

THE HIGH COURT

Record No.: [2011 No.48 Ext.]

[2011 No.49 Ext.]

[2012 No.111 Ext.]

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003

Between/

THE MINISTER FOR JUSTICE & EQUALITY

Applicant

-AND-

K.L.

Respondent

JUDGMENT of Mr Justice Edwards delivered on the 31st day of July 2013

Introduction:

The respondent is the subject of three European arrest warrants issued by the Republic of Poland on the 15th October, 2007, the 25th July 2008, and the 13th December 2010. All three warrants were received in the State at the same time and all three were initially presented to the Court for endorsement on the 16th February, 2011, and were duly endorsed on that date. Subsequently, however, the endorsement of the second warrant in time was vacated due to a technical difficulty and a corrected version of the second warrant in time was then endorsed on the 22nd February, 2012. As a consequence of this the first and third warrants in time were in fact the first warrants to be executed. The respondent was arrested by Detective Garda Michael Brosnan on the 11th January, 2012, in execution of the first and third warrants in time, following which she was brought before the High Court on the following day pursuant to s. 13 of the European Arrest Warrant Act 2003 (hereinafter "the Act of 2003"). The corrected version of the second warrant in time was then executed on the 27th March, 2012 when the respondent was arrested by Detective Sergeant Sean Fallon in connection with that matter, following which she was again brought before the High Court on the same day pursuant to s. 13 of the Act of 2003. In the course of the two s. 13 hearings notional dates were fixed for the purposes of s. 16 of the Act of 2003 and on each occasion the respondent was remanded on bail to the date fixed. The cases were aligned, and as is usual were adjourned from time to time, ultimately coming before the Court together for the purposes of a conjoined surrender hearing.

The respondent does not consent to her surrender to the Republic of Poland. Accordingly, this Court is now being asked by the applicant to make an Order pursuant to s. 16 of the Act of 2003 directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive her. The Court must consider whether the requirements of s. 16 of the Act of 2003, 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.

Uncontroversial S. 16 Issues

The Court has received an affidavit of Detective Michael Brosnan sworn on the 17th July 2012 testifying as to his arrest of the respondent and as to the questions he asked of the respondent to establish her identity. Detective Sergeant Sean Fallon also swore an affidavit on the 18th July 2012 testifying as to his arrest of the respondent and as to the questions he asked of the respondent to establish her identity. In addition, counsel for the respondent has confirmed that no issue arises as to either the arrest or identity.

The Court has received a booklet containing true copies of the European arrest warrants in this case. However, the Court has also taken the opportunity to inspect the original European arrest warrants which are on the Court's file and which bear this Court's endorsement.

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. No. 206 of 2004) (hereinafter "the 2004 Designation Order"), and duly notes that by a combination of s. 3(1) of the Act of 2003, and Article 2 and the Schedule to the 2004 Designation Order, "Poland" (or more correctly the Republic of Poland) is designated for the purposes of the Act of 2003 as being a State that has under its national law given effect to Council Framework Decision 02/584/J.H.A. on the European arrest warrant and the surrender procedures between Member States, O.J. L190/1 18.7.2002 (hereinafter referred to as "the Framework Decision") .

Warrant 1

I am satisfied following my consideration of these matters that:

- (a) the European arrest warrant was endorsed for execution in this State in accordance with s. 13 of the 2003 Act;
- (b) the warrant was duly executed;
- (c) the person who has been brought before the Court is the person in respect of whom the European arrest warrant was issued;
- (d) the warrant is in the correct form;
- (e) the warrant purports to be a prosecution type warrant and the respondent is wanted in Poland for trial in respect of the offence

particularised in Part E of the warrant which is characterised as an "offence against property contrary to art. 286 § 1 of the Polish Penal Code":

(f) the underlying domestic decision on which the warrant is based is a decision of the District Court for Warszawa Mokotów of the 26th January, 2007;

(g) the issuing judicial authority has invoked para. 2 of article 2 of the Framework Decision in respect of the offence listed in Part E, by the ticking of the box in Part E.I of the warrant relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests". Accordingly, subject to the Court being satisfied that the invocation of para. 2 of article 2 is valid (i.e. that the minimum gravity threshold is met, and that there is no basis for believing that there has been some gross or manifest error), it need not concern itself with correspondence;

(h) the minimum gravity threshold in a case in which para. 2 of article 2 of the Framework Decision is relied upon is that which now finds transposition into Irish domestic law within s. 38(1)(b) of the Act of 2003, as amended, namely that under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years. It is clear from Part C (1) of the warrant, read in conjunction with the information concerning the nature and legal classification of the offence set out within Part E, that the offence carries a potential penalty of up to eight years imprisonment. Accordingly, the minimum gravity threshold is comfortably met;

(i) the description of the circumstances in which the offence in question was committed is as follows:

"On 22.01.2004 in Warsaw with an advance intend (sic), she brought a company "Concept" Sp.z o.o. [Ltd.] with its seat in Suchy Las at 69 Poziomkowa street, to disadvantageous disposal of the property of paper supplies of the total value of 82.716 zloty in such a way that representing the company "Grupa Kreatywnie" with its seat in Warsaw at 97 Wilanowska street, she had ordered goods of advertising blocks "Nootropil" "Atarax" and she had no intention to pay for them."

There is no reason, upon a consideration of the underlying facts as set out above, to believe that the ticking of the box relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests" was in error;

(j) no issue as to trial *in absentia* arises in the circumstances of this case and so no undertaking is required under s. 45 of the Act of 2003;

(k) 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 of 2003, as amended.

Warrant 2

I am satisfied in relation to warrant no. 2 that:

(a) the European arrest warrant was endorsed for execution in this State in accordance with s. 13 of the 2003 Act;

(b) the warrant was duly executed;

(c) the person who has been brought before the Court is the person in respect of whom the European arrest warrant was issued;

(d) the warrant is in the correct form;

(e) the warrant purports to be a prosecution type warrant and the respondent is wanted in Poland for trial in respect of three fraud offences all of which are charged contrary to article 286(1) of the Polish Penal Code;

(f) the underlying domestic decision is described in Part (b) of the warrant as a decision by the "District Court for Warszawa Mokotów VIII Penal Division";

(g) the issuing judicial authority has invoked para. 2 of article 2 of the Framework Decision in respect of all three offences listed in Part E, by the ticking of the box in Part E.I of the warrant relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests". Accordingly, subject to the Court being satisfied that the invocation of para. 2 of article 2 is valid (i.e. that the minimum gravity threshold is met, and that there is no basis for believing that there has been some gross or manifest error), it need not concern itself with correspondence;

