THE HIGH COURT

2015 No. 228 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

NOOR (ALSO KNOWN AS NUR) KHAN

RESPONDENT

2015 No. 232 EXT

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

NOOR (ALSO KNOWN AS NUR) KHAN

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 1st day of February, 2016.

1. A novel point concerning the interpretation of s. 29 (1) of the European Arrest Warrant, 2003, as amended ("the Act of 2003"), has arisen in this case. Two European Arrest Warrants ("EAW") have issued from two separate jurisdictions in the United Kingdom ("U.K."). The question for determination is whether s. 29 of the Act of 2003, as amended, requires the High Court to exercise a choice *between* these EAWs with regard to the performance of statutory functions.

2. On 15th October, 2015, a judicial authority of the U.K., (a District Judge of Northern Ireland) issued an EAW ("the Northern Ireland EAW") for the purpose of conducting a criminal prosecution against the above named respondent. He is sought on five counts of alleged fraud accusing him of dishonestly making false representations that he was an employee of a company concerned with online money payment, with the intention by making the representation to make a gain for himself or another or to cause loss to others. The Northern Ireland EAW was endorsed by this Court on 19th October, 2015.

3. On 22nd October, 2015, another judicial authority of the U.K., this time a District Judge in Leeds, issued an EAW ("the Leeds EAW") for the purposes of conducting a criminal prosecution against him in relation to two offences of conspiracy to defraud. These are allegations of a conspiracy involving similar false representations, this time relating to being an account holder and agent of Western Union. The Leeds EAW was endorsed for execution by the High Court on 27th October, 2015.

4. On 19th October, 2015, Mr. Khan was arrested in relation to the Northern Ireland EAW. On 3rd November, 2015, he was arrested on the Leeds EAW. He has been remanded in custody from time to time, bail having been refused to him.

5. The case has a somewhat unfortunate procedural history. Initially, an indication was given on behalf of the respondent, that it was likely that there would be consent to surrender in relation to both EAWs. On the day the matter came before the Court, counsel indicated that the respondent would consent to surrender on one EAW but not on the other. Points of objection had by that time already been served in relation to both EAWs. Further delays ensued as detailed in this judgment.

The points of objection

6. The points of objection filed in each case were virtually identical. In summary, the four points of objection were:

> 1) the surrender of the respondent would be unfair and unjust and in breach of his personal and family rights;
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> 2) Surrender is prohibited by Part 3 of the Act of 2003, as amended, in particular by s. 37 thereof on grounds of breach of the respondent's constitutional and European Convention on Human Rights ("ECHR") rights;
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> 3) It would be in breach of s. 37 of the Act of 2003 because such surrender would impermissibly infringe his personal rights and family rights as guaranteed by Articles 38, 40 and 41 of the Constitution and as protected by Articles 2, 3, 5, 6 and 8 of the ECHR and "because he will be separated from his family including his young children and because he will be treated less favourably than other persons who are not of his race, nationality or ethnic origin";
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> 4) A generic objection stating such further or other points of objection as maybe permitted by this Honourable Court.

7. On the first hearing date, counsel for the respondent indicated that the respondent was prepared to consent to his surrender on the Leeds EAW whereas he objected to surrender on the Northern Ireland EAW. In support of his objection to surrender, the respondent stated on affidavit that he was living in Carlow since January (presumably of 2015), was married and had a son and a daughter aged fourteen and nine years old respectively who were attending local schools. He said he was a British citizen and his children were British citizens. His family had contacts in England and if surrendered to Leeds, his family would be in a better position to visit him. He also said with regard to his exposure to the Northern Ireland prison system that: "I did not like what I experienced. It was very bad. I was in HM Prison Maghaberry and I found it very distressing. I was harassed and threatened and this was motivated by reasons of my race or ethnic origin. Other inmates told me that they didn't want foreigners. I did not feel I had any protection from prison officers and I was in fear. I am very concerned about my health and my safety if sent back there. I anticipate physical harm or worse. It is because of that fear that I did not go back there for my court case."

