Neutral Citation: [2015] IEHC 161

THE HIGH COURT

[2011 No. 368 EXT.]
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IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 AS AMENDED

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND
O. C.

RESPONDENT

JUDGMENT of Mr Justice Edwards delivered on the 20th day of February, 2015.

Introduction
The respondent is the subject of two European arrest warrants dated 31st May, 2011, ("the May warrant") and 14th July, 2011, ("the July warrant") respectively, issued by a competent judicial authority in Latvia. The May warrant seeks her rendition for the purposes of prosecuting her for two theft type offences. The July warrant seeks her rendition for the purposes of executing a sentence of one year's deprivation of liberty imposed upon her by a Court in Latvia in 2009 for nine theft type offences. Both of those warrants were endorsed for execution in this jurisdiction, following which the applicant was arrested in execution of both warrants on the 20th March, 2012, by Garda Liam Staunton and was brought before the High Court on the same day pursuant to s.13 of the European Arrest Warrant Act 2003 ("the Act of 2003"). In the course of the s.13 hearing in respect of each warrant, a notional date was fixed for the purposes of s.16 of the Act of 2003 and the respondent was remanded on bail to the date fixed. Thereafter both matters were adjourned from time to time, ultimately coming before the Court for the purposes of a surrender hearing.

The respondent does not consent to her surrender to Latvia in either case. Accordingly, this Court is now being asked by the applicant to make orders 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, in both cases, 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 dependent upon a judicial finding that they have been so satisfied.

Uncontroversial s.16 issues
The Court has received and scrutinised true copies of both European arrest warrants. Further, the Court has taken the opportunity to inspect the original European arrest warrant on the Court file pertaining to each case, and each of which bears this Court's endorsement.

The Court has also received an affidavit of Garda Liam Staunton, sworn on 30th September, 2012, testifying as to his arrest of the respondent on foot of both warrants. He states at paragraph 5 of his affidavit that the woman that he arrested acknowledged that she was O. C.. Moreover, she acknowledged the part (a) details of the warrants when they were put to her, and also that she was the person shown in photographs attached to each of the warrants. In addition, counsel for the respondent has confirmed that no issue arises in either case as to either the arrest or identity.

I am satisfied following my consideration of these matters that:

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

(b) Both warrants were duly executed;

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

(d) Both warrants are in the correct form;

(e) The respondent is wanted in Latvia on foot of the May warrant for the purposes of prosecuting her for the two offences particularised at part (e) of that warrant;

(f) The underlying domestic decisions on foot of which the May warrant seeks the respondent for prosecution are two decisions of Riga City Kurzeme District Court on applying an arrest to the accused O. C. in the criminal proceedings No 12020008209 and No 11096040809, respectively;

(g) The nature and classification of the two offences for which the May warrant seeks the respondent for prosecution is that they are offences contrary to section 180 paragraph 2 of the Criminal Law of Latvia involving repeated "theft, fraud, or misappropriation on a small scale";

(h) The issuing judicial authority has not sought to invoke para. 2 of article 2 of Council Framework Decision 2002/584/JHA of the 13th June 2002 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") in respect of these offences and, accordingly, the Court requires to be satisfied both with respect to correspondence and minimum gravity;

(i) In the case of the May warrant, the description of the circumstances of both offences is set out within part (e). The Court has considered the circumstances set out and is satisfied to find correspondence in each case with the offence in Irish law of theft contrary to s.4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. Counsel for the respondent did not seek to challenge correspondence in respect of those offences;

(j) The minimum gravity threshold in a prosecution case in which para. 2 of article 2 of the Framework Decision is not relied upon is that which now finds transposition into Irish domestic law within s.38(1)(a)(i) 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 12 months. It appears from part (c) of the warrant that the maximum potential sentences available under the relevant provision of the Criminal Law of Latvia in respect of which the respondent is charged is one of up to three years imprisonment. Accordingly, the minimum gravity threshold is comfortably met in respect of both offences;

(k) The respondent is wanted in Latvia on foot of the July warrant for the purposes of executing a sentence of deprivation of liberty for one year imposed upon her for the nine offences particularised at part (e) of that warrant;

(l) The underlying domestic decisions on foot of which the July warrant seeks the respondent for the purposes of executing the said sentence prosecution are set out in part (b) of the warrant as follows:

1) Judgment of 15th January, 2009, of the Riga City Kurzeme District Court, by which O. C. was found guilty pursuant to s.180 para. 2 of the Criminal Law;

2) Judgment of 18th February, 2009, of the Valka District Court, by which O. C. was found guilty pursuant to s.180 para. 1 of the Criminal Law;

3) Decision of 24th April, 2009, of the Riga City Kurzeme District Court, by which it was decided to determine a final penalty by including a lighter penalty determined by the judgment of 18th February, 2009, by the Valka District Court into a heavier penalty determined by the judgment of 15th January, 2009, by the Riga City Kurzeme District Court, determining deprivation of liberty for 1 year conditionally with a probation period for 1 year;

4) Decision of 14th September, 2009, of the Valka District Court, by which it was decided to execute the decision of 24th April, 2009, issued by the Riga City Kurzeme District Court, determining punishment of deprivation of liberty for 1 year.

