Neutral Citation: [2014] IEHC 649

THE HIGH COURT

[2013 No. 264 EXT.]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

PIOTR PAWEL CZAJKOWSKI

RESPONDENT

Judgment of Ms. Justice Murphy delivered the 17th November 2014

RULING re s. 21(A)1 of Ms. Justice Murphy delivered the 24th day of July 2014

Relevant Facts
1. The respondent is the subject of a European Arrest Warrant issued by the Republic of Poland on the 23rd July 2012. The warrant was forwarded to the central authority in this jurisdiction in March 2013, was endorsed by the High Court for execution in this jurisdiction on the 12th November 2013 and was duly executed on the 6th January 2014. The respondent was arrested by Garda Gerard Newton on that date, following which he was brought before the High Court pursuant to s. 13 of the European Arrest Warrant Act 2003. In the course of the s. 13 hearing a notional date was fixed for the purposes of s. 15 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 on the 7th July 2014, for the purposes of a surrender hearing. The respondent does not consent to his surrender and accordingly the Court must consider whether the requirements of s. 16 of the Act have been satisfied and whether or not there is any bar to the surrender of the respondent.

2. Offences
The warrant is a prosecution warrant which relates to four offences. The first offence relates to participation in a criminal organization with two named people and other unnamed people, and involved dishonestly obtaining by deception loans for the purchase of motor vehicles and consumption goods as well as cash loans. This is a tick box offence. The issuing authority has ticked "*participation in a criminal organization*" in respect of this offence. The other three offences all relate to alleged frauds committed on specific dates between November 2005 and July 2006. These are also tick box offences and the issuing authority has ticked "fraud" in respect of these three offences.

3. Points of objection
Points of objection were filed on the 14th March 2014 and amended points of objection were filed on the 24th of June 2014. Eight points of objection were raised initially, including alleged disproportionate interference with the respondent's Article 8 rights and lack of correspondence as required by s. 38(1). However, by agreement, the issue of whether surrender was barred pursuant to s. 21A(1), which was raised at Paragraph 8 of the Amended Points of Objection, was taken as a preliminary issue. If the respondent were successful on that issue, it would in effect dispose of the entire hearing. The remaining points of objection were held over to await the Court's determination on this point. Point 8 of the Amended Points of Objection states:

> *No decision has been made in the issuing State to charge and try the Respondent with the offences for which his surrender is sought and section 21A(1) of the European Arrest Warrant Act, 2003, as amended, thereby prohibits surrender and in respect of which the presumption contained in section 21A(2) does not apply in the circumstances that prevail in the present case.*

4. The respondent contends therefore that the Court is prohibited by s. 21A(1) of the European Arrest Warrant Act 2003, as amended, from surrendering the respondent because no decision has been made to charge and try the respondent with the alleged offences. Because of the presumption contained in s. 21(A)(2) that a decision has been made to charge and try the respondent, it is for the respondent to prove that the presumption has been rebutted.

5. The Evidence
The evidence before the court is as follows; upon receipt of the warrant and following consideration of same the central authority was unsure whether the warrant was a prosecution or an execution warrant. The uncertainty arose from the fact that section C.1 had been filled in and indicated that the maximum sentence on conviction was 10 years imprisonment. This was a clear suggestion that the warrant was a prosecution warrant. However, section D.2 had also been completed and indicated that the individual did not appear in person at the trial resulting in the decision. This raised the possibility that the warrant was an execution warrant. The central authority wrote, by letter dated the 23rd May 2013, to the judicial authority which issued the warrant namely, Judge Marek Kapala stating:

> *I am to inform you that the warrant is not in order to proceed with and an amended warrant that addresses the following issues is required:*
>
> *(i) Please clarify whether the respondent is sought to serve a sentence or to face prosecution for the offences detailed in the warrant. It appears from section c.1 that a sentence has not been handed down yet, however section d indicates that a trial has taken place. If this is the case, the sentences handed down in respect of each offence, in addition to the maximum sentence that may be imposed for each offence, must be included.*
>
> *(ii) With regard to each of the offences detailed in the warrant, please specify which offences are deemed to be covered by the two categories of ticked offences in the Framework List of Offences at section e.1?*

6. A reply to this letter was sent from Gdañsk on the 4th September 2013 and was in the following terms:

In reply to your letter of 23 May 2013, this Regional Court in Gdañsk, Criminal Division IV, has the honour to advise you that Piotr Pawel Czajkowski is sought for in connection with the ***pending preparatory proceedings*** *(emphasis added) held by the Regional Prosecutor's Office in Gdañsk against him in his capacity of the subject suspected of the offences listed in the European Arrest Warrant.* ***The case is currently at the investigation stage*** *(emphasis added). Therefore section D of the European Arrest Warrant concerning Piotr Pawel Czajkowski relates to section B and points out to the fact that there was a court session held to consider temporary detention and that at that sitting the court made the official decision to impose temporary detention on the requested subject. The sitting took place at the absence of Piotr Pawel Czajkowski.*

Furthermore, please note that the categories identified for the offences in section E1 refer to the following offences described in section E:

(a) fraud relates to offences II, III and IV,

(b) participation in an organized criminal group or an alliance aimed at committing offences, this relates to offence I.

