THE HIGH COURT

2011 No. 407 EXT

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

T.N.

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 6th day of October, 2015.

1. The surrender of the respondent is sought by the Republic of Lithuania ("Lithuania") pursuant to a European Arrest Warrant ("EAW") dated 21st March, 2007 issued for the purpose of conducting a criminal prosecution. Two main issues arise. The first is whether surrender is prohibited under Article 3 of the European Convention on Human Rights ("ECHR") on the basis that there are substantial grounds for believing that there is a real risk of the respondent being subjected to inhuman and degrading prison conditions in Lithuania on surrender. The second is whether his surrender is prohibited by the provisions of s. 37 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") on the basis that his surrender would amount to a disproportionate interference with his family and personal rights.

2. I am satisfied that Lithuania is a state which the Minister for Foreign Affairs has designated as a Member State for the purposes of the Act of 2003 as amended.

Non-contentious Section 16 matters

Endorsement
3. I am satisfied that the EAW was endorsed for execution in this jurisdiction in accordance with s. 13 of the Act of 2003 on 23rd November, 2011. The respondent was duly arrested thereunder. He was subsequently released on bail. The proceedings were adjourned from time to time and came on before me for hearing on the 30th July 2015.

Identity
4. No issue has been raised with respect to the identity of the respondent. I am satisfied on the information in the EAW and on the affidavit of Brian Mackey, member of An Garda Síochána, that the person who appears before me is the person in respect of whom the EAW has issued.

Section 22, 23 and 24 of the Act of 2003
5. I am satisfied that I am not required to refuse to surrender the respondent under sections 22, 23 or 24 of the Act of 2003.

Section 45
6. This EAW has been issued for the purpose of conducting a criminal prosecution. The respondent is sought for trial. This is not an EAW where it is appropriate for the warrant to state the matters required by s. 45 of the Act of 2003. I am satisfied that his surrender is not prohibited under section 45.

Section 21A
7. The respondent also raised an additional point of objection regarding the provisions of s. 21A. No oral or written submission was made to the court but nonetheless the point was not conceded. It is not entirely clear on what basis this point is made. The EAW clearly states that it is issued for the purpose of conducting a criminal prosecution. The respondent is termed an accused person in the EAW and there is a reference to him having "hid[den] from trial". There is a presumption in s. 21A that a decision has been made to charge the respondent with and try him for the offence for which he is sought in the issuing state. There is nothing on the papers before me to indicate that this presumption has been or even might be rebutted. Therefore, there is no basis for prohibiting his surrender under s. 21A of the Act of 2003.

Part 3 of the Act of 2003
8. Part 3 of the Act of 2003 contains a number of prohibitions on surrender. I am satisfied that subject to the consideration of ss. 37 and 38 set out herein, that surrender is not prohibited by any other section contained in Part 3.

Section 38
9. It is alleged that the respondent, on 27th December, 2000 at approximately 17.00, broke into a premises while acting in a pre-arranged manner with others, and used physical violence against the victim by hitting him in the face and causing a minor health impairment without short-term illness. The alleged facts contained in the EAW allege that the perpetrators then threatened to use further physical violence against the victim and forced him to drink alcohol, thus intoxicating him and depriving him of the opportunity to resist and then seized various property belonging to him. The identity of the person who hit the victim has not been established.

10. The Lithuanian authorities have ticked the box of "organised or armed robbery" by stressing it is "organised robbery". This is a list offence under para. 2 Article 2 of the Framework Decision. No correspondence is required to be established. Under Lithuanian law, this offence is one of robbery. Robbery by breaking into a premises is punishable by imprisonment of up to seven years. Minimum gravity has therefore been made out in this case. In light of the description of the alleged offence, there is no manifest error in the ticking of the box and I am satisfied that the surrender of the respondent is not prohibited by s. 38 of the Act of 2003.