(m) The nature and classification of the nine offences to which the July warrant relates is that they are offences contrary to s.180 para. 1 of the Criminal Law of Latvia involving "theft… on a small scale";

(n) The issuing judicial authority has not sought to invoke para. 2 of article 2 of the Framework Decision in respect of these offences and, accordingly, the Court requires to be satisfied both with respect to correspondence and minimum gravity;

(o) In the case of the July warrant, the description of the circumstances in which all nine offences were committed is set out within part (e). The Court has considered the circumstances set out and is satisfied to find correspondence in each case with the offence in Irish law of theft contrary to s.4 of the Criminal Justice (Theft and Fraud Offences) Act 2001. Counsel for the respondent did not seek to challenge correspondence in respect of those offences;

(p) The minimum gravity threshold in a conviction case in which para. 2 of article 2 of the Framework Decision is not relied upon is that which now finds transposition into Irish domestic law within s.38(1)(a)(ii) of the Act of 2003, as amended, namely that a sentence of at least four months imprisonment or deprivation of liberty was imposed by a court in the issuing state. It appears from part (c) of the warrant that a sentence of deprivation of one year was imposed by the court in Latvia. Accordingly, the minimum gravity threshold is comfortably met in respect of all nine offences;

(q) To the extent that the respondent is wanted for prosecution, no issue as to trial *in absentia* arises, so no issue arises in relation to s.45 of the Act of 2003 in so far as the May warrant is concerned. In so far as the July warrant, which seeks the respondent's rendition for the purpose of executing a sentence, is concerned, the issuing judicial authority has confirmed by letter containing additional information dated the 10th December, 2013, that the respondent was not tried in absentia, and that she was present at her trials. Accordingly, it is also the case that no issue arises in relation to s.45 of the Act of 2003 in so far as the July warrant is concerned;

(r) There are no circumstances that would cause the Court to refuse to surrender the respondent under ss.21A, 22, 23 or 24 of the Act of 2003, as amended.

In addition, the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No. 5) Order 2004 (S.I. No. 449 of 2004) (hereinafter referred to as "the Designation Order of 2004") and duly notes that by a combination of s.3(1) of the Act of 2003, and article 2 of, and the Schedule to, the Designation Order of 2004, Latvia, is designated for the purposes of the Act of 2003 as being a state that has under its national law given effect to the Framework Decision.

The Points of Objection

The only points of objection ultimately relied upon at the hearing were objections relying upon s.37(1)(a) and/or (b) of the Act of 2003 and based upon Article 8 of the European Convention on Human Rights ("the ECHR") and Article 42 of the Constitution of Ireland. These were pleaded in an amended "Statement of Points of Objection" dated 7th October, 2014, in these terms:

"In relation to European Arrest Warrant dated 14 July, 2011:

4. The surrender of the Respondent is prohibited by section 37(l)(b) of the European Arrest Warrant Act 2003. In the particular circumstances of this case therefore, the surrender of the Respondent is prohibited by Section 37 of the European Arrest warrant Act, 2003 in that to surrender the Respondent before her above mentioned applications are determined would breach her constitutional right to fair procedures and/or an unjust and disproportionate interference with the enjoyment of her family life (under Article 42 of the Constitution and/or Article 8 of the European Convention of Human Rights)

5. The surrender of the Respondent pursuant to the European Arrest Warrant would breach the principle of proportionality for the following reasons:

- the offences involved were of a minor nature in that the offences concerned the theft of coffee on a number of occasions and that the total value of goods taken, between her and another person was Ls. 251.85, which equates to approx. €350.00

- at the time of the commission of the offences the Respondent was of a young age (being 20 years old)

- The delay in seeking the surrender of the Respondent and issuing the warrant where the offences date between 2007 and 2008

- Said delay in the issuing of the European Arrest Warrant entitled the Respondent to assume that she would not be subject to extradition or surrender where she has been residing in Ireland for four years, and has a young child who is a citizen of this country, who is seven years old, and is in education in this jurisdiction since he was four years old

- The interference with family life as outlined in paragraph 4, where the order to surrender would be a disproportionate interference with the Respondent's right to private and family life, where she would be required to serve a sentence of a year in the issuing jurisdiction. Surrender in all the circumstances would be in breach of Section 37 (1) (a) and (b) of the European Arrest Warrant Act, 2003 and in breach of Article 8 and Section 2 of the European Convention on Human Rights Act, 2003.

In relation to European Arrest Warrant dated 31 May, 2011
6. The surrender of the Respondent pursuant to the European Arrest Warrant would breach the principle of proportionality for the following reasons:

- the offences involved were of a minor nature in that the offences concerned the theft of coffee on a number of occasions and that the total value of goods taken, between her and another person, was Ls. 25.02, which equates to approx. €35.60

- at the time of the commission of the offences the Respondent was of a young age (being 22 years old)

- The delay in seeking the warrant where the offences date back to 2009

- Said delay in the issuing of the European Arrest Warrant entitled the Respondent to assume that she would not be subject to to extradition or surrender where she has a young child who is a citizen of this country, who is seven years old, and is in education in this jurisdiction for the last four years;

- The interference with family life as outlined in paragraph 4 where the order to surrender would be a disproportionate interference with the Respondent's right to private and family life where she would be required to serve a sentence of a year in the issuing jurisdiction. Surrender in all the circumstances would be in breach of Section 37 (1) (a) and (b) of the European Arrest Warrant Act, 2003 and in breach of Article 8 and Section 2 of the European Convention on Human Rights Act, 2003."

The Respondent's Evidence
The Court has before it an affidavit sworn by the respondent personally on the 21st November, 2014, and in which she states:

"2. I say I was born in March, 1987 in Latvia and am now 27 years old. I say that I had a difficult early life and childhood. I say that my mother died when I was aged 8/9 and my father tried to take care of us but began drinking heavily and eventually committed suicide three years later.