7. This response makes it clear that the warrant is a prosecution warrant and not a sentence warrant. The reason section D was completed was because the decision to detain the respondent on remand in respect of the offences set out in the warrant which is referred to at section B.1 of the warrant, was a decision which was taken in his absence. While this response resolved the initial conundrum, it raised further issues, particularly the reference to the case being "**currently at the investigation stage**". Upon receipt of that letter the central authority again wrote to the issuing judicial authority expressing its concerns about the nature of the warrant and the status of the respondent in the criminal proceedings in Poland, by letter dated the 11th September 2013. The relevant portion states:-

*It is noted that the issuing judicial authority refers to proceedings in Poland as being "****currently at the investigation stage****" (emphasis added).*

Under Irish law is not possible to surrender a person under a European arrest warrant unless a decision has been made in the requesting State to charge the person with an offence and also to put him on trial for the offence. Under Irish law a "charge" means that a person has been formally accused of having committed a stated offence, i.e. an expression which includes, in these circumstances, an indictment for an offence. To be "put on trial" refers to a decision being made to bring the accused before a court which will determine whether the accused committed the offence with which they are charged.

In general this means that Ireland is unable to surrender a person where they are being sought for questioning and investigation to allow a decision to be made whether or not to charge (indict) the person with the offence or for a decision to be made whether to put the person on trial. Where, however, a warrant is issued during the course of an investigation but there is an intention, at the time the warrant is issued, to put the person on trial, then it is possible for Ireland to surrender the subject. The issues upon which we need to be clear are whether the warrant has been issued either where the subject has already been charged (indicted) or with the intention of charging (indicting) the subject and with the intention of putting the subject on trial.

In order to clarify the position in this case, we require the following information:

(i) Has a decision been made to charge (indict) the requested person?

(ii) If a decision to charge (indict) the requested person has been made, does this mean that a decision to put the requested person on trial has also been made?

(iii) Does a decision to put the person on trial have to be made separately from the decision to charge him or her and, if so, has a decision to put the requested person on trial been made in this case?

8. It has to be said that this letter does not present a very clear exposition of the requirements and nuances of Irish law. One can readily appreciate that a reader unfamiliar with Irish law might find this explanation dense and impenetrable. Given that more than three years have elapsed since the Supreme Court decision in *The Minister for Justice Equality and Law Reform v Thomas Olsson* [2011] IESC 1; [2011] IR 384, the ratio of which was not disturbed by the later decision of *The Minister for Justice Equality and Law Reform v Ian Bailey* [2012] IESC 16, one might have expected that by now, the central authority in this State would have prepared an explanatory note setting out the particular requirements of Irish law. This would be of practical benefit in providing clarity and consistency of approach whenever this issue arises. In any event it is not surprising that in replying to this letter, by letter dated the 27th September 2013, the issuing judicial authority did not engage with the material contained in the body of the letter, but confined itself to answering the four questions raised. The letter states:

In reply to your letter of the 11 September 2013, this Regional Court in Gdañsk Criminal Division IV, has the honour to advise you that:

1. In the course of the investigation, the prosecutor in charge issued the decision to present charges against the wanted, Piotr Pawel Czajkowski.

2. The decision to present charges does not mean that the decision has been issued to bring the requested person before the court to establish whether he has actually committed an offence, (ie. that the indictment has been lodged with the court). One must, however, point that the case of Piotr Pawel Czajkowski has been presented to the court so as to obtain imposition of temporary detention on him. The decision to reach for temporary detention with respect to the requested person was issued by the District Court Gdañsk-South, on the 15th September 2009.

3. According to the Polish law, the issuance of the decision to present charges is not the same as filing the indictment with the court in order that it is established whether the suspect has actually committed the offence. The indictment is issued and filed with the court separate, the moment the investigation is completed. The indictment against Piotr Pawel Czajkowski has not been lodged with the court.

9. This letter makes clear that a decision to charge had been made by the prosecutor and on foot of that decision the case had been

presented to the District Court Gdañsk-South seeking the imposition of temporary detention. That order was made by the said court on the 15th September 2009.

