Neutral Citation: [2013] IEHC 322

THE HIGH COURT

Record No.: 2012 234 Ext.

Between/

THE MINISTER FOR JUSTICE & EQUALITY

Applicant

-AND-

N.M.

Respondent

JUDGMENT of Mr Justice Edwards delivered on the 25th day of June 2013

Introduction:
The respondent is the subject of a European arrest warrant issued by the United Kingdom on the 29th of June, 2012. The warrant was endorsed by the High Court for execution in this jurisdiction on the 22nd of August, 2012, and it was duly executed on the 4th of December, 2012. The respondent was arrested by Detective Garda J.H. on that date, following which she was brought before the High Court on the same day pursuant to s. 13 of the European Arrest Warrant Act 2003 (hereinafter "the Act of 2003"). In the course of the s. 13 hearing 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 the matter was 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 the United Kingdom. Accordingly, this Court is now being asked by the applicant to make an Order pursuant to s. 16 of the Act of 2003 directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive her. The Court must consider whether the requirements of s. 16 of the Act of 2003, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependant upon a judicial finding that they have been so satisfied.

Uncontroversial s. 16 issues
The Court has received an affidavit of Detective Garda J.H. sworn on the 4th of March, 2013 testifying as to his arrest of the respondent and as to the questions he asked of the respondent to establish the respondent's identity. In addition, counsel for the respondent has confirmed that no issue arises as to either the arrest or identity.

The Court has also received and has scrutinised a true copy of the European arrest warrant in this case. Further, the Court has taken the opportunity to inspect the original European arrest warrant which is on the Court's file and which bears this Court's endorsement.

I am satisfied following my consideration of these matters that:

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

(b) The warrant was duly executed;

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

(d) The warrant is in the correct form;

(e) The warrant purports to be a prosecution type warrant and the respondent is wanted in the United Kingdom for trial in respect of the two offences particularised in Part E of the warrant which is characterised as "robbery" and "attempted robbery".

(f) The underlying domestic decision on which the warrant is based is an Arrest Warrant issued on the 28th of November, 1994 by the "Bristol Crown Court in respect of offences of Robbery on the 7th September 1994 and Attempted Robbery on the 16th September 1994".

(g) The issuing judicial authority has invoked paragraph 2 of article 2 of Council Framework Decision 02/584/J.H.A. on the European arrest warrant and the surrender procedures between Member States, O.J. Ll90/l 18.7.2002 (hereinafter referred to as "the Framework Decision") in respect of both offences listed in Part E, by the ticking of the box in Part E.I of the warrant relating to "organised or armed robbery". Accordingly, subject to the Court being satisfied that the invocation of paragraph 2 of article 2 is valid (*i.e*. that the minimum gravity threshold is met, and that there is no basis for believing that there has been some gross or manifest error), it need not concern itself with correspondence;

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

(i) The description of the circumstances in which the offences in question were committed as set out in the warrant is as follows:

> "Robbery on 7th September 1994
>
> On the 7th September 1994 David March was working alone as a Cashier at Emborough Filling Station Near Chilcompton Somerset England, when two persons wearing motor cycle helmets and leather jackets entered the service station shop.

After enquiring about a bottle of gear oil, Ashman produced a lock knife type weapon and held it against Mr March's side. He then demanded that the till be opened and for Mr March to place all the Notes from the till and some coinage into a pouch which Ashman was wearing around his waist.

Mr March was then told to go through to the rear store room and ordered to empty a spare till float which Ashman appeared to know existed. Having done that he was ordered to lie down on the floor and not to give the alarm whilst Ashman and his accomplice made good their escape.

About £300 in cash was stolen.

The second person and accomplice was N. M. who remained in the shop. She was the person who went to pick up the gear oil which Ashman had asked about initially. She could see the knife being produced and the notes and coins being put by the Cashier into the pouch around Ashman's waist.

Attempted Robberv on the 16th September 1994

At about 1130am on this date, Mr John Caines was working at the Markham Filling Station, Martcombe Road Easton in Gordano Near Bristol England. The Filling Station was not self service and Mr Caines was going about his business serving any customers who called in for fuel as and when. Around the stated time a black motor cycle displaying Index Number LBN 26P with a driver and a pillion passenger pulled onto the Filling Station forecourt.

The driver (Ashman) said 'Fill it up' and Mr Caines put £3.40p worth of fuel into the petrol tank.

Mr Caines then moved a short distance to his small forecourt office expecting the driver to pay for the fuel. When he looked back towards the driver, who was only some 4 to 5 feet away from him, he could see that the driver was pointing a lock knife towards him. Ashman said 'Don't shout or do anything'. He then walked towards Mr Caines, who being fearful as to what was going to happen, ran from the forecourt office towards the Filling Station shop, knocking over a bin in his haste to do so. Ashman ran after him initially but after Mr Caines shouted to his wife (who was working within the Filling Station shop) to telephone the Police, he and M. made off on the motor cycle empty handed.

Having received information about the motor cycle from Mrs Caines, the Police were keeping observations for the vehicle and saw it shortly after travelling Southbound on the MS Motorway. The officers saw the motor cycle exit the Motorway at Junction 20 and followed it. Ashman, the driver, saw the Police and increased his speed and a pursuit began. Another Police vehicle joined the pursuit and got in front of the motor cycle. Between the two police vehicles they managed to stop the motor cycle near to the village of Kenn in Somerset England.

Ashman was the driver and M. was the passenger. A lock knife and a pillow case was found on Ashman. M. also had a lock knife and a map. The motor cycle was being driven on false plates and the correct Index Number Plates were found within the motor cycle after a search. In interview Ashman admitted involvement in the incident at Markham Filling Station earlier and said that the motor cycle had false plates because he had intended to' rob a garage'. M. also admitted involvement in the offence saying she knew what was going on and was 'short of money'.