3. I say that I went to live with my grandmother but that eventually she began drinking heavily too and was not able to care for me. I say that I was sent to an children's home when I was seventeen. I say that I left the home when I was eighteen. I say that I went to school until I was sixteen but have no qualifications. I say I was a poor student and lived in a very tough neighbourhood in Riga where there are many social problems and criminality. I say that I was involved in drug taking occasionally at that time, in the form of amphetamines, which I injected. I say that when I became pregnant with my oldest son, S., I gave up drug taking but I relapsed after he was born. I say that I was nearly 18 when he was born. I say he was born in February 2005. I say that I was in a short relationship with S.'s father but we split up soon after he was born. I say that I tried to give up drugs and change my life by moving from the city to the countryside but my attempts were not completely successful until I moved to Ireland. I say that I became involved with R. P., whom I had known as a teenager. He was living an working in Ireland. I decided to come to Ireland with S. to live with him and to try to change my life. I say that I believe that it is because I am away from my old life in Latvia that I have turned my life around.

4. I say I came to Ireland on 19th of May 2009. I say that I have sworn in my first affidavit that I had come four years before it was sworn but that is incorrect. I say I do not know how the confusion arose but I had no intention to mislead, and my objection to my return is not based on any absence at the date of my conviction. I say when I came to Ireland I got work in a factory but lost that job and was unemployed for about two years. I say that eventually I started working part time in a shop and that I work 12 hours a week on average but get extra hours on some weeks. I say that I am registered and have a P.P.S. number.

5. I say that in March 2013 my son M. was born in Ireland. I say that as a result of routine pre-natal checks I was diagnosed with hepatitis C and HIV when I became pregnant and I am now a patient of the clinic in James hospital on an outpatient basis with four visits a year. I say that I am on retroviral treatment . I beg to refer to a letter from the hospital, which marked with the letter A, I have signed my name prior to the swearing hereof. I say that I believe and am instructed that there have been difficulties with medical treatment for HIV positive prisoners in Latvian jails and that this is a matter which causes me very significant concern, as the ongoing administration of a stable medical treatment is vital in relation to both the illnesses with which I have been diagnosed.

6. I say that my relationship with R. P. is a volatile and physically violent relationship. I say that I believe R. has been taken by Gardaí three times from our house in X. after they were called. I say that about three and half months ago he left the country and as far as I was concerned our relationship was over. I say that on the 13th of September 20 I 4 he returned to the house and has returned to work. I say that he wishes to reconcile but I do not. He has nowhere else to live except with me. I say that his son M. is very pleased to see him but S. was not happy that he was back. I say that their relationship is not very positive and that there is, in my opinion, not a strong bond of affection between them. I say that I did make a statement of complaint about R. to Gardaí but I have withdrawn that.

7. I say that since I came to Ireland I have had no convictions for theft but I have had road traffic convictions and in particular for drunk driving. I say that I no longer drive (I am disqualified from driving) and that I have taken steps to take control of my life, and do not have a problem with alcohO.

8. I say that I believe that if my return to Latvia were ordered by this Court that this would do lasting and irreparable harm to myself and my children. I say that I am the only constant figure in their lives. I say that I used to ask friends to mind the children while I was at work but now I pay a friend to mind them in her home. I say she has two children of her own and could not take my children if I am sent back. I say that if my return were ordered I would like to bring my youngest with me as I believe some women are allowed to keep young children with them in prison. I do not know how this is arranged. If R. is still in the house it would be better if he minded S. than if S. went into care. I say that he would have to reduce his working hours and he would have to employ a childminder. I say that I believe as stated above that this arrangement will be very bad for my children but I can not think of anything else to do.

9. I say that I have a brother in Latvia but he is only nineteen and has two children of his own and has psychiatric problems and could not take my children. I say my children have no contact with Latvia. I say I am a Russian speaker and R. speaks Latvian. I say that the youngest M. doesn't really speak yet and S. is most comfortable in English - I speak Russian to him and he answers in English. He would have big problems should he have to go to Latvia.

10. I say that I am also afraid for my medical health and also that I would be returning to a place I associate with drug taking and would be scared of finding myself in that milieu again. Although I have had difficulties in Ireland I have made a new and better life for myself and my children here and am very concerned that all that will be lost should I be returned. I say I believe that it is directly as a result of my move to Ireland that my life has reached the level of stability that it has.

11. I say and believe that the offences committed in Latvia were committed at a time when I was young and troubled, and that to order my return for the offences concerned would not be proportionate to the huge impact that this would have on my life, and that of my children."

The Psychologist's Evidence

The Court also has before it the affidavit of O. F., Clinical Psychologist sworn on the 29th November, 2014, in which she exhibits, and verifies the contents of, her earlier report dated the 28th June 2014.

Dr. F.'s report is comprehensive and detailed and is to some 20 pages in length. The Court read it in its entirety and has carefully considered its contents. Dr. F.'s findings are summarised as follows within her said report:

"I met with Ms C. and her children M. and S., in the family home.

Ms C. is the sole carer for the two children. Her ex-partner R. P. (M.'s father) recently left the family home and according to Ms C. has gone to Latvia and is not likely to return. Ms C. reports that she cannot identify someone who could care for S. and M., should she be incarcerated. She accepted that should she be separated from the children she would be reliant upon state care for them.

I would anticipate that separation from their mother would cause significant short term and long term psychological damage to both S. and M.. Both children would lose their sole carer. Both are emotionally vulnerable for a variety of reasons.

