Neutral Citation Number: [2011] IEHC 136

THE HIGH COURT

2010 101 & 102 EXT

BETWEEN/

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

- AND -

WOJCIECH BEDNARCZYK

RESPONDENT

JUDGMENT of Mr Justice Edwards delivered on the 5th day of April 2011

Introduction

The respondent is the subject of two European Arrest Warrants issued by the Republic of Poland on the 25th of March, 2008 and the 22nd of September, 2009, respectively. Both warrants were endorsed for execution by the High Court in this jurisdiction on the 10th of March, 2010. The respondent was arrested by Garda Gary Ryan at Riverview, Ballinasloe, Co Galway on the 24th of August 2010 on foot of the warrant dated the 22nd of September, 2009 and was brought to Dublin to appear before the High Court on the 25th of August 2010. On the 25th of August 2010 he was arrested at the CCJ building in Dublin on foot of the warrant dated the 25th of March, 2008. He was brought the High Court later that day on foot of both warrants pursuant to s. 13 of the European Arrest Warrant Act 2003 (hereinafter "the 2003 Act") and was remanded on bail pending a s. 16 hearing. The respondent does not consent to his surrender to the Republic of Poland on foot of either warrant. Accordingly, this Court is now being asked by the applicant to make Orders pursuant to s. 16 of the 2003 Act directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether it is appropriate to do so having regard to the terms of s.16 of the 2003 Act.

The respondent, as is his entitlement, does not concede that any of the requirements of s. 16 aforesaid are satisfied. Accordingly, as no admissions have been made, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied. In so far as specific points of objection are concerned, the Court is required to consider a single specific objection to the respondent's surrender, namely:

> "whether the surrender of the respondent would be incompatible with the State's obligations under the European Convention on Human Rights and Fundamental Freedoms (hereinafter 'the Convention'), in particular the right to respect for his private and family life under Article 8."

Uncontroversial s. 16 issues

The Court has received an affidavit of Garda Gary Ryan sworn on the 26th of March, 2011 and has also received and scrutinised a copy of both European Arrest Warrants in this case. Moreover the Court has also inspected both original European Arrest Warrants which are on the Court's file and notes that each one bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

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

The warrant dated the 25th of March, 2008 is a prosecution type warrant and the respondent is wanted in the Republic of Poland for trial in respect of a single charge for an offence that the Court is satisfied would correspond in this jurisdiction with theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. The relevant offence carries a potential penalty of up to 5 years imprisonment in Poland and accordingly the requirements in relation to minimum gravity are met.

The warrant dated the 22nd of September 2009 is required to be read in conjunction with additional information supplied by the issuing judicial authority dated the 20th of February, 2011. It is a sentence type warrant on foot of which the respondent is wanted in Poland to serve an outstanding sentence of eight months imprisonment imposed upon him by Local (or District) Court in Koñskie on the 23rd of November 2005 in respect of an offence that the Court is satisfied would correspond in this jurisdiction with making gain or causing loss by deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. The Court is satisfied that the requirements of the 2003 Act with respect to minimum gravity are also met in terms of this warrant.

The Court is further satisfied that the European Arrest Warrant in this case is in the correct form. 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 s. 38 objection

The evidence in support of the respondent's objections in both cases is contained in two more or less identical affidavits sworn by him on the 14th of December 2010, and in a supplemental affidavit sworn by him on the 21st of March 2011.

The respondent has deposed that in or about the 13th of May 2006 he came to Ireland and he has been here since then. He is a married man and his wife and three children, aged ten, eight and six, respectively, also reside in Ireland with him. He contends that they have settled down and made a life here.

He has sought to emphasise that he is a hard worker, has been more often in work than out of it and has been making a useful contribution to society here, all of which I have no hesitation in accepting. To that end, he has set out his employment record in some detail and has averred that he was employed by Frank Kelly builder from 29th of May 2006 until the 25th of August 2006. Thereafter he was employed by Cregg Brothers Limited from September of 2006 until May of 2007. He was then employed at Carlton Shearwater Hotel as a kitchen porter from October of 2007 until December 2007. Subsequent to that he was employed by Frank Byrnes Autobody Repairs, Clarenbridge, Co Galway from January of 2008 until February 2008. He then was employed by Cregg Stone from March 2008 until August of 2008 when he was let go due to a downturn in the business. He contends that he has been offered numerous employment positions recently including positions with his previous employers Frank Byrnes Autobody Repairs in Clarenbridge as well with Kilgarve Cars on the Athlone Road in Ballinasloe, Co Galway and with another garage in Renmore, Co Galway. He states that he has been eager to take up any and all of these offers in order to support his family but that to date he has been unable to do so due to the fact that the present proceedings are pending.

