Neutral Citation Number: [2011] IEHC 168

THE HIGH COURT

2010 276 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003 AS AMENDED

BETWEEN/

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

- AND -

CHRISTIAN CHARRON

RESPONDENT

JUDGMENT of Mr Justice Edwards delivered on the 14th day of April 2011

Introduction:
The respondent is the subject of a European Arrest Warrant issued by the Republic of France on the 21st of June, 2010. The warrant was subsequently endorsed for execution by the High Court in this jurisdiction on the 7th of July 2010. The respondent was arrested at the Criminal Courts of Justice, Dublin 7 on the 13th of July, 2010 but does not consent to his surrender to the Republic of France. Accordingly, this Court is now being asked by the applicant to make an Order pursuant to s. 16 of the European Arrest Warrant Act, 2003 as amended (hereinafter referred to as "the 2003 Act") directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him. In the circumstances the Court must enquire whether it is appropriate to do so having regard to the terms of s.16 of the 2003 Act.

The respondent, as is his entitlement, does not concede that any of the requirements of s. 16 aforesaid are satisfied. Accordingly, as no admissions have been made, the Court is put on inquiry as to whether the requirements of s. 16 of the 2003 Act, 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. In addition the Court is required to consider in the particular circumstances of this case three specific objections to the respondent's surrender, namely:

> (i) that the surrender of the respondent is prohibited under s. 37 of the 2003 Act on the grounds that it would contravene a provision or provisions of the Constitution and/or that it would be incompatible with the State's obligations under the European Convention on Human Rights. In that regard the respondent alleges that the prosecution leading to his conviction and sentencing in the issuing state for the offences specified in the European Arrest Warrant was malicious and politically motivated arising from a legal dispute between his family and the French authorities;
>
> (ii) that the surrender of the respondent surrender is prohibited by s. 45 of the 2003 Act in circumstances where it is conceded that he was tried *in absentia* and where a purported undertaking by the issuing judicial authority that he would receive a re-trial if surrendered is said by the respondent not to meet the requirements of s. 45 aforesaid;
>
> (iii) that surrender of the respondent surrender is prohibited by s. 38 of the 2003 Act as the offences in respect of which surrender is sought do not correspond with offences known to the law of the State.

Uncontroversial s. 16 issues
The Court has received an affidavit of Sergeant James Kirwan sworn on the 10th of November, 2010 and has also received and scrutinised a copy of the European Arrest Warrant in this case. Moreover the Court has also inspected the original European Arrest Warrant which is on the Court's file and which bears this Court's endorsement. The Court is satisfied following its consideration of this evidence and documentation that:

> (a) the person before it is the person in respect of whom the European arrest warrant was issued;
>
> (b) the European arrest warrant has been endorsed for execution in accordance with s. 13 of the 2003 Act;
>
> (c) the High Court is not required, under s. 21A, 22, 23, or 24 (inserted by ss 79, 80, 81 and 82 of the Criminal Justice (Terrorist Offences) Act 2005), to refuse to surrender the respondent under the 2003 Act.

The warrant is a sentence type warrant and the respondent is wanted in the Republic of France to serve the balance outstanding of a sentence imposed upon him on the 31st of May, 2010 by the 4th Division of the Bordeaux Magistrate's Court in respect of the three offences particularised in the warrant. The sentence imposed was an aggregate or composite sentence in respect of the said three offences and was for a three year term of imprisonment with one year thereof suspended. The balance of the sentence which is required to be served is the full unsuspended period of two years imprisonment.

The Court is further satisfied that the European Arrest Warrant in this case is in the correct form, and that, subject to the Court being satisfied as to correspondence, the requirements of the statute with respect to minimum gravity are met.

In addition the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No 2) Order 2004, S.I. 130/2004 (hereinafter referred to as "the 2004 Designation Order"), and duly notes that by a combination of s 3(1) of the 2003 Act, and article 2 of, and the Schedule to, the 2004 Designation Order, "France" (or more correctly the Republic of France) is designated for the purposes of the 2003 Act as being a state that has under its national law given effect to the Framework Decision.