Both denied involvement in the Robbery on the 7th September 1994 at Emborough as described.

Motor cycle clothing and helmets were seized from both. Both confirmed that they had owned the seized items for months/years. They could not give any account for their whereabouts on the 7th September 1994. The map found on M. showed a route through Emborough, the scene of the Robbery on that date. Their clothing, including the helmets gloves and 2 leather jackets, were shown to Mr March who identified the clothing as that worn by the perpetrators. Mr March had already given very specific details and descriptions of the clothing gloves and helmets when he made his initial statement to the Police which had been made prior to the offence on the 16th September 1994. He had given details in this statement about flaps, pockets and the positioning of poppers on the jackets and helmets. These details corresponded exactly with the clothing recovered from Ashman and M. on the 16th September 1994.

Following a search of M's address a pair of gradual blue glasses were recovered. They were shown to Mr March who con finned that these glasses were worn by one of the two perpetrators on the 7th September 1994. M. accepted that the glasses belonged to her."

There is no reason, upon a consideration of the underlying facts as set out above, to believe that the ticking of the boxes relating to "organised or armed robbery" was in error;

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

(k) There are no circumstances that would cause the Court to refuse to surrender the respondent under s.21A, 22, s.23 or s.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) Order 2004 (S.I. No.4 of 2004) (hereinafter "the 2004 Designation Order"), and duly notes that by a combination of s. 3(1) of the Act of 2003, and Article 2 and the Schedule to the 2004 Designation Order, "the United Kingdom" (or more correctly the United Kingdom of Great Britain & Northern Ireland) 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.

Points of Objection
The respondent relies upon just one substantive point of objection. She argues that the Court should regard her surrender as being prohibited under s. 37(1) of the Act of 2003 because her surrender would be a disproportionate measure in terms of any legitimate aim being pursued in that it would breach her right to respect for family life, and the cognate and corresponding rights to family life of her children, guaranteed under Article 8 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter "the Convention" or "the ECHR")

The Respondent's Evidence
The respondent relies on two affidavits in support of her objection, namely, an affidavit sworn by herself on the 4th of March 2013,

and an affidavit sworn by her solicitor, P. O'D., sworn on the 23rd of April 2013.

The respondent deposes to the following matters in her own affidavit:

"2. I am fifty three year old British citizen with a date of birth of 30th December 1959 and I accept I am the person named in the European Arrest Warrant that issued at Bristol Crown Court on 29th June 2012.

3. I am a mother of three children and the sole carer of the two who live with me, my seventeen year old daughter Y and my fifteen year old son, Z. We are a family unit, and we are dependent on one another. As my health allows I look after them.

4. My daughter Y on the surface is a bright and bubbly teenager and she gives the impression that the world is there just for her pleasure. One would think she is immune to the pressures of life and always has a smile on her face. However, she has become very adept at wearing a mask because several years ago due to the fact that she was bullied so badly by a group of girls in school that she started to self-harm and she still bears the dreadful resulting scars on her arms and legs. In my view the school has not been effective in dealing with the matter but with the help of counselling, outof-school activities and my presence reassurance Y has learned to accept her fate and has learned to value herself more and has become a more confident person.

5. Y is still in counselling and at times of stress she is very vulnerable. At the moment she is studying for her leaving certificate an extremely stressful time and I do not expect her to do well as because of the stress she won't be able to focus properly. I feel Y has a very unusual bright spark inside her that, given the right encouragement, could take her to wonderful things however, I am very concerned that without strong love and support she might deviate from the proper course.

6. My boy, Z, was recently diagnosed with Autistic Spectrum Disorder (ASD). While he is at home with me it is difficult to see much 'wrong' with him, beyond the usual typical teenage awkwardness. Yet outside the home, in circumstances with which he is unfamiliar, Z becomes almost profoundly disabled and unable to cope. Sometimes this exhibits in him as confusion, sensory overload, manic behaviour or shutdown. Consequently his schooling has suffered. As Z's mother, I am his sole care-giver and as he is now 15 years old, it is envisaged that he will need a full-time carer for a long time to come. My most important aim for Z is to help him achieve independence. It is very important, should anything happen to me, that Z should be capable of living on his own. I would like his sisters to want to see him out of filial love, rather than be forced to see him out of filial duty. To that end, I am establishing routines in Z's life that will help him to adapt to the outside world and at the very least, pretend to be a part of it. 1 believe it is imperative that I am with him for the foreseeable future, in the first instance to look after him in the immediate short term, but secondly to continue with his preparation so that he can look after himself in the long-term. He is currently studying for his junior certificate and I am an essential cog in that wheel for him.

7. As with many autistic children, Z displays a fiendish ability in mathematics. I am confident that he has something special in him that will benefit the world. As his mother, I believe my role in so far as my own health allows is to guide Z and help him and to secure appropriate assistance and educational sources and outlets so that he can live lift to his full potential.

8. X, my eldest daughter is coping with issues of historic sexual abuse and the consequent fallout from this. She needs me to help her work through the issues so that she can assist the Gardaí l believe she won't be able to cope or go through things without me.