The respondent further states that his wife is awaiting a response from Portiuncla Hospital regarding obtaining position which she recently applied for.

The respondent avers that if he is surrendered to the Polish authorities on foot of the European Arrest Warrants his wife and three children will also be forced to return to Poland. He states that they will have no means to support themselves in his absence. He contends that his wife and his three children are very settled here in Ireland and that his children are all attending school. The respondent emphasises that his three children have many friends here and he states that it is his intention and ambition that they will eventually attend college here in Ireland. He suggests that should his children have to return to Poland they will enter the Polish education system at a lower level and will be at a significant disadvantage in terms of the Polish subjects that they will have to study and with respect to the Polish schooling system in general.

The respondent's case, as outlined by his counsel, is essentially this. He accepts that the approach that a court such this should adopt in considering whether an order for the surrender of the respondent would constitute a breach of this State's obligations under the Convention or its Protocols is that set out by Peart J in *Minister for Justice, Equality and Law Reform v Gorman* [2010] IEHC 210. It will be recalled that in his judgment in the Gorman case, Peart J said:

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

The respondent accepts that in his particular case, of the four questions commended by Peart J, the first three would have to be answered in the affirmative. Moreover, he does not seek to gainsay that the legitimate aim or objective being pursued by the Polish Government in seeking his rendition is the entitlement of the Polish authorities, acting in the Polish public interest (which public interest includes the prevention of crime and disorder and the protection of the rights and freedoms of Polish citizens and others), to seek (a) to try him for a crime of which he is accused and with which he has been duly charged, viz that which is the subject matter of the warrant of the 25th of March, 2008 and (b) to have him serve out the sentence already imposed upon him for a crime of which he has already been convicted, and which is the subject of the warrant of the 22nd of September, 2009. However the respondent contends that in all the circumstances of his case his surrender would be a disproportionate interference with his right, and his wife and childrens' corresponding rights, to respect for family life, guaranteed by article 8 of the Convention and notwithstanding the legitimate aims being pursued.

The respondent relies principally upon article 8 of the Convention as well as on two English cases, namely a decision of the former House of Lords in the case of *Beoku-Betts v Secretary of State for the Home Department* [2009] A.C. 115 and a more recent U.K. Supreme Court case of *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 W.L.R. 148.

Article 8 of the Convention states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> "2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

In regard to article 8, the Court's attention was drawn to the judgment of Baroness Hale of Richmond JSC in the *Z.H.* case where she states:

> In *Beoku-Betts v Secretary of State for the Home Department* [2009] AC 115, the House of Lords held that both the Secretary of State and the immigration appellate authorities had to consider the rights to respect for their family life of all the family members who might be affected by the decision and not just those of the claimant or appellant in question. Lord Brown of Eaton-under-Heywood summarised the argument which the House accepted thus, at para 20:

> "Together these members enjoy a single family life and whether or not the removal would interfere disproportionately with it has to be looked at by reference to the family unit as a whole and the impact of removal upon each member. If overall the removal would be disproportionate, all affected family members are to be regarded as victims."

I added this footnote at para 4:

> "To insist that an appeal to the Asylum and Immigration Tribunal consider only the effect upon other family members as it affects the appellant, and that a judicial review brought by other family members considers only the effect upon the appellant as it affects them, is not only artificial and impracticable. It also risks missing the central point about family life, which is that the whole is greater than the sum of its individual parts. The right to respect for the family life of one necessarily encompasses the right to respect for the family life of others, normally a spouse or minor children, with whom that family life is enjoyed."

Relying on this, the respondent submits that in considering whether or not his surrender on foot of the relevant European Arrest Warrants is prohibited by the Part 3 of the 2003 Act or by the Framework decision (including the recitals thereto) the Court must consider the rights to respect for their family life of all the family members who might be affected by the Court's decision and not just those of the respondent.

Baroness Hale went on to cite Lord Bingham of Cornhill's statement in *EB (Kosovo) v Secretary of State for the Home Department* [2009] AC 1159, where he said this, at para 12:

> "Thus the appellate immigration authority must make its own judgment and that judgment will be strongly influenced by the particular facts and circumstances of the particular case. The authority will, of course, take note of factors which have, or have not, weighed with the Strasbourg court. It will, for example, recognise that it will rarely be proportionate to uphold an order for removal of a spouse if there is a close and genuine bond with the other spouse and that spouse cannot reasonably be expected to follow the removed spouse to the country of removal, or if the effect of the order is to sever a genuine and subsisting relationship between parent and child. But cases will not ordinarily raise such stark choices, and there is in general no alternative to making a careful and informed evaluation of the facts of the particular case. The search for a hard-edged or bright-line rule to be applied in the generality of cases is incompatible with the difficult evaluative exercise which article 8 requires."