(h) the minimum gravity threshold in a case in which para. 2 of article 2 of the Framework Decision is relied upon is that which now finds transposition into Irish domestic law within s. 38(1)(b) of the Act of 2003, as amended, namely that under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years. Part C (1) of this warrant indicates that the maximum potential penalty is eight years of imprisonment. However, somewhat confusingly a penalty of eight years is also indicated in both Parts C (2) and (3), respectively. It is clear, however, that this is a prosecution type of warrant and that Parts C (2) and (3) are simply inapplicable. Moreover, any residual doubt as to the potential maximum penalty is resolved by recourse to Part C (1) of the warrant dated the 15th October, 2007 which specifies with more particularity that the maximum potential penalty that might be imposed under article 286 §1 of the Polish Penal Code is indeed eight years. Accordingly, the minimum gravity threshold is comfortably met;

(i) the description of the circumstances in which the offence in question was committed as set out in the warrant is as follows:

1) "In the period 29th November, 2003 to 12th March, 2004 in Warsaw acting in short intervals with an advance intent, she brought Engas Sp. Z o.o. with its seat in Bielsko-Biala to disadvantageous disposal of property of the total value of 275769,06 zloty by misleading as to the payment for the ordered goods in such a way that representing Grupa Kreatywnie Sp. Z o.o. with its seat in Warsaw at 97 Wilanowska street, she took the advertising materials ordered beforehand such as leaflets, folders packages and calendars without settlement at the receipt of the following VAT invoices:

- on 29.11.2003 she took goods of the value of 64008,28 zloty
- on 18.12.2003 she took goods of the value of 1138,15 zloty
- on 22.12.2003 she took goods of the value of 15947,23 zloty
- on 30.12.2003 she took goods of the value of 14823,00 zloty
- on 30.12.2003 she took goods of the value of 41175,00 zloty
- on 30.12.2003 she took goods of the value of 15372,00 zloty
- on 08.01.2004 she took goods of the value of 6954,00 zloty
- on 21.01.2004 she took goods of the value of 4270,00 zloty
- on 21.04.2004 she took goods of the value of 32086,00 zloty
- on 30.01.2004 she took goods of the value of 51240,00 zloty

2) In the period from December, 2003 to 17th December 2003 in Warsaw, acting in short intervals with an advance intent, she brought Offset drunk and Media Sp. Z o.o. with its seat in Cieszyn to disadvantageous disposal of property of the total value of 106778,46 zloty, by misleading as to the payment for the ordered goods in such a way that representing Grupa Kreatywnie Sp z o.o. with its seat in Warsaw at 97 Wilanowska street, she took the advertising materials ordered beforehand without payment settlement at the receipt of the following VAT invoices:

- on 10.12.2003 she took goods of the value of 79.792,00 zloty
- on 17.12.2003 she took goods of the value of 26986,46 zloty

3) On 26th January, 2004 in Warsaw acting with an advanced intent, she brought HINT BUSINESS SERVICES Sp z o.o. with its seat in Warsaw to disadvantageous disposal of property of the total value of 14220 zloty by misleading as to the payment for the ordered goods in such a way that representing Grupa Kreatywnie Sp. z o.o. with its seat in Warsaw at 97 Wilanowska street, she signed an order contract to search for an employee- candidate and she made employment of the presented person without any settlement of the accepted VAT invoices".

There is no reason, upon a consideration of the underlying facts as set out above, to believe that the ticking of the box relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests" was in error;

(j) no issue as to trial in absentia arises in the circumstances of this case and so no undertaking is required under s. 45 of the Act of 2003;

(k) 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 of 2003, as amended.

Warrant 3

I am satisfied in relation to warrant no. 3 that:

- (a) the European arrest warrant was endorsed for execution in this State in accordance with s. 13 of the 2003 Act;
- (b) the warrant was duly executed;
- (c) the person who has been brought before the Court is the person in respect of whom the European arrest warrant was issued;
- (d) the warrant is in the correct form;
- (e) the warrant purports to be a conviction type warrant and the respondent is wanted in Poland to serve a sentence of one year and six months imprisonment imposed upon her in respect of a single offence characterised in the warrant as a "crime against property contrary to article 286(1) of the Polish Penal Code";
- (f) the underlying domestic decision on which the warrant is based is a decision of the District Court for Warszawa Śródmieście dated the 20th April, 2010, ordering execution of a sentence imposed, but initially conditionally suspended, by the District Court for Warszawa Śródmieście in Warsaw on the 20th October, 2006, following a trial *in absentia*;
- (g) the issuing judicial authority has invoked para. 2 of article 2 of the Framework Decision in respect of the offence listed in Part E, by the ticking of the box in Part E.I of the warrant relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests". Accordingly, subject to the Court being satisfied that the invocation of para. 2 of article 2 is valid (*i.e.* that the minimum gravity threshold is met, and that there is no basis for believing that there has been some gross or manifest error), it need not concern itself with correspondence;
- (h) the minimum gravity threshold in a case in which para. 2 of article 2 of the Framework Decision is relied upon is that which now finds transposition into Irish domestic law within s. 38(1)(b) of the Act of 2003, as amended, namely that under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years. Although this particular warrant does not state expressly that the potential penalty that might have been imposed is one of eight years, the Court knows that that is the case following its consideration of the evidence in relation to the first and second warrants in time. The offences with which all three warrants are concerned are the subject of identical charges under the same provision of the Polish Penal Code, *i.e.*, article 286 § 1 of that Code. Having been told at a conjoined hearing what the penalty is in relation to such an offence is in the context of the

first and second warrants, the Court believes that it is entitled to, and is prepared, to take judicial notice of the relevant penalty and apply it in the case of the third warrant in time. In any event, the boilerplate text appearing above the list in Part E.1 of the warrant states: "If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years". In circumstances where the issuing judicial authority has elected to tick the item relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests", this Court is entitled to regard the ticking of that item as providing sufficient confirmation, if confirmation were indeed needed, that the minimum gravity threshold is met by the relevant Polish offence;

(i) the description of the circumstances in which the offence in question was committed is set out in the warrant as follows:

"On 23.02.1998 and 24.02.1998 in Warsaw, acting in continuous offence with an advance intend to receive property benefit, she brought CIG MESART Sp. z o.o. [Ltd.] to disadvantageous disposal of property of 25.108,49 zloty in such a way that being an owner of Advertising Agency "Kadar" with its seat in Warsaw, she took advertising materials from CIG MESART misleading MESART as to her intention of paying for them- therefore acting to the detriment of the above mentioned company."

There is no reason, upon a consideration of the underlying facts as set out above, to believe that the ticking of the box relating to "fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests" was in error;

(j) 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 of 2003, as amended;

(k) no issue arises as to trial *in absentia* in relation to warrants Nos. 1 and 2 respectively.

Non-Surrender on Warrant No. 3.