9. My personal health is quite poor at the moment and it is deteriorating further such that the quality of my life has been significantly reduced. However, I firmly believe I must strive to live as full a life as possible for the sake of my children. I have a monthly prescription for six medicines, (i) Janumet (may cause drowsiness), the principal anti-diabetes drug (ii) Victoza (may cause dizziness, confusion, nausea), an injectable anti-diabetic (iii) Adalat (may cause drowsiness), for high blood pressure (iv) Simcovas (take at night but does not cause drowsiness), a statin for cholesterol (v) Aspirin, for clot prevention and (vi) Edronax, for depression

10. I suffer from "type 2 diabetes" which is non-insulin drug controlled. The diabetes has ravaged through me for several years and I now have reduced sensation and pains in my legs and feet due to peripheral neuropathy. One of my legs has withered a lot is much weaker than the other such that movement is becoming more and more difficult for me. I am still in the process of undergoing tests to discover the cause for this. I have recently had to resort to the use of a walking stick as an aid, and my usual "people-phobia" has now mushroomed as I fear being knocked over in the street as people push past.. I have to pause to consider which leg to use first. Stairs are ridiculously difficult for me to climb. I have collapsed several times in public in the last few weeks and I understand a wheel chair is in the offing. I beg to refer to a true copy of a letter from my doctor upon which marked with the letters "NM-1" I have signed my name prior to the swearing hereof.

11. I have had a very troublesome history in terms of abusive relationships and I have spent time in a women's refuge which may have added to my symptoms. While I was at one refuge, I had several emotional collapses and I was diagnosed with depression and I commenced a long trial to find the right anti-depressant for me. After several months of different potions and pills, it seemed that we had found one that worked for me. However, today, I am still clinically depressed.

12. My depression takes a hold of me regularly and hence the antidepressant medication. In fact it was during the evaluation period for my son, Z, that my own mental health was raised as a live issue and I was duly advised that my own psychological health might benefit from an examination and I am currently undergoing a psychological evaluation. Were it not for my children, I would most certainly consider suicide. I don't have any ideological or religious barrier to that consideration. In fact as I believe in a rebirth of sorts, suicide seems an almost logical choice.

13. I am still fairly young at 53 years of age, yet my health and failing mobility have restricted my life considerably. Facing many more years of pain, loneliness and misery, I just don't see the point. This European arrest warrant is the final straw. Yet I love my children very deeply and I believe it imperative that we stay together as a family unit. In that respect of course if I was removed from them and sent to England the stability of our family unit would be destroyed and suicide would once again become an active consideration.

> 14. Despite all I have gone through in my life and all I am currently going through I can categorically state I did not commit the offences described in the European arrest warrant. However I do not have the strength to go through a trial process and I do not want to be removed from my family and surrendered to the U.K. for matters that happened almost twenty years ago. I don't believe I can get a fair trial after such a time lapse and I don't think I could live if I was removed from my family and I don't think my children can survive without me.
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> 15. I adore my children. They are my life. I would do anything to protect them and to be with them. I couldn't bear to be separated from them. I don't think I could live without them and I don't believe they could survive without me."

The Court has examined and has taken due account of the contents of exhibit NM I. This represents a letter dated 13th of February, 2013 from her G.P. to the Housing Department of the local authority in the area in which she resides urging that she be provided with a bungalow with wheelchair access and a walk in shower due to the fact that she is said to be suffering from "very advanced Peripheral Neuropathy" which is a complication of diabetes. Her present housing situation is characterised in the letter as "totally inappropriate" and it was represented to the Housing Department that her case constituted "an emergency". It was stated that that she is only barely able to get around by using sticks and crutches, and that she is a candidate for a wheelchair but she is resistant to utilising same. It was further stated that "Steps and stairs are impossible for her now. To get in and out of a bath would be impossible and she has to get assistance even to get in and out of bed from her children."

As mentioned above, the Court also has a affidavit of the respondent's solicitor. This merely exhibits a report from the respondent's G.P., Dr M O'H, dated the 19th of April, 2013 concerning the respondent's medical problems. The report as exhibited states:

"To Whom It May Concern,

N. has been a patient of this practice for approximately 13 years. She has Diabetes Mellitus for approximately 7 years. Unfortunately she has developed a complication of diabetes called Diabetic Polyneuropathy for which she is having ongoing investigations in Cork University Hospital. This initially manifested in her case as a proximal Myopathy (muscle weakness and loss of power in her hips and lower limb musculature) as well as altered sensation in her upper and lower limbs,

There is no evidence to suggest that this is any type of Conversion syndrome or disorder. At this juncture her mobility is very limited steps. Stairs are almost impossible; she gets around by using a crutch. Activities of daily living are proving very difficult. We have arranged home help for her with her general hygiene and meals etc. Apart from the Neuropathy she has other problems such as, depression, hypertension and weight problems.

She has an Autistic son who demands a lot of care and who is a credit to her, as she has managed to keep him in contact with mainstream education. She is a lone parent.

Thank you for your help with this lady."

Finally, the Court also has had simply "handed in" another letter from the respondent's said G.P., dated 11th of March 2013, addressed to the "Disability Allowance Section, Social Services", this time making a case on the respondent's behalf for Disability Allowance. As counsel for the applicant takes no objection, the Court has been prepared to receive and take account of it *de bene esse*. This letter describes the respondent as suffering from acute polyneuropathy of a mixed type, with a background of diabetes for approximately 7 years and states:

> "She should be in a wheelchair. She is getting around with the help of walking aids such as crutches etc. It really is Stoicism on her behalf that is making her refractory to the use of a wheelchair. She needs assistance with activities of daily living and we are trying to arrange accommodation which will be wheelchair accessible etc."

Relevant Statutory and Convention Provisions
S. 37(1)(a) of the Act of2003 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,"

S.37(2) 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. II done at Strasbourg on the 11th day of May, 1994"

Article 8 of the 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 well-being 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."