8. Counsel for the respondent also indicated on the first hearing date, that he was relying upon the mandatory provision in s. 15 of the Act of 2003 requiring surrender where a requested person consents. It appeared at that time that counsel was submitting that a consent to surrender under s. 15 had to be dealt with by the High Court immediately. Section 15 (1) states that "where a person is brought before the High Court under section 13, he or she may consent to his or her being surrendered to the issuing state and, if he or she so consents, the High Court shall - [subject to various conditions set out in the section] make an order directing that the

person be surrendered to such other person as is duly authorised by the issuing state to receive him or her."

9. Counsel for the minister sought time to consider this newly indicated approach of the respondent to surrender on each EAW. In the absence of a straightforward consent as had been indicated, the Court did not have time to deal with the issue. The Court, therefore, had no alternative but to adjourn the matter. On the following date for hearing, the available court time did not suit counsel and on consent the matter was adjourned to 24th November, 2015 for hearing.

10. On that further date, the Court, again due to the pressure of court time, was unable to hear the matter. It then transpired that counsel for the respondent was now seeking to rely upon s. 29 of the Act of 2003, as amended. Not surprisingly, counsel for the minister complained that no notice had been given of this matter. Counsel for the respondent took issue with whether it was a point of objection at all and suggested that it was a matter the High Court was required to address. Although the Court expressed disappointment that no notice had been given of this argument, the Court concluded that it was a matter that the Court should consider.

11. On 27th November, 2015, the High Court heard submissions from both sides, both written and oral. In his submissions, counsel for the respondent raised another argument, albeit one related to his s. 29 point. He submitted that if the Court could only surrender on one EAW, there would be a breach of specialty contrary to s. 22 of the Act of 2003. This was undoubtedly a point of objection (indeed, it appeared to be a point of objection even to the consent to surrender). Undoubtedly, this should have been stated expressly in the points of objection.

12. A respondent has a duty to file points of objection where he or she intends to raise an objection to surrender. Counsel and solicitors also have duties to avoid unnecessary expense or waste of the court's time. Where a matter has to be adjourned due to an otherwise avoidable late filing of a point of objection, such waste of court time will occur. A situation may arise where, in carrying out its own statutory role to deal with EAW applications without undue delay and mindful of the constitutional requirement of fairness to all parties, the court will be obliged to refuse to hear a point which has not been raised in points of objection in accordance with the Rules of the Superior Courts. This is most likely to arise where the new issue places an evidential burden on the respondent. In this case, I permitted the point to be argued before me in circumstances where it did not depend on evidence from the respondent, where it was a novel point and where there was no real prejudice to the minister's position by reason of a short adjournment. I should also say that there was no persistence with the argument that s.15 required an immediate surrender. The Court, in any event, has concluded that s. 15 cannot be understood as requiring an immediate surrender order by the Court. It is inevitable that the High Court may not be in a position to deal with a matter on a given day or indeed to give a judgment on a given day (even in a consent matter the High Court has to be satisfied of a number of matters for example compliance with s. 38 and, where appropriate, s. 45). In this case, the matter required time for written and oral submissions, and indeed in light of further information from the U.K. authorities, a further brief hearing on the 21st December 2016. The Court then took time for consideration of this judgment.

