referred to the decision of the Supreme Court (per Hardiman J.) in ***The Minister for Justice, Equality and Law Reform -v-James Anthony Tighe [2010] IESC 61***.

On the latter points, the applicant submitted that the warrant was substantially in the proper form and that any defects should be disregarded as insubstantial. In this respect, Ms Noctor relied upon the provisions of s.45C of the Act, which provides that surrender shall not be refused on the basis of non-substantial defects or omissions in a warrant, once no injustice is found.

On the former arguments, the applicant disputed that there was an unwarranted or excessive interference with the family or other personal rights of the respondent. The central theme of her submission was that the probation history relied upon by the respondent was irrelevant to the proposed surrender of the respondent, where this was based on a recall to prison for a breach of licence which was subsequent and separate to that probation history.

Ms Noctor submitted that the provisions of the Framework Decision were entirely irrelevant to the case, as neither Ireland nor the United Kingdom had seen fit to implement the provisions thereof, and the Decision did not create any rights in the respondent to which the court could give direct effect.

She also submitted that there was no requirement in the circumstances of this case for the United Kingdom authorities to provide an opportunity to make representations prior to the revocation of his licence or the issue of an arrest warrant.

She referred to the decisions of the Supreme Court ***in The Minister for Justice, Equality and Law Reform -v- Piotr Sliczynski [2008] IESC 73*** and ***The Minister for Justice and Equality -v- Jaroslaw Ostrowki [2014] 1 I.L.R.M 88,*** and to the decisions of the High Court in ***The Minister for Justice and Equality -v-Wislaw Ciecko (18/12/2013***, Edwards J.) and ***The Minister for Justice and Equality -v- Magdalena Rostas [2014 IEHC 391*** (Edwards J.).

Section 16 of the Act
On a surrender hearing pursuant to this section, where the court is requested by the applicant to make an order directing that the be surrendered to such person as is duly authorised by the United Kingdom to receive him, and where the respondent does not consent to his surrender, the court must be satisfied that all requirements of the section have been met before acceding to the request of the applicant.

The following matters have been established by the evidence adduced:-

a) the person before the court is the person in respect of whom the European arrest warrant was issued;

b) the European arrest warrant was endorsed for execution in the state in accordance with s. 13 of the Act;

c) the warrant was duly executed;

d) the warrant is a conviction type warrant and the respondent is wanted in the United Kingdom for the purpose of serving the balance of the sentence of seven years imprisonment described above;

e) the respondent appeared in person at the trial resulting in the sentence imposed on him;

f) the offence in question is a "ticked box" offence involving grievous bodily injury punishable by a custodial sentence of at least three years;

g) there are no circumstances that would cause the court to refuse to surrender the respondent under s. 21A, s. 22, s. 23 or s. 24 of the Act;

h) the United Kingdom is designated by secondary and primary legislation for the purposes of the Act as being a state that has under its national law given effect to the Framework Decision.

Accordingly, it appears that the applicant is entitled to an order for the surrender of the respondent to the United Kingdom unless the respondent establishes the proposition that the European arrest warrant in question is defective and/or that the rendition measure sought by the applicant would have a disproportionately adverse effect on his family or other personal rights, when balanced against the public interest in surrender.

Public interest
The decision of Edwards J. in ***Ciecko*** summarises in the following terms the enquiry to be carried out in a case such as this:-

"In summary what is required is a balancing of the public interest in extradition against private law considerations relevant to the particular circumstances of the requested person. The exercise is case specific. The evidence will obviously differ in every case. The starting point is to determine what the public interest in extradition is in the particular case.

It was stated by Mr Justice McKechnie in his judgement in the Supreme Court in ***The Minister for Justice and Equality -v- Ostrowki [2013] IESC 24****, that there will be a public interest in extradition in every case. It is a constant in the vertical sense, as McKechnie J. put it. Sharing, as I do, this view, it is to be found incorporated within the principles expounded in both T.E. and R.P.G. It arises as a matter of public policy. In general, and without factoring in specific features peculiar to the individual case, it is widely recognised as being of importance that criminals are not permitted to evade justice, and that fugitives are located and returned to face trial or serve their sentences as the case may be. This is required for the maintenance of public confidence in a state's criminal justice system and in the forces of law and order. It is also necessary for its deterrent effect.*