The Applicable Legal Principles
In its recent judgment in *Minister for Justice and Equality v Egharevba* (unreported, High Court, Edwards J, 21st of June 2013) this Court conducted an extensive review of relevant Irish, English and European Court of Human Rights (hereinafter "E.Ct.H.R) case law and sought to distill from that jurisprudence a series of principles for application both in that case and in future cases.

Among the cases reviewed were *Minister for Justice, Equality and Law Reform v. Gorman* [201OJ 3 IR 583. *Minister for Justice, Equality and Law Reform v. Gheorghe* [2009] IESC 76 (unreported, Supreme Court, Fennelly J., 9th April 2009); *Minister for Justice, Equality and Law Reform v. Bednarczyk* [2011] IEHC 136 (unreported, High Court, Edwards J., 5th April 2011); *Launder v. United Kingdom* (1997) 25 EHRR CD67; *King v. United Kingdom* (Application no. 9742/07, 26th January, 2010) (2010] ECHR 164; *Babar Ahmad and Others v. United Kingdom*, (Application no 24027/07, 10th April 2012) [2012] ECHR 609; *Huang v. Secretary of State for the Home Department* [2007] A.C. 167; *Zigor Ruiz Jaso v. Central Court of Criminal Proceedings (No 5) Madrid* [2007] EWHC 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.(HH) & (P.H) v. the Deputy Prosecutor of the Italian Republic, Genoa, also R.(F-K) v. Polish Judicial Authority*, [2012]1 A.C. 338 and *Minister for Justice and Equality v. Ostrowski* [2013] IESC 24 (unreported, Supreme Court, 15th May, 2013- in particular the judgment of McKechnie J.) This represents an indicative, but by no means exhaustive, list of the cases and judgments reviewed.

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

1. The test imposed by Article 8(2) is not whether extradition is on balance desirable but whether it is necessary in a democratic society;

2. There is no presumption against the application of article 8 in extradition cases and no requirement that exceptional circumstances must be demonstrated before article 8 grounds can succeed;

3. The test is one of proportionality, not exceptionality;

4. Where the family rights that are in issue are rights enjoyed in this country, the issue of proportionality involves weighing the proposed interference with those rights against the relevant public interest;

5 In conducting the required proportionality test, it is incorrect to seek to balance the general desirability of international cooperation in enforcing the criminal law and in bringing fugitives to justice, against the level of respect to be afforded generally to the private and family life of persons;

6 Rather, the assessment must be individual and particular to the requested person and family concerned. The correct approach is to balance the public interest in the extradition of the particular requested person against the damage which would be done to the private life of that person and his or her family in the event of the requested person being surrendered;

7. In the required balancing exercise the public interest must be properly recognized and duly rated;

8. The public interest is a constant factor in the horizontal sense, i.e., it is a factor of which due account must be taken in every case;

9. However, the public interest is a variable factor in the vertical sense, i.e., the weight to be attached to it, though never insignificant, may vary depending on the circumstances of the case;

10. No fixed or specific attribution should be assigned to the importance of the public interest in extradition and it is unwise to approach any evaluation of the degree of weight to be attached to it on the basis of assumptions. The precise degree of weight to be attached to the public interest in extradition in any particular case requires a careful and case specific assessment. That said, the public interest in extradition will in most cases be afforded significant weight.

11. The gravity of the crime is relevant to the assessment of the weight to be attached to the public interest. The graver the crime, the greater the public interest. However, the opposite effect, namely 'the lesser the crime the lesser the interest' may not follow in corresponding proportion. Where on the spectrum the subject offence may sit, is an aspect of each case which must also be explored as part of the process.

12. The public interest in extraditing a person to be tried for an alleged crime is of a different order from the public interest in deporting or removing an alien who has been convicted of a crime and who has served his sentence for it, or whose presence in the country is for some other reason not acceptable. This does not mean, however, that the Court is required to adopt a different approach to article 8 rights depending on whether a case is an extradition case or an expulsion case. The approach should be the same, but the weight to be afforded to the public interest will not necessarily be the same in each case.

13. Delay may be taken into account in assessing the weight to be attached to the public interest in extradition;

14. In so far as it is necessary to weigh in the balance the rights of potentially affected individuals on the one hand, with the public interest in the extradition of the requested person, on the other hand, the question for consideration is whether, to the extent that the proposed extradition may interfere with the family life of the requested person and other members of his family, such interference would constitute a proportionate measure both in terms of the legitimate aim or objective being pursued and the pressing social need which it is suggested renders such interference necessary.

15. It is self evident that a proposed surrender on foot of an extradition request will, if carried into effect, result in the requested person being arrested, being possibly detained in custody in this State for a period pending transfer to the requesting state, and being forcibly expelled from the State. In addition, he/she may have to face a trial (and may possibly be further detained pending such trial) and/or may have to serve a sentence in the requesting State. Such factors, in and of themselves, will rarely be regarded as sufficient to outweigh the public interest in extradition. Accordingly, reliance on matters which could be said to typically flow from arrest, detention or surrender, without more, will little avail the affected person.

16. Article 8 does not guarantee the right to a private or family life. Rather it guarantees the right to respect for one's private or family life. That right can only be breached if a proposed measure would operate to 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 legitimate aim or objective being pursued and the stated pressing social need proffered in justification of the measure, would operate in that way and breach of the affected individual's rights under

Article

17. It will be necessary for any Court concerned with the proportionality of a proposed extradition measure to examine with great care in a fact specific enquiry how the requested person, and relevant members of that person's family, would be affected by it, and in particular to assess the extent to which such person or persons might be subjected to particularly injurious, prejudicial or harmful consequences, and then weigh those considerations in the balance against the public interest in the extradition of the requested person.