Section 37 of the Act of 2003
11. The respondent claims that he is at real risk of being subjected to inhuman and degrading treatment should he be surrendered to Lithuania on the basis of the prison conditions he is at risk of enduring there. He relied upon what he states are the poor, unhygienic, and overcrowded conditions in the Lithuanian prisons, the fact that detainees are subjected to long periods in their cells while on remand and also that he will be subjected to issues of inter-prisoner violence and abuse.

12. The main evidence upon which the respondent relies is a report from Professor Rodney Morgan. Professor Morgan's credentials have already been set out in *Minister for Justice, Equality and Law Reform v. McGuigan [*2013] IEHC 216 and accepted by this Court

in the judgment *Minister for Justice, Equality and Law Reform v. Tagijevas* [2015] IEHC 455. The report that he relies upon is, in all relevant respects, the same as that provided to this court in *Tagijevas, Minister for Justice and Equality v. M.V.* [2015] IEHC 524 and a number of other cases which this Court has dealt with.

13. Professor Morgan, having set out his own experiences of Lithuanian prisons and of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"), and his consideration of the various CPT reports dealing with Lithuanian prisons, reached a series of conclusions. These conclusions are as follows:

> • "Were he held at either Lukiskes or Siauliai Remand Prisons there is a high likelihood that he would be held in conditions which are inhuman or degrading;
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> • That were he allocated to Kaunas Remand Prison and were Kaunas Remand Prison to be holding today roughly the same number of prisoners as in 2013, he would likely be held in overcrowded conditions but not such, when other aspects are considered, as would likely be judged inhuman or degrading;
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> • That no matter which remand prison he was allocated to he could, if the investigation of his case is incomplete, temporarily be held in a police station where his conditions of detention might be unacceptable;
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> • Were he convicted and sentenced to a period of imprisonment, then he would be held in an institution for adult, male, sentenced prisoners almost certainly exhibiting, for want of adequate staff supervision, of an environment where prisoners are allowed a great deal of movement with little in the way of positive activities, a high level of inter-prisoner exploitation and violence and, were he to seek protective isolation from this risk, he would likely experience custodial conditions as unacceptable as those he might experience at Lukiskes and Siauliai Remand Prisons."

14. A letter was sent by the central authority requesting confirmation of the prison to which the respondent would be sent on surrender. The prosecuting authority, which is the issuing judicial authority in this case, sent an initial reply to the effect that there were no legal grounds to speak about a potential place for serving the sentence. A further request was sent asking that the Ministry of Justice might indicate the place to which he might be sent if not granted bail following surrender. The Ministry of Justice replied saying that they were unable to specify the institution where he could be detained as "it depends from the decision where a pre-trial investigation will be carried out." Subsequently, on 29th July, 2015, the Prosecutor General's Office replied that if the measure of constraint, i.e. arrest, remains in force after surrender that during the hearing of the criminal case at court he "shall be kept at Siauliai Remand Prison."

15. The Ministry of Justice also replied with a detailed letter setting out its response to Professor Morgan's report. In particular, the Ministry gave an indication of the number of inmates up to 1st May, 2015. The letter indicated that between 1st January, 2012 and 1st May, 2015, there was a 40% reduction in detainees in remand prisons. The number of prisoners in penitentiaries had decreased by 12% over that same period. At present, Siauliai Remand Prison is at 95.0% occupancy.

16. Professor Morgan made a response to this information in which he stated that, while he accepted that the aggregate level of overcrowding had reduced, his view was that this fact did not mean that there was not a risk of overcrowding to some prisoners within the prison. In his view, the Lithuanian authorities had ignored this in their response. He also said that while there were improvements, the situation with regard to prisoners in Siauliai and Lukiskes was unacceptable and relied upon the fact that the Lithuanian authorities continue to give undertakings to the English courts that surrendered persons will not be held in either institution.