It is clear from the terms of warrant no. 3 that the respondent was tried *in absentia*. That fact of itself potentially engages s. 45 of the Act of 2003 (as substituted by s. 20 of the Criminal Justice (Miscellaneous Provisions) Act 2009). That section provides:

"45.— A person shall not be surrendered under this Act if—

(a) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and

(b) (i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence, or

(ii) he or she was not permitted to attend the trial in respect of the offence concerned,

unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered—

(i) be retried for that offence or be given the opportunity of a retrial in respect of that offence,

(ii) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and

(iii) be permitted to be present when any such retrial takes place."

This provision makes it clear that in the case of a person who has been tried *in absentia* and who was either not notified of the time when, and place at which, he or she would be tried for the offence, or alternatively was not permitted to attend the trial in respect of the offence concerned, the Court shall not surrender such person unless it is in receipt of an undertaking in writing from the issuing state confirming that the person in question is entitled to a re-trial.

It is clear that in the present case that the respondent was tried *in absentia* in respect of the offence to which warrant no 3 relates. S. 45 is therefore engaged.

The Court's enquiry moves at this point to whether the respondent was either not notified of the time when, and place at which she would be tried for the offence, or alternatively was not permitted to attend the trial in respect of the offence concerned. It was confirmed shortly after the opening of the case by counsel for the applicant that although the respondent was sent a notification of the time and place of her trial in a manner sufficient for the purposes of Polish law, it has not been possible for the Central Authority to ascertain that the respondent received actual notification as is required by s.45, as interpreted by the Supreme Court in *Minister for Justice, Equality and Law Reform v Sliczynski* [2008] IESC 73 (Unreported Supreme Court, 19th December 2008)

In those circumstances, the Court's enquiry then moves to whether or not the issuing state is prepared to provide an undertaking as to a re-trial. No such undertaking is being offered in the circumstances of this case.

In the circumstances, the Court cannot surrender the respondent in respect of the offence which is the subject of warrant no. 3.

The Points of Objection

Points of Objection were filed pleading various different grounds of objection specific to each of the three warrants. However, apart from the s.45 objection relating solely to warrant no 3, and which the Court has just dealt with, only one other ground of objection was ultimately relied upon, namely, an objection based upon s. 37(1) of the Act of 2003, common to all three warrants. That objection was pleaded in the following terms:

"The surrender of the Respondent would be entirely disproportionate having regard to the delay on the part of the authorities in the issuing State in seeking her surrender, her family circumstances in this jurisdiction and her medical condition. In this regard it is pleaded that the Respondent is the mother of 6 children between the ages of 21 and 2, five of whom live with her and her husband, and that she is working and supporting her family as a self-employed business consultant. It is further pleaded that the Respondent suffered a pulmonary embolism in December 2011 and is on anti-coagulant medication. It is submitted in such circumstances that her surrender would amount to a disproportionate

interference with her family life and in the absence of any compelling explanation on the part of the authorities in the issuing State for the timing of same ought be refused in accordance with section 37 of the European Arrest Warrant Act, 2003".

The Respondent's Evidence

The Court has before it an affidavit of K.L. sworn on 29th May, 2012 in which she states:

"8. ... I say that I travelled to Ireland in June 2007 with my partner and family in search of work, and that at this time I was unaware of any criminal or other proceedings against me. I say that I initially was granted Jobseeker's Allowance but from March 2008 I assisted my partner, a self-employed plumber, in an administrative capacity. I say that in September 2010 to date I became a self-employed business consultant with XXX, which I registered as a business name. I continue to run this business on a part-time basis and this business is still in existence. I worked at XXX, XXX, XXX from January 2011 until June 2011. I claimed Jobseekers Allowance from June 2011 until August 2011, I found employment with an accountancy firm XXX, XXX, XXX, XXX in January 2012 to present date. I say that I have been involved in all these activities in my own name and therefore that, as before in the issuing State, I have lived openly within this jurisdiction and have not sought to conceal my identity."

"10. I say more generally that I am the mother of 6 children between the ages of 21 and 2, four of whom live with me and my partner, who works as a self-employed plumber. I say that my eldest son X attends college in Cork, that my second son helps with my business and that my other children are either attending school or will do so in the near future. I say also that I am working and supporting my family as a self-employed business consultant, and I beg to refer to my income tax assessment for 2010 upon which pinned together and marked with the letters "KL 1" I have signed my name prior to the swearing hereof.

11. I also that I have suffered health difficulties in the recent past in that I suffered a pulmonary embolism in December 2011 and am on anticoagulant medication, and I beg to refer to letters from my GP and consultant physician upon which pinned together and marked with the letters "KL 2" I have signed my name prior to the swearing hereof.

12. I say finally that the three Warrants relate to allegations, both proven and otherwise, of fraud between the years 1998 to 2004. I say that while I was at all times readily available to the authorities in the issuing State prior to my departure in June 2007 it would appear that no step was taken to establish my whereabouts or caution me in relation to the matters the subject of the Warrants issued on the 15th day of October 2007 and the 25th day of July 2008 until 2007 or 2008, when warrants were issued for my arrest and preventive detention in the issuing State.

13. I say that the first I became aware that I was suspected of any such criminal activity was when I was arrested in this jurisdiction on foot of these Warrants in January 2012. I say that there is no explanation in any of the Warrants for this delay but I say that I have not in any way contributed to it or sought to evade or conceal my identity from the authorities in any jurisdiction. I say further that during this period I have made a new life in this country with my family and that we have engaged in education and employment with a view to contributing positively to Irish society. I say that we have not come to adverse garda attention but have formed ties both professional and personal with our local community. I say and believe, therefore, that given the considerable delay in the prosecution of these matters against me and the changes to my life and that of my family in the meantime, and my own health condition, it would in all the circumstances be unjust and disproportionate to order my surrender to the issuing State on foot of the European Arrest Warrant."

The Court has also been furnished with a supplemental affidavit sworn by the respondent on the 9th November, 2012. This affidavit, to the extent that it is relevant to the sole remaining ground of objection before the Court, states:

"2. ... it is pleaded on my behalf that my surrender to the issuing State would represent a disproportionate interference with my family life. I say it was ... submitted at the hearing of these proceedings before this Honourable Court on the 19th day of July 2012 that a consideration of my family rights should take account of the best interests of my children, and I say that I make this Affidavit in order to more fully explain their circumstances and the likely effect on them of my surrender to the issuing State. I say further that, insofar as my decision to come to this jurisdiction was related to family difficulties I had experienced in the issuing State, I propose to set out this history in some detail.

3. I say, as deposed previously, that I am the mother of 6 children, four of whom are under the age of 18. I say that the eldest three X, Y and A are children of my marriage in the issuing State to D.L. on the 27th day of July 1990. I say that I was 16 years of age when I got married as I was pregnant and that from the outset it was a very unhappy relationship. I say that my husband was abusive to our children and would lock our several-week-old children in a room by themselves when they cried and would not let me comfort them, and would wake the children up in the middle of the night and told them to read aloud or to rewrite their copy books. I say that while he was never physically abusive to me I was constantly in fear of him. I say also that he was never employed and that I was responsible for the maintenance of our family. I say therefore that I felt I had to complete my final secondary school examinations in order to be in a better position to provide for our children. I say that after finishing school I attended night classes in university and graduated with a degree in Marketing and Business Management from Kozminski University, Warsaw. I say that throughout this period my continued education was only possible with the ongoing assistance of my grandmother who supported me emotionally and looked after the children.