S. is at particular risk of psychological distress and dysfunction because of his previous losses and existing emotional vulnerability (which may in part be due to the nature of the care he received from his mother). The quality of Ms C.'s parenting of S. has been mixed but seems to have improved over time. She struggled with addiction when he was an infant and found caring for him very difficult, given her young age and limited experience of being nurtured during her own childhood. She has had some engagement with HSE Social Work services in 2010 and 2011 following referrals relating to her alleged failure to provide adequate supervision for S. and following a domestic dispute between her and her ex partner. In my opinion it is likely that all of these experiences have had some damaging effects upon S.'s attachment with his mother. However the HSE Social Work Department has had no Child Protection referrals regarding this family since 2011 and his Social Worker reports that their team has observed positive changes in Ms C.'s parenting of S. and her commitment to engage with services to support him. In conclusion, S.'s mother remains the central figure in his life and the person that he is closest to and relies upon for physical and emotional care. S. has already experienced many losses and much distress in his life; he lost his biological father, he lost his stepfather figure, he witnessed domestic violence - to name only some of his difficult experiences. A further loss of the most important person to him would be therefore extremely damaging emotionally both in the short and long term. This emotional distress is likely to lead to behavioral deterioration, and disruption in academic performance for S..

Ms C. has a less complex relationship with her younger son M.. She was observed to be intuitive and responsive to his needs and he, in turn, was playful and sought comfort and closeness with her. M. is at a vulnerable stage in his development, given his young age. In addition, he too has experienced the loss of his father and of his grandmother, who spent seven months in the family home. He would likely suffer emotional distress and associated behavioral deterioration in the short term and potentially the long term, dependent on the quality of care he would receive in his mother's absence.

Ms C. has no alternative care plan for her children should she be incarcerated. Therefore it is likely that her children would be in the care of the state. This would likely take the form of a foster placement or placements. This care could entail the children being separated, not being cared for by people who speak the same first language as them and could mean they have to move between foster placements rather than stay in the same stable setting.

The loss of their mother would be particularly damaging for both boys due to the alternative care they would be likely to receive. As outlined above state foster care may not be nurturing enough for them. It is also likely that their ongoing contact with their mother would not be adequate to meet their emotional needs, should she be detained, due to the physical distance involved.

While there have been some shortcomings in Ms C.'s ability as a parent I would anticipate that should her children be separated from her and be cared for in foster care, they would experience significant distress and psychological ill effects in both the short and long term. For S. these ill effects could include anxiety, mood disturbance, disrupted school performance, social withdrawal and behavioral acting out. For M. these effects could include anxiety, mood disturbance, social withdrawal, behavioral acting out and disrupted development of a secure attachment. S. may be able to intellectually understand why his mother is unavailable, but emotionally would find it overwhelming. M. would not

understand any verbal explanation for his mother's absence.

Should Ms C. be detained, there are a number of factors that would reduce psychological distress for the children. These include the length of time she would be absent from them in total and the opportunity for ongoing, regular contact between her and the children, preferably in person or alternatively by video calling. A clear explanation about what has happened and what is likely to happen would reduce S.'s anxiety in a minor way. This explanation would need to be repeated over time, with opportunities for him to ask questions.

In conclusion, it is my professional, clinical opinion that separation from their mother, and moving to state foster care would cause significant harm to both children emotionally and behaviorally. These damaging effects would be evident in both the short term and the long term (i.e. into adulthood) and I would anticipate that both boys would require support from a specialist clinical service with S. requiring a greater level of support."

Subsequent to issuing her said report, Dr. F. was apprised by letter from the respondent's solicitor concerning a material change in circumstances that had occurred in the interim. This was that R. P. had returned from Latvia and was now residing in the family home again. In the circumstances, Dr. F. felt it appropriate to issue an addendum to her report, and on the 21st November, 2014, replied to the respondent in the following terms:

"Thank you for your correspondence regarding the above case and my clinical assessment of Ms. C.. You informed me that the domestic situation has changed within the family home; that R. P. (M.'s father and S.'s stepfather) now resides in the family home again. Mr. P. was not present in the family home during my assessment and was not living there at that time. My assessment was carried out therefore, without meeting him, or accounting for his having any ongoing involvement in the care arrangements for the children, should their mother be extradited and absent from the family home.

You informed me that Mr. P. might be suggested as a possible full time carer for S., should Ms. C. be extradited. While I cannot comment in a comprehensive or conclusive way about Mr. P.' capacity to care for S. I would have some concerns about him fulfilling this role, given what Ms. C. and S. told me about Mr. P.. Ms. C. reported that Mr. P. was violent within the home and that S. witnessed this violence. In addition S. told me that he was relieved that Mr. P. had left the family home.

I would therefore recommend that prior to a decision being made about whether Mr. P. would be an appropriate carer for S., that a comprehensive assessment of his capacity to provide this care should be carried out. This should include careful consideration of S.'s additional emotional needs given his difficult life experiences so far."

Relevant Statutory and Convention Provisions

Section 37(1)(a) of the Act of 2003 provides:

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

(a) his or her surrender would be incompatible with the State's obligations under—
(i) the Convention,…"

Section 37(2) of the Act of 2003 defines "Convention" as follows:

"In this section—

"Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950, as amended by Protocol No. 11 done at Strasbourg on the 11th day of May, 1994."

Section 37(1)(b) of the Act of 2003 provides:

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

(b) his or her surrender would constitute a contravention of any provision of the Constitution (other than for the reason that the offence specified in the European arrest warrant is an offence to which section 38(1)(b) applies)"

S.38(1)(b) has no application in the present case.

Article 8 of the Convention (i.e., Article 8 ECHR) provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Applicable Legal Principles

In its judgments in *Minister for Justice and Equality v T.E.* [2013] I.E.H.C. 323 and *Minister for Justice and Equality v R.P.G.* [2013] I.E.H.C. 54, this Court conducted an extensive review of relevant Irish, English, European Court of Human Rights, and Court of Justice of the European Union ("the C.J.E.U.") case-law and sought to distil 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] I.E.H.C. 210, [2010] 3 I.R. 583; *Minister for Justice, Equality and Law Reform v. Gheorghe* [2009] I.E.S.C. 76; *Minister for Justice, Equality and Law Reform v. Bednarczyk* [2011] I.E.H.C. 136; *Launder v. United Kingdom* (Application no. 27279/95, 8th December, 1997) (1997) 25 E.H.R.R.