The risk of being held as a sentenced prisoner in conditions as unacceptable as Lukiskes Remand Prison

17. On 30th June, 2015, I gave judgment in *Minister for Justice v. Tagijevas* in which I rejected the claim that there was a real risk that on surrender the respondent would be subjected to inhuman and degrading treatment on the basis of being kept in such inhuman and degrading conditions. The evidence presented by the respondent in this case does not differ in any material respect from that presented in *Tagijevas.* On the other hand, what is changing is that the number of prisoners incarcerated in Lithuanian prisons appears to be reducing all the time. That fact strengthens the view that overcrowding, which may have been at the heart of many of the problems in Lithuanian prisons, is being addressed resolutely.

18. For the reasons I have set out in *Tagijevas*, I am satisfied that the respondent has not established substantial grounds under this subheading to demonstrate that there is a real risk of being subjected to inhuman and degrading treatment as a sentenced prisoner.

Inter-prisoner violence

19. In *Minister for Justice and Equality v. M.V.*, delivered on 28th July, 2015, I addressed directly the issue of the risk of being subjected to inter-prisoner violence as a ground in itself for prohibiting surrender. No further information that could assist the respondent was presented to the Court in this case. I am satisfied, for the reasons set out in *M.V.,* that the respondent has not established substantial grounds under this subheading to demonstrate that there is a real risk of being subjected to inhuman and degrading treatment.

Risk of being held in a police station

20. While this was presented by the respondent as a ground upon which his surrender is prohibited, the basis for this submission does not reach the required level for the Court to be placed on its enquiry under the principles set out in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45. A possibility of a risk of prohibited ill-treatment is insufficient to prevent surrender. In this situation, Professor Morgan simply says the respondent *might* experience those conditions. This does not amount to a substantial ground for believing that there is a real risk of ill-treatment. On this basis, I reject the respondent's submission under this heading.

The conditions at Siauliai Remand Prison

21. Reliance was placed by the respondent on the undertaking given by the Lithuanian authorities to the United Kingdom ("U.K."). This is an undertaking that remand prisoners surrendered from the U.K. will only be kept in Kaunas Remand Prison. The respondent urged the court to accept that this is a not simply a tacit acceptance, but is a clear acceptance, by the Lithuanian authorities, that the respondent will be subjected to inhuman and degrading treatment at Siauliai Remand Prison.

22. Counsel for the respondent referred to two U.K. cases, *Atraskeviv v. Prosecutor General's Office, Republic of Lithuania,* [2015] EWHC 131 (Admin) and *Aleksynas & Ors. v. Minister of Justice, Republic of Lithuania* [2014] EWHC 437 (Admin). Counsel points in particular to the fact that these assurances were being given to the U.K. courts even before the decisions in *Lithuania v. Campbell* [2013] NIQB 19 and *Minister for Justice and Equality v. McGuigan*. From para. 18 of *Aleksynas,* it appears that the Minister of Justice

in Lithuania noted that international organisations and Lithuanian national authorities had criticised the conditions in remand prisons, typically on the basis of overcrowding. The Lithuanian Minister for Justice asserted that Kaunas Remand Prison was not overcrowded. Therefore, the Minister informed the U.K. courts that the "…Director of Prisons Department shall ensure that all detainees transferred from the United Kingdom will be held in Kaunas Remand Prison during the entire period of pre-trial investigation and case hearing in the court."

23. In *Aleksynas*, a major issue was whether the assurance of the Lithuanian authorities could be relied upon. It was held that it could be. That is unsurprising. An assurance by one country, particularly a Member State of the European Union, must be accorded due respect by the courts. No evidence at all has been put forward in this case that the assurance that the respondent will be sent to Siauliai Remand Prison cannot be relied upon. I am satisfied that this assurance can and should be relied upon. Therefore, the Court is dealing with conditions at Siauliai Remand Prison.

