

## THE HIGH COURT

[2015 No. 226 EXT]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

WEI YU

RESPONDENT

**JUDGMENT of Ms. Justice Donnelly delivered the 29th day of February, 2016.**

1. This is an application for the surrender of the respondent to Spain pursuant to a European Arrest Warrant ("EAW") dated 29th July, 2014. This was the third EAW issued in respect of this respondent by Spain in relation to the same offences. The first EAW was dated 3rd May, 2014; while it was received in the State, it was never endorsed. A second EAW, received by the State and dated 13th May, 2014, was endorsed. The respondent was arrested on that EAW and subsequently remanded on bail in relation to that second EAW. The second EAW was withdrawn by Spain. The endorsement of same was vacated on 20th October, 2015 and those proceedings were struck out by the High Court. The third and final EAW was endorsed and the respondent arrested immediately thereunder on 20th October, 2015.

2. The EAW before the Court refers to two offences. An issue arose in the case as to whether these were truly prosecution only offences or if the respondent had been convicted in his absence. For reasons more fully set out in this judgment, I am satisfied that the EAW has been issued by Spain for the purpose of prosecuting both offences. Other issues in the case centred mainly upon the description of the offence in the EAW and the admissibility of certain documentation.

**The offences set out in the EAW**

3. The first offence set out in the EAW is stated to be an offence of alleged illegal trafficking of persons. The second offence is stated to be an offence of falsification of official documentation. The description of the offences in the body of the EAW at point (e) is as follows:

"The accused was arrested on 24 December 2011 by members of the national police of Alicante (central unit against immigration networks and document falsification) at the Altet Airport (Alicante) with fake passports of different nationalities, with the intention of facilitating the entry, transmit and documentation of citizens of Chinese origin without legal residence in countries of the European Union, with the destination of Ireland, Wei Yu having two boarding passes in his name."

4. Under the nature and legal classification of the offences and the applicable statutory code, it records "offence of illegal trafficking of persons (art. 318 BIS of the criminal code: maximum sentence to be handed down is 5 years of prison. Offence of falsification of official documentation as per art. 392.2 of the criminal code: maximum sentence to impose is 9 months of prison and a fine of 5 months with a daily quota of 6 Euros."

5. Underneath that at (e) I, the box "facilitation of unauthorised entry and residence" is ticked and then the box "forgery of administrative documents and trafficking therein" is also ticked.

**Points of objection**

6. The following points of objection were relied upon by the respondent:

1. The offence of falsification of official documentation did not reach the level of minimum gravity of offence required under s. 38 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003").
2. There was a failure to comply with s. 11 (1A) (f) of the Act of 2003.
3. That the Minister cannot rely on the ticking of the box by the issuing state in respect of the first offence set out in the EAW. It is then pleaded that there is no correspondence with that first offence.
4. The respondent's surrender is prohibited by s. 10, s. 21A and/or s. 11 of the Act of 2003 as it is unclear whether a decision has been made to charge and try him for the first offence.
5. Various information provided is either inadmissible as it was provided in the context of previous proceedings or it was not provided by an issuing judicial authority.
6. There is a lack of clarity between whether the respondent is sought for the purposes of prosecution or sentence. In particular, there are discrepancies within the EAW and additional documentation.
7. The respondent's surrender is prohibited by s. 37 of the Act of 2003 insofar as there would be a breach of his constitutional right to fair procedures and to a fair trial where the facts have not been set out in sufficient detail or have not been particularised for the specialty purposes in s. 22 of the Act of 2003.
8. The surrender of the respondent is prohibited by s. 37 of the Act of 2003 in that to surrender him would breach his constitutional and European Convention on Human Rights ("ECHR") right to the enjoyment of family life.
9. The respondent also reserved his rights to submit additional points of objection as he was seeking assistance from a

Spanish lawyer (no such additional information was presented on his behalf).

## **Section 16 of the Act of 2003**

### **Uncontroversial Issues**

7. I am satisfied that the Minister for Foreign Affairs has, by the European Arrest Warrant Act 2003 (Designated Member States) Order 2004 (S.I. 4 of 2004), designated Spain as a member state that has, under its national law, given the effect to the Framework Decision of 13th June 2002 on the European Arrest Warrant and surrender procedures between Member States ("the 2002 Framework Decision").