4. I say that in or about 2003 I met my current partner, D.O. who finally gave me the support and encouragement to leave my husband and the assistance I required in looking after my family. I say however that my husband refused to divorce me but continued to harass us, threatening to kidnap the children, as a result of which I made complaints to the police on two or three occasions. I say that while they would come and take notes I was afraid to take the matter further and never made a formal complaint against my husband. I say however that I filed divorce petitions on several occasions but that as he repeatedly changed his permanent address no proceedings could be served on him and accordingly all suits were dismissed. Therefore I have not managed to divorce him or officially separate from him until this day. I say however my partner and I remain together and that my daughter B was born in the issuing State with on the 5th day of October 2005."

"6. I say ... that as a result of my family and business difficulties in the issuing State I was suffering considerable stress and depression and I decided to leave and to come to this jurisdiction, which I did on the 5th day of June 2007 together

with my partner, four children and my mother. I say that I was seven months pregnant and that my fifth child, C, was born here on the 28th day of August 2007.

7. I say that we came to this jurisdiction with €2,000 and that we found life very difficult here at first but that I say that we have worked hard and now have a very good family life here, having our last child together, D, on the 27th day of July 2009. I say that the four younger children spend most of their time with me as my partner works in Cork, XXX and XXX as a self-employed plumber, leaving for work at 10am each weekday and returning 12 hours later.

8. I say that my two eldest children, X and Y, attended secondary school in Ireland for three years. They went to school in XXX, XXX, XXX, Cork for transition year and then to school in Cork at XXX, XXX, Cork for 5th and 6th Year. I say that they now reside together in a flat in XXX. I say that Krzysztof is currently working and X is looking for work.

9. I say that I take the children to school and pre-school respectively every morning and that I work in the mornings while they are at school as set out in my previous affidavit. My daughter A (aged 13) attends XXX, XXX, XXX and my daughters B (age 7) and C (age 5) both attend XXX, XXX. I say that I collect the second youngest, C (aged 5) from primary school at 1pm and take her to collect (aged 3) from pre-school at 1.15pm. I say that I give them their lunch before returning to collect the third youngest, B (aged 7) from school at 2.30pm. I say that from this point I am the sole carer of the children for the remainder of the day, and that this includes my daughter A (aged 13) who returns from school at 4.15pm. I say that I work for myself as a self-employed bookkeeper in the evenings when the children are in bed until my partner returns from work at 10pm.

10. I say further that I take B and C to art lessons on Monday afternoons and A to guitar lessons on Tuesday evenings. I say that they all go to swimming lessons on Wednesday afternoons and A, B and C attend dance classes on Thursday afternoons and horse riding on Saturday.

11. I say, therefore, that in the absence of my partner during the day all week that I am the primary carer for my children. I say that I receive some assistance from my mother, who picks the children up from school one to three days a week and minds them for two to three hours and minds them on Friday afternoons if I have to run company errands. I say, however, that we have no set arrangement in this regard and that she is in poor health and suffers from high blood pressure, heart problems and eye cataracts and that I have little or no outside assistance. I say, therefore, that if I am surrendered to the issuing State I do not know how we would cope as my partner would have to give up work in order to look after the children and that without our joint salaries we would have to seek social assistance in order to continue to live in this jurisdiction. I say in this regard that at present I earn €2,500 per month and that my partner earns €1,000 per month, and that our rent is €700 per month so that would be unable to continue to live in our present home, where we have been living since February 2012.

12. I say therefore that, while the above might suggest my children cannot remain in this jurisdiction, I say equally that if I am surrendered to the issuing State there is little reality to me taking my family with me as I have no remaining immediate family in the issuing State as I have no siblings and I do not know my father as my mother had divorced him when I was 3 months old. I say that I have an uncle and two cousins there but that we have not been in touch since my grandmother's death in 1995. I say that I say that the only family member my partner has in the issuing State is his mother, who is 52 years of age and works as a masseuse earning approximately €400 per month. I say and believe that she would be unable to care for my family if they were to return and indeed that when she retires in two years time it is her intention to come to Ireland. I say therefore that we have cut all our ties to Poland and have not returned there even once on holiday since we came to this jurisdiction.

13. I say further that I do not know how my family could cope in practical terms if they had to return to Poland. I say that while my children can speak Polish they cannot read or write it and would have great difficulties in the education system. I say that the youngest two children have never been to Poland and have no familiarity with it. I say also that as my partner owns his own business he could not receive immediate social assistance even if he did give up work.

14. I say, in particular, that my surrender would create very real difficulties for my daughter A, as my current partner has no natural or legal relationship with her. I say that the last time she saw her natural father, my husband, was in or about 2005 and that the last time she or any of us spoke to him was by telephone in January or February 2007. I say therefore that if I am surrendered to the issuing State A will be left in a very difficult situation as there is little reality to her remaining with my partner in this jurisdiction. Likewise, if she were to return with me to the issuing State I have no idea where she might live as I have no family there. I further say in this regard that I have made enquiries with the Adoption Board in Dublin as to whether A could become the legal guardian of A. I was informed by phone that, as I am still married to D.L. the father or [sic.] A, he has legal guardianship rights and nothing [sic.] could be done. I say there is a farther complication in that my former husband is named as the father on B's birth certificate as we were not divorced when she was born, and I say and believe that this could create legal difficulties for my partner if they returned to Poland. I say and believe that, as I am not formally divorced from my husband, my partner would have no legal rights as regards A or B and that equally my husband has never made any application to court for access or guardianship rights over them. I say and believe further that B would have difficulties in obtaining a Polish passport as my husband's consent would be required for any such application.

15. I further say and believe that if I am surrendered to the issuing State that I will have to serve the sentence of 18 months imprisonment imposed in my absence and I say and believe that I will be remanded in custody as a measure of preliminary detention pending my trial on the other matters, particularly as I do not have a permanent address at which I could reside in Poland. I say and believe that such a remand may be for a period of up to 2 years and that during this period my visiting rights with my family will be limited to one hour per month. I beg to refer in this regard to a letter from my lawyer, Adwokat Maciej Zakiewicz, dated the 7th day of November 2012 upon which marked with the letters "KL 1" I have signed my name prior to the swearing hereof.

16. I say and believe further that my partner, D.O., suffers from a rheumatic condition known as ankylosing spondylitis, which is a chronic, usually progressive, disease of the skeleton which affects his movement in particularly his knees and which I say and believe would affect his ability to look after the children in my absence, and I beg to refer to letters from his consultant rheumatologist in Waterford Regional Hospital and from Dr Isobel Brennock upon which pinned together and marked with the letters "KL 2" I have signed my name prior to the swearing hereof.