24. Counsel for the respondent urges that the undertaking is evidence, in and of itself, of the unacceptable conditions at Lukiskes and Siauliai Remand Prisons. Professor Morgan does not reach such a bald conclusion. He puts forward that it is a tacit acceptance that some of the conditions at Lukiskes and Siauliai Remand Prisons remain unacceptable. The Court also observes that, it is far from clear that the U.K. courts believe that the undertaking given to them is evidence of itself of an Article 3 violation. From both U.K. decisions referred to by counsel for the respondent, the undertaking given by the Lithuanian authorities was not cited as evidence, in and of itself, of a breach of Article 3. At para. 63 in *Atraskeviv*, the U.K. High Court stated: *"It might be arguable, on the basis of the court's reasoning in Aleksynas that the Article 3 threshold was reached as far as conditions generally are concerned in certain remain prisons in Lithuania other than Kaunas remand prison."* In *Aleksynas*, Siauliai Remand Prison was not at issue but, what the court said in relation to Lukiskes at para. 49 was that "[*a]ll the available evidence, in particular Professor Morgan's, clearly shows that conditions"* there breach Article 3.

25. It is also worth noting that the undertaking to the U.K. from the Lithuanian Ministry of Justice was given on the basis of overcrowding in the prisons. From the evidence available to this court, the overcrowding in the prisons has been reduced dramatically and it is continuing to reduce. Of huge significance is the resulting decrease, since 1st January, 2012 to May 2015, of 40% in the number of detainees registered in remand prisons. In relation to Siauliai, the prison is now at 95% capacity.

26. From all of the foregoing, I am satisfied that the test in *Rettinger* cannot be discharged by this Court drawing a conclusion from an undertaking given to a foreign jurisdiction in relation to prisoners who may be surrendered from that jurisdiction. I am obliged by s. 4A of the Act of 2003 to presume that a State will comply with the requirements of the Framework Decision. Furthermore, mutual trust in the context of EAW cases means accepting what is stated in a warrant and documentation, unless there are clear grounds for not doing so. It is, however, necessary to consider the evidence that has been placed before me and I refer in particular to the CPT reports and what other evidence Professor Morgan has adduced.

27. In considering the evidence set out therein relating to Siauliai Remand Prison, it must be recognised at the outset that there has been a sea change in Lithuanian prisons over the years. The figures referred to above bear this out. It is also apparent from the progression reported in the CPT reports (CPT, "*Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2008"* (2009) and CPT, "*Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 November to 4 December 2012"* (2014)), from the Response of the Lithuanian authorities to the latest CPT report (CPT, "*Response of the Lithuanian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Lithuania from 27 November to 4 December 2012"* (2014)) and from the detail in the additional information provided by the Lithuanian authorities in the present case. The specific reply of the Lithuanian authorities in this case outlines the many criminal policy changes that have occurred in Lithuania. Those changes have already been outlined by me in *Tagijevas* and in M.V. and I will not repeat them here.

28. Professor Morgan deals in particular with Siauliai Remand Prison at paragraphs 8.3, 8.4., 8.5, 8.6, 8.7 and 8.8 of his report. It appears that Professor Morgan did not visit Siauliai Remand Prison on any of his visits to Lithuania.

29. The CPT visited Siauliai in December 2012. In relation to the aspect of dilapidated cells and unhygienic conditions as set out in the 2014 CPT report, the response of the Lithuanian authorities cannot be ignored. In that response, the Lithuanian authorities stated that, not only were they involved in a project to correct conditions in Siauliai Remand Prison, but prior to the start of that project, thirty-three cells were renovated in 2012, twenty-seven cells were renovated in 2013, five cells were built in the prisoner reception and distribution station and three more cells had been renovated at that moment. Therefore, I reject the respondent's contention that I must take the conditions as set out in the 2014 CPT report as indicative of the conditions the respondent will face on surrender. To do so would be wrong in fact and wrong in principle. It would be contrary to the requirement that this Court be forward-looking in terms of its consideration of the real risk of ill-treatment on surrender. Professor Morgan has no further evidence to challenge what has been said in relation to improvements and I am quite satisfied that the present situation is not as was found by the CPT in 2012.