CD67, [1997] E.C.H.R. 106; *King v. United Kingdom* (Application no. 9742/07, 26th January, 2010) [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 & Ors. v. Central Court of Criminal Proceedings (No. 5) Madrid* [2007] EWITC 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. Deputy Prosecutor of the Italian Republic, Genoa, also R.(F-K) v. P.h Judicial Authority* [2013] 1 A.C. 338; *In re Ciprian Vasile Radu* (Case C-396/11, C.J.E.U., 29th January, 2013) and *Minister for Justice and Equality v. Ostrowski* [2013] I.E.S.C. 24, [2014] 1 I.L.R.M. 88 (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 of the Convention 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 her 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 be of little avail to 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. In particular, it will be necessary for the Court 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 pre-determined 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 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.

The Court's Analysis and Conclusions

It is necessary in the first instance to assess and weigh the public interest in the respondent's extradition. It is then necessary to consider the degree to which the proposed extradition measure, *i.e.*, the proposed surrender of the respondent to Latvia so that she might face trial for the various offences covered by the May warrant, and so that she might be required to serve the sentence of one year's deprivation of liberty imposed upon her for the offences covered by the July warrant, will interfere with, and operate to the prejudice of, the family life of the respondent and her children. Having determined that, it is then necessary to balance the public interest in her extradition against those private interests.

If, upon a balancing of the relevant public and private interests, it appears that the proposed measure is disproportionate to the legitimate aims being pursued, and that it is not justified by a pressing social need in the circumstances of the case, then the Court ought to uphold the objection under s. 37(1)(a) of the Act of 2003, and not surrender the respondent, as to do so would breach her right and/or the rights of her children, to respect for family life as guaranteed by Article 8 of the Convention.

Conversely, if upon a balancing of those interests, it appears that the proposed measure is indeed proportionate to the legitimate aims being pursued, and continues to be justified by a pressing social need, the Court will be at liberty to surrender the respondent and will be obliged not to uphold the s. 37(1)(a) objection.

Before proceeding to consider the s.37(1)(a) claim it seems appropriate to digress momentarily to refer to the alternative claim being made in reliance on s. 37(1)(b) of the Act of 2003.

In the Court's view, the case based upon s. 37(1)(b) of the Act of 2003, while superficially similar to a s.37(1)(a) case, is potentially much more difficult for a person in the position of the respondent to sustain. The respondent invokes Article 42 of the Constitution, and that immediately presents a difficulty. Articles 41 and 42 of the Constitution are to be read together and an extensive body of jurisprudence has interpreted the reference to "family" within those Articles as referring to the family based on marriage. There is no evidence before the Court that the respondent has ever been married, whether to S.'s father, or to R. P., or to somebody else. Accordingly to the extent that she prays Article 42 of the Constitution in aid of her own case, the case is misconceived.

Of course that is not necessarily the end of the matter in so far as reliance on the Constitution is concerned, because the respondent invokes s. 37(1)(b) and Article 42 not just in respect of her own situation, but also in respect of her children. However, in circumstances where, at this point in time, the Thirty-first Amendment of the Constitution (Children) Bill 2012 has not yet been signed into law, the position of the children remains as set out by O'Higgins C.J. in *G v An Bord Uchtála* [1980] I.R. 32, wherein he said (at pp.55-56):

> "The child also has natural rights. Normally, these will be safe under the care and protection of its mother. Having been born, the child has the right to be fed and to live, to be reared and educated, to have the opportunity of working and of realising his or her full personality and dignity as a human being. These rights of the child (and others which I have not enumerated) must equally be protected and vindicated by the State. In exceptional cases the State, under the provisions of Article 42, s. 5, of the Constitution, is given the duty, as guardian of the common good, to provide for a child born into a family where the parents fail in their duty towards that child for physical or moral reasons. In the same way, in special circumstances the State may have an equal obligation in relation to a child born outside the family to protect that child, even against its mother, if her natural rights are used in such a way as to endanger the health or life of the child or to deprive him of his rights. In my view this obligation stems from the provisions of Article 40, s. 3, of the Constitution."

The respondent has not pleaded reliance on Article 40.3 of the Constitution in connection with her Article 37(1)(b) claim in so far as it is based on anticipated prejudice to the rights of her children. If it were the case that the only basis available to the respondent to resist her rendition in reliance on what might loosely be described as "family rights" grounds was s.37(1)(b); this Court would not allow the interests of justice to be defeated on the basis of a mere pleading technicality. However, in circumstances where the respondent can call in aid her rights, and the cognate rights of her children, to respect for their family life under Article 8 ECHR, it seems to this Court unnecessary for her to seek rely on s.37 (1)(b) of the Act of 2003. In those circumstances, given that Article 40.3 is not specifically pleaded in conjunction with s.37(1)(b), the Court is not disposed to entertain the s.37(1)(b) objection, and will

proceed to consider the objection to surrender solely on the s. 37(1)(a) ground.

In considering the public interest in the respondent's rendition, it is necessary to examine, in the first instance, the gravity of the offences to which the two warrants relate. In doing so, the circumstances of the offending conduct and the range of available penalties should be taken into account, and in the case of the conviction matters the penalty actually imposed.