However, as McKechnie J. also explained in ***Ostrowski,*** *the public interest in extradition will not necessarily be afforded the same weight in every case, because obviously the circumstances of cases may vary. Some cases will involve more serious offences than others. The sentences potentially to be imposed, or that were available to be imposed, may also vary. Moreover, in a conviction case, the sentence actually imposed is an important yardstick, particularly because it is likely to reflect factors taken into account by the sentencing court that may not necessarily appear on the warrant, e.g., aggravating or mitigating circumstances peculiar to the case or the individual concerned. For example, an*

ostensibly severe sentence imposed for what would in general terms be regarded as a relatively petty crime, might reflect the fact that the respondent is a recidivist criminal, with a long criminal record in the issuing state."

The nature of the offence committed by the respondent, the duration of the sentence imposed and the summary of the facts pertaining to the offence set out in the arrest warrant all indicate that the respondent was convicted of a significant and serious crime. Consequently, there is a strong general public interest in seeing that such sentences are actually served as a matter of public policy, together with a corresponding public interest in the respondent's extradition to face execution of the sentence in question.

In ***Ciecko,*** Edwards J. was able to find that the facts of that case justified the view that a substantial unexplained delay significantly diluted the otherwise moderately strong public interest in the respondent's extradition. The heavily diluted public interest subsequently enabled Edwards J to find that private interest considerations which otherwise would not carry extraordinary weight were sufficient to balance the scales in favour of the respondent in that case. It should also be noted that Edwards J. characterised the offences in question as being "relatively minor".

There are no such considerations in this case. The sentence is lengthy, the offence is serious and there are no considerations pertaining to delay. It is entirely reasonable for the respondent to assert that there is a competing public interest in the State respecting the obligations placed on it by the Council Framework Directive, which required the necessary implementation measures to be in place by 6 December 2011.

However, the public interest in executing extradition obligations which have been properly transposed into domestic law cannot be diluted or cancelled by the failure of the State to implement other obligations which are imposed by EU law, where the measure in question does not create directly effective rights in the respondent. Accordingly, any private law considerations relating to this respondent must be balanced against a strong public interest in surrender.

Proportionality
The material provisions of s. 37 of the Act of 2003 prevent the surrender of a person under the Act if this would be incompatible with the State's obligations under the European Convention of Human Rights or under the Constitution. The respondent claims that surrender would cause a disproportionate interference with the rights listed in his reply to particulars of 3 December 2014, as recited above, in addition to the risk of ill-treatment raised solely in oral argument.

The test and approach to be applied to such a claim has now been clearly enunciated by the Supreme Court decision in ***Ostrowski.*** Denham C.J. cited the judgement of Fennelly J. In ***The Minister for Justice, Equality and Law Reform -v- Gheorghe [2009] IESC 76*** as follows:-

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

Denham C.J. then continued as follows:-

"In almost all cases of surrender, family rights, article 8 rights, are affected. However, it is only in an exceptional case that article 8 rights would outweigh the requirement to surrender. This is not such an exceptional case. Thus, there is no foundation upon which to find for the respondent on this ground. Therefore, the general principle of proportionality does not arise in these circumstances.

Even if the principle of proportionality might arise in some circumstances, even if it could be a factor in a case, there is no basis in the principle of proportionality upon which to refuse to surrender the respondent in this case."

Consequently, the Supreme Court has clearly stipulated that an exceptional case must be established to permit such rights to set aside the normal requirement to surrender, particularly where the public interest in such surrender is strong. McKechnie J. also referred to a requirement for the facts in such a case to *"demonstrate the likely existence of harmful consequences, peculiar to the respondent, which are of such significance as to outweigh the public interest in ordering his return."* These do not include matters falling within the expected consequences which might flow from, and which are inherent to the operation of the extradition process itself.

In this respect, the respondent relies squarely on his personal circumstances and the specific probation history outlined above. In respect of probation matters, it is a lamentable state of affairs that an absence of resources dictated that no arrangement, whether formal or informal, could be devised so as to accommodate both the respondent's desire and that of the United Kingdom Probation Service that he should be supervised in his own country of residence, rather than for an extended period in a country with which he has no real connection. It is impossible to see what meaningful benefit or rehabilitation could accrue to the respondent from a protracted period of residence in a probation hostel in a town and country with which he has no real connection.