The respondent argues that this Court should consider, as a matter of particular importance, whether his spouse, but in particular his children, can reasonably be expected to follow him to Poland. He further submits that the Court must approach the question with due regard for the best interests and well being of the respondent's children, and that having regard to the provisions of the United Nations Declaration on the Rights of the Child, 1959, and article 3.1 of the (United Nations) Convention on the Rights of the Child, 1989 ("UNCRC) in particular, the Court should regard the best interests of the child as being a primary and indeed the paramount consideration. He submits that his spouse and children cannot reasonably be expected to follow him to Poland in circumstances where they have put down solid roots here; and, in the particular case of the children, where they are engaged with the education system here, are being educated through English, are following the Irish Department of Education curriculum; and have no, alternatively no recent, experience of Polish schools, or of the Polish education system and curriculum, or of being educated through Polish. The respondent contends that the principles enunciated in the English cases upon which he relies are consistent with the jurisprudence of the European Court of Human Rights in Strasbourg. Moreover, he submits, that it is so is clear from the following further quotation from the judgment of Baroness Hale of Richmond JSC in the *Z.H.* case where she states (at para 17) :

> "These questions tend to arise in two rather different sorts of case. The first relates to long-settled residents who have committed criminal offences (as it happens, this was the context of *R (WL (Congo)) v Secretary of State for the Home Department* [2010] 1 WLR 2168). In such cases, the principal legitimate aims pursued are the prevention of disorder and crime and the protection of the rights and freedoms of others. The Strasbourg court has identified a number of factors which have to be taken into account in conducting the proportionality exercise in this context. The leading case is now *Üner v The Netherlands* (2006) 45 EHRR 421. The starting point is, of course, that states are entitled to control the entry of aliens into their territory and their residence there. Even if the alien has a very strong residence status and a high degree of integration he cannot be equated with a national. Article 8 does not give him an absolute right to remain. However, if expulsion will interfere with the right to respect for family life, it must be necessary in a democratic society and proportionate to the legitimate aim pursued. At para 57, the Grand Chamber repeated the relevant factors which had first been enunciated in *Boultif v Switzerland* (2001) 33 EHRR 1179 (numbers inserted):
>
> > '(i) the nature and seriousness of the offence committed by the applicant; (ii) the length of the applicant's stay in the country from which he or she is to be expelled; (iii) the time elapsed since the offence was committed and the applicant's conduct during that period; (iv) the nationalities of the various persons concerned; (v) the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life; (vi) whether the spouse knew about the offence at the time when he or she entered into a family relationship; (vii) whether there are children of the marriage, and if so, their age; and (viii) the seriousness of the difficulties which the spouse is likely to encounter in the country to which the appellant is to be expelled.'
>
> Significantly for us, however, the Grand Chamber in *Üner* went on, in para 58, "to make explicit two criteria which may already be implicit" in the above (again, numbers inserted):
>
> > '(ix) the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and (x) the solidity of social, cultural and family ties with the host country and with the country of destination.'
>
> The importance of these is reinforced in the recent case of *Maslov v Austria* [2009] INLR 47, para 75 where the Grand Chamber emphasised that
>
> > 'for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.'"

In response to all of this counsel for the applicant has argued that the respondent has not discharged the evidential burden upon him of showing that the level of interference with his right, and the right of his family members, to respect for family life would be so great as to amount to a breach of what is guaranteed to them by the Convention. The Court was reminded of the following remarks of Fennelly J in giving the decision of the Supreme Court in *Minister for Justice, Equality and Law Reform v Gheorgie* [2009] IESC 76 :

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

The Court's decision

I find myself in agreement with Counsel for the applicant, Ms Greally, that the respondent has not discharged the evidential burden upon him of showing that the level of interference with his right, and the right of his family members, to respect for family life would so great as to amount to a breach of what is guaranteed to them by the Convention. In considering this question I have adopted the respondent's submission that it is appropriate that the Court should consider the matter not just from the perspective of the respondent personally but with due regard to the Article 8 rights of all of the family members that might be affected by the Court's decision.