Dealing first with the July warrant which relates to nine offences of which the respondent has been convicted, these were nine instances of theft of packets of coffee from shops and other retail outlets. The quantities were relatively small and the total loss amounted to Ls 251.85 which approximates to €350. The respondent was charged with offences contrary to section 180 paragraph 1 of the Criminal Law of Latvia. This was significant because it effectively treated the respondent as a first offender. There is, however, an aggravated form of the offence chargeable under section 180 paragraph 2 of the Criminal Law of Latvia which provides for a potentially higher penalty for the same offending conduct where it involves repeat offending. It is noteworthy that the two offences which are the subject matter of the May warrant, which involve the alleged theft of packets of coffee from shops, worth on this occasion Ls 25.02 in total, or approximately €35.60, are charged under section 180 paragraph 2 of the Criminal Law of Latvia.

The terms of section 180 of the Criminal Law of Latvia are set out in both warrants. It provides:

> "(1) For a person who commits theft, fraud, or misappropriation on a small scale, except for the crimes provided for in the Section 175 Paragraphs three and four; Section 177 Paragraph three and Section 179 Paragraph three of this Law, - the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.
>
> (2) For a person who commits the same acts, if the commission thereof is repeated, - the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage."

If one looks then at the penalty actually imposed for the nine offences that are the subject matter of the July warrant, the respondent received a sentence of one year deprivation of liberty, suspended upon a regime of conditions where the range of penalties that had been available to the court ran from the non-custodial options of a fine or community service up to deprivation of liberty for a maximum of two years.

Moreover, in the event that the respondent is convicted of the two offences which are the subject of the May warrant, the range of penalties that the court will have available to it will range from the non-custodial options of a fine or community service up to deprivation of liberty for a maximum of three years.

It is clear from additional information furnished by the issuing judicial authority in the form of the "Resolution", or judgment, of the Valka District Court dated the 14th September, 2009, that the suspension of the respondent's sentence for the offences the subject matter of the July warrant was lifted in the following circumstances. The Resolution recites that the conditions of the respondents probation, as imposed upon her by the Riga City Kurzeme District Court on the 15th January, 2009, were that she should not change her place of residence without the consent of the State Probation Service and that she should participate in probation programs in compliance with directions of the State Probation Service, including attending when required at a nominated TSV (territorial structural unit) of the State Probation Service. It then goes on to record that: J 1 *

> "On the 1st of September, 2009 in the Valka District Court, the claim from the Valka Territorial Structural Unit of the State Probation Service was received regarding implementation of sanction regarding the deprivation of liberty for O. C., which was established in the judgement of 24th of April, 2009 at the Riga City Kurzeme District Court.
>
> O. C. has not appeared at the court session. She has not informed the court regarding reasons for her absence and has not asked to postpone consideration of the case; therefore, the Court considers the absence as unjustified and based on Part 1 of Section 651 of the Criminal Procedure Law the matter was decided without the presence of the convicted person.
>
> According to the case documentation and the explanations of the representative I. V. of the Probation Service at the court session, it follows that O. C., on the 21s1 of April, 2009 appeared in the Riga TSV of the State Probation Service where the court judgments were explained to her, as well as the obligations and legal consequences which will come into force if there is a breach of these obligations established and applied by the Court, and she confirmed her understanding with her signature. On the 24th of April, 2009 O. C. appeared in the Riga TSV of the State Probation Service with the request to continue supervision in Valka Territorial Structural Unit, having specified in the application that her actual place of residence is in Valka. Because of the case mentioned regarding the supervision of O. C., she was sent to Valka Territorial Structural Unit and a summons was issued to O. C. to appear in Valka Territorial Structural Unit on the 21st of May, 2009. On the above mentioned date, O. C. did not appear in Valka TSV, and neither has she appeared in Valka TSV [sic] or in Riga TSV. O. C. did not respond to the sent invitations and notifications and on the 29th of May, 2009 having inspected the place of residence specified by the convicted person herself in Valka, O. C. was not found to be there. Her friend A. L. explained that as the Criminal Police of Riga were looking for her and that as there was a threat of imprisonment for her, O. C. had left the place of residence and that her present location was not known. On the 18th of June, 2009, having inspected her declared place of residence in Riga, she was not found to be there, and neighbours had no information about her possible location. On the 24th of August, 2009, having repeatedly inspected the place of residence of O. C. in Valka, she was not found to be there but the owner of the apartment, J. S., explained that O. C. had gone abroad."

The Valka District Court concluded:

> "Having considered the above mentioned, the conclusion is that O. C. did not fulfill the obligations established in the Section 155 of the Latvian Sentence Execution Code with which she became familiar on 21.04.2009: "to attend the State Probation Service at the time specified by an official of the State Probation Service; to inform the official of the State Probation Service regarding his or her place of residence as well as, without delay, to notify regarding changes; to request permission from the State Probation Service regarding departure outside of his or her place of residence for a period which is longer than fifteen days".
>
> In compliance with Part 9 of the Section 55 of the Criminal Law "If a convicted person upon whom a suspended sentence has been imposed, without justifiable reason does not fulfill the obligations imposed by the court and/or those specified in

the regulating laws regarding the execution of criminal punishments, the court, pursuant to a submission by the institution which has been assigned supervision of the behaviour of the convicted person, may take a decision regarding serving of the punishment determined for the convicted person."

The fact that O. C. cannot be contacted at the declared place of residence, or at the one specified by her, as well as having not appeared in the Probation Service after invitations, and has not contacted the Service in any other way, according to the Courts opinion, it testifies that she deliberately avoids the obligations specified in the regulating laws regarding execution of criminal punishments; therefore, the request of the Probation Service regarding execution of punishment of deprivation of liberty which is imposed to her is well-founded and can upheld.