It is also a matter of regret that neither of the respective jurisdictions has seen fit to implement the Framework Decision on probation matters within the specified time limit, which might have allowed the respondent to have a formal method of instituting a type of supervision arrangement apparently thought to be desirable by the probation services in both jurisdictions. This State has failed to implement the Framework Decision by the time specified in that respect, and the United Kingdom has apparently exercised a right to opt out of implementation thereof. In addition, this State has declined to make resources available to receive the respondent for probation supervision on a voluntary basis.

The facts of this case illustrate clearly that the respondent is precisely the kind of person who could be benefited by a transferred probation arrangement. All successful probation arrangements result in the accrual of a dual benefit, to the individual supervised and to society in general, the possibility of which has now been lost in the case of the respondent. Furthermore, the taxpayer in the United Kingdom might have been spared the expense of further dealings with the respondent.

However, in the absence of a legislative instrument creating directly effective rights, these matters are beyond the province of the judicial branch. Presumably the potential remedy against State default lies in an enforcement action against the states concerned by the EU authorities for failure to implement the provisions of the Decision by the date specified in that regard. Furthermore, the

absence of a facility for the transfer of probation supervision is not an exceptional feature, in that it applies currently to all Irish residents who choose to commit criminal offences in the United Kingdom and who receive a "half and half" type sentence, and not exclusively or primarily to the respondent.

In addition, the dates of the correspondence regarding a potential voluntary probation arrangement considerably weaken any ensuing effect on the arrest warrant subsequently issued in this case. The exchange between the United Kingdom and Irish probation services took place in January 2013, and was clearly in contemplation of the respondent's release after serving the first half of the custodial sentence imposed on him in 2010. However, this exchange ceased to have real or continuing relevance when the respondent was recalled to prison in March 2013, after only two months at liberty, due to concerns about his behaviour in the community.

When the respondent was released from prison for a second time in April 2014, Mr Dixon of the Bournemouth probation office contacted his counterpart in Navan in order to re-establish whether the respondent could then be supervised in Ireland. He recites that he reached an agreement with the respondent that if the respondent demonstrated good behaviour for a period of approximately 3 months while residing at the probation hostel in Weymouth, transfer of his licence to Ireland would be seriously considered. The respondent apparently chose not to comply with the terms of this agreement, and remained at the hostel for a couple of weeks before he departed and returned to Ireland of his own accord. Accordingly, he gave Mr Dixon or the Irish Probation Service no real opportunity to revisit the proposal refused during the previous year.

It is quite clear from Mr Dixon's letter that the respondent was either unwilling or unable to await further developments before breaching the terms of his licence. As understandable as his desire to return home in his particular circumstances might have been, the arrangement initiated by Mr Dixon was reasonable in those circumstances. If the respondent had waited for three months, and if during that time the Irish probation service had issued a similar refusal to accept a voluntary transfer to that communicated to the Bournemouth probation services during the previous year, the respondent might now stand on more solid ground in his criticism of the Irish authorities. As it is, the respondent simply departed after a short time without further ado. It is unnecessary to speculate further on alternative factual scenarios.

It is also clear from that letter that there is no longer any realistic prospect that the respondent will be subject to a probation regime, either in the United Kingdom, or under any alternative arrangement in this jurisdiction. On the contrary, what is now required of the respondent in the United Kingdom is to complete the balance of his custodial sentence, and it is significant that in the last paragraph of his letter, Mr Dixon refers only to the advantages to the respondent serving the remainder of that sentence in Ireland, which is a distinct and separate issue to that of probation supervision in lieu of serving out the sentence.

There is no doubt that as a non-national with no significant connections with the United Kingdom, the respondent found service of both the custodial and the non-custodial portions of the sentence more onerous than a United Kingdom national in the same position. However, that is hardly an exceptional feature in the extradition context, and is usually a mitigating factor to be taken into account at the sentencing stage. The hardships accruing to the respondent whilst serving his sentence both in and out of custody in the United Kingdom do not exceed what could fairly be regarded as flowing from and inherent in the ordinary situation where a resident of one country is obliged to serve a sentence in another country where he has committed a serious crime.

In relation to the rights of the applicant concerning access to family, medical issues and freedom of movement, there is also nothing sufficiently exceptional to justify refusal to surrender on the basis of s.37. It is clear from both the reports and his demeanour in court during the hearings that the respondent is a troubled young man with significant behavioural difficulties, and it is a great pity that it was not possible to provide a meaningful community-based rehabilitation programme to address these difficulties in a non-custodial setting. It may well be that his current situation could have been avoided if either formal or voluntary transfer arrangements were open to him in 2013. In default thereof, he was and remains obliged to comply with the generally applicable sentencing regime in the United Kingdom.