8. I have scrutinised the EAW, the additional documentation and the affidavit of Sgt. Seán Fallon of An Garda Síochána and based on the information contained therein, I am satisfied that the person before me is the person in respect of whom the EAW has been issued.

9. I am satisfied that the EAW has been endorsed in accordance with s. 13 of the Act of 2003, as amended, for execution in this jurisdiction.

10. I am satisfied that I am not required to refuse the respondent's surrender under sections 23 or 24 of the Act of 2003, as amended.

11. Apart from further considerations of s. 37, s. 38 and s. 45 of the Act of 2003, I am satisfied that the respondent's surrender is not prohibited by any other section contained in Part 3 of the said Act.

### **Section 38 of the Act of 2003**

12. As is by now well known, a person shall not be surrendered to an issuing state unless there is either:

- a. an offence of the required minimum gravity in the issuing state which corresponds to an offence in this jurisdiction or
- b. an offence in the issuing state coming under the list of offences set out in Article 2 para. 2 of the 2002 Framework Decision which is punishable under the law of the issuing state by imprisonment for a maximum period of not less than three years.

13. In this case, the offence of falsification of official documentation carries a maximum period of nine months imprisonment in Spain. It therefore does not reach the level of minimum gravity required for an Article 2 para. 2 offence, namely 3 years. It also does not reach the minimum 12 months sentence or detention period in the issuing state which is required for corresponding offences. Surrender is, therefore, not permitted for that offence.

14. The remaining offence is that of illegal trafficking of persons. The respondent has submitted that, the misdesignation of the Spanish judicial authority of the offence of forgery of administrative documents and trafficking therein has implications for how this Court should view the rest of the EAW. It is unquestionably true that, the offence of falsification of official documentation should not have been included in the list offences as the list is reserved for offences of the required minimum gravity. Indeed, it should not have been included in the warrant at all as under the 2002 Framework Decision, and therefore not merely by the Act of 2003, the offence had to be punishable under the law of Spain by a custodial sentence or a detention order for a maximum period of at least twelve months.

15. In the view of the Court, the type of clear error that has been made here does not affect the principles of mutual trust and mutual recognition that this Court must give to its Spanish counterparts. Mistakes in the drafting and issuing of warrants can and do happen. On the other hand, if the Court were to be presented with repeated mistakes which demonstrate a clear disregard of the legal parameters of the 2002 Framework Decision, the Court might have cause to consider that such mutual trust and recognition could no longer be relied upon. It is important to bear in mind that the operation of the rule of law, upon which the 2002 Framework Decision is premised, leaves to the executing judicial authority the role of ensuring that a requested person is only surrendered in accordance with law. In this jurisdiction, a requested person may only be surrendered when the High Court is satisfied that his surrender is not prohibited by the provisions of the Act of 2003, which implement the 2002 Framework Decision. I have undertaken that task and I am satisfied that his surrender on the first offence of illegal trafficking of persons is not prohibited merely because of the inclusion of a non-extraditable offence in the EAW.

16. In the present case, I am quite satisfied that there is no manifest error in ticking the box concerning the facilitation of unauthorised entry and residence in the circumstances of the offence alleged against this respondent. There is no real dispute that this particular offence is one for which the penalty reaches the required minimum gravity. In all the circumstances, his surrender is not prohibited by the provision of s. 38 of the Act of 2003.

### **Section 45 of the Act of 2003**

17. Section 45 of the Act of 2003 prohibits surrender if a person did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the EAW was issued unless the EAW indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the 2002 Framework Decision as amended by the Framework Decision of 26th February, 2009 on the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial ("2009 Framework Decision"). The question of the completion of point (d) does not arise if the offence for which the respondent has been sought is an offence for which he has not been tried and convicted but is sought for the purpose of prosecution.