The evidence adduced by the respondent
The respondent has filed an affidavit sworn by him on the 17th of November, 2010. He makes the following averments as to matters of fact at paragraphs 4– 10 inclusive:

> "4. I say that my family originally lived in Martinique, where my father, Victor Charron, was the mayor of the town of Le Marin from 1977 to 1982. I say that my father was anxious to develop the sugar industry in Martinique in conjunction with the French government and that the European Economic Community provided funds to assist with this. I say, however, that the funds were diverted to develop the tourist industry instead and that a number of businessmen, such as [a named person], who were connected to powerful political figures in France benefited financially as a result.
>
> 5. I say that when my father discovered that the funds had been embezzled he instituted numerous legal proceedings against the French government between 1982 and 2006. My father also questioned the French government in the French National Assembly on a number of occasions in relation to the misappropriation of these funds.
>
> 6. I say that, as a result of the embarrassment caused to the French political establishment from his exposure of this matter, on three occasions between 1976 and 1982 attempts were made on my father's life. I further say that my father died on the 19th day of November 2006 of natural causes.
>
> 7. I say that in 2005 I wrote a book about this affair entitled "Un Sucre Amer" but that immediately prior to the Paris Book Fair in March 2005, at which I hoped to market the book, I was served with a tax demand for €230,000. I say that I never owned this money to the French state but I say and believe that the tax demand was an effort by the authorities in the issuing state to prevent the distribution of my book. As a result of the tax demand, my bank accounts were frozen and I was unable to access any funds for the printing and promotion of my books. I further say that I unsuccessfully challenged this tax demand and that I was also unsuccessful in my subsequent appeal of this decision. I say that, while I have in total written and published 22 books, five of them were based on the cases taken by my father, I have been unsuccessful in having any of them widely distributed because of limited funds arising principally out of my accounts being frozen by the French Government.
>
> 8. I further said that the description of the circumstances of the offence set out in the European arrest warrant is entirely incorrect. I never "swindled" anybody in the manner alleged or at all. I say that the warrant is correct in stating that I was given money by Marie Claire Deffarge as referred to therein, but I say that this was a loan in the amount of €489,000 in order to assist with the publication of my first book about my father's case. I say that I required this loan as, due to the controversial nature of its contents, I was unable to publish and otherwise. This money was also used in an attempt to set up a vinegar business which would have generated funds for the publication, printing and promotion of my books.
>
> 9. I say equally that I never defrauded any of the other individuals referred to in the said warrant. I say that M. Veyron is an estate agent who arranged the lease of a property near Bordeaux for me, and that Gerard Raffin is the owner of that property and that Michel Jay completed some works on the property. I further say that the vinegar business referred to above was to be established in this property.
>
> 10. I say, therefore, that the prosecution against me is both malicious and politically motivated."

Additional information from the issuing judicial authority.
The European Arrest Warrant, at Part D thereof, indicates that the respondent was tried *in absentia*. It states:

> "M083 The person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia* but has the following legal guarantees after surrender to the judicial authorities (such guarantees can be given in advance):
>
> M083 Specify the legal guarantee:
>
> **An application to set aside a judgement is the legal remedy for a judgement rendered IN ABSENTIA; Mr CHARRON may file an application to SET ASIDE the judgement within 10 days following notification of the judgement handed down on May 31st 2010, and will be judged again."**
>
> (original formatting preserved)

On the 15th of September 2010 the Irish Central Authority sought clarification from the issuing judicial authority with respect to the legal guarantee in question, and received the following reply dated the 17th of September, 2010:

> "In reply to your letter of September 15, 2010, concerning the European arrest warrant issued on June 21st 2010 in respect of Mister Christiaan Charron, I hereby inform you that if Mister Christian Charron is surrendered to the French judicial authorities, he will be given the opportunity of a retrial in his presence, if he so requests.
>
> French law provides that any person judged in his absence, if it is not established that the person was aware of the date of the trial hearing, is allowed to file an application to set aside the judgement within a period of 10 days following the date on which notice of the judgement is served by giving the person a copy thereof. A new hearing date has been set and the case is judged again, in the presence of the person concerned. If Mister Charron is surrendered to the French authorities:
>
> • a copy of the judgement handed down in his absence will be given to him and he will be given the opportunity of a retrial;
>
> • he will be notified of the data, time and place of the retrial. A written summons will be given to him;
>
> • the retrial will take place in his presence and he will be assisted by a lawyer if he so requests.