Such transfer arrangements would have been in the interest of both the respondent, and the community in which he intends to reside after his release from prison. If he is now surrendered to the United Kingdom to simply serve out the balance of the sentence, he will presumably return to Ireland thereafter, without being subject to any obligations as to post-release supervision in this country. This will hardly assist his re-integration into the community, or increase his prospects of not re-offending. It is to be hoped that the decision not to extend a voluntary supervision arrangement in 2013 will not be proved by future events to have been very short-sighted.

There is undoubtedly practical merit in the argument that resources used in extraditing the respondent would be better used in providing a probation supervision regime for him in his country of residence, but the decision in a case such as this depends on legal merit, rather than resource allocation, which is not a matter within the competence of the court.

There can be no doubt that a young man with his difficulties would benefit from proximity to, and the support of his family. Although it has been indicated that the respondent's mother is now prepared to offer conditional support to him, his family situation is not sufficiently exceptional in nature to support a refusal to surrender under s.37.

Similarly, although the respondent does have medical issues, there is no evidence that they are sufficiently acute or unusual as to present a barrier to rendition. The first specific complaint is that he would be hindered in this respect by distance from his family, which is not an exceptional feature in such cases.

The second specific complaint is that he may not receive appropriate treatment for his medical condition if returned to the United Kingdom. The evidence produced does not actually advance this complaint to any great extent. It suggests merely that the respondent was wrongly prescribed Diazepam for his condition by a doctor, who did not realise that the prison regime did not permit prescription of this drug to prisoners. After it was withdrawn, the respondent complained about this fact, but does not appear to have prosecuted this complaint with any vigour. There is no evidence to suggest that Diazepam is the only appropriate medication for trichotillomania, nor is there any evidence concerning what regime, if any, is currently applicable to the respondent in this respect. The evidence from the United Kingdom authorities tends to suggest the cognitive behaviour therapy is the preferred method of treatment.

The decision of the Supreme Court in ***Minister for Justice, Equality and Law Reform -v- Robert Rettinger [2010] IESC 45*** suggests that a real risk of inhuman or degrading treatment must be established by reasonable grounds of belief, as distinct from a mere possibility of ill-treatment. Having considered all of the material, including that requested by the court from the United Kingdom authorities, while accepting that the condition suffered by the respondent is real and distressing, the weight of all of the evidence does not establish a real suggestion that he did not receive appropriate treatment in respect of his condition whilst serving the first portion of his sentence, or that he cannot be accommodated in that respect during a second portion thereof.

Consequently, the respondent's medical condition does not prevent the making of a surrender order.

Form of the warrant
The arrest warrant in question is alleged to contain a number of defects. Section B of the warrant is challenged. This requires that the warrant contained details of the decision upon which the warrant is based. The particulars set out in the warrant refer to the sentence imposed by Bournemouth Crown Court, the release on licence on 7 April 2014, and the exercise by the Secretary of State for Justice of his powers under section 254 of the Criminal Justice Act 2003 (as amended by the Criminal Justice and Immigration Act 2008), revoking the licence and recalling the respondent to prison. It is recited that the respondent is deemed to be unlawfully at large.

This aspect of the warrant is challenged because it is essentially asserted that the decision of the Secretary of State for Justice to revoke the respondents licence is not a judicial decision. No evidence was furnished as to the precise legal structure under which sentences are activated in the circumstances in the United Kingdom, so the situation must be approached on the basis of that which is apparent from the evidence and the face of the warrant, which is that the respondent is now required for the purpose of being returned to prison on foot of the exercise of a statutory power by a government minister, to serve out the balance of a sentence previously imposed by a criminal court, from which the respondent was twice released on licence, presumably by the same Secretary of State.

The Framework Decision creating the European arrest warrant provides for the issue of a warrant by a competent judicial authority to request the arrest and surrender of a person for the purpose of executing a custodial sentence or detention. It is not been alleged by the respondent that the representative of the magistrates court at Southampton who signed the arrest warrant is not a competent judicial authority in respect of the custodial sentence clearly imposed by Bournemouth Crown Court. The complaint is rather that the arrest warrant relates to the enforcement of a decision by a non-judicial personage regarding a recall to custody on the basis of the sentence previously imposed by the Crown Court.