17. I say and believe in all the circumstances that the welfare of my children would be greatly affected if I were to be

surrendered to the issuing State. I say that for the purposes of assessing any such impact I referred my four youngest children to a clinical psychologist, XXX, in the XXX in Cork. I say that she concluded that the impact of my surrender "could be profound and long-lasting, and would affect every aspect of her family life" and that such impact could involve a "range of psychosocial problems" and I beg to refer in this regard to a report from M.B. dated the 28th day of September 2012 upon which marked with the letters "KL 3" I have signed my name prior to the swearing hereof.

18. I say further that my family have made our life in this jurisdiction and that this is where we want to continue to live, work and go to school. IU [sic.] say that we have many connections with our local community. I beg to refer in this regard to a letter from our former landlords XXX and XXX dated the 31st day of October 2012 upon which marked with the letters "KL 4" I have signed my name prior to the swearing hereof."

The psychological report prepared by XXX of the XXX in Cork, referred to in para. 17 of the aforementioned supplementary affidavit, has been considered by the Court to the extent that it is relevant to the objections under consideration. It is not necessary to quote it in full. However, in a section of the report "Behavioural Observations" XXX provided her opinion regarding A, B, C, and D as follows:

"They appeared to have a very good relationship with parents (D.O. is the father of B, C and D) and were quite affectionate towards them. All children had no difficulty separating from K.L. and entered the testing room willingly. Their affect and mood were appropriate at all times, and their response to authority was respectful and cooperative."

In addition, XXX, in a subsequent section of the same report entitled "Interpretations and impressions" states her opinion as to the likely impact that imprisonment of the respondent would have on these children. XXX opined:

"According to the information obtained from K.L. children during clinical interviews and observations at assessment sessions, K.L. seems to be actively involved with her children and if she was imprisoned the impact of it could be profound and long-lasting. [sic.] and would affect every aspect of children's and family life:

- A, B, C and D could experience a range of psychosocial problems during the imprisonment of their mother, including: depression, hyperactivity, aggressive behaviour, withdrawal, regression, clinging behaviour, sleep problems, eating problems, running away, truancy, poor school grades and delinquency.
- A would probably have to take on pseudo-parental role towards her younger sisters in order to provide domestic, emotional and/or financial support for them. She would probably feel that she must "be strong" for them and would hide her own feelings of loss, anger at her mother and at the "system", shame, sadness, confusion, and guilt. She could feel isolated and stigmatized as the child of a prisoner and fearful of public discovery of her status. Coping strategies that A could use to help her deal with her mothers unexpected imprisonment can also take the form of alcohol/drug use, running away, and using anger to suppress other emotions, thrill seeking, developing pseudo-family relationships with relative strangers, and seeking -sexual intimacy. Finally, she may drift away from the care and supervision of responsible adults, living with "friends," with exploitive adults or on the street.
- B, as a child who is at the age when she becomes increasingly aware of other people and wants to see her mother as a good person, may hide her "secret" from others and this may prevent her from seeking support and assistance from adults such as caretakers or teachers and her peers. She may experience adjustment difficulties that can manifest in a variety of ways including aggression, difficulty concentrating, multiple absences and even school avoidance.
- C and D, who are pre-schoolers, will not be able to grasp the connection between crime and punishment and will focus on the outcome. For example, they may blame the police or the judge for taking Mommy away. Or they may blame Mommy for being bad and needing a "time out" which is difficult to reconcile with the good mommy they know who does nice things for them. This may set the stage for children to see the justice system as unjust and "people like them" as victims of that system.
- The family would not be able to afford staying in its home - children's schooling would be affected, as well as their relationships and day- to- day routines.
- Increased responsibilities placed on would cause stress and would place heavy demands on children (they would have to perform some domestic tasks that were previously done by mother) and support networks (family and friends).
- Negative reactions of others could affect children's self-confidence and self-worth.
- If K.L. was imprisoned in Poland, it would be very difficult for children to visit her, which could add to their feelings of isolation from their mother. It would also place extra costs on the family (e.g., costs of visiting, telephone calls, lawyer s fees), while at the same time depriving them of the income the imprisoned parent could have given them."

The Court has also been furnished with an affidavit of a D.O., sworn on the 14th February, 2012, in which he states:

"1. I say that I am the partner of the Respondent in the above-entitled proceedings ..."

"2. I say that, as appears therefrom, I suffer from Ankylosing Spondylitis, a rheumatic condition which affects my movement. I say that I am currently being treated by Dr G., Consultant Rheumatologist in Waterford Regional Hospital, and that while I am making progress in my treatment and have been able to continue to work as a plumber, my condition would affect my ability to look after our children in the absence of the Respondent if she were surrendered to the issuing State. I further say and believe that I would be unable to continue working and that as it is unlikely that my medication would be available to me in the issuing State, that my treatment would be affected if I returned to the issuing State with the Respondent. I beg to refer in this regard to a letter from my consultant rheumatologist dated the 5th day of December 2012 upon which marked with the letters "DOT" I have signed my name prior to the swearing hereof."

The Court has also been provided with a medical report dated the 13th September, 2012 from the aforementioned G, exhibited with the affidavit of the respondent sworn on the 9th November, 2012, which corroborates the information provided by D.O. concerning D.O.'s medical condition :

"D.O. is under my care since February 2008. At his first attendance he presented with a diagnosis of Ankylosing spondylitis which was made in Poland but with which I completely agree on the basis of his clinical presentation. I will

outline in further detail this condition but at this point would summarise to say that his condition was severe at the time of presentation with a score of 7 over 10 on a disease activity index and that he has, since that time, required the highest level of treatment with an agent named Etanercept. He has had a good response to treatment.

Outline of diagnosis: Ankylosing spondylitis is an inflammatory condition which affects the ligaments of the spine and pelvis together with peripheral joints. It causes significant pain, stiffness and fatigue. Associated features include inflammatory arthritis of other joints again producing pain, swelling and stiffness particularly in larger joints such as the hips and shoulders. There are other clinical aspects which I will not describe here as they have not occurred in his case but are aspects which require continued care.

Disease activity is assessed using an internationally agreed tool called the BATH Ankylosing spondylitis activity index. This includes features related to pain, stiffness, impact on function, and measurements of ROM (Range of Motion). Together a score of greater than 5 is considered severe and warrants the highest level of treatment. At his first presentation D.O.'s score was 7 out of 10.

His treatment is with an agent which has been found to be, in general, the most effective treatment to date. Most patients can enjoy a 50% improvement in symptoms. Using the same disease activity index D.O.'s score today was 2.8.