18. Dealing with the face of the EAW, the respondent submitted that there was confusion because it states that, the decision on which the warrant is based is "European and International Arrest Warrant for the search arrest and admission to prison of Wei Yu." Furthermore, at point (c) the EAW says "[t]he public prosecutor requests that a prison sentence of 5 years be handed down, although a sentence has not been handed down due to not being able to hold a hearing because the location of the accused is unknown". Additionally at point (d), which is in the form set out in 2002 Framework Decision prior to its amendment, neither of the two boxes have been ticked, but underneath the box "specify the illegal guarantees", the following is stated: "[t]here is an appeal to annul (the sentence) which the accused *in absentia* is allowed to lodge once delivered and notified of the sentence".

19. On the other hand, at point (c) in the EAW, the box concerning length of custodial sentence or detention order imposed is blank

as is the box relating to the remaining sentence to be served. Furthermore, the enforceable judgment box is also blank. On the face of the EAW alone, I am quite satisfied that it is an offence for the purposes of conducting a criminal prosecution (although like many EAWs, it does not make that distinction on the first page of the warrant). I am satisfied that the reference to the search, arrest and admission to prison is in relation to the arrest warrant and not to a sentence for either or both of the offences set out in the EAW. I am satisfied that under point (c), it is clearly established that no sentence has been imposed and it does not establish that he has been convicted. In relation to point (d), neither of the two boxes has been ticked and, in my view, the reference to the legal guarantees was a superfluous one concerning guarantees in general.

20. Strictly speaking it is unnecessary to delve any further, as the EAW on its face is one which demonstrates that the respondent is sought for surrender. The respondent has, however, in this case sought to partially rely on information in the previous documentation purportedly sent by the issuing judicial authority, while also submitting that it is not possible for the Court to rely upon that documentation in terms of deciding that his surrender is permitted. It is therefore appropriate for the Court to deal with these issues of admissibility and with the further documentation that arose in the course of these proceedings.

#### **The admissibility of the additional information**

21. In order to understand the respondent's submissions, some detail in respect of the identification and signature of the issuing judicial authority in respect of the EAW and the subsequent additional information must be set out. The EAW records that the judicial authority which issued the warrant is the Examining Magistrates' Court No. 3 of Elche. The name of its representative is given as Mercedes Matarredona Rico. Her post is described as senior judge. On the English translation under signature of the issuing judge, it is therein stated her name as above and her post as above. It then says there is a stamp of the Examining Magistrates' Court No. 3 ELX (Alicante). And underneath that, it says illegible signature appears. On the original EAW in the Spanish language, a stamp appears referring to "Jutjat D'Instruccio No. 3 ELX (Alacant)". That has a signature through the seal. It is fair to say that the signature is illegible but nonetheless identifiable. The name of the title of the issuing judicial authority is recorded in the Spanish version as "Juzgado de Instruccion No. 3 de Elche." Thus the same difference in the place name, *i.e.* Elx and Elche, appears in both the original and the translated version.

22. During the currency of the proceedings involving the second EAW, the central authority sought further information from the issuing judicial authority. On 14th July, 2015, a reply was received which purports to come from the issuing judicial authority. This communication, which is in Spanish, is headed in entirely the same format as that which appears on the EAW, *i.e.* "Juzgado de instruccion numero 3 de Elx". This is translated to District Court No. 3 of Elx in the papers presented to the Court. This was a translation apparently by Word Perfect Translations Ltd., because the Spanish judicial authorities had not sent over a translation. The reply was stamped in the same way as the warrant and had the same illegible but identifiable signature. The name of the Magistrate was not set out. That reply had dealt with the issue of whether the respondent had been convicted in Spain. The respondent objected to this being presented before the Court both in the sense that it was not a vouched translation and it had been presented in the previous case.

23. Having heard the application and prior to delivering judgment, I made a request of the Spanish judicial authority under s. 20 of the Act of 2003. These questions dealt with the s. 45 point and also the point under s. 11 (1A)(f). I requested the following information:

1. Has Wei Yu been convicted of the offences detailed in the warrant; and,
2. Please provide a full description of the circumstances relating to the alleged offence of human trafficking.

24. The response, dated 18th January, 2016, answered the first question by stating that "he has not been convicted of the crimes described in the order" and that the criminal proceedings are stalled because he has not been located. A description of the offence of human trafficking was provided thereafter and will be addressed further below.