Section 29 of the Act of 2003

13. As originally drafted, s. 29(1) of the Act of 2003 provided:

> "(1) where the Central Authority in the State receives two or more European arrest warrants in respect of a person, *neither of which or not all of which, as the case may be, have been issued by the same issuing state*, the Central Authority in the State shall, where the High Court has not yet made an order under section 15, or subsection (1) or (2) of section 16, in relation to the person, inform the High Court as soon as may be of the receipt by it of those warrants and the High Court shall, having regard to all the circumstances, decide, in relation to which of those European arrest warrants it shall-
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> a) perform functions under section 13, or
>
> b) where it has already performed such functions in relation to one of those European arrest warrants, perform functions under section 15 or 16, as may be appropriate. (*emphasis added*)

14. By s. 15 of the Criminal Justice (Miscellaneous Provisions) Act, 2009 ("the Act of 2009"), the phrase "neither of which or not all of which, as the case may be, have been issued by the same issuing state," underlined above, was deleted from section 29 subsection 1. By s. 17 of the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act, 2012, a very minor addition was made to subsection 1, by the addition of the words "subsection 1 or 2 of" just prior to the mention of section 15.

The Court's analysis and determination

15. Counsel for both parties referred to Article 16 of the Framework Decision of 13th June, 2002 on the European Arrest Warrant and surrender procedures between Member States ("the 2002 Framework Decision"). This article is headed "Decision in the event of multiple requests". Article 16 para. 1 provides: "[i]f two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order."

16. It is now well established that, in the words of the European Court of Justice ("ECJ") in *Criminal Proceedings against Pupino* (Case C-105/03) [2006] Q.B. 83, at para. 43 "*when applying national law, the national court that is called upon to interpret it must do so as far as possible in light of the wording and purpose of the framework decision in order to obtain the result which it pursues and thus comply with Article 34 (2)(b) (EU).*" However, as Fennelly J. stated at para. 72 in *Dundon v. Governor of Cloverhill Prison* [2006] 1 I.R. 518 "*these courts are bound to apply provisions of Acts of the Oireachtas. The framework decision does not have direct effect. Where a provision of an Act of the Oireachtas conflicts directly with the provision of a framework decision, this court must give preference to the former. To do otherwise would, to cite the language of the Court of Justice in Criminal Proceedings against* Pupino […], *be* contra legem."

17. The original draft of s. 29 was self-evidently intended to implement Article 16 of the 2002 Framework Decision, which concerns the situation where two or more member states have issued EAWs for the same person. Ultimately, the decision on which of those EAWs shall be executed is to be taken by the executing judicial authority with due consideration of all the circumstances. That is understandable because the 2002 Framework Decision provides for the mutual recognition of judicial decisions in criminal matters. This can be contrasted with the position under the Extradition Act, 1965, where it is the minister who makes the choice as to which extradition request to act upon. It can also be distinguished from s. 30 of the Act of 2003 which leaves it to the minister to decide between an extradition request and a request for surrender under the Act of 2003. That latter situation is also provided for in Article

16.

18. Regardless of whether the situation concerns applications for extradition or surrender, it is necessary that some mechanism be provided for a choice to be made when there are competing requests for surrender/extradition from two or more states. This is because, if a person in this jurisdiction is requested by state A and, at the same time, requested by state B, he or she can only be physically surrendered/extradited to one of those states. Section 29 lays down the process for determining to which member state a requested person should be surrendered where two or more EAWs are received from two or more member states.

19. Viewed in this light, it is immaterial whether there are two, three or a multiplicity of requests. The practical reality is that there is a necessity for a choice to be made between competing EAW requests from different member states. This is because a requested person can only be surrendered from this jurisdiction to one other issuing state. The High Court was, and still is, given that choice under section 29. It is necessary to perform functions over EAWs from one state and not another as ultimately surrender may only be effected to a single member state.

20. The original wording of s. 29 anticipated that a single member state may have issued more than one EAW (to wit, "not *all* of which….have been issued by the same issuing state"). The reference later in the section to the duty of the High Court to "decide, in relation to which of those [EAWs] it shall" perform functions is undoubtedly not limiting the High Court to the exercise of a function in respect of only one EAW. It could be that the High Court will decide to exercise its functions to surrender over two or more EAWs emanating from one member state and not on a single EAW from the other member state. Furthermore, if there was any ambiguity (which the Court does not consider there is) about whether the original s. 29 only provided for a choice to exercise statutory functions only over a single EAW regardless of how many had been issued from a single member state, the foregoing interpretation accords with the wording and purpose of Article 16 and the 2002 Framework Decision as a whole, *i.e.* to provide for mutual recognition of criminal decisions and a simplified system of surrender.