You will find the completed undertaking form herewith. This opportunity of a retrial is also indicated in section D M 083 of the European arrest warrant sent to you."

This letter was accompanied by a document stating the following:

"Undertaking pursuant to Article 5 of the Framework Decision on the European arrest warrant and the surrender procedures between Member States.

I, C Buytet, Vice Procureur, the issuing judicial authority in respect of the European Arrest Warrant issued for CHARRON, Christian on the 21. 6. 2010 hereby undertake that the said CHARRON, Christian upon being surrendered will:

(i) be retried for the offences set out on the European Arrest Warrant or be given the opportunity of a retrial in respect of those offences,

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

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

The main controversies

Is the respondent's surrender prohibited under s. 37 of the 2003 Act?

As previously stated, the respondent contends that his surrender is prohibited under s. 37 of the 2003 Act on the grounds that it would contravene a provision or provisions of the Constitution and/or that it would be incompatible with the State's obligations under the European Convention on Human Rights. This contention is based upon the allegation that the prosecution leading to his conviction and sentencing in the issuing state for the offences specified in the European Arrest Warrant was malicious and politically motivated arising from a legal dispute between his family and the French authorities, and the respondent relies upon the evidence set forth in his affidavit from which the Court has already quoted extensively.

The applicant opposes this contention and has submitted that no objective or corroborative evidence has been provided by the respondent. It was further submitted that the guilt or innocence of the respondent is a matter which falls to be determined in the issuing state. The applicant further submitted that are respondent must produce cogent evidence of a breach of his fundamental rights, including his right to a fair trial, in order for surrendered to be prohibited by section 37 of the 2003 Act. In support of this the applicant relies upon *Minister for Justice Equality and Law Reform v. Brennan* [2007] 3 I.R. 732 and *Minister for Justice Equality and Law Reform v. Stapleton* [2008] 1 I.R. 669.

The court agrees with the applicant's submission. Although the respondent has set out certain facts in his affidavit which he contends are evidence of malice and of a politically motivated prosecution, the court is faced at the end of the day with uncorroborated assertion. The quality this evidence cannot be regarded as being sufficient to displace the presumption that the Republic of France generally respects human rights, and indeed to date has respected, and will continue to respect, the respondent's human rights. In the case of *Minister for Justice Equality and Law Reform v. Puta and Sulej* [2008] IESC 30, a case in which the respondents contended that they would not receive a fair trial on account of pervasive corruption and brutality within the political and criminal justice system of the Czech Republic, Fennelly J stated:

" it is, of course, clear that person is in the position of the appellants are entitled to resist the making of the order by producing proof that they face the risk of mistreatment on their return. That is clear from the recitals to the Framework Decision and from section 37 of the Act of 2003. But they must discharge a heavy onus. They must rebut the presumption that the issuing state generally respects human rights. The evidence must be cogent. That is that it must be coherent and persuasive. It is easy to make unsupported and unverifiable assertions about the state of affairs in another country."

It is this Court's view that the respondent has not produced sufficiently cogent evidence to support his claim of malice and politically motivated prosecution. What he has done is make unsupported assertions about the French political and criminal justice system. In the absence of some evidence tending to verify or corroborate his assertions that the heavy onus that he bears is not discharged, and the presumption in favour of the issuing state showing respect for his human rights is not rebutted.