The symptoms are [sic.] of pain and stiffness restricting his ROM in his neck and shoulders. These symptoms increase at times of stress which is again a recognised aspect of Ankylosing spondylitis. He also has stiffness in his knees and an aching pain at the end of a long day at work. Of note he works as a plumber and therefore spends long periods kneeling on hard surfaces including, when necessary, joists in an attic space.

Considering all of the aspects of Ankylosing spondylitis he would consider his current level of symptoms to be as high as 6 over 10 where 10 indicates the worst imaginable symptoms and 0 being free of symptoms.

Standard measurements of range of movement which would be understood by practitioners in this field include a measurement index of 4 over 10. This indicates that he has moderate restriction in the range of movement in 4 of the 5 ranges measured including the neck, spine and hips.

He is able to continue his work as a plumber but this effectively exhausts all his [sic.] energy and endurance to tolerate symptoms and his activities are otherwise limited. For instance he does not take part in sporting activities or other hobbies.

The duration of morning stiffness is approximately 30 minutes. Together with the level of pain there is no doubt that there would be significant difficulty in looking after three children aged between 7 and 3 as a single parent. Similarly on his return from work he is currently unable to carry out any other activity and the duties of a single parent would be a very significant strain on him.

There is no opportunity to escalate his treatment and as indicated above he has already had an excellent response to treatment. His remaining symptoms would be expected to persist indefinitely.

I have also established that the access to Etanercept in Poland is extremely restricted and it is highly unlikely that he would have access to that treatment. This would result in him reverting to pre-treatment levels i.e. a deterioration of 50-60% in his clinical condition."

Following the s. 16 hearing in these matters, and during the period of reservation of the Court's judgment, the solicitors for the respondent wrote to the Court by letter dated the 18th June, 2013 advising the following change in circumstances:

"We confirm that our client separated from her partner D.O. during the last week of March 2013.

D.O. is still living in the XXX area but our client understands he is in the process of renting an apartment.

He has contact with the children once every 3 weeks for a period of approximately 2/3 hours.

K.L. and D.O. have not put formal arrangements in place regarding maintenance or access to date. As K.L. is now in receipt of lone parent's allowance she has been requested by the Social Welfare to contact a solicitor with a view to getting a maintenance order in place."

Submissions

As this was the first case to come before this Court in which reliance was placed by a party on the decision of the United Kingdom Supreme Court in the conjoined cases of *R.(H.H.) & (P.H.) v. the Deputy Prosecutor of the Italian Republic, Genoa*; also *R.(F-K) v. Polish Judicial Authority*, [2012] 1 A.C. 338, the Court invited, and was grateful to receive, detailed legal submissions as to the law. The Court has carefully considered those submissions (both written and oral) and has taken full account of them.

This case has in fact been overtaken in judgment terms by virtue of the Court having already given judgment in a number of later cases in which similar issues arose for the Court's consideration.

In its recent judgments in *Minister for Justice and Equality v T.E.* [2013] IEHC 323 (Unreported, High Court, Edwards J., 19th June 2013), and *Minister for Justice and Equality v R.P.G.* [2013] IEHC (Unreported, High Court, Edwards J., 18th July 2013) the Court conducted an extensive review of relevant Irish, English, European Court of Human Rights, and Court of Justice of the European Union (hereinafter CJEU) case law and sought to distill from that jurisprudence a series of principles for application both in that case and in future cases.

Among the cases reviewed were *Minister for Justice, Equality and Law Reform v. Gorman* [2010] 3 I.R. 583, *Minister for Justice, Equality and Law Reform v. Gheorghe* [2009] IESC 76 (Unreported, Supreme Court, Fennelly J., 9th April, 2009); *Minister for Justice, Equality and Law Reform v. Bednarczyk* [2011] IEHC 136 (Unreported, High Court, Edwards J., 5th April, 2011); *Lauder v. United Kingdom* (1997) 25 E.H.R.R. CD67; *King v. United Kingdom* [2010] E.C.H.R. 164; *Babar Ahmad and Others v. United Kingdom*, (Application no 24027/07, 10th April 2012) [2012] E.C.H.R. 609; *Huang v. Secretary of State for the Home Department* [2007] 2

A.C. 167 ; *Zigor Ruiz Jaso v. Central Court of Criminal Proceedings (No 5) Madrid* [2007] E.W.H.C. 2983 ; *Norris v. Government of United States of America (No 2)*, [2010] 2 A.C. 487 ; *Z.H. (Tanzania) v. Secretary of State for the Home Department* [2011] 2 A.C. 166 ; *R.(H.H.) & (P.H.) v. the Deputy Prosecutor of the Italian Republic, Genoa, also R.(F-K) v. Polish Judicial Authority*, [2012] 1 A.C. 338, *In re Ciprian Radu* (Case 396/11, C.J.E.U., 29th January 2013) and *Minister for Justice and Equality v. Ostrowski* [2013] I.E.S.C. 24 (Unreported, Supreme Court, 15th May, 2013 – in particular the judgment of McKechnie J.) This represents an indicative, but by no means exhaustive, list of the many cases and judgments reviewed.

As a result of its review the Court was satisfied to set forth and adopt the following principles of law for application in the European Arrest Warrant context in cases where article 8 is engaged:

1. the test imposed by article 8(2) is not whether extradition is on balance desirable but whether it is necessary in a democratic society;
2. there is no presumption against the application of article 8 in extradition cases and no requirement that exceptional circumstances must be demonstrated before article 8 grounds can succeed;
3. the test is one of proportionality, not exceptionality;
4. where the family rights that are in issue are rights enjoyed in this country, the issue of proportionality involves weighing the proposed interference with those rights against the relevant public interest;
5. in conducting the required proportionality test, it is incorrect to seek to balance the general desirability of international cooperation in enforcing the criminal law and in bringing fugitives to justice, against the level of respect to be afforded generally to the private and family life of persons;
6. rather, the assessment must be individual and particular to the requested person and family concerned. The correct approach is to balance the public interest in the extradition of the particular requested person against the damage which would be done to the private life of that person and his or her family in the event of the requested person being surrendered;
7. in the required balancing exercise the public interest must be properly recognized and duly rated;
8. the public interest is a constant factor in the horizontal sense, i.e., it is a factor of which due account must be taken in every case;
9. however, the public interest is a variable factor in the vertical sense, i.e., the weight to be attached to it, though never insignificant, may vary depending on the circumstances of the case;
10. no fixed or specific attribution should be assigned to the importance of the public interest in extradition and it is unwise to approach any evaluation of the degree of weight to be attached to it on the basis of assumptions. The precise degree of weight to be attached to the public interest in extradition in any particular case requires a careful and case specific assessment. That said, the public interest in extradition will in most cases be afforded significant weight;
11. the gravity of the crime is relevant to the assessment of the weight to be attached to the public interest. The graver the crime, the greater the public interest. However, the opposite effect, namely 'the lesser the crime the lesser the interest' may not follow in corresponding proportion. Where on the spectrum the subject offence may sit, is an aspect of each case which must also be explored as part of the process;
12. the public interest in extraditing a person to be tried for an alleged crime is of a different order from the public interest in deporting or removing an alien who has been convicted of a crime and who has served his sentence for it, or whose presence in the country is for some other reason not acceptable. This does not mean, however, that the Court is required to adopt a different approach to article 8 rights depending on whether a case is an extradition case or an expulsion case. The approach should be the same, but the weight to be afforded to the public interest will not necessarily be the same in each case;
13. delay may be taken into account in assessing the weight to be attached to the public interest in extradition;
14. in so far as it is necessary to weigh in the balance the rights of potentially affected individuals on the one hand, with the public interest in the extradition of the requested person, on the other hand, the question for consideration is whether, to the extent that the proposed extradition may interfere with the family life of the requested person and other members of his family, such interference would constitute a proportionate measure both in terms of the legitimate aim or objective being pursued and the pressing social need which it is suggested renders such interference necessary;
15. it is self evident that a proposed surrender on foot of an extradition request will, if carried into effect, result in the requested person being arrested, being possibly detained in custody in this State for a period pending transfer to the requesting state, and being forcibly expelled from the State. In addition, he/she may have to face a trial (and may possibly be further detained pending such trial) and/or may have to serve a sentence in the requesting State. Such factors, in and of themselves, will rarely be regarded as sufficient to outweigh the public interest in extradition. Accordingly, reliance on matters which could be said to typically flow from arrest, detention or surrender, without more, will little avail the affected person;
16. article 8 does not guarantee the right to a private or family life. Rather it guarantees the right to respect for one's private or family life. That right can only be breached if a proposed measure would operate so as to disrespect an individual's private or family life. A proposed measure giving rise to exceptionally injurious and harmful consequences for an affected individual, disproportionate to both the legitimate aim or objective being pursued and the stated pressing social need proffered in justification of the measure, would operate in that way and in breach of the affected individual's rights under article 8.;
17. it will be necessary for any Court concerned with the proportionality of a proposed extradition measure to examine with great care in a fact specific enquiry how the requested person, and relevant members of that person's family, would be affected by it, and in particular to assess the extent to which such person or persons might be subjected to

particularly injurious, prejudicial or harmful consequences, and then weigh those considerations in the balance against the public interest in the extradition of the requested person;

18. such an exercise ought not to be governed by any predetermined approach or by pre-set formula: it is for the Court seized of the issue to decide how to proceed. Once all of the circumstances are properly considered, the end result should accurately reflect the exercise;

19. the demonstration of exceptional circumstances is not required to sustain an article 8 type objection because in some cases the existence of commonplace or unexceptional circumstances might, in the event of the proposed measure being implemented, still result in potentially affected persons suffering injury, prejudice or harm. The focus of the court's enquiry should therefore be on assessing the severity of the consequences of the proposed extradition measure for the potentially affected persons or persons, rather than on the circumstances giving rise to those consequences;

20. where the article 8 rights of a child or children are engaged by a proposed extradition measure the best interests of the child or children concerned must be a primary consideration. They may be outweighed by countervailing factors, but they are of primary importance;

21. if children's interests are to be properly taken into account by an extradition court, it will require to have detailed information about them, and about the family as a whole, covering all considerations material to or bearing upon their welfare, both present and future. Primary responsibility for the adduction of the necessary evidence rests upon the party raising article 8 rights in support of an objection to their surrender;

22. in an appropriate case, where it is satisfied that there are special features requiring further investigation to establish how the welfare of a child or children might be affected by a proposed extradition measure, and/or as to what the best interests of the child or children in question might require, an extradition court can, of its own motion, seek further evidence.

Analysis and Decision

The Court has carefully considered the evidence relevant to the s.37 / article 8 objection in this case.

The offences which are the subject of the first and second warrants are offences of moderate seriousness in the Court's view. They are only allegations of course and it must be accepted that the respondent enjoys the presumption of innocence. The offences with which she is charged are not minor offences, but equally they are not the most serious in the calendar of criminal offences. They do, however, each carry potential penalties of up to eight years imprisonment. Moreover, although they are fraud type offences involving dishonesty and giving rise to financial losses to various businesses rather than private individuals, they are certainly not victimless crimes. The sums involved, particularly on the second warrant, are quite substantial. In the court's view there is, in all the circumstances, and subject to the issue of delay which the Court will deal with in a moment, a strong public interest in the respondent's extradition.

The single offence charged in warrant no. 1 is said to have occurred on the 22nd January 2004. The three offences charged in warrant no. 2 are all alleged to have occurred between dates in November of 2003 and March of 2004. The respondent contends, *inter alia*, that because of unexplained delay in the case there is no longer a pressing social need for her extradition and that the Court should attach considerable weight to this, as well as to the personal circumstances of the respondent and her children, in the balancing exercise that it is required to conduct.

It is necessary to examine the alleged delay in some detail. In the case of the first warrant the alleged offence occurred on the 22nd January 2004. It is not clear how long it was before the crime was reported, but it was duly reported and there was a police investigation leading to the charging of the respondent in or about the end of 2006 / beginning of 2007, or perhaps a little earlier. It is reasonable to infer this timeline from the information provided in Part F of warrant no. 1 which states:

"K.L. in the case of District Prosecutor's Office Warszawa Mokotów, Acta No 2 Ds. 3302/041 was charged to commit a qualified offence against art. 286 § 1 Penal Code.

As the accused did not appear at the court duly summoned, she was not staying at the residence address given in the proceedings, District Court for Warszawa Mokotow, by virtue of a decision of 26th January, 2007, Acts No III K 1156/05, inflicted preventive measure of detention awaiting trial against the accused for the period of 2 (two) months since the detention date and it ordered to search for the accused by a "wanted" notice. By the same decision the Court suspended the proceedings in the case till the detention of the accused."

There would not therefore seem to have been any gross or wholly unreasonable delay in the police investigation and charging of the respondent in respect of the charge in warrant no. 1.

Before looking at what happened next the Court should examine what is known about the police investigation and charging of the respondent in respect of the charges in warrant no. 2. Again, these offences are alleged to have occurred between November 2003 and March 2004. We are also told the following in Part F of the warrant:

"K.L. has been charged for committing offence against art. 286 § 1 Penal Code in connection to art. 12 Penal Code. As the attempts to serve the summons by the police failed, it was established that the accused did not stay at the address given in preparatory proceedings. The actual residence address was not established. By virtue of a decision dated 22nd April, 2008 District Court for Warszawa Mokotow, Acts No VIII K 165/08, inflicted preventive measure of preventive detention against K.L. for the period of 2 months from the detention date, ordered a search for her by a "wanted" notice and it suspended the proceedings. As the search for the accused failed to establish her residence address in Poland and it did not bring to her detention, it was highly probable she was staying in the territory of the European Union. As of a letter of Police Station Warszawa Targowek dated 13th April, 2008, K.L. may stay in The United Kingdom. On 23rd June, 2008 Regional Prosecutor's Office in Warsaw applied to Regional Court in Warsaw to issue European Arrest Warrant."