On the basis of the mentioned and Section 155, Section 158 of the Sentence Execution Code, Part 9 of the Section 55 of the Criminal Law, Part 2,3 of the Section 641, Section 651 of the Criminal Procedure Law, the Court has decided:

To execute the decision of the Riga City Kurzeme District Court of the 24th of April, 2009 regarding the decision to impose a custodial sentence for ***1 (one) year*** for ***O. C.***. To consider the serving of the sentence from the moment of arrest."

It is clear from all of the above that the offences of which the respondent has been convicted were relatively minor offences, involving small scale thefts of goods of relatively low monetary value. The respondent was charged with the lowest form of the offence notwithstanding the multiple instances of her offending behaviour and was convicted at first instance by the Riga City Kurzeme District Court on the 15th January, 2009, which imposed a sentence of one year's deprivation of liberty which was conditionally suspended. Just over a month later, on the 18th February, 2009, the respondent was convicted of a further section 180, paragraph 1 offence by Valka District Court, which was minded to impose an additional though somewhat lighter penalty. However, the matter was referred back to the Riga City Kurzeme District Court on the 24th April, 2009, which affirmed the sentence originally imposed of one year's deprivation of liberty conditionally suspended and effectively took into consideration the conviction before Valka District Court. As it was characterised in the July warrant, the lighter penalty was included into the heavier penalty. Accordingly, the respondent was treated leniently and would never have been required to serve time in prison had she kept to the conditions upon which her sentence was suspended.

The aggravating feature in this case is that, having been given a chance, she effectively threw it back in the face of the Court by breaching the conditions of her probation by changing her residence without notifying the change, and by failing to turn up for appointments with the State Probation Service. It also appears that she is now also suspected of having committed the further offences that are the subject of the May warrant in the interval between her initial conviction and sentencing on the 15th January, 2009, and the review of her sentencing on the 24th April, 2009, to take account of the further conviction and sentencing before Valka District Court on the 18th February, 2009. The offences on the May warrant are alleged to have been committed on the 2nd February, 2009, and on the 30th March, 2009, respectively.

All other things being equal there would not be a strong public interest in this respondent's rendition if the Court was concerned only with a sentence of one year's deprivation of liberty for a once off conviction for small scale theft of goods of relatively low monetary value. However, the respondent in this case is not a once off offender. She has a second conviction, and is suspected of having committed yet more offences. Accordingly there is a recidivist dimension to this case. In addition there is the fact that the respondent was given a chance to avoid prison and was treated leniently and given a non-custodial sentence in the first instance. Despite the leniency shown to her she breached the terms of her probation which were far from onerous, and left Latvia as a fugitive and came to Ireland. It is reasonable to infer that when the offences, the subject matter of the May warrant, were charged and prosecuted the suspension of her sentence was at risk of being lifted in any event. Accordingly, in the circumstances outlined, the public interest in this respondent's rendition for the offences that are the subject matter of the two warrants before this Court, requires that they be rated more highly than they otherwise would.

The issuing state is entitled to maintain a police and criminal justice system and to charge and try persons who are alleged to have committed criminal offences within its territory. It would be inimical to that legitimate public interest if the offender, particularly one to whom leniency had been shown, could seek to evade justice by simply crossing into the territory of another state. For that reason, there have long been extradition/rendition arrangements between states on the basis of bilateral or multi-lateral treaties, or international agreements. In recent years the member states of the European Union have all subscribed to the Framework Decision and now operate the simplified and more expeditious rendition arrangement that constitutes the European arrest warrant system. It is therefore reasonable and legitimate for the issuing state to seek to pursue the present respondent using that system and to seek to have the respondent surrendered to it on foot of European arrest warrants so that she may face trial for the offences to which the May warrant relates, and so that she may serve the sentence imposed upon her for the offences to which the July warrant relates, the suspension of that sentence having been lawfully and validly lifted on account of her breach of the conditions of her probation.

In all the circumstances of the case this Court rates the public interest in this respondent's rendition as being medium on a five point scale ranging from very low at one end, through low, medium, and high, to very high at the other end.

The respondent contends that any public interest in her rendition is diluted by delays that have occurred in this case. In this Court's view that contention, does not stand up to any kind of critical scrutiny.

The offences in the July warrant were committed in 2008; they were charged, prosecuted and resulted in convictions in January, 2009; they were made the subject of a suspended sentence in April, 2009, and the suspension was revoked in September, 2009, after it had been established that the respondent had gone abroad. The European arrest warrant then issued in July, 2011.

The offences in the May warrant were allegedly committed in early 2009; and the domestic orders for the respondent's arrest issued in October, 2009, and September, 2010, respectively. The European arrest warrant then issued in May, 2011.

Both warrants were transmitted to Ireland at the end of August, 2011. They were endorsed shortly thereafter, and the respondent was arrested in March, 2012. The surrender hearings in both matters were then considerably delayed while the respondent unsuccessfully pursued judicial review proceedings in the High Court on an issue related to the legal assistance available to her under the Legal Aid (Custody Issues) Scheme in connection with these proceedings.

It is clear that any delays that have occurred have been modest delays only and have been very substantially contributed to by the respondent herself. While the Latvian authorities have certainly known since the late summer of 2009 that the respondent had gone abroad, there is nothing in the papers before me to suggest that they discovered at that time exactly where she was to be found. This Court sees no evidence of any foot dragging or dilatoriness on the part of the Latvian authorities. On the contrary, they appear to have pursued the respondent with reasonable efficiency. Moreover, the respondent cannot expect to rely on delays for which she

herself is in large measure responsible.

In conclusion with respect to the public interest side of the equation, a medium level public interest in the respondent's rendition exists which has not been negated or diluted by delay. In the Court's view there remains a pressing social need for this respondent's rendition.