I have also had regard to the best interests and well being of the respondent's children, and have taken this into account. However, while the Court has taken these considerations into account it has not been disposed, for reasons explained in the next two paragraphs, to afford them primary, much less paramount, consideration. The best interests and well being of the respondent's children are clearly important considerations but they are not to be regarded as automatically trumping other important considerations to which the Court must also have regard.

Counsel for the respondent has cited, and relies upon, article 3.1 of the (United Nations) Convention on the Rights of the Child 1989 ("UNCRC) which states: "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*" Ireland is bound by this obligation in international law, having signed the UNCRC and having ratified it without reservation on the 21st of September 1992. However, Ireland has a dualist system under which international agreements, to which Ireland becomes a party, are not automatically incorporated into domestic law. Article 29.3 of the Constitution states that "*Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States*". Further, Article 29.6 of the Constitution states that "*no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas"*. These provisions have been interpreted as precluding the Irish Courts from giving effect to an international agreement if it is contrary to domestic law or grants rights or imposes obligations additional to those of domestic law – *Re Ó' Laighléis* [1960] I.R. 93. Currently, Irish domestic law does not universally provide that in court actions concerning or affecting children, whether directly or indirectly, the best interests of the child shall be a primary consideration. At most, it can be said that Article 3.1 of the UNCRC equates broadly with the so-called "welfare principle" which appears in a number of domestic statutes relating to children. However, it does not appear in all potentially relevant legislation. It certainly does not appear in the European Arrest Warrant Act, 2003 (or in the underlying Framework Decision). Neither does it appear in express form in the Constitution. That the Government may have plans to put a constitutional amendment before the people to fully incorporate the UNCRC into Irish domestic law is a matter of public knowledge. However, the holding of such a referendum, much less its outcome, cannot be taken for granted and the Court must apply the law as it is today.

Accordingly, it is this Court's view that article 3.1 of the UNCRC, in so far as purports to require the Court to regard as "a primary consideration" the best interests and well being of children who may be affected by a decision to surrender the respondent, must be regarded as imposing an obligation greater than that imposed by domestic law. Accordingly, the Court is constitutionally prohibited from directly applying, or giving direct effect to, article 3.1 of the UNCRC. That said, the Court does recognise that any assessment of proportionality involves a balancing exercise, and that in seeking to strike the appropriate balance it is appropriate to take account of the best interests and well being of children who may be affected by a decision to surrender the respondent as one of a number of potentially relevant factors, including the legitimate aims and objectives of the issuing state in seeking the respondent's rendition. However, it cannot, in the course of its balancing exercise, afford that consideration "primary" (or "paramount") status to the prejudice of other relevant considerations.

Moreover, the Court notes and agrees with the views of Fennelly J in the *Gheorge* case that surrender is not to be refused just because a person may suffer disruption, even severe disruption, of family relationships. In my view the bar for judicial intervention is set at a significantly higher level than that. A refusal of surrender on article 8 grounds should only be contemplated where the interference is a gross one and constitutes a clear and unequivocal failure to respect the article 8 rights of those affected.

The level of disruption of family relationships occasioned by the imprisonment of a family member, even the parent of a minor child, will not normally be regarded as a gross interference with the right to respect for family life or a breach of the article 8 rights of those affected. It is of the essence of statehood that a sovereign state should be free to operate a police and criminal justice system for the prevention of crime and disorder and the protection of the rights and freedoms of its citizens and others. The entitlement to operate a police and criminal justice system must include the entitlement to operate a prison system, and in appropriate cases to deprive people of their liberty by sending them to prison.

It is in the nature of imprisonment that many of the personal rights (whether they be constitutional or convention rights) enjoyed by persons at liberty will be suspended or abrogated by the very fact of that person being remanded to or detained in a prison, especially where he or she has been sentenced to a term of imprisonment. Of course, a prisoner will always have certain residual personal rights which are not abrogated or suspended, such as the right to life and the right to be treated humanely and with human dignity. However, it needs to be said that the sending of a person to prison will inevitably severely impinge upon their opportunity to have society with, and to enjoy the company of, their family members including any children they may have. Such society as is permitted is likely to be occasional, limited and restricted in a multitude of ways in the interests of security and good order within the prison system. Moreover, the ability of a prisoner to earn a salary or wage to support his family will be suspended, and his ability to exercise his guardianship rights with respect to his children will also inevitably be severely curtailed. Such interferences with family life are a

usual feature of, and are to be expected of, any prison system. Many of the rights or entitlements in that regard that the prisoner would otherwise have, but for the fact that he is in prison, are suspended or abrogated for the duration of his or her sentence or period of remand. Moreover such suspension or abrogation of the prisoner's rights to participation in family life will in most circumstances be considered to be a measure proportionate to legitimate aims and objectives of the imprisoning state.