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

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

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

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

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

Analysis
It is necessary to consider the degree to which the proposed extradition measure, i.e the proposed surrender of the respondent to the UK so that she might face trial for the two offences which are the subject of the European arrest 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 weigh against those private interests the public interest in the respondent's extradition.

If, upon a balancing of those private and public 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 s. 37(1) objection, and not surrender the respondent, as to do so would disrespect, and thereby breach, her rights and/or the rights of her children, to family life contrary to Article 8 ECHR.

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) objection.

Before examining the private interests of the respondent and her children, it is perhaps more convenient to start with a consideration of the public interest in this respondent's extradition. It is necessary to examine, in the first instance, the gravity of the offences to which the warrant relates. The need to do so arises because while the public interest in extradition is constant in the horizontal sense, it is variable in the vertical sense according to both the gravity of the offence or offences in question and the degree to which there is a pressing social need for the proposed extradition measure to be carried into effect.

The offences in this case are characterised under English law as offences of robbery and attempted robbery respectively. They appear to be common law rather than statutory offences. This Court has not had to concern itself with correspondence in circumstances where the ticked box procedure has been utilized by the issuing judicial authority in respect of both offences. In any event, the precise label used by the issuing State, or indeed by this State, to characterise the criminal conduct in question is not determinative in terms of this Court's task of assessing the gravity of the offences in question. To do that effectively it is necessary to have regard to the factual matrix underlying each of the charges that have been preferred. In that regard the precise details of what is alleged against the respondent, including the time and place of the offences, and the degree of her participation, are set out at Part E of the warrant and have been quoted earlier in this judgment.

It is clear from what is set out that the allegations relate to both a robbery and an attempted robbery, in the sense of a theft/attempted theft accompanied by violence or the threat of violence. In both instances it is alleged that the respondent was party to a common design involving herself and her then boyfriend/partner. A motorcycle was used in both alleged crimes, driven by the boyfriend/partner and on which the respondent was a pillion passenger. The *modus operandi* of both alleged crimes was the same. In each case the motorcycle carrying the pair arrived at a filling station. They dismounted the motorcycle on a pretext of purchasing fuel or other goods. Shortly thereafter the boyfriend/partner produced a knife and threatened the service station attendant. In the successful robbery of the 7th of September, 1994 the knife was held to the attendant's side. In the attempted robbery of the 16th of September, 1994 the knife was pointed at the attendant. In the first case £300 was taken by the robbers from shop tills. In the second case, the attempted robbery was unsuccessful because the attendant ran in fear upon being confronted with the knife shouting to his wife to call the police, and causing the would-be robbers to have to flee.

It seems to this Court that, upon any view of these matters, they must be characterised as an armed robbery and an attempted armed robbery. They were clearly premeditated, rather than opportunistic. Moreover, a lethal weapon was employed in each case though fortunately no injury was caused. Although the respondent is not alleged to have personally brandished or employed the knife, it is nonetheless clear that she is regarded by the prosecuting authorities as having been party to a joint enterprise. She later admitted involvement in the attempted robbery when interviewed by the police saying she knew what was going on, and was "short of money".

These alleged crimes can only be regarded as matters of significant gravity in respect of which there would in the normal course of events be a strong public interest in the respondent's extradition. It is very much in the public interest that crimes of violence of this sort be detected and punished. The issuing state is entitled to prosecute and try those suspected of such crimes, with a view to the punishment of those found guilty of such crimes following a trial in due course of law, both for reasons of general and specific deterrence and in pursuit of other public policy and penalogical objectives such as the protection of the public, the protection of private property, and the maintenance of law and order in society. These are all legitimate aims which the issuing state is entitled to pursue. Where, as in the case of this respondent, a suspect is on bail awaiting trial and breaches the terms of her bail, and flees the jurisdiction of the issuing state, it is an entirely legitimate aim for the issuing state to seek to recover the fugitive so that she can stand trial for the offences of which she is charged.

It was contended by counsel on behalf of the respondent that notwithstanding any legitimate aim that the issuing state might have in seeking to recover this respondent on foot of the European arrest warrant in this case, there is no longer a pressing social need for her to be extradited in circumstances where nearly twenty years has elapsed since the crimes of which she is suspected occurred. Counsel for the respondent has suggested that because (*inter alia*) of what he characterises as the "delay" in the case his client, who has put down extensive roots in this country, should not now be surrendered to the UK.

It is clear from the decision of Peart J. in *Minister for Justice, Equality and Law Reform v. Gorman* [2010] 3 IR 583 that delay has a potential relevance in any consideration of proportionality where Article 8 is engaged. Peart J said:

> "It is also an undonbted fact that for whatever reason, and these have been explained in the evidence before the court as I have set forth, there has been a lengthy passage of time from 1994 until the possibility presented itself again to seek the respondent's surrender under the new surrender procedures under a European arrest warrant. But there has been further delay from 1st January, 2004 until the respondent was arrested in May, 2009. Advices were taken from a number of sources and this and other factors, such as awaiting the result of the decision in *Minister v. Justice v. Dundon* [2005]1 I.R. 261, caused delay. But the period of eight years from the enactment of the 2003 Act is something to weigh in the balance when considering the extent of the pressing social need in a democratic society to achieve the surrender of the respondent. In that regard I refer again to the comments of Lord Bingham in *E. B. (Kosovo) v. Secretary of State for the Home Department* [2009]1 A.C. 1159 as to the relevance and effect of a delayed decision on the question of family rights.
>
> In my view the pressing social need or other need or obligation to surrender the respondent is diluted by the delays which have been encountered in this case, for whatever reason they have occurred ... "