The fact that in another legal system a non-judicial entity may have a role in either releasing or recalling a person subject to the sentence of a criminal court does not prevent the issue of a European arrest warrant by a competent judicial authority once the underlying sentence is still subsisting. For example, in this jurisdiction, the executive branch assumes various roles in respect of sentenced persons after sentence without affecting the validity or continuity of the underlying court order during the currency thereof. This seems to be confirmed by the provisions of s.11(e) of the Act, which provide simply that a European arrest warrant shall specify that a conviction, sentence or detention order is immediately enforceable against the person concerned.

This requirement is met by the particulars set out in section (B)(1) of the warrant, which clearly states that as the respondent is regarded as being unlawfully at large by the United Kingdom authorities, the sentence originally imposed by Bournemouth Crown Court on 8 April 2010 will not expire until 6 July 2016, and any period for which the respondent remains unlawfully at large will not count towards the sentence.

The latter point raises the challenge made by the respondent to section C of the warrant, which contains "indications on the length of the sentence". This information is not very clear, in that it gives no indication as to whether the respondent would receive any credit from the United Kingdom authorities for any time spent in custody in Ireland whilst these extradition proceedings are in train.

It will be manifestly unfair if the United Kingdom authorities continued to regard the respondent as "unlawfully at large" whilst he was detained in custody pending determination of their extradition request. Failure to give such credit would be capable of causing rendition to be disproportionate, so the court requested further information on this point pursuant to the provisions of section 20 of Act. However, the further information supplied pursuant to court request satisfactorily confirmed the process by which the respondent would be credited in respect of time served in custody in Ireland referable exclusively to detention pending rendition.

The next challenge to the form of the warrant relates to section B thereof, which contains a statement pursuant to s.142(5) of the (United Kingdom) Extradition Act 2003. In essence, the compiler of the warrant failed to delete from the warrant the alternative purpose of such a warrant, that being that the person in question is required for sentencing, as opposed to serving a sentence previously imposed. Counsel informed the court that there was no authority on the proper approach to the construction of such arrest warrants.

In those circumstances, the correct approach is to assess the nature of the error in the light of the contents of the document as a whole. The purpose for which the warrant was issued is perfectly clear on an overall reading of the document, either by the person concerned by the warrant, or by a reasonably careful reader thereof, in that it is obvious that the respondent has previously been sentenced in respect of the offence in question. In those circumstances, the omission in question, although regrettable, may be regarded as a "non-substantial detail" within the meaning of section 45C of the Act.

In the circumstances, there is no defect in the form or contents of the warrant which would justify the refusal of an order under section 16.

Right to make submissions
Finally, the respondent submitted that the failure of the United Kingdom authorities to afford him an opportunity to make submissions as to whether his licence ought to be revoked constituted a sufficient interference with the respondent's rights to justify a refusal to surrender under the terms of s.37.

The evidence suggests that the second portion of the sentence imposed on the respondent reverted to being custodial in nature by reason of his failure to comply with the terms of the license permitting him to serve the second half of the sentence otherwise than in custody. The respondent must have known that he was not entitled to leave the United Kingdom, on the basis of his discussions with Mr Dixon, as set out in the letter recited above.

In those circumstances, it is not possible to discern that any right of the respondent under either the Convention or the Constitution has been infringed by the revocation of the licence and the recall to prison. Where the respondent simply departed from the issuing state in breach of his release obligations, it is unrealistic to suggest that the issuing state ought to have been obliged to engage in some form of hearing or other process with the respondent before making a decision to recall the respondent to prison for an obvious and clear breach of the terms of his licence.

As the requirements of s.16 of the Act have been met, and as the respondent as not succeeded on any of the grounds of objection to surrender lodged by him, there will be an order for the surrender of the respondent to the United Kingdom.

That is not to detract from criticisms which properly arise from the failure of both jurisdictions to implement necessary legislation which might have alleviated the position of the respondent, to the benefit of both societies in general.

In view of the fact that it was not possible to extend a voluntary probation arrangement to the respondent when an application for such an arrangement ought to have been available to him as a matter of statutory right, serious and speedy consideration should be given to any request that may be made by the respondent to serve his sentence in this jurisdiction, for the reasons correctly identified by Mr Dixon and set out above.