That this is so is reflected in Article 8(2) of the Convention which permits interference by a public authority with the exercise of the right to respect for family life where that is "*in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*". It would be preposterous to suggest that persons could not, or should not, be sent to prison simply because that would interfere, and indeed significantly interfere, with their enjoyment of family life, or that the sending of persons, particularly any person with a spouse and children, to prison would amount to a failure to respect the right of those affected to family life. That is not to say that there can never be circumstances in which a person's imprisonment could amount to a failure to respect family life but such circumstances would be highly exceptional and are likely to be exceedingly rare. Before a Court would intervene in that regard it would have to be satisfied as to the existence of some truly exceptional circumstance that would render the usually permitted level of interference with family life that imprisonment normally entails unacceptable in the circumstances of the particular case and disrespectful of the right to family life as guaranteed by article 8.

In saying this it is important, I believe, to reiterate a point made by Mr Justice Feeney in his judgment in *Agbonlahore v Minister for Justice, Equality & Law Reform* [2007] 4 I.R. 309. Feeney J stated at paragraph 13 of the reported judgment in that case:

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

The possibility of imposing a term of imprisonment upon an offender, or the lawful deprivation of that person's liberty, as a feature of a State's criminal justice system, will in most cases be a step well within the margin of appreciation that that State has in terms of what it must do to ensure respect for family life. Society could not function properly otherwise.

Turning then to a consideration of the circumstances of the respondent, and his spouse and children as persons who may be affected by a decision to surrender him, I accept that his surrender will be disruptive of their family life. It is obvious that it will be. However, in the Court's view it will not be so grossly disruptive as to breach their rights under article 8 of the Convention. First, any disruption will be inevitably be finite because both the sentence already imposed on the respondent, and the potential sentence he faces in the event of being convicted on the matter for which he is wanted for trial, are finite. Secondly, while I accept that the respondent and his family have put down some roots in this country, it seems to me that those roots are fairly shallow. They have only been in this country since May 2006, a period of just under five years. There is no evidence of an extensive family network here in Ireland, or indeed of an extensive social network here. I accept that the children have some school friends. Both parents and children are of Polish nationality and are culturally Polish. Counsel for the respondent has confirmed to the Court that Polish is spoken in the home. While there is evidence that the respondent is a good worker and has tried to keep himself in employment, he is not presently employed. There is no evidence that he or his spouse has established any business or enterprise in this country that might be prejudiced by his surrender, or that they have acquired any assets, property or land the maintenance, or working, of which might be prejudiced by his surrender.

The Court does not accept that the respondent's spouse and children cannot reasonably be expected to follow him to Poland. They are not required to make that move but may wish to do so. Doing so may well be inconvenient, and may well involve some financial hardship for them, but whether or not they should do so is their choice to make.

It seems to the Court that the strongest case made by respondent is in respect of possible educational prejudice to the children. However, when this case is examined in detail it is seen to be based upon pure assertion and to be unsupported by any evidence. While Poland's schools may have a somewhat different curriculum to Irish schools there is no independent evidence to support the suggestion that the respondent's children will have to enter the Polish school system at a lower level than they would be at if they had been in school in Poland from the start. Moreover, there will be no language difficulty as the children already speak Polish. The Court further notes that the children are all in primary school. They are not old enough to be facing State exams in Ireland and there is no suggestion that they would have to face State exams in Poland in early course. The youngest child, who is aged six, can only be just out of infant classes and must be at first, or at most, second class level at this stage. It is fanciful to suggest that he or she could not easily fit in with, or integrate into, the Polish school system, given the early stage of the child's education. As regards the oldest child, a girl (if memory serves me correctly), aged 12, she is at a convenient transition point in her school life where she would in any event be moving from a primary school to a secondary school, a move that would involve a change of curriculum even in Ireland. The middle child, who is aged ten, would perhaps see the most disruption to his/her school life, but it is hard to conceive that at the age of ten, and while still in primary school, he or she could not readily adjust to having to go to school in Poland.

In all the circumstances of the case the Court is satisfied that it would not be a breach of the respondent's right to respect for his family life under Article 8 of the Convention, or of the corresponding Article 8 rights of those members of his family who might be affected by his rendition, to surrender him to the issuing State. In the circumstances I am satisfied that his surrender is not prohibited by Part 3 of the 2003 Act, or by the Framework Decision (including the recitals thereto).