21. The amendment of s. 29, by the deletion of the reference to EAWs issued by different issuing states, extended its ambit to include all situations where multiple requests are made regardless of whether they are from different member states or emanate from the same member state. No amendment was made to any other part of section 29. The respondent's submission is primarily that, as the High Court had to make a choice between EAWs under the original s. 29, it must do so now.

22. Counsel for the minister suggests that the amendment to s. 29 deals with the situation that arose in *Minister for Justice, Equality and Law Reform v. Gotszlik* [2009] 3 I.R. 390 where at para. 23 Denham J. (as she then was) stated "[u]*nder the legislation the court is bound to make an order for surrender on each valid warrant."* The decision in *Gotszlik* predated the amendment brought about by the Act of 2009. That judgment dealt with the issue of specialty where a person was being surrendered to the same member state on two separate EAWs. The fact that the amendment was made subsequent to the decision in *Gotszlik* is part of the legislative history which must be considered in the post-amendment interpretation of the section.

23. Counsel for the minister submitted that the interpretation being placed on s. 29 by counsel for the respondent does violence to the plain language of the section. Counsel submitted that the words "in relation to which of those European arrest warrants" do not require that a choice be made on otherwise valid warrants. Counsel relied upon an analogy with the syntax and language that might be used when one gives a choice to another as regarding bringing along friends to a party. She submitted that the phrase "decide which of your friends you are bringing to the party" is not a directive that you must bring a friend to the party, it permits you to bring a friend, some friends, all friends or no friend

24. Counsel for the minister also submitted that if it was the intention that the High Court was limited to performing its function in relation to just one EAW, the Oireachtas would have provided for that by saying "which warrant" or "which one of those warrants" or words to the same effect.

25. Counsel for the respondent submitted that the plain and ordinary meaning was that a choice had to be made in respect of the EAWs. He submitted that the legislature had clearly and deliberately amended the provision to ensure that multiple warrants from the same issuing state are treated in the same manner under the Act of 2003, as amended, as multiple warrants from diverse states. He relied also upon the amendment to s. 10 of the Act of 2003 by s. 5 of the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act, 2012 which deleted the reference to the Framework Decision and now clarifies that "the person shall, subject to and in accordance with the provisions of *this Act* be arrested and surrendered to the issuing state" (emphasis added).

26. In written submissions, the minister submitted that the Court is permitted to take a variety of courses in respect of the "surrender" of a requested person under section 29. The implication from this submission is to equate "surrender" with the performance of functions. Section 29 does not give a choice as to "surrender", rather it gives a choice as to performance of functions. A refusal to endorse under s. 13, or to surrender under s. 15 or s. 16, is a performance of functions under the Act of 2003, as amended. Therefore, the Court rejects any implication that it is possible under s. 29 for the Court not to exercise any statutory function in respect of any warrant presented to it. The Court must exercise functions over at least one EAW presented to it, even if that means refusing to endorse or refusing to surrender an individual. Indeed, if the Court were to find that surrender or endorsement was likely to be prohibited under the Act in respect of one EAW from one member state, that might be a circumstance leading the Court to decide to perform its functions under another or other EAWs from a second state.

27. The real issue in the case is whether s. 29 is to be read as meaning that the court is permitted to exercise its functions in respect of all EAWs presented to it or that the court must exercise a choice between which of two EAWs on which to perform functions if only two are before the court, or a choice between one or more but not all, if more than two are before the Court.