30. In relation to the issue of overcrowding, this is not a tenable argument. In their 2014 report, the CPT stated that they had been told in 2012 that alternative measures to detention had recently been introduced but that at that stage they had little impact. That is demonstrably not the case anymore, as the overall statistics show. Professor Morgan's view is that the issue is that not all prisoners are held in overcrowded conditions, but that some prisoners are so held. Professor Morgan also says that reliance cannot be placed on the figures provided as there are sectors within prisons that remain overcrowded. In my view, this fails to take into account the actual situation that had been noted in the CPT report and in particular the passage from it cited by Professor Morgan. The figures in the CPT report were very stark in relation to Siauliai Remand Prison. The CPT referred to 619 inmates being held in a prison which had a capacity of 435. It was in that context that they gave the example of extreme overcrowding (which even Professor Morgan accepts does not mean all prisoners in Siauliai Remand Prison were held like this).

31. The situation has dramatically changed now with respect to numbers in Siauliai prison; there is a stark reduction in the overall number being held. If the capacity is 435, there are fewer than that now as it is only at 95% capacity. Therefore, there has been a far greater reduction than a mere 5% in the number of prisoners in Siauliai Remand Prison. Professor Morgan does not address this particular reduction in prisoner numbers. His point is that the figures mask the overcrowding that some prisoners will face within the system. However, at a very rough estimate, the Court calculates that there has been a major reduction of about 200 prisoners from the height of 619 prisoners when the CPT visited. On this basis, and in the absence of any evidence directly from Siauliai Remand Prison, this Court could not, and should not, draw the inference that, despite that dramatic reduction in the numbers in Siauliai Remand Prison, nonetheless, prisoners will still be kept there in these overcrowded conditions. To accept the assertion by Professor Morgan that there is at a minimum a real risk that the respondent would be kept in such conditions, would be contrary to the

evidence, to the presumption to be given to the compliance with the Framework Decision by Lithuania under s. 4A of the Act of 2003 and, in particular, would be contrary to the test set out in *Rettinger.* The respondent has not produced any cogent evidence establishing substantial grounds for believing that there is a real risk that he will be subjected to inhuman and degrading conditions should he be surrendered to Lithuania due to a fear of overcrowding in Siauliai. On the contrary, the evidence before me establishes that overcrowding issues at Siauliai no longer give rise to concerns that conditions there amount to inhuman and degrading treatment.

32. Professor Morgan also raised issues concerning the lack of out-of-cell activity. This is also referred to by the CPT, who found that the vast majority of prisoners were confined to their cells for up to 23 hours a day and the only regular out-of-cell activity was an hour of outdoor exercise and a shower once a week. It is clear from the Response of the Lithuanian Government to the CPT (June 2014) that there have been improvements in relation to the ability of detainees to have access to out-of-cell activities. The law has been amended. There is specific reference in their Response to Lukiskes Remand Prison and improvements made there. The Response goes on to say that there are plans to ease the bans on communication between prisoners in detention in different cells. It does appear from the CPT report that both sentenced and remand prisoners were entitled to use a computer for up to three hours a day and that prison directors had the possibility to extend this period of access. Professor Morgan does not address this issue when he says that many remand prisoners are held for 23 hours without employment (as he says employment is not offered to remand prisoners) or other positive activity. In the specific reply of the Lithuanian authorities in this case, it is stated that it is important to note that "detainees and inmates have a right to study in secondary or professional school, to be engaged in individual work or creative activities. Both groups (detainees and inmates) may also exercise in well-equipped sports grounds."