25. The respondent has maintained his objection to the admissibility of this additional information on the basis that the identification of the particular judge who issued it is not known. In answer to that it can be observed that this information was transmitted with a translation. It is headed with the seal of the Department of Justice. It is entitled the Examining Magistrates' Court No. 3 of ELX. It is signed the Magistrate with the stamp of the Examining Magistrates' Court No. 3 ELX Alicante and once again the signature is illegible but it is identifiable. It is also at a glance the same signature as has been already sent to this Court. It should also be noted that it is recorded that it is on official paper and it had the seal of the City Council of Valentia on the bottom left hand side.

26. I am satisfied in the first place that, this document has been placed before the Court by the Minister in her capacity as the central authority under the Act of 2003. On its face, it purports to be from the issuing judicial authority. There is nothing on the face of this document to give rise to any suspicion that it is not from the issuing judicial authority. The issuing judicial authority is noted on the warrant as being the Examining Magistrates' Court No. 3 of ELX of Alicante. While there is a slight difference between the spelling of ELX or ELCHE (which I infer from the context is the same place name in two different languages), it is clear that the covering document sending the warrant refers to it as the Examining Magistrates' Court No. 3 of ELX and the stamps are the same throughout. I have no doubt that these have emanated from the Examining Magistrate. The identity of the person signing the EAW is clear.

27. It is by now well established that extradition proceedings are to be regarded as inquisitorial rather than adversarial proceedings. They are *sui generis* in nature. It is for the court itself to enquire into the correctness or otherwise of the application for surrender and whether all the requirements have been met (see *Minister for Justice and Equality v. Palonka* [2015] IECA 69 and *Attorney General v. Parke* [2004] IESC 100).

28. Having considered the matters carefully, I am quite satisfied that this is a document which emanates from the issuing judicial authority which issued the EAW. I am also satisfied that the signature corresponds with the signature on the EAW. I am entitled to conclude and do so conclude that the same person has sent this correspondence. I therefore hold that this subsequent document of 18th January, 2016 is admissible.

#### **Conclusion as to s. 45 of the Act of 2003 in light of all documents received**

29. The Court is of the view that in its inquisitorial role, it may be appropriate for the Court to consider the history of all the documentation that has been presented to it regarding a request for the surrender of a person. That could include a previous request and any information sent in relation to same. In the present case, I did not have to have regard to the previous reply that the issuing judicial authority gave in light of the response of 18th January, 2016. The Court observes, however, that where a translation, not emanating from the issuing judicial authority is being relied upon, its provenance should be proved in evidence before the court.

30. The Court also considers that by virtue of its inquisitorial role, any previous EAWs or information should also be available for use by a respondent when contesting surrender. That of course must be subject to the caveat that any difference in the information

provided may be explained expressly or by implication in the later EAW or additional information. In this case, the Court has considered the previous information to see if, as submitted by the respondent, it demonstrates that he has already been convicted contrary to the clear indication on behalf of the issuing judicial authority. It is, of course, necessary to consider each document in its entirety, as otherwise an incorrect interpretation could be given to isolated pieces of information.

31. The second EAW sent to this State, namely the EAW which was endorsed and under which the respondent was arrested, contained as an appendix a document headed "Provincial Public Prosecution Office Alicante Court of Instruction No. 3 of Elche". This is described in the second EAW as "The public prosecutor's indictment bill where the facts charged are further described". This, on its face, appears to be a request for the committal for trial and the issuing of a charge sheet based upon provisional findings. It is dated 19th July, 2013. The first finding refers to an accusation against the Irish citizen, Wei Yu.

32. Under the fifth heading of those provisional findings, the following is stated: "it proceeds to pass to the accused Wei Yu a conviction to a five-year custodial sentence for offence A and a nine-month custodial sentence for offence B...". This is the document that the respondent relied upon primarily as demonstrating that he was already convicted of this offence in his absence. In my view, however, that document is a request for a committal for trial based upon provisional findings, but it is not a conviction of the respondent. Even on the basis of documents relied upon by the respondent, I am quite satisfied that this is a matter where Mr. Wei Yu is sought for prosecution and is not sought having being convicted in his absence.