Whether the respondent's surrender is prohibited by s. 45 of the 2003 Act

S. 45 of the 2003 Act provides:

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

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

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

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

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

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

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

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

The respondent contends that the conditional nature of the undertaking as it is set out in the warrant is clearly inadequate having

regard to the requirements of section 45. Counsel for the respondent has submitted that somewhat conditional nature of the undertaking is confirmed in the letter of the 17th of December, 2010 in as much as that letter indicates that French law allows for a retrial *"if it is not established that the person was aware of the date of the trial hearing*". He contends that the clear implication is that no retrial is permissible where it is established that the person was aware of the date of the trial hearing. Whilst it is acknowledged that the person who is so aware is not entitled to the protection of section 45 the difficulty which presents itself stems, he submits, from the fact that the French authorities would appear to have reserved to themselves the entitlement to determine whether or not the person was aware. Counsel for the respondent submits that is for the Irish courts to make this determination and not the courts or any other body in the issuing state. In support of this the respondent relies upon *Minister for Justice Equality and Law Reform v. Sliczynski* [2009] IESC 73 where the Supreme Court stated that there was a matter for the Irish courts to determine whether there had been notification or not in accordance with the strict terms of section 45. In the circumstances it was submitted on behalf of the respondent that the undertaking in respect of a retrial is inadequate.

Counsel for the applicant has submitted that the actual undertaking given by the issuing judicial authority is given in terms which comply with the terms of section 45 of the Act of 2003, and that it does not provide for the refusal or withdrawal of the right to a retrial as alleged by the respondent.

This court agrees that the applicant's submission. The actual undertaking document is clear and unequivocal, and is not qualified or subject to any conditions. The court is satisfied as to the sufficiency of the undertaking and is disposed to dismiss this ground of objection.

Is the surrender of the respondent prohibited by s. 38 of the 2003 Act?

The respondent contends that his surrender is prohibited by s. 38 of the 2003 Act as the offences in respect of which surrender is sought do not correspond with offences known to the law of the State.

The first offence is described in the European Arrest Warrant as "swindling" as defined in Article 313-1 par.1, par. 2 of the French Code of Criminal Law and punished by Articles 313-1c par. 2, 313-7 and 313-8 of the French Code of Criminal Law; and at Part E I of the European Arrest Warrant the box relating to swindling is ticked. Accordingly, the offence is an offence to which paragraph 2 of article 2 of the Framework Decision applies. As the offence is punishable by imprisonment for a maximum period of not less than 3 years, s. 38(1) (b) of the 2003 Act applies, and correspondence does not require to be demonstrated.

The second offence is described in the European Arrest Warrant as aiding and abetting criminal bankruptcy: embezzling or concealing all or part of assets, as defined in Articles L 654-2-2, L.626-1 of the French Commercial Code and punished by Articles L 654-3 par. 1, L654-5, L654-6, L 653-8 par.1 of the French Commercial Code and Articles 121-6 and 121-7 of the French Code of Criminal Law. As s. 38(1) (b) of the 2003 Act does not apply to this offence correspondence requires to be demonstrated.

The facts which are said to give rise to the offence in question are set out in the European Arrest Warrant. It is stated that the respondent:

> "…convinced Gérard RAFFIN, a farmer concerned by a court-ordered liquidation procedure, to embezzle part of the asets of the BERTHOUMIEUX agricultural estate by selling agricultural equipment and uprooting vines, thereby aiding criminal bankruptcy. This offence earned him the amount of 9,000 Euros."

The applicant invites the Court to find that this offence corresponds with the offence of counselling or procuring the commission of the offence of theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, having regard to section 7 of the Criminal Law Act, 1997.

S. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 provides:

> "(1) Subject to section 5, a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it.
>
> (2) For the purposes of this section a person does not appropriate property without the consent of its owner if—
>
> (a) the person believes that he or she has the owner's consent, or would have the owner's consent if the owner knew of the appropriation of the property and the circumstances in which it was appropriated, or
>
> (b) (except where the property came to the person as trustee or personal representative) he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps,
>
> but consent obtained by deception or intimidation is not consent for those purposes.
>
> (3) (a) This subsection applies to a person who in the course of business holds property in trust for, or on behalf of, more than one owner.
>
> (b) Where a person to whom this subsection applies appropriates some of the property so held to his or her own use or benefit, the person shall, for the purposes of subsection (1) but subject to subsection (2), be deemed to have appropriated the property or, as the case may be, a sum representing it without the consent of its owner or owners.
>
> (c) If in any proceedings against a person to whom this subsection applies for theft of some or all of the property so held by him or her it is proved that—
>
> (i) there is a deficiency in the property or a sum representing it, and
>
> (ii) the person has failed to provide a satisfactory explanation for the whole or any part of the deficiency,

it shall be presumed, until the contrary is proved, for the purposes of subsection (1) but subject to subsection (2), that the person appropriated, without the consent of its owner or owners, the whole or that part of the deficiency.