28. In the Court's view the interpretation centres on the phrase "which of those". In Inspector of *Taxes v. Kiernan* [1981] 1 I.R. 117, the Supreme Court (*per* Henchy J.) at p. 122 stated that *"(w)here statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily*." The Supreme Court also went on to say that:-

> *"[t]hirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed."*

29. As can be seen from the conclusions above regarding the original s. 29, the phrase "which of those" give the High Court as

executing judicial authority the scope to exercise a choice but there is certainly no interpretation that can be given to the section that required such a choice to be exercised over only *one* EAW and not in relation to any other EAW. As demonstrated above, the choice could be exercised in respect of more than one EAW in circumstances where the court is dealing with two or more EAWs from one member state and another EAW or other EAWs from another member state or indeed member states. In those circumstances, even in its original enactment, the phrase "which of those" in s. 29 did not mean "which *one* of those".

30. It is also apparent that when the plain and ordinary meaning of "which of those" is considered regardless of whether contained in the original or the amended text of s. 29, the phrase does not mean that the choice must be over one and not the other EAW if only two or any of the other EAWs if more than two EAWs have been sent. I agree with the submission of counsel for the minister that the ordinary meaning to "which of those" when referring to a given set does not mean that a particular subset of that given set must be selected. I understand the word "which" and in particular the phrase "which of those" to permit the selection of all the matters over which the choice is being offered. In the original enactment of the section, the phrase "which of those" meant that the choice had to be *operated* with respect to an EAW (or EAWs) from one issuing state. That *operation* of the choice did not affect the plain and ordinary meaning of the phrase itself. The interpretation of the phrase is unaffected by the widened ambit of the section to include a collection of EAWs over which there may be no need to exercise a choice.

31. Even if there was some kind of doubt about the singularity of its ordinary meaning, I am satisfied that, such meaning is in accordance with the dictionary meaning. The relevant definition of "which" under the Oxford English Dictionary (Second Edition, Clarendon Press, 1991), when used in the limited sense means "expressing a request for selection from a definite number: What one (or ones) of a (stated or implied) set of persons, things or alternatives."

32. In this case, the definite set from which the choice may be made is all the EAWs presented to the High Court. The choice is then to select from that number. The choice can be one or more of the EAWs presented. It is not a choice that must be made over only *one* where the definite list contains two EAWs, or made over more than *one* where the definite list contains more than two EAWs. The choice is to select any number from the entire list of EAWs submitted to the Court.

33. Moreover, if there is a lack of clarity in the expression, the court is entitled to look at the scheme of the Act of 2003 for the purpose of understanding the intention of the legislature. As stated above, the entire meaning and purpose of the Act of 2003, and indeed the 2002 Framework Decision, is to introduce a simplified system of surrender and to provide for the free movement of judicial decisions of member states in criminal matters. The provisions of the Act of 2003 requires the High Court to make a surrender on each valid EAW. That is an important consideration in the construction of the phrase "which of those" should it be perceived there is a lack of clarity. Nothing in that phrase of itself obviates the clear instructions in sections 13, 15 and 16 that the High Court must otherwise carry out it functions to either endorse an EAW or surrender under it unless otherwise prohibited by the provisions of the Act.

34. Furthermore, if the argument of the respondent is correct in his interpretation there will be a resultant absurdity. The requirement of the High Court to exercise a choice between EAWs to the same state would not affect the ability of the issuing state to thereafter seek the consent of the High Court for the prosecution of the respondent or the execution of a custodial sentence. The High Court would be able to make the same decision to permit either prosecution or execution that it might have made on the hearing of the application for surrender. Thus, the interpretation contended for by the respondent would only have the result in delaying the process, denying his client from being present for the arguments and make it unnecessarily complicated. It would be the opposite of a simplified process of surrender designed to remove complexity and delay. In the circumstances, I am quite satisfied if there was any ambiguity in the phrase "which of those", it can be resolved in so far as the intention of the Oireachtas is clearly to put in place a simplified process of surrender.