33. The respondent also sought to rely upon a court document entitled Writ of the Court of Instruction Number Three, Elx which was apparently sent with the first, unendorsed EAW. That writ, dated 20th March, 2014, refers to an "alleged offence of trafficking in human beings". It also refers to the above indictment bill "charging the accused". There is nothing on that warrant, even though it refers to "search, arrest and imprisonment" that demonstrates that he has been convicted of either of the offences in the EAW. I am wholly satisfied that he has not been convicted of either offence set out in the EAW.

#### **Conclusion on s. 45**

34. I am satisfied that on the face on the EAW, the respondent has not been convicted of any offence set out in the EAW. It is further confirmed by the reply of the issuing judicial authority dated 18th January, 2016 that the respondent has not been convicted of any of the crimes set out in the EAW. The respondent has maintained his objection on the basis that the reply dated 18th January, 2016 refers to the indictment of the Public Prosecutors Office of 19th July, 2013 referred to above. I have dealt with this document and rejected that it can be given an interpretation that means that the respondent has already been convicted. I am also satisfied that, even taking into account the documents relied upon by the respondent, they do not establish that he has been convicted of these offences. On the contrary, all documents placed before this Court by either party, confirm that he is accused of these alleged offences. Therefore, there is no reason to refuse his surrender under s. 45 of the Act of 2003 as the completion of the EAW in the form of the Table set out in that section is not required.

#### **Section 11 (1A) (f) of the Act of 2003**

35. Under this heading, the respondent relied upon the cases of *Minister for Justice, Equality and Law Reform v. Rodnov* (Unreported, Supreme Court, 1st June 2006) and *Minister for Justice v. Stafford* [2009] IESC 83. In *Stafford*, Denham J. (as she then was) stated at para. 15 "[i]t is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act 1965, as amended, and indeed classically in extradition law. A description of the acts, or the acts alleged, are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the court and so a decision may be made as to whether there is, for example, double criminality."

36. In *Minister for Justice Equality & Law Reform v. Desjatnikovs* [2009] 1 I.R. 618, Denham J. also stated that the arrested person was entitled to be informed of the reasons for his arrest and have any charges against him in plain language which he can understand and also that in view of the specialty rule, the facts upon which a warrant is based should be clearly stated. Edwards J. in *Minister for Justice & Equality v. Cahill* [2012] IEHC 315 identified from those cases three objectives behind the requirement that the matters be set out on the warrant.

37. The respondent complains that the information set out in the three EAWs is mutually incorrect and does not provide adequate or clear particulars of the charge against him. He says that it is invidious that the documentation contradicts or, at least, undermines the description in the present EAW. He also submits that the ambiguity surrounding the first offence in the EAW, and the difficulty in disentangling it from the second offence in the EAW, for which he cannot be surrendered, means that there is uncertainty about the facts for the offence such that surrender should be refused. As regards the confusion, the respondent says that the description refers to the respondent being in possession of fake passports of different nationalities, whereas previous court documentation does not refer to him being in possession of fake passports (plural). The respondent states that the reference to having two boarding passes in his own name cannot amount to information which addresses the first offence on the EAW where that information could not form the basis of any criminal offence. Again, the respondent's submissions rely on the use of earlier documentation provided by the issuing judicial authority and I permit such reliance.

38. The first, unendorsed EAW, had stated baldly the following:-

"The UCRIF team of the Provincial National Police Station of Alicante established that on 24th December 2011, Chinese citizens were going to travel to Ireland using forged passports from different nationalities. When he was stopped, the police found on him two in his name."

The court document entitled "Writ in ELCHE Alicante on 20th March, 2014" and referred to above records that the indictment bill is based upon facts as follows: that the respondent and three other people were booked on a Ryanair flight. The police team detected the presence of the suspects and they noticed that this respondent gave An He a passport and a boarding card that was subsequently seized, the passport given to An He was found to be in a different name and "was completely forged". The writ also states the indictment is based upon the fact that Wei Yu was searched and the following was found on him: two boarding cards in his name for the flights FR74063 and FR7062, one for Alicante/Dublin, Dublin/Alicante, 24th December, 2011 and 1st January, 2011, and then two boarding cards in the name of Lin Fei and Li Xiaoli for the flight from Alicante to Dublin making reference to passports appearing in the bookings which do not correspond to the passports issued by the British authorities.