33. Having considered all of the evidence, I am quite satisfied that it has not been established that there are substantial grounds for believing that the respondent will be subjected to inhuman and degrading treatment on the basis of the prison regime at Siauliai. The prison is not overcrowded at present and that reduction in overcrowding is as a result of systemic changes in Lithuanian penal policy. The complete lack of activity for remand prisoners in the Lithuanian prison system has now been attenuated. The conditions may still be far from ideal, and may be the subject of legitimate criticism, but taken together they do not reach the threshold of establishing a breach of Article 3.

34. It should also be noted that Mr. Justice Edwards has reached a similar conclusion in relation to Siauliai Remand Prison. I accept, however, that each case may be presented on a different factual basis and must be dealt with accordingly. However, the general principles set out in *Minister for Justice and Equality v. Savickis (ex tempore*, 31st July, 2014) still apply. It is not enough to establish that conditions are suboptimal, the conditions must reach a level of inhuman and degrading treatment before surrender will be prohibited. On the evidence before me, it has not been established that there is a real risk that the respondent, if surrendered, would be exposed to conditions in Siauliai Remand Prison which would reach the level of inhuman and degrading treatment.

Breach of his right to respect for private and family life

35. The respondent claimed that his surrender "would amount to a disproportionate interference with [his] constitutional and ECHR rights, in particular Article 8 of the ECHR, in circumstances where he enjoys a family and community life in this jurisdiction, where he has resided since 2001".

36. The law has been well set out in this area in *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 and *Minister for Justice and Equality v. P.G.* [2013] IEHC 54 and has been further discussed by me in *Minister for Justice and Equality v. D.S.* [2015] IEHC 459 and *Minister for Justice and Equality v. Piekarz*, also delivered today..

37. The respondent has pointed in particular to the delay in this case between the alleged offence on 27th December, 2000 and his arrest on 7th February, 2014. The respondent said that he was 19 years old at the time of the alleged offence and was 33 at the time of swearing the affidavit. He said that he left Lithuania for economic reasons and came to Ireland in or about the year 2001 and resided here since. The respondent said that he lived in Dublin initially but then lived in Kerry since approximately 2002. He said he had built his life here and considered it home. The respondent said that he worked where work was available, as a labourer and driver amongst other jobs. He said that in recent years he had to resort to the support of social welfare.

38. In relation to his own personal circumstances, he said that his former wife lives in Ireland, they got married in 2004 and had a child in 2005. He said that although he is separated, he sees his son at least 2/3 times a week and shares his care. He said that he has a current partner, they both reside here and are integrated into the community. They were expecting a child in December 2014. He said that his life has changed completely since the dates referred to in the warrant and that his familial responsibilities are such that his surrender "will irrevocably damage my former partner and my young son as well as my present partner and our soon to be born child". I was informed that his second child was born in November 2014.

39. The respondent relied upon the absence of any explanation for the delay in the issue of this warrant in 2007, for the delay up to 2011 and for the delay up to 2014 when he was arrested. Counsel relied on *Minister for Justice v. Ciecko* (unreported, 18th December, 2013, High Court, Edwards J.) and said that the lack of explanation is indicative of a lack of pressing social need for his surrender. She said that there was a double digit delay here which was crying out for an explanation. Counsel for the Minister pointed to the fact that the respondent avoided addressing the issue of fleeing from justice. He said that the fact that the respondent hid from justice is something that must be taken into account. In response, counsel for the respondent submitted that it would do violence to common sense to accept that as an explanation for the delay.

40. Counsel for the respondent submitted that while this was not a trivial or minor offence, it was not the most serious offence. She compared it with the case of *Minister for Justice, Equality and Law Reform v. Gorman* [2010] 3 I.R. 583 in which the offence was murder but surrender was prohibited on Article 8 grounds. Counsel for the Minister submitted that the offence, being one of organised burglary with deliberately inflicted violence, was a serious one.

41. Counsel for the respondent relied upon the length of the time that had elapsed, the age of her client at the time and the considerable life changes he had undergone in the meantime. On behalf of the Minister, it was submitted that the interference with his family and personal rights did not amount to an interference beyond that to be expected in the context of a surrender for prosecution.