10. Notwithstanding the fact that a clear decision to charge had been made and a Court order for the temporary detention of the respondent on remand had been made, the central authority was still concerned as to whether or not this amounted to a decision to 'try' the respondent. On the 10th October 2013, a further letter was sent by the central authority to the issuing judicial authority in the following terms:

> *The Irish Courts will only surrender a person sought for the purpose of prosecution if the appropriate authority in the issuing state intends to formally accuse the person with committing the offences and to put the person on trial for the offences and that is the purpose for which the person is sought. Under Irish law the decision to charge or to indict a person equates to a formal accusation of committing an offence.*
>
> *This does not mean that the investigation phase must be closed, it can continue. What is not permissible is for the realisation of the intention to put the person on trial to be dependent on such further investigation producing sufficient evidence for that purpose.*
>
> *(i) It appears from the information received to date, that proceedings in Poland are currently at the investigative stage. In the event of Mr. Czajkowski's surrender to Poland, please clarify what further measures must take place before the investigation stage of proceedings are completed in Poland and an indictment is filed for the trial of Mr. Czajkowski for the offences detailed in the European arrest warrant with the Polish court.*
>
> *(ii) In this instance, please clarify whether the appropriate authority in Poland intends to have Mr. Czajkowski placed on trial for offences detailed in the EAW and that there is sufficient evidence for that purpose at this moment in time."*

11. This letter ignores the clear statement from the issuing authority that a decision to charge has been made and that the matter has been before the District Court in Gdañsk where an order for the detention on remand of the respondent was made. The issuing judicial authority replied to the letter by letter dated the 24th October 2013 and stated:

> *I refer to our previous correspondence regarding the European Arrest Warrant issued by the Regional Court in Gdañsk pm the 12th July 2012 against Piotr Czajkowski. Be kindly informed that the evidence gathered in the investigation no. V Ds. 87/10 provides sufficient grounds to file an indictment against Piotr Czajkowski.*
>
> *The decision to present the charges (charge sheet) has already been issued, yet it is required that Piotr Czajkowski be advised of the decision and subsequently interviewed in this regard. Depending on the contents of Piotr Czajkowski's explanations, it may become necessary to verify his line of defence. However, for the time being, there is no indication that any actions other than interviewing him or checking his health condition will be required in the case.*

12. This letter makes it clear that a decision has been made to charge the respondent; that there is sufficient evidence to indict him; that Polish law requires that he first be advised of the decision and interviewed in respect of the charges. Should lines of defence emerge during that interview they will have to be checked.

13. No further direct questions touching on s. 21A(1) were raised by the central authority. However, because delay had been raised in the point of objections further correspondence ensued on that issue, on the 16th May 2014. The following questions were raised by the central authority:-

> *1. Can you set out the maximum sentence in law for each offence as set out in the EAW?*
>
> *2. Is there any explanation for the following delays:-*
>
> > *(a) The delay between the offences which date from November 2005 and March 2007 and the temporary detention order issued on the 15 September, 2009.*
> >
> > *(b) The delay between the detention order being made on 15 September 2009 and the issuing of the European Arrest Warrant on the 12th July, 2012.*
> >
> > *(c) The delay between the issuing of the European Arrest Warrant on the 12th July, 2012, and its forwarding to the Irish authorities in March 2013.*

14. The response, of 22nd May 2014, came from the District Prosecutor's office and it was submitted on behalf of the respondent that that fact was further indication that the case was still at investigation stage. However, the Court accepts the explanation offered by the applicant that this was the appropriate body to deal with questions relating to delay. Having set out the penalties for the various offences in the warrant the letter goes on to state:

> *I wish to point out that the reason for delay between crimes committed by suspect Piotr Czajkowski between November 2005 and March 2007, that he was charged for* ***and decree of the court issued on 15.09.2009, concerning his pre-trial detention*** *(emphasis added) was due to the fact that the investigations were being conducted against him as well as many other suspects, with the purpose of collecting the significant evidence confirming commitment (sic) of the offenses (sic) and also impossibility of establishing the whereabouts of the suspect in the territory of Poland and conducting necessary procedural acts with his participation.* ***Following the Court's decree of a pretrial detention of suspect Piotr Czajkowski on the 15th 15.09.2009*** *(emphasis added), a further search of the suspect had been implemented and conducted in the area of Poland. Since the search was unsuccessful, an application to the appropriate court had been made with the request to commence the search for the suspect as a matter of a European Arrest Warrant. On the 12.07.2012, the District Court in Gdañsk, by request of the District Prosecutor's Office in Gdañsk, issued a European Arrest Warrant against suspect, Piotr Czajkowski. Thus, the reason for delay was the impossibility of establishing the whereabouts of the suspect in the territory of Poland and the process of searching for him.*
>
> *I also wish to point out the fact that once the Polish party received information confirming the whereabouts of suspect Piotr Czajkowski, in Irish territory, obtained on the basis of information from a social system regarding a co-habitant of the suspect, from the Office of International Police Co-Operation Sirene, the European Arrest Warrant, issued by the Court on 12.07.2012, was sent immediately to the appropriate authorities in the Republic of Ireland.*

15. This letter explains that the delay up to the 15th September 2009 was due to the complexity of the investigation and the inability of the authorities to locate the respondent. By the 15th September 2009 a decision had been made to charge the respondent with the offences set out in the warrant and an order for what is described as his "*pre-trial detention*" was made by, as we have seen in earlier correspondence, the District Court in Gdañsk-South.