39. In the second EAW, at point (e), it was stated that he was arrested with forged passports from different nationalities and that when he was stopped, the police found on him, two boarding cards in his name. The public prosecutor's indictment bill was attached to the second EAW and the EAW records that this is "where the facts charged are further described". The public prosecutor's indictment bill is virtually identical to that set out above and it records that the respondent was allegedly seen giving An He the passport "which was completely forged." It also alleges that when arrested, what was allegedly found on him were the two boarding cards in his own name and two boarding cards in the names of the two others, which cards make reference to passports appearing in

the booking which do not correspond to the passports issued by the British authorities.

40. The final document received on 18th January, 2016, states that the complete description is reported by the public prosecutor's office in its indictment. It then states:-

"It was learned that on 24/12/11, Mr. Wei Yu would be travelling to Ireland together with Asian citizens, apparently of Chinese origin, using falsified passports for different nationalities as their identification. After mounting the corresponding control device in the El Atlet (Alicante) airport, it was detected that the party under investigation, Wei Yu, delivered a passport and boarding pass to An He, which were subsequently confiscated. Upon being intercepted by police agents, two boarding passes in his name for flights FR74063 and FT7062, Alicante-Dublin for the days of 24 December 2011 and 5 January 2011 were found on him, along with two boarding passes for flight FR7063, Alicante and Dublin in the name of Lin Fei and Li Xiaoli. Therefore, it appears that the party under investigation, Wei Yu, was determined to facilitate the entry, transit and documentation for citizens without legal residence in European Union countries."

41. A main complaint of the respondent was that the circumstances of each separate offence had not been separately and fully delineated in point (e), is not one that of itself amounts to a bar to surrender. In general, where offences are related, a composite narrative will be the most appropriate. It is a description of the circumstances of the offence that are to be indicated. The circumstances can often range beyond the immediate ingredients necessary as proof of the particular offence. Indeed, it is a failure to provide extra information that often is the focus of a respondent's complaint. When a composite narrative is supplied, but where the fact of two different offences *and* their nature and legal classification has been clearly illustrated within the EAW and accompanying documentation, there can be no further cause for complaint. I am quite satisfied that the description provided by this issuing judicial authority does not amount to a ground to refuse surrender merely because a composite description has been given.

42. Counsel for the respondent makes the further point that, because the surrender of the respondent is to be refused in respect of one offence, the composite narrative can no longer be relied upon. As a matter of generality, such a submission is rejected. Much will depend on the particular facts and circumstances of each case. The same set of facts can constitute any number of offences. The narrative in the EAW is required to set out a description of the circumstances of the offences. I am satisfied that the EAW in this case sets out a description of the circumstances of this alleged offence of illegal trafficking in people, that is clear and unambiguous and therefore appropriate to accept as a description of the alleged offences.

43. In the particular circumstances of the present case and for the avoidance of any possible doubt, I had sought further information from the Spanish authorities under s. 20 of the Act of 2003. What has been returned to this Court, by the document dated 18th January 2016, is a clear and concise, yet sufficiently detailed statement of the facts and circumstances of the offence of the alleged crime of human trafficking. There can be no doubt as to what is alleged against the respondent. Furthermore, the reference to the Public Prosecutor's indictment sent earlier, incorporates that document into the EAW. I am quite satisfied that this issue has been put beyond any possible doubt by this communication, both on the face of the additional information itself and also by the reference to the Public Prosecutor's indictment, which adds further detail.

44. The respondent also submitted that the details of what the respondent is alleged to have had in his possession is lacking in clarity and therefore the offence for which he is sought is unclear and ambiguous and he should not be surrendered. This is not a matter which causes this Court any concern. It can be stated first of all that each of the three EAWs refers to forged passports in the plural. The first EAW referred to Chinese citizens using forged passports to travel to Ireland. There is a reference to the respondent having two in his name when being stopped. However, the court writ accompanying that first EAW makes it clear that he gave a passport (completely forged) to another person but that he had two boarding cards in his own name and two boarding cards of other persons which referred to passports not corresponding with those issued by British authorities. The second EAW also referred to him being arrested with forged passports from different nationalities. It says that when he was arrested, they found two boarding cards in his name. That is consistent with what is stated on the face of the third EAW.