It is necessary at this point to move to the private interest side of the equation. The private rights and interests of the respondent and her sons S. and M. must also be considered and taken into account. The respondent alleges that to surrender her in the circumstances of this case would be a disproportionate measure in terms of the legitimate aim being pursued by the issuing state. The contention is that the proposed surrender of the respondent would have such profound consequences for the respondent and/or her sons S. and M., in terms of the respondent's psychological health, and also in terms of the maintenance of the mother/son relationship and the care and nurture of S. and M., as to be unjustified and in breach of their rights to respect for family life as guaranteed under Article 8 of the Convention.

It is clear that the respondent has put down appreciable roots in this country. However, it is a matter of significance that this is a case where the respondent relies upon roots put down in circumstances where she knew that she was being pursued, or was likely to be pursued, by the issuing state, and in the knowledge that she was in peril of facing a rendition request at any time.

At the same time it cannot be gainsaid that the respondent, though an adult, was relatively young at the time that she committed the offences of which she has been convicted, and at the time that she is alleged to have committed the other offences for which she is wanted for prosecution. Perhaps even more significantly, she had a significant drug problem at the time. Of course these are not matters to be taken account of by this Court as being directly relevant to the decision it has to make as to whether or not to surrender the respondent. They are not directly relevant as it is not for this Court to concern itself with culpability or with matters of mitigation. On the contrary, they were, and are, matters to be taken account of by the courts in the issuing state. That having been said, however, this evidence is not wholly irrelevant to the exercise that the Court is engaged in as it provides a contextual backdrop against which the life which the respondent has built in this jurisdiction can be contrasted and compared.

The respondent contends that establishing a life in Ireland enabled her to turn over a new leaf and to take control of her life. She is older now and it appears that the respondent has been largely law abiding while in this jurisdiction. She acknowledges that she was prosecuted and convicted here for driving under the influence of alcohol, following which she was disqualified from driving. However, there is no evidence that she has been involved in crimes similar to those that she committed in Latvia. She contends that she has overcome her drug problem, and more recently her alcohol problem, and it seems reasonable to infer that there may be a direct connection between her present law abiding life and the steps she has taken to overcome her drug and alcohol problems.

The Court has evidence that she has family responsibilities in respect of two very young sons, by different fathers. The father of the oldest boy S. has long since cut his ties with the respondent and with his son. The respondent has been in an on and off relationship with R. P., which appears to have been turbulent, somewhat dysfunctional and to have allegedly involved a degree of domestic violence. R. P. is the father of the respondent's second son, M., and has recently returned from Latvia to live in the family home. However, the respondent has previously stated that she regards the relationship as being over.

The respondent has her own significant health difficulties and appears to be doing her best to raise her two boys as a single parent. She has been successful in obtaining part time work as a shop assistant, and appears to be both the primary breadwinner and carer, with the assistance of a child minder, of her sons.

The Court has been very impressed with the report of Dr. F., and at the same time is very concerned at what she has reported. Both S. and M. are vulnerable children. However, in the case of S., he is already a psychologically damaged child who has already experienced many losses and much distress in his life; he lost his biological father, he lost his stepfather figure (at least temporarily) and there is no certainty that he will remain in S.'s life, and he witnessed domestic violence. Even though the dysfunctional relationship between the respondent and R. P., coupled with the respondent's own coping difficulties in her situation where she has had to face multiple adversities, has had a damaging effect on the attachment between S. and his mother, she is the person he is closest to and the person he relies on for physical and emotional care.

The situation with respect to M. is less acute. He is younger, and although also vulnerable, he has had to face fewer adversities and has been exposed to less trauma than his older brother. His biological father is also involved with him, at least at the moment.

The Court notes that the HSE were previously involved with this family and that no child protection concerns have come to their attention since 2011. However, the note of caution sounded by Dr. F. concerning whether, in the event of the respondent's surrender R. P. would be a suitable person to temporarily take over the nurture and care of these little boys is entirely appropriate and rings loud in circumstances where he has no blood relationship with S., and there is a background of alleged domestic violence.

Be all of that as it may, the Court readily accepts the evidence of Dr. F. that in the circumstances of this particular case that if the respondent is surrendered it is likely to cause significant harm to both children emotionally and behaviorally. The risk in that regard is particularly acute in the case of S.. In the words of Dr. F. – "S. may be able to intellectually understand why his mother is unavailable, but emotionally would find it overwhelming."

With some hesitation the court has concluded that the risk of causing further damage to these children is so great in the circumstances of this particular case that it outweighs the medium level public interest in this respondent's rendition that the Court has earlier identified. The Court would not refuse surrender if the situation of the respondent was the only consideration. However, the Court is obliged in its assessment to have regard to the best interests of these children. The major consideration for the Court is not whether these children would have to move temporarily to Latvia, or stay in Ireland, or whether they would go into foster care, or be cared for by R. P., or by some relative of the respondent's in Latvia. None of these options are particularly attractive, but if it was a case that the children would not be damaged by the separation, as opposed to being understandably distressed and upset, the Court would nonetheless contemplate surrendering the respondent. The difference, however, in this particular case is that there is a very significant chance, given the background, that these young boys, and S. in particular, will suffer irreparable emotional and psychological damage if they are temporarily separated from their mother in consequence of a surrender order.

Conclusion
The Court is not prepared to order the respondent's surrender in the circumstances. It will uphold the section 37(1)(a) objection in each case, on the grounds that to surrender the respondent would be a disproportionate measure in all the circumstances of the case, thereby breaching the rights of the respondent and her sons to respect for their family life as guaranteed by Article 8 ECHR.