(4) If at the trial of a person for theft the court or jury, as the case may be has to consider whether the person believed —

(a) that he or she had not acted dishonestly, or

(b) that the owner of the property concerned had consented or would have consented to its appropriation, or

(c) that the owner could not be discovered by taking reasonable steps,

the presence or absence of reasonable grounds for such a belief is a matter to which the court or jury shall have regard, in conjunction with any other relevant matters, in considering whether the person so believed.

(5) In this section—

"appropriates", in relation to property, means usurps or adversely interferes with the proprietary rights of the owner of the property;

"depriving" means temporarily or permanently depriving.

(6) A person guilty of theft is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both."

S. 7(1) of the Criminal Law Act, 1997 provides:

"Any person who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be indicted, tried and punished as a principal offender."

It was submitted by the applicant that the respondent can be tried as a principal offender as it is clear from the warrant that he counselled or procured M Raffin to embezzle the assets in issue. It was further submitted that having regard to *Minister for Justice Equality and Law Reform v. Sas* [2010] IESC 16 the word "embezzle" should be given its popular or ordinary meaning.

While the respondent does not concede correspondence with respect to this offence, he has not sought to advance any specific argument in support of non-correspondence. The Court accepts the applicant's submission and finds that this offence (the second offence listed in the warrant) does correspond with the offence in Irish law of counselling or procuring the commission of the offence of theft contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and section 7 of the Criminal Law Act, 1997.

The third offence listed in the warrant is an offence described as concealed work as defined in Articles L. 362-3 par.1, L. 324-9, L. 324-10, L. 324-11, 320, L. 143-3 of the French Labour Code and punished by Articles L.362-3 par.1, L.362-4, and L.362-5 of the French Labour Code. The European Arrest Warrant further states in Part E II thereof that:

"CONCEALED WORK

The following is considered to be concealed work by concealing activity: undertaking a profit-making activity to produce, process, repair or provide services, or perform business activities for any natural person or legal entity who, intentionally failing to comply with its obligations:

a) …." [not relevant];

"b) *or does not undertake the required declarations with respect to social protection bodies or to the tax authorities in compliance with the applicable legislative and statutory obligations*

Concealed work is punished by a three year prison sentence or by a fine of 45,000 Euros."

(original emphasis preserved)

The facts which are said to give rise to the offence in question are set out in the European Arrest Warrant. It is stated that the respondent:

"…hired 2 employees: Christelle TRAMEAU and Yannick MASMONDET, but did not file the declarations required under French labour law."

In additional information supplied by the issuing judicial authority on the 11th of March, 2011 it is stated:

"In reply to your request for additional information concerning the offence of concealed work, I can inform you that Mr CHARRON hired 2 employees without declaring their employment to the competent bodies meaning that he deprived his employees of any rights and of any social security cover.

French law provides that the employer must declare employment to URSSAF (the body that collects social security and family allowance contributions) within eight days of the foreseeable date of start of employment, and that the employer must give his employees an employment contract and payslips. The declaration of employment sent to URSSAF allows the employee to be covered for risks of illness, invalidity, maternity, loss of employment, old age pension and industrial accidents. The declaration confirms the capacity of employee and therefore allows the employee to assert that status in

any disputes he may have with his employer. Following the declaration of employment the employer must pay social security contributions for his employee. Failure to comply with these legal obligations is detrimental to the social system and gives rise to unfair competition wuth respect to employers who do comply with their obligations.