To put these remarks fully in context it is also appropriate to quote the comments of Lord Bingham in *E. B. Kosovo v. Secretary of State for the Home Department* [2009]1 A.C. 1159 to which Peart J. was referring. In doing so, it should be stated that E.B. Kosovo was an immigration case in which a proposed deportee was relying upon Article 8 to resist deportation. It was not an extradition case. Nevertheless, Peart J. regarded it as being of some assistance to him in *Gorman*, stating:

> "Lord Bingham saw relevance of delay in three ways, two of which I feel are worth setting out:
>
> > 'It does not, however, follow that delay in the decision-making process is necessarily irrelevant to the decision. It may, depending on the facts, be relevant in any one of three ways. First, the applicant may during the period of any delay develop closer personal and social ties and establish deeper roots in the community than he could have shown earlier. The longer the period of the delay, the likelier this is to be true. To the extent that it is true, the applicant's claim under Article 8 will necessarily be strengthened. It is unnecessary to elaborate this point since the respondent accepts it.
> >
> > Delay may be relevant in a second, less obvious way. An immigrant without leave to enter or remain is in a very precarious situation, liable to be removed at any time. Any relationship into which such an applicant enters is likely to be, initially, tentative, being entered into under the shadow of severance by administrative order. This is the more true where the other party to the relationship is aware of the precarious position. This has been treated as relevant to the quality of the relationship ..... A relationship so entered into may well be imbued with a sense of impermanence. But if months pass without a decision to remove being made, and months become years, and year succeed year, it is to be expected that this sense of impermanence will fade and the expectation will grow that if the authorities had intended to remove the applicant they would have taken steps to do so. The result depends on no legal doctrine but on an understanding of how, in some cases, minds may work and it may affect the proportionality of removal.
> >
> > Delay may be relevant, thirdly, in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes.' "

This Court has carefully considered the circumstances of the respondent's case in so far as they are known. Having regard to the specifics of her case, it does not seem to the Court that delay could operate to dilute what would otherwise be the pressing social need for her extradition, notwithstanding the significant passage of time since the offences are said to have been committed. It would seem that to the extent that there has been delay, it has been due to the respondent's action in fleeing and going to ground. It is hardly reasonable to suggest that she should now be able to benefit from a delay situation that she herself has contrived, indeed created.

There was no delay in the police investigation, or in the preferment of charges. The offences are alleged to have occurred on the 7th of September, 1994 and on the 16th of September, 1994. She was arrested on the latter date, charged and admitted to bail pending trial in due course at Bristol Crown Court in respect of both matters. She failed to answer her bail on the 28th of November, 1994. We now know that she fled to evade justice and made her way to Ireland, where she settled and took up residence in County XXX. There is not a scintilla of evidence to suggest that the UK authorities had any clue as to her whereabouts until shortly before the issuing of the European arrest warrant on the 29th of June, 2012. However, information accompanying the warrant reveals that Avon and Somerset Constabulary received an "Intel Hub Intelligence Report" dated 13th March, 2012, in response to an earlier request made by them to the Home Office Identity & Passport Service seeking disclosure of information relating to the possible existence of a passport in the name of N. J. M. aka N.J.M. (differently spelt version of names) date of birth 30/12/1959. It is unclear what prompted this request for intelligence. However, it seems clear that the intelligence report issued in response was the means by which the respondent was eventually located. The intelligence report recorded that:

"IPS records show the following:

Passport number XXXXX was issued at Foreign Commonwealth Office Dublin on 02/08/2005 expiring on 02/08/2015 in the name N.J. M. born XXXXX on XXIXXIXXXX (B21).

The address given on the application form was, XXX, Co XXX (B21).

There is no trace of the issue of a UK passport or an application for UK passport facilities in the name N.J. M. date of birth XX/XX/XXXX (B21)."

The respondent has adduced no evidence whatsoever to suggest that the UK authorities knew, or should have known, or indeed had been in a position to discover, her whereabouts sooner, or suggesting that they have been dilatory in any way. On the contrary, the evidence, such as it is, suggests that they acted as soon as they discovered her whereabouts.

As previously stated the European arrest warrant was issued on the 29th of June, 2012. There was no significant delay in its transmission to the Irish authorities or in the Central Authority here placing it before the High Court for endorsement. It was endorsed as stated already on the 22nd of August, 2012 by Dunne J., and the warrant was then executed on the 4th of December, 2012. Following that the case progressed in the normal way through various procedural and case management steps, ultimately coming before this Court for hearing on the 24th of April, 2013. The case did not conclude on that date and was adjourned part heard to the 1st of May, 2013 when it was resumed and the hearing was concluded. Judgment was then reserved.

It is not enough for the respondent to simply point to the passage of time in circumstances where she fled the jurisdiction of the issuing state without flagging her intention to do so, or making anyone aware of her intended destination, and where she has adduced no evidence whatsoever to suggest that there was any actual foot-dragging, negligence or ineptitude on the part of the authorities in the issuing state in their efforts to locate and recover her. It would be an entirely different matter if she had adduced evidence, direct or even circumstantial, or could point to material in the warrant, suggestive of the fact that the issuing state knew for some time where she was to be located and had failed to act. However, the Court has received no evidence whatsoever to suggest that that was the case here.

Extradition has at all times been possible between the UK and Ireland. Prior to the 1st of January, 2004 the respondent's extradition could have been sought under Part III of the Extradition Act 1965 as amended. Thereafter, she could have been sought, as is now the case, on foot of a European arrest warrant. However, for the UK authorities to have been expected to act under either regime they would have to have known where she was. There is simply no evidence to suggest that they in fact knew her whereabouts and the evidence before the Court concerning the 2012 intelligence report implies the contrary.