16. Discussion
The Court has been invited by the applicant and the respondent to construe the various documents set out above and to decide whether or not the surrender of the respondent is prohibited by s. 21(A)(1) of the European Arrest Warrant Act 2003, as amended. The applicant contends that there is sufficient evidence in the documents of an intention to try the respondent and that in any event, the presumption contained in s. 21(A)(2) has not been rebutted. Counsel for the respondent contends that the documentation, and in particular the letters from the issuing judicial authority dated the 4th September 2013, and the 27th September 2013, set out above suggest that the case is still in the preparatory/investigative stage and that surrender is prohibited for such purpose.

17. The Court has had the benefit of being referred to the Supreme Court decisions in the cases of *The Minister for Justice, Equality and Law Reform v Thomas Olsson* [2011] IESC 1; [2011] IR 384, and all five judgments in *The Minister for Justice and Equality v Ian Bailey* [2012] IESC 16. In addition the Court has been referred to the subsequent decisions of this Court in the cases of *The Minister for Justice and Equality v Angelina Joèien*è [2013] IEHC 290 and *The Minister for Justice and Equality v Martin Gerard Holden* [2013] IEHC 62. It is noteworthy that in each of those cases, the court was furnished with information and/or evidence on the operation of the criminal process in the issuing State. That information allowed each court to assess with precision the nature and status of the criminal proceedings to which the respondent was being subjected and allowed it to make a reasoned decision on whether or not the surrender of the respondent in each case was prohibited by s. 21A.

18. In the present case, the Court has not had such assistance. Both parties have submitted that such additional information would not advance matters. The Court was initially of the view that absent information/evidence as to the operation of the Polish Criminal Justice system, the Court simply does not have sufficient information to allow it to make a reasoned decision. Having reflected on the matter and with the assistance gleaned from the decisions referred to above, the Court has concluded that it can determine the issue on the papers before it.

19. The letters from the issuing judicial authority in Gdañsk dated the 4th September 2013 and the 27th September 2013, certainly suggest that the proceedings against the respondent are at the investigation stage such as might bring the respondent within the ambit of this Court's decision in the *Minister for Justice Equality v. Angelina Joèien*è [2013] IEHC 290. The use of phrases such as "*pending preparatory proceedings"; "in his capacity of the subject suspected of the offences"; "The case is currently at the investigation stage"* (letter of 4th September); "*The decision to present charges does not mean that the decision has been issued to bring the requested person before the court to establish whether he has actually committed an offence*" (letter of 27th September 2013), taken in isolation, all point in that direction. On the other hand, the letter from the issuing authority dated the 24th October 2013, states that there is sufficient evidence to file an indictment and a decision to present the charges has been made and that all that remains to be done is to inform Piotr Czajkowski of the decision and interview him in respect of it. This is suggestive of a system similar to that which operates in Sweden and which was the subject of the decision in the *Olsson* case.

20. The decision not to surrender Angelina Joèienè was based on one specific piece of additional information supplied by the issuing authority. In reply to a query as to what would happen if she were surrendered the Lithuanian authorities replied;

> *If A. Joèienè was surrendered to Lithuania on the grounds of the EAW* ***and*** *(emphasis added) there was sufficient information gathered in evidence of her committing the crime specified in Section E of the EAW, then she would be put on trial (for the first offence) and recognised as an accused.*

21. Edwards J. correctly, in this Court's view, characterised that response as:

> *highly contingent and is strongly indicative that a decision to try the respondent has not yet been taken. It suggests that more evidence has yet to be gathered and that it will only be at a point in the future where it is adjudged that sufficient evidence implicating her in the crime has been gathered that a decision will be taken to put her on trial.*

22. There is no such clear evidence in this case. In fact the contrary is the case. The additional information sought over a period of months between the 23rd May 2013 and the 24th October 2013 reveals that there is sufficient evidence to lay an indictment, that a decision to charge the respondent was made in September 2009, that an order of pre-trial detention was made the same month, and, in the words of O'Donnell J. at paragraph