45. The final communication from the issuing judicial authority makes reference to the police squad learning that he was travelling to Ireland with others using falsified passports for different nationalities. There is then the reference to the boarding passes and to the delivery of the passport and boarding pass to An He. That document also refers to the Public Prosecutor's Indictment Bill which sets out the allegations against him, including the reference to the passport passed by this respondent to An He as being "completely forged."

46. From all of the documentation, it appears that the allegations have been consistent. There may have been a reference to possession of forged passports in the plural, but the question of whether he was in the possession of one or more forged passports is a matter for the trial. It is not a matter for this Court. If there was any doubt about what is alleged against him, which the Court does not have, the Court and the respondent can be satisfied that the allegations against him are those contained in the Public Prosecutors Indictment Bill which was sent with the second EAW and is now incorporated by the reference in the communication of 18th January, 2016. The question of whether he was in possession of any one of more forged passports by virtue of his exercise of control over same will be a matter for the trial, as will any inference that can be drawn from possessing two boarding passes in his own name for flights out of Alicante over a week apart.

47. What has been given is a description of the circumstances surrounding the arrest. The facts alleged against him have been set out quite clearly and consistently (although with varying level of detail). It is not for this Court to make any determination as to whether there is a *prima facie* case against the respondent or to make any comment as to the strength of the case against him. That is a matter for the Spanish authorities. They have, in fact, been quite consistent in describing the circumstances of the arrest and the circumstances of the charge against him. In those circumstances, I am satisfied that there has been compliance with s. 10 and s. 11(1A)(f) of the Act of 2003.

## Section 22

48. Section 22 is the implementation of the rule of specialty. The rule of specialty in extradition law prohibits the prosecution or punishment of a person for an offence other than the offence for which they have been surrendered, except in very specific circumstances. The respondent's complaint here is that the description of the offence or offences was so unclear as to offend against the rule of specialty. His further complaint is that the failure to distinguish between the offences in the narrative would fail to provide the protection for specialty purposes that is set out in s. 22 of the Act of 2003, in light of the refusal of the Court to send him back on one of the offences.

49. The Court has already found that there is clarity in the particular offences. A description of the circumstances of the offences and the nature and legal classification of the offence and the applicable statutory provision are referred to in the EAW. If the surrender of the respondent is to be prohibited under s. 22, the High Court must be satisfied that the relevant conditions set out at s.

22(2)(a) and (b) have been met. There is a presumption provided by s. 22(3) to assist the Court in that regard. In the present case, there are no grounds for this Court to believe or indeed to suspect that those conditions will not be met. In short, this Court has no reason to believe or even suspect that the Spanish judicial system will not respect the principle of specialty if this respondent is returned on the single offence of illegal trafficking of persons. Therefore, his surrender is not prohibited by s. 22 of the Act of 2003.

### **Section 21A of the Act of 2003**

50. Section 21A requires the High Court to refuse to surrender a respondent if it is satisfied that a decision has not been made to charge the person with, and try him or her for, the offence in the issuing state. There is, however, a presumption under the Act of 2003 that a decision has been made to charge the person with and try him or her for that offence in the issuing state unless the contrary is proved.

51. The respondent's contentions in this regard focused primarily on the fact that there was doubt about whether the respondent had been convicted of the offence or was being sought for prosecution. In the submission of the respondent, there was evidence in the documentation supplied by the issuing judicial authority which was sufficient to rebut the presumption. In the view of this Court, such an argument is unsustainable. In the first place, this Court is entirely satisfied that this is a warrant for the purposes of prosecution. There is no doubt about that. The presumption in s. 21A applies. Nothing has been placed before this Court that casts any doubt as to whether that presumption can be relied upon. Indeed, the Court observes that no Spanish legal expert has provided evidence on behalf of the respondent to the Court.