Moreover, although the respondent makes the point that she has put down roots in this country, and indeed has conceived and borne two of her three children in Ireland (her affidavit does not say this in terms but it was urged upon the Court by her counsel that that is the position) she had no reason to believe that her position was other than precarious. She left the UK as a fugitive, breaching her bail terms while awaiting trial on serious charges, and had simply no basis for any confidence or belief that she would not be pursued, or that the police and the courts in the UK would lose interest in her. It was not a case of her being lulled into a false sense of security by reason of some default on the part of the UK authorities. There is no evidence that they lost interest in her, or were dilatory about pursuing her, or otherwise gave encouragement to a belief that the case could be regarded as being closed and that she was no longer wanted. Accordingly, it can little avail her that she has put down roots in Ireland, and has conceived, borne and reared children here, given that her position in this country has at all times been precarious, and that she ought to have recognised it as such.

Turning then to the private rights of the respondent and her children, it is appropriate in the first instance to examine the respondent's personal circumstances. It seems that she is settled in County XXX for many years, and resides there in local authority housing. It is not clear if her G.P.'s request that she be moved to a more suitable house than the one she was living in earlier this year has been acceded to. The evidence is silent as to whether she is married or single, or as to whether she is in any kind of relationship. The evidence is also silent as to whether her children were fathered by just one individual or more than one individual, whether the father or fathers of those children are alive or dead, whether she has any ongoing contact with such person or persons, or whether she or the children receive any support from such person or persons. The evidence is also silent concerning whether she has any family or relatives living in Ireland apart from her children, and as to what is the situation with respect to family in England or elsewhere. Equally, there is no information concerning her social network, if any. It seems that she possesses little in the way of material means. She does not claim to own any property, and it seems that she is unemployed and on disability allowance because of medical problems. There is no information concerning any employment or employments she may have had in the past, or whether she possesses any skills or vocational qualifications that might make her employable, at least in theory (economic circumstances permitting), notwithstanding her medical problems.

The evidence concerning the respondent's medical condition paints a reasonably clear picture concerning her physical ailments and limitations. She is significantly challenged by a range of medical problems and, as a result, suffers from reduced mobility. Though she can walk with difficulty, the use of a wheelchair by her is recommended. She does not yet use a wheelchair but we are told this is due to stoicism on her behalf. Undoubtedly, she would find detention or imprisonment for any period to hard and difficult to cope with on account of her disabilities. However, that is not a reason, in itself, to refuse to surrender her, as most prisons have to accommodate disabled and immobile prisoners from time to time, and the E.Ct H.R. in *Kaprykowski v. Poland*, (App. no. 23052/05, J February, 2009), and in *Nitecki v. Poland* (App. no 65653/01, 21 March, 2002) has stated that prisoners are entitled to the same level of medical care as is available in the public health care system in the country where they are detained.

To the extent that the respondent claims to have depression and to have had suicidal ideation in the past, and to be at risk of committing suicide in the event of being surrendered, there is little medical evidence to support that assertion. The G.P. does not refer to her suicidal ideation at all, although he does list depression among her "other problems" in the report of the 19'h of April, 2013. However, there is no report from a psychiatrist or any other mental health professional to support the suggestion that she is at risk of suicide. The respondent claims to be on a drug "Edronox" for her depression, but she does not indicate who has prescribed it. It seems reasonable to assume that it was probably prescribed by her G.P.. The important point, however, is that there is obviously some doctor involved in her mental health care. Yet, no medical report has been exhibited or produced from any such professional dealing specifically with her mental health issues, and in particular her alleged suicidal ideation and the degree, if any, to which there may be reality to her suggestion that she is at risk of suicide. Neither has an affidavit sworn by such person been adduced.

It is necessary at this point to consider the situation of the respondent's children, whose Article 8 rights are also invoked, and also the respondent's relationship with her children. The Court is satisfied that the respondent is a loving mother with strong maternal

instincts and that she is genuinely worried about what may happen to her children in the event that she is surrendered by this Court. Moreover, the Court accepts that both she, and the children, have faced and continue to face, certain adversities as described in her affidavit.

In speaking of the "children" the Court has so far not been speaking in the strict legal sense, but in the sense that Y, Z and X were born of the respondent and are her issue. However, legally speaking X, being well over eighteen, is no longer a child. The Court has not been given the exact dates of birth of Y and Z. It has simply been told that they are seventeen and fifteen respectively (as of the date of the respondent's affidavit- 4th March, 2013). They are both legally children and will remain such until their eighteenth birthdays. To the extent that the respondent invokes her children's Article 8 rights, she can only rely upon and assert the rights of those in respect of whom she is *in loco parentis*. She cannot therefore seek to rely upon X's Article 8 rights. X is an adult who can invoke her own rights. The fact that she is coping with issues to do with historic sexual abuse, and benefits from emotional support provided by her mother, does not alter this.

The situation of Y is described in paragraphs 4 & 5 of the respondent's affidavit. She is described as "vulnerable" at times of stress due to having been bullied at school, and to have a history of self harming. She is apparently in counselling. However, no report has been provided to the Court from the counsellor addressing the implications, if any, for Y's continued recovery, and emotional and mental well being generally, in the event of her mother being surrendered. The only evidence suggesting that the proposed extradition measure would be harmful or injurious to Y, as opposed to upsetting and distressing (which it undoubtedly would be), is the respondent's unsupported assertion in that regard.