I would also add that this declaration of employment involves membership of a supplementary pension institution. The purpose of the declaration is to inform all the social bodies that the employee is indeed employed by the company"

The applicant invites the Court to find that this offence corresponds with an offence contrary to s. 252(2) of the Social Welfare (Consolidation) Act, 2005 which provides:

> "An employer, or a servant or agent acting on behalf of the employer, who, for the purpose of evading or reducing the amount of his or her liability in respect of employment contributions which the employer is liable to pay under Part 2 and which he or she has not paid—
>
> (a) ……, or knowingly conceals any material fact, or
>
> (b) ……..
>
> is guilty of an offence."

The applicant has submitted that the facts are that the respondent hired two employees and failed to make the declarations required under French labour law. Moreover, counsel for the applicant submits, it is clear from the additional information dated the 11th of March 2011 that the declarations ought to have been made to the URSSAF, the body which collects social security and family allowance contributions. The declaration of employment is stated to involve membership of a supplementary pension institution. The failure of the respondent to declare his two employees deprived them of any rights to social security cover. Following the making of such a declaration the employer is obliged to pay social security contributions. It is implicit from the fact that no declaration was made that the respondent did not pay the contributions required.

The applicant has submitted that the fact that the nature of the contributions is not identical is not material having regard to the terms of s. 38(2) of the 2003 Act and the dictum of Denham J in *Minister for Justice Equality and Law Reform v. Sas* [2009] IESC 48, at paragraph 14 wherein she states:

> "In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."

S. 38(2) of the 2003 Act states:

> "The surrender of a person to an issuing state under this Act shall not be refused on the ground that, in relation to a revenue offence—
>
> (a) no tax or duty of the kind to which the offence relates is imposed in the State, or
>
> (b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control."

The applicant says that while it is accepted that the offence under s.252 of the Social Welfare (Consolidation) Act, 2005 is not a revenue offence, s.38(2) is nonetheless instructive insofar as it refers to *"a tax or duty of the kind"* and not an identical tax or duty. The notification required in respect of the contributions which was required in France is of the same kind as the non-disclosure which constitutes an offence under s. 252.

The applicant further submits, in the alternative, that correspondence is to be found with an offence under s. 1078(2) of the Taxes Consolidation Act 1997 (as amended) by reference to regulation 7 of the Income Tax (Employments) (Consolidation) Regulations, 2001, S.I. 559 of 2001.

S. 1078(2) of the Taxes Consolidation Act 1997 (as amended) provides:

> "A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—
>
> (g) knowingly or wilfully fails to comply with any provision of the Acts requiring—
> (ii) the furnishing of any other return, certificate, notification, particulars, or any statement or evidence, for the purposes of any tax"

Regulation 7 of the Income Tax (Employments) (Consolidation) Regulations, 2001 provides:

> "(1) (a) Every employer who makes a payment of emoluments to or on behalf of an employee at a rate exceeding a rate equivalent to a rate of €8 a week, or, in the case of an employee with other employment, €2 per week, shall send to the Revenue Commissioners a notification of his or her name and address and of the fact that he or she is paying such emoluments.
>
> (b) In the case of an employee paid monthly or at longer intervals, the references in subparagraph (a) of this paragraph to a rate of €8 a week and a rate of €2 a week shall be treated as references to a rate of €36 a month and a rate of €9 a month respectively.

> (2) Where a change occurs in a name or address which has been notified under this Regulation, the employer shall send to the Revenue Commissioners a notification of the change.
>
> (3) An employer who is liable to send a notification under this Regulation shall do so within the period of 9 days beginning on the day on which the employer becomes so liable.
>
> (4) The Revenue Commissioners shall keep and maintain a register in which names and addresses notified to them under this Regulation shall be registered and, when any name or address has been registered, they shall give notice of the registration to the employer."

The respondent contends the court should not find correspondence as it is necessary to demonstrate an equivalent regulation intended to cover the same or broadly analogous conduct within the state. Counsel for the respondent submits that the only information before the Court as to the offence of concealed work is the information contained within the warrant, namely:

> "he hired 2 employees: Christelle TRAMEAU and Yannick MASMONDET, but did not file the declarations required under French labour law."