52. Insofar as the respondent has referred to the writ of the court of instruction referring to contradictory orders that were previously amended and thus implying that the proceedings against him had become complicated and/or subject to conflicting decisions in the issuing state, this point is of no relevance to setting the presumption aside. This Court is entitled to take judicial notice of the fact that legal proceedings can involve many applications to court, appeals, varying orders and amended orders. This Court operates on the basis of mutual trust and mutual recognition of the Spanish issuing judicial authority. The Spanish issuing judicial authority has issued this EAW for the purpose of conducting a criminal prosecution against this respondent. As O'Donnell J. stated at para. 34 in *Minister for Justice, Equality and Law Reform v. Olsson* [2011] 1 I.R. 384 that "*the existence of any such intention [i.e. to bring proceedings against him] is virtually coterminous with a decision to bring proceedings sufficient for the purposes of section 21A*".

53. In the circumstances, I am quite satisfied that a decision has been made to charge this respondent with and to try him for the offence of illegal trafficking of persons. His surrender is not prohibited by the provisions of s. 21A of the Act of 2003.

### **Article 8 ECHR issues**

54. The law concerning Article 8 ECHR and its related constitutional provisions regarding protection of family and personal rights in extradition cases, has been well ventilated in these courts. While there are general points of principle, the consideration of an Article 8 point is fact specific to each case. The issue is whether surrender will amount to an interference with family and personal rights which is not necessary for the purposes of the prevention of crime and disorder through extradition. This is a question of balancing the public interest in the extradition with the specific issues arising in the person's private and family life.

55. In this case, the respondent relied upon the facts set out in his affidavit. He is now 50 years old. He is originally from China but came to Ireland in 2001 and lived here since then. He became a naturalised Irish citizen on 1st November, 2009. He lives in Limerick with his wife and 26 year old son. He is self employed. He says that his wife has a significant medical problem and was to receive follow up care in January 2016. It is notable that this Court did not receive any medical report in relation to his wife's condition. He said her legal status is dependent upon his citizenship and should his surrender be ordered, it will affect her status. It should also be noted that there was no legal submission made in respect of this aspect of matters and it is entirely unclear as to the basis for his statement that surrender would affect her status. That status is based upon his citizenship. I do not accept that surrender will affect his citizenship and, therefore, there can be no effect on her status.

56. The respondent has been self employed or employed during his time in Ireland in the restaurant business. There was lengthy evidence and submissions in relation to the question of legal aid as regards the previous EAW and this EAW. It is unnecessary to recite these matters but suffice to say that, at one point, this respondent was working for his wife in a particular Chinese takeaway but that business closed and he was then running a Chinese restaurant and takeaway with another person.

57. The Court is satisfied that in the case of an offence of the illegal trafficking of persons, there is a high public interest, in general, in the surrender of persons in relation to these matters. In the EAW before the Court for determination, it is clear that the court order dated 3rd March, 2014, is the date of the decision on which the warrant is based within the domestic proceedings. That is a period of two years and three months from the date of the alleged offence. From all the information placed before the Court, not least that referred to by the respondent, including for example the writ of 20th March 2014, it is clear that the respondent was being sought but his location was unknown.

58. Therefore, even if were necessary to explain any lapse of time, this can be explained from the other documentation that had been sent to this Court by the issuing judicial authority and has been put before this Court by the respondent (as well as by the minister). It has been established that there were investigations and court proceedings against him for some time. It is also established that he was sought at an earlier stage for service of a writ on him and that on 8th October, 2013, an arrest and surrender writ was passed and subsequent national warrants issued and finally a writ was passed on 15th October, 2013, declaring him in default. I am satisfied that there is a high public interest in his surrender.

59. On the other side of the equation, this respondent has put forward very little in terms of his personal circumstances for the consideration of this Court. His separation from his family is a usual result of surrender and there is nothing of a particularly injurious or harmful consequence anticipated for him if he is so surrendered. Balancing the high public interest in his surrender as against his own personal circumstances and the effect on him and his family of surrender, I am satisfied that surrender would not amount to a disproportionate interference with his family and personal rights under Article 8 of the ECHR or under any provision of the Constitution. Indeed, even if there was a low or moderate public interest in his surrender, it would not be disproportionate to surrender him in light of this particular respondent's personal and family circumstances.

### **Conclusion**

60. For the reasons set out above, I reject the points of objection put forward on behalf of the respondent and I am satisfied that in accordance with the provisions of s. 16 of the Act of 2003, I may make an order for the surrender of this respondent on the single offence of illegal trafficking of persons to such person as is duly authorised to receive him in the issuing state.