The most worrying aspect of the case from the Court's perspective is the situation of Z. His situation is dealt with in paragraphs 6 & 7. He is described by his mother as having been "recently" diagnosed with Autistic Spectrum Disorder (ASD). The Court has not been told who made this diagnosis, the circumstances in which it came to be made, and whether Z is receiving ongoing professional help or services of any sort. The G.P. does describe Z as "autistic" in his report concerning the respondent and dated 19th of April, 2013, and says that he demands a lot of care, but is a credit to his mother. He also praises the respondent for successfully keeping Z in mainstream education. The respondent herself states that while Z is at home with her it is difficult to see much 'wrong' with him, beyond the usual typical teenage awkwardness. Yet outside the home, in circumstances with which he is unfamiliar, she says Z becomes almost profoundly disabled and unable to cope. Sometimes this exhibits in him as confusion, sensory overload, manic behaviour or shutdown. Consequently his schooling has suffered. She states that as Z's mother, she is his sole care-giver and as he is now 15 years old, it is envisaged that he will need a full-time carer for a long time to come.

The Court has been given no indication as to what level of adult family, or community support, there may be for Z in the event of his mother being surrendered. Again, the Court has not been provided with any professional reports or evidence concerning how this undoubtedly vulnerable child may be expected to cope materially, socially, emotionally and educationally, in the event of his mother being surrendered.

Aside from practical considerations to do with his material welfare, which may perhaps be capable of being addressed, it is necessary for the Court to also consider whether Z, on account of his particular vulnerabilities, is at risk of suffering specific harm, prejudice or injury in the event of the Court surrendering his mother. There is no evidence before the Court at this time that the proposed surrender would be specifically harmful or injurious to him, beyond the apprehensions expressed by his mother who is neither independent nor disinterested. In saying that the respondent is neither independent nor disinterested, the Court does not intend to imply that the respondent is cynically putting forward her son's situation to resist surrender. The Court has no reason to doubt that she genuinely fears for her son's welfare. However, she is not best placed to present a reliable assessment of whether there is reality to him suffering the various prejudices that she apprehends. The Court has been led to believe that Z's diagnosis is recent. There was therefore at least one professional involved in recent times who could have provided assistance to the Court. It begs the question: why is there no professional assessment of Z's situation before the Court?

The situation is most unsatisfactory. Even on the limited information that the Court has, there are grounds for concern. Who is going to look after Z, and provide him with the support he needs, if his mother is surrendered? Where is he going to live, how is he going to be fed, clothed and cared for, and who is going to act *in loco parentis* to him? It would be an abdication of the Court's responsibility to approach matters simply on the basis that there is no evidence one way or the other. It must regard Z's welfare as a primary consideration.

In that regard this Court believes that fair criticism can be directed at the respondent personally, and to some extent at her legal team, for the degree to which there are significant evidential deficits in this case. The respondent's own affidavit is articulate and cogently expressed. She is seemingly an intelligent person. It is difficult, therefore, to understand why no professional evidence has been put before the Court concerning Z, and to a lesser extent Y, particularly in circumstances where she has had the benefit of professional legal advice and representation. The Court has not been apprised of any resources difficulty (e.g. a professional refusing to provide a report, to swear an affidavit or to come to Court without a guarantee in respect of fees), or any other difficulty. Moreover, even if there was a resources difficulty, and that is to speculate, she clearly has a supportive G.P. who could have been asked to deal specifically with the children's situation. It is also inexplicable that there is no engagement by the respondent with the question of her social and family network, the other parent or parents involved (or not involved as the case might be) and what contingency plans she has put in place for Z and Y to be looked after in the event that she is to be surrendered. Her affidavit is wholly silent on these issues. She must surely have considered the risk that she might be surrendered, and must surely have considered Z's needs. If there is absolutely nobody willing and able to assume responsibility for Z's care the Court would have expected her to say so, but she doesn't say so. The affidavit is simply silent on the possibility of alternative care arrangements.

The Court's Decision

The evidence, such as it is, does not establish that the private interests of the respondent and her dependent children outweigh the public interest in her extradition in the circumstances of this case. The proposed surrender does not constitute a disproportionate measure in the circumstances of this case and would not operate to disrespect the rights of the respondent, and her children, in breach of Article 8 of the ECHR. The Court is not disposed therefore to uphold the s. 37 objection in this case.

While the information in respect of Z is unsatisfactory to the extent that it is unclear what arrangements have been made, or will be made, to ensure his material, social, emotional and educational welfare in the event of his mother being surrendered, the Court has received no concrete evidence to establish that the proposed measure would be injurious and harmful to him, as opposed to distressing and upsetting. The fact that alternative care arrangements require to be made for Z is not a reason in itself to regard the proposed surrender as being a disproportionate measure. He is reasonably close to adulthood, albeit vulnerable by reason of his autism, and therefore is not in the same situation as a very young child. However, alternative care arrangements will require to be put in place, whether those involve him being cared for by a sibling or some other relative, or possibly being taken into the care of the State; and it is clear that in his best interests Ms. M.'s surrender ought not to occur until arrangements in that regard are in place.

The Court is therefore disposed to surrender Ms. M., but will consider either staying its order, or postponing surrender on humanitarian grounds, for such reasonable period as is necessary to enable alternative care arrangements to be put in place. It is the intention of the Court that any such stay or postponement should be for the shortest possible period and, barring unforeseen circumstances, that it should terminate within a matter of weeks rather than months. Moreover, if alternative arrangements are not put in place by Ms. M. herself within the envisaged reasonable period, and in particular if it appears that there has been foot-dragging, unreasonable delay, or obstruction on her part, the Court will not hesitate to intervene of its own motion and directly refer Z's case to the Health Service Executive.

The Court will invite submissions from counsel on both sides concerning the most appropriate form of the orders necessary to give effect to it's decision, and on the question of whether the Court ought to admit Ms M. to continuing bail pending her surrender in due course and, if so, upon what conditions.