He has submitted that it is of particular note that there is no allegation to the effect that the respondent had any fraudulent intent or that the offence was committed wilfully. It is also not specified what declarations were not filed.

It was further submitted that whilst a definition of the offence of concealed working is provided at Part E II of the European Arrest Warrant this does not form part of the narrative of the offence for the purposes of considering the issue of correspondence. Counsel for the respondent has directed the Court's attention to the decision of the Supreme Court in *Attorney General v Dyer* [2004] 1 I.R. 40. In that case the State had sought to rely upon the definition of the offence as provided under the law of Jersey for the purpose of inviting the court to assume that the elements of the offence as constituted under the law of the issuing state must necessarily be what was alleged against the respondent. Having considered the relevant authorities the court rejected such an approach, and I have been referred with particularity to the following passage from the judgment of Fennelly J (at p. 50):

> "The result seems to me to be the following. Normally, words used in an extradition warrant will be given their ordinary meaning. This enables the courts to give effect, without resort to extrinsic evidence, to extradition requests where words such as "steal," "rob" and "murder"are used. It is possible that such words have different meanings in the law of the requesting state, but, in the absence of anything suggesting that, the courts will examine correspondence by attributing to such words, when used in a warrant, the meaning that they would have in Irish law. In some cases, however, the word used in the requesting jurisdiction may be unfamiliar to Irish law. A good example was suggested from the bench during the hearing. In Scots law, the word "reset" is used to describe the harbouring of stolen goods. If that word were used in a warrant emanating from Scotland, it would clearly be necessary to have evidence of Scots law to explain it. I can see no basis upon which it could be refused. In my view, that simple proposition is a sufficient answer to the objection that the evidence of Mr. St. John O'Connell should not have been admitted to explain the term "contrary to common law". The evidence was receivable to explain that "the common law" of Jersey, when used in a warrant for criminal fraud, encompasses the notion of "intent to defraud"."

The respondent says that insofar as the applicant may suggest that the definition of the offence under the law of the issuing state may be considered for the purposes of establishing correspondence that proposition is contrary to express authority.

Counsel for the applicant has submitted in rejoinder that the Dyer may be distinguished on two grounds. Firstly, Mr Dyer had not been convicted, whereas Mr Charron has been convicted and the fact of his conviction means that the requisite intention is established. Secondly, it is clear from Dyer that the extradition warrant in that case did not contain sufficient information. It was submitted that the European Arrest Warrant in this case, and the additional information with which it must be read, does provide sufficient information to enable the Court to be satisfied as to correspondence.

The Court considers that while the information provided initially in the European Arrest Warrant did not provide sufficient information as to the nature of the declarations that were not filed, that lacuna was filled by the additional information of the 11th of March 2011. Nevertheless, the court is troubled by the requirement in Irish law in relation to an offence contrary to s.252(2) of the Social Welfare (Consolidation) Act, 2005 that the offender should have "knowingly" concealed a material fact; and by the the requirement in Irish law in relation to an offence contrary to s. 1078(2) of the Taxes Consolidation Act 1997 (as amended) that the offender should have "knowingly or wilfully" failed etc etc. I believe the respondent is correct in his submission that the factual information set out in the warrant and in the additional information does not address this requirement and that neither knowledge, nor wilfulness, is specifically alleged. Moreover, I believe that intention is not to be implied or inferred from the nature of the offence in French law, and/or from the mere fact that he was convicted of the offence in France. The inquiry as to correspondence that this Court must conduct is concerned with the factual components of the conduct or actions of the respondent specified in the warrant read in conjunction with any additional information and which are said to constitute the offence. Nowhere is it alleged as a matter of fact that the respondent acted "knowingly" or "wilfully" in doing what he did. Nor is there a sufficient evidential basis to ground an inference that he knowingly or intentionally did the acts complained of. In the circumstances the Court is not satisfied that correspondence has been demonstrated with respect to the third offence.

As severance is not possible in the circumstances of this case by reason of the composite or aggregate sentence having regard to the decision in *Minister for Justice Equality and Law Reform v. Ferenca* [2008] 4 I.R. 480, this Court must refuse to surrender the respondent.