The Court's analysis and determination

42. In this case, there has been a considerable lapse of time between the alleged offence and the arrest of the respondent, i.e. just over 13 years. For the purpose of the calculation of the public interest in his surrender, I am disregarding the time between arrest and hearing of the s. 16 application. This effluxion of time was mainly due to the late service of affidavits by the respondent (November 2014 and April 2015) and the subsequent adjournment of the hearing to await the outcome of the *Tagijevas* decision.

43. Ireland must comply with its international obligations with regard to the execution of EAWs. Any delay in the hearing of the

application for surrender does not affect Ireland's obligations under the Framework Decision to effect the surrender of those persons who are otherwise liable to surrender under the terms of the Framework Decision and in accordance with the provisions of the Act of 2003. The importance of meeting our obligations weighs heavily in favour of the public interest in surrender and is therefore not diluted by delays, blameworthy or otherwise, in our judicial process.

44. On the other hand, the point at which the interference with personal and family rights occurs is when surrender takes place. Therefore, the respondent's present circumstances must be considered in assessing whether the surrender is a disproportionate interference with the right to respect for those rights. Some deliberate and intentional circumstances, specifically created for the purpose of avoiding surrender, may possibly be excluded from consideration of personal and family rights. That issue may arise for consideration in another case. In this case, the respondent had a child who was conceived after his arrest. There is no reason to conclude that this child was conceived for the purpose of avoiding surrender, although the child was conceived at a time when the respondent knew he was facing surrender under the EAW. In my view, the fact that the family exists, and that the child has rights that must be considered, necessitates that the court take into account the present family circumstances of the respondent and the child and in particular the best interests of the child.

45. For the reasons set out above, concerning Ireland's obligation to surrender those persons otherwise properly requested on foot of an EAW, I am disregarding the lapse of time between the request by the Lithuanian authorities on 17th November, 2011 for the arrest of the respondent on the EAW and the arrest of the respondent on 7th February, 2014 in the calculation of the public interest in his extradition. Even if Ireland delayed in the execution of the EAW, this would not affect the public interest in his extradition. In this particular case, it is far from being established that there has been any delay on the part of the Irish authorities. I note that the covering letter of the Lithuanian authorities dated 17th November, 2011 sent with the EAW states that "according to the data of the Interpol National Bureau of Ireland", the respondent was residing at a particular address in Kerry. The respondent was arrested in 2014 in a different part of Kerry where he was then apparently residing. The clear inference is that he had moved address.

46. Indeed, it is particularly notable that the respondent does not state that he had always lived at the same address here. The respondent is also remarkably coy about his living arrangements in general and at no point does he aver that he was living openly in this jurisdiction. He does not name a single employer and does not exhibit any employment documentation. He never says that he was aware or unaware of the charges against him in the affidavit and never addresses whether he knew about them. He answered "yes I do" to the arresting Garda when asked did he know what the offences were about. He never specifically addressed the statement in the EAW that he "hid from trial." He simply stated that he came to Ireland for economic reasons. In all the circumstances, I find that he was aware of the charges in Lithuania, that he hid from justice there, that his reason for leaving was not solely economic but was related to the fact of the prosecution, that he did not live openly here but was living below the radar and in the shadow economy. Indeed, I draw the inference that it was only when he sought social welfare "in recent years" that his presence here became apparent.

47. I find, therefore, that the respondent is responsible for the lapse of time in this case. He was sought in Lithuania but hid from his trial. It is clear that a measure of suppression, i.e. arrest, was imposed in 2000 in Lithuania and continued in 2006. He was clearly being sought. An EAW issued in 2007. This does not give an address in Ireland. I draw the reasonable inference that his presence in Ireland was not apparent at that time. It was only in November 2011 that his presence here became apparent. At that time, he was sought by the Lithuanian authorities. He was not arrested at the address that Interpol had for him but was arrested 2 years and 3 months later at another address. I have specifically considered whether the lack of an explicit explanation for the lapse of time corresponds with a lack of interest in seeking the respondent which would dilute the public interest in his extradition. I am satisfied that in the particular circumstances of this case, for the reasons set out above, it does not. The Court is entitled to draw its own conclusions as to the lapse of time from the evidence available to it.