35. In so far as s. 29 gives a choice to the High Court, it is a "choice" that the High Court must exercise judicially. Thus, even under the original Act of 2003 which included s. 29, the High Court had a duty under both s. 15 and s. 16 to surrender under an EAW unless surrender is prohibited under the Act of 2003. Section 29 provided for the situation where such surrender was not physically possible in setting out a mechanism whereby the High Court could determine which one (or indeed more than one) EAW from a particular member state should be exercised over another. Thus, s. 29 provided for that choice because there was a necessity to make one. It was a circumstance that the High Court had to take into account in deciding the EAWs over which it was going to exercise statutory functions. Similarly with regard to EAWs emanating from the same member state, s. 29 provides for a choice to be made between EAWs where there is a necessity to exercise such a choice between EAWs. In many cases there will not be any necessity to exercise such a choice between EAWs.

36. I am satisfied that the mere fact that under the original s. 29 there was a necessity to exercise a choice, does not compel the Court to find that the phrase "which of those" must mean that the High Court has to exercise such a choice even where there is no necessity to do so. The phrase did not limit the choice to "one" EAW and originally permitted the High Court to exercise the choice over any number of EAWs originating from the same issuing state. The phrase "which of those" in its plain and ordinary meaning, and contextually within the section, the Act and the Framework Decision, gave the High Court a choice to exercise functions in accordance with the provisions of the Act over such EAWs as is appropriate to do so. Where there is no basis for refusing to endorse or to surrender on any given EAW, the High Court must exercise its functions over all EAWs.

37. Finally, it should be observed that despite the submission of counsel for the minister that the reason for the amendment was the decision in *Gotszlik*, the reason for such amendment was not further elucidated. A rational explanation of the decision to amend the legislation was that there may have been a perception by the Oireachtas, that the duty to surrender on every valid EAW might present difficulties in certain circumstances; for example, the situation where a person is consented to surrender under s. 15 but is contesting the application for surrender on another EAW under section. 16. Even if dealt with on the same day, there could be a difficulty in arranging surrender on both the s. 15 matter and the s. 16 matter. Indeed, perhaps it was also envisaged that there could be a situation where there are difficulties in surrendering to member states with different jurisdictions e.g. the United Kingdom.

38. In this case, the U.K. were asked by the central authority "as to where the respondent will be surrendered" if the High Court were to order his surrender on both EAWs. The reply came to the Court in the interregnum between reserving judgment and delivering same. I invited both parties to make submissions in respect of the reply. In that reply, the U.K. authorities stated that if surrender is ordered on both EAWs, "he is to be surrendered to Northern Ireland". Counsel for the respondent repeated his submission that there could only be one surrender. Counsel for the minister submitted that this was the equivalent of being surrendered to this jurisdiction to face a number of charges in different courts. The Court agrees with the submission that neither the Act nor the 2002 Framework Decision operate so that the executing judicial authority decides the order in which different EAWs have to be dealt with in the issuing state. That is a matter for the authorities in that state. The duty of this Court is to order surrender to a person duly authorised to receive the person on an otherwise valid warrant.

39. The Court has been assured that in this case there is no difficulty with his physical surrender to Northern Ireland and that he will

in effect be surrendered on both EAWs. It would be inappropriate for this Court to assume that there cannot be a surrender effected at the same time in relation to multiple matters in any given state. Similarly, the central authority has not indicated any anticipated difficulty with surrender on consent or a contested surrender. If any such difficulty was to emerge, then that is a circumstance to which the court could have regard, amongst others, in deciding to surrender on only one EAW (or on two or more if there were multiple EAWs).

40. The question is whether there is a necessity to exercise a choice over which EAW he must be surrendered. No such necessity has been put forward here. I will separately consider the respondent's complaints regarding conditions in Northern Ireland below but in doing so I am performing my functions under section 16. On the contrary, I am being informed that there is no bar to his physical surrender on both warrants. In those circumstances, the Court, in accordance with the provisions of the Act, has to, and will, perform its functions in respect of both EAWs.