Although we do not know when exactly the crimes were reported and when the police investigation was begun, it was certainly begun before the respondent left Poland to come to Ireland in June 2007 because it is clear from this information that they had been provided with an address in preparatory proceedings. They were therefore in contact with her and she engaged at least to the extent

of providing an address in Poland at which she might be contacted. Again, given that we know from the information provided in connection with warrant no. 1 that she had gone to ground and could not be contacted by the beginning of 2007 it is reasonable to infer that the preparatory proceeding had begun prior to that point in time. Once again, there would not seem to have been any gross or wholly unreasonable delay in the police investigation and charging of the respondent in respect of the charges in warrant no. 3.

It is clear that from the beginning of 2007 onwards the Polish police were unable to contact the respondent. In the court's view the respondent cannot rely to any great extent on the passage of time since the beginning of 2007, since that has been almost entirely due to her fleeing from the issuing state to evade justice. The Court specifically rejects the assertions in her affidavit that the reason that she travelled to Ireland in 2007 was to look for work and that she "*was unaware of any criminal or other proceedings*" against her and that she was "*at all times available to the authorities in the issuing State prior to my departure in June 2007.*" It is clear from both warrants that she had been charged in both cases long before that, and had failed to answer summonses served upon her at the address that she had provided in each instance. She clearly knew that she was wanted, and I am satisfied that she fled Poland to evade justice. Overall, this Court has concluded that any degree of delay in this case, and there is no evidence of any culpable prosecutorial delay, is not such as might operate to reduce the weight otherwise to be afforded to the public interest in the extradition of the respondent for these offences. The respondent went to ground, fled the jurisdiction of Poland, had to be searched for and located by the Polish Authorities, and then pursued through the European Arrest Warrant system. It is clear that they initially believed, mistakenly, that she was in the United Kingdom. She was eventually located here in Ireland. There is no evidence, however, that the Polish authorities sat on their hands or were dilatory about searching for and pursuing her. As far as this Court is concerned there remains a pressing social need to give effect to the respondent's extradition in this case. It follows that the public interest in the respondent's extradition remains strong.

In so far as the private interests of the respondent and her family are concerned, the Court has taken full account of the affidavit evidence and the various documents and reports exhibited. It is accepted that the respondent has put down certain roots in Ireland. However, she has done so in circumstances where she could have been under no illusions but that her position was other than precarious. She has had absolutely no grounds for believing that the Polish authorities were not still interested in her, and had no basis for any confidence that they would not discover her whereabouts and seek her extradition. Accordingly to the extent that she has put down roots she did so knowing that at any time she might be apprehended and sent back to Poland to answer the charges to which the present warrants relate.

The Court accepts that she has six children, a number of whom are still minors, and three of whom were born in Ireland. The children are of course blameless in all of this and this court must, and will, take due account of their best interests which fall to be considered as a primary consideration in the sense explained in this Court's recent judgment in *Minister for Justice and Equality v R.P.G.* cited earlier. The Court also accepts that the respondent is a self employed business consultant, and a taxpayer and that she has the health difficulties described in the medical reports.

In so far as the respondent's medical condition is concerned, certain remarks in this Court's recent judgment in *Minister for Justice and Equality v N.M.* [2013] IEHC 322 (Unreported, High Court, Edwards J., 25th June, 2013) are apposite to this case as well. The Court stated in *N.M.* :

"The evidence concerning the respondent's medical condition paints a reasonably clear picture concerning her physical ailments and limitations..... However, that is not a reason, in itself, to refuse to surrender her, as most prisons have to accommodate disabled and immobile prisoners from time to time, and the E.Ct H.R. in *Kaprykowski v. Poland*, (App. no. 23052/05, 3 February, 2009), and in *Nitecki v. Poland* (App. no 65653/01, 21 March, 2002) has stated that prisoners are entitled to the same level of medical care as is available in the public health care system in the country where they are detained."

The Court has nevertheless taken due account of the respondent's medical problems as a relevant circumstance in the balancing exercise it is required to conduct, but in the absence of any reliable evidence to suggest that her condition cannot be managed in Poland in the event of her being surrendered relatively little weight can be attached to it.

In so far as the situation of the minor children is concerned, the Court recognises that they are well settled in this country, are established in various schools, and have friends and social networks here. I also accept that while they are culturally Polish, and speak Polish, they have little or no experience of life in Poland in the event of having to move. The Court further recognises the particular difficulties now posed by the respondent's recent separation from her partner, D.O. in terms of the provision of material and emotional support for the children, and the fact that the separation must have induced in them certain feelings of insecurity, which would be undoubtedly seriously compounded in the event of the proposed extradition going ahead.

The Court has considered and taken due account of the assessment of M.B. of the XXX as expressed in her report dated the 28th September, 2012. She lists various things that "could" happen in regard to the children if the respondent is extradited and therefore identifies risks as existing at the level of possibility. However, none of the risks identified are expressed in terms of something that will definitely, or even probably, happen. There is no evidence before the Court at this time that the proposed surrender would be specifically harmful or injurious to the children, beyond the apprehensions expressed by the psychologist which are only expressed as being possibilities. Clearly it would be in the best interests of these children that their mother should remain in their lives and they should not be separated from her even temporarily. Therefore, if possible, she should not be surrendered having regard to their best interests and this is a consideration to which significant weight must be attached on the private interest side of the scales. However, that non-surrender would be in the children's best interests cannot be regarded as being dispositive of the issue before the Court. The countervailing public interest considerations must be weighed against all private interest considerations including the best interests of the children.

In the light of the recent separation of the respondent and her partner the Court was most concerned to know what alternative care arrangements could be put in place for the children if it were to arise that the Court considered it appropriate to surrender the respondent. The Court has since received assurances that alternative care arrangements can and will be put in place, including for A in respect of whom particular concerns were raised by the respondent in para. 14 of her supplemental affidavit sworn on the 9th November, 2012. Of course, no substitute carer can ever hope to fully effectively deputise for a loving and caring mother in the lives of affected children, and particularly very young children. That said, it is clear that satisfactory alternative care arrangements can be made in the event of a surrender.

Having carefully considered all of the evidence before it, the Court has concluded that neither the private interests of the respondent, nor those of the children concerned, nor those of the whole family considered cumulatively, are sufficient to outweigh the strong public interest in this particular respondent's extradition.

The Court must therefore reject the s. 37 objection in this case, in circumstances where it has not been persuaded that surrendering the respondent would breach her right and/or the rights of her immediate family, under article 8 ECHR to respect for private and family life. I do not consider therefore that it would be a disproportionate measure to surrender her, and I will proceed in the circumstances to make the appropriate order under s. 16(1) of the Act of 2003.