48. This is an offence involving an alleged burglary into another person's home and the infliction of personal violence. It also involves an unusual and unpleasant aspect that the victim was forced to drink alcohol so as to deprive him of the chance of resisting. It is an offence of some seriousness. There is, on balance, a high public interest in the surrender of the respondent in circumstances where he has been a fugitive from justice, has not been living openly and is sought for the prosecution of an offence involving personal violence inflicted during a premeditated organised home burglary.

49. On the other side of the equation, I consider the respondent's personal circumstances. He was only 19 at the time of the alleged offence, he came to Ireland and established himself here. From his initial relationship, he had one child. This child appears to live with his wife, from whom he is separated, here in Ireland and he appears to have access rights. The respondent claims irrevocable damage to his separated wife and his first child. That is a mere assertion without any attempt to explain what is meant by it. Similarly, with respect to his new partner and his second child, the respondent asserts irrevocable damage to them also if he is surrendered. He does not give any explanation as to why this would be so. There is nothing put forward over and above the interference with private and family life that will be experienced by any requested person on surrender. Taking into account the best interests of each child does not necessitate refusal to surrender simply because of the loss of contact with a parent.

50. The respondent does not have to show exceptional circumstances, but he must show that the consequences he faces are particularly injurious or severe, over and above the impact that surrender will necessarily have on family relationships or personal circumstances. Those consequences do not have to be "exceptional" but they must be such as to establish a disproportionate interference (See *Minister for Justice v. D.S.* already cited above).

51. In this case, there are no consequences that show that surrender would be disproportionate to his family and private life. This respondent has two separate family connections that will undoubtedly be interfered with. It is not asserted that his partner or former partner are dependent on him. The respondent's statement that he is integrated into the community is not backed up by evidence but even if it were, this establishes no more than that he lives here and that this is his home. The surrender of an Irish resident, who has lived here all of his or her life, does not become disproportionate merely by that fact alone. This respondent has no tie by way of a particular job or business that he is set to lose if surrendered. While that on its own might not be a factor in requiring a court to refuse surrender in a particular case, it is of some significance that it does not exist in this case.

52. In view of the respondent's particular circumstances, which do not demonstrate any particular injurious, prejudicial or harmful consequence of surrender, this may be a case where it was unnecessary to consider in detail the extent of the public interest in his surrender. This is because there is a constant public interest in surrender to ensure "*…the orderly running of a democratic society, which at a key level includes, the protection of fundamental rights, freedoms and security for all and for their property, that fugitives should be brought to trial for serious offences, that those convicted should serve their sentences, that no sanctuary of immunity should exist for such persons and that the public, not only nationally but also internationally, is aware of the state's commitment to honour its obligations in this regard."* (as per McKechnie J. in *Minister for Justice and Equality v. Ostrowski* [2013] IESC 24 at para. 53). In this case, even if there has been a delay for which the Lithuanian authorities were responsible, the public

interest and consequent pressing social need would have been significantly diluted but would be still subsisting. In those circumstances, even the undoubted interference that surrender would bring to the private and family life that the respondent had created in the meantime, would not be disproportionate to the necessity for his surrender on this relatively serious alleged offence.

53. I therefore reject the respondent's claim that his surrender is prohibited on the basis of a disproportionate interference with his person and family life or with that of his partner or children.

Conclusion
54. For the reasons set out above, I reject the respondent's points of objection to his surrender. I am satisfied for the reasons set out above that I may make an order under s. 16 (1) of the Act of 2003 for his surrender to such person as is duly authorised by Lithuania to receive him.