The Northern Ireland EAW

Section 16 matters
41. I am satisfied that the person before me is the person in respect of whom the EAW has issued. I am satisfied that the EAW has been endorsed in accordance with s. 13 for execution. I am satisfied that the provisions of s. 45 are not required to be considered as this is a prosecution warrant.

42. The alleged offences have been included in the ticked box 'fraud' by the issuing judicial authority. The offence has clearly reached those of minimum gravity. The surrender is not prohibited by s. 38 of the Act of 2003.

43. I have considered the matters in respect of s. 37 of the Act. I am quite satisfied that I am not required to prohibit his surrender under s. 37. The Court need not make any further inquiry in relation to the matters of inhuman and degrading treatment or indeed allegations of discrimination as the minimum threshold before which the Court would have to be put on inquiry has not been reached. There are no substantial grounds for believing that his ECHR or constitutional rights are at risk upon surrender.

44. The complaints regarding Article 8 have been set out above. It is difficult to see how there is any interference with the right to respect for his family or personal rights. If there is an interference, it is abundantly clear that there is a high public interest in his surrender and that it would not be disproportionate to surrender him. In particular, the consequences for him on surrender are not particularly harmful or injurious such as to amount to such a disproportionate interference. Counsel for the respondent accepted that his complaints were really directed towards sending him to Leeds and not Northern Ireland should the Court hold that he could only be surrendered on one warrant. He had complaints about the difficulty of travelling to Northern Ireland but it is difficult to give them any credence. The statement that he has contacts in Leeds and it would therefore be easier for his family to visit him there rather than in Northern Ireland is difficult to understand. It is asserted without any explanation as to why that would be so. A trip to Northern Ireland could be done in one day, whereas a trip to Leeds, while also possible to do in one day, would by its very nature be more difficult and more expensive. Indeed, his reference to staying with people in Leeds makes clear that he expects his family to stay overnight there. He does not explain why it would be difficult for them to go to Northern Ireland within a day. In those circumstances, I am of the view that this is a complaint without any substance at all.

45. With respect to his complaints about discrimination, his affidavit makes clear that he never made any complaint to prison officers. The respondent says he did not feel he had protection from them but does not outline the reason for that. There is a presumption that the Northern Ireland authorities will protect his fundamental rights while he is in their custody. He has not produced a single piece of independent evidence that might give this Court cause to have concerns about the issue of discrimination or racially motivated abuse within the prison service of Northern Ireland. In all the circumstances, there is simply no substance to his claim. Indeed it should be acknowledged that this was not put forward in any substantive way as a stand alone objection to his surrender.

46. I am satisfied that his surrender is not prohibited by any section contained in Part 3 of the Act of 2003, as amended.

47. The High Court is not required under s. 21A, 23 or 24 of the Act of 2003, as amended, to refuse his surrender.

Section 22
48. Counsel for the respondent raised an issue that if the Court is only surrendering in respect of one warrant, the rule of specialty will be breached as there is clearly an intention to prosecute him in the issuing state in respect of another matter. This no longer arises where I have ruled I can surrender on both EAWs. His surrender, therefore, is not prohibited by s. 22 of the Act of 2003.

Conclusion
49. For the reasons set out above, I have decided that I may perform my functions over both EAWs and I have decided to exercise my function over both. There is no basis for prohibiting his surrender on the Northern Ireland EAW. I consider that under s. 16 (1) of the Act of 2003, I may make an order for the delivery of the respondent to such other person as is duly authorised by the issuing state to receive him. In respect of the Leeds EAW, from a perusal of the EAW, I am quite satisfied that there is no apparent basis for prohibiting his surrender to Leeds. He has not yet given his formal consent in writing to surrender on that EAW and the Court will proceed to hear from him in that regard prior to making a final determination on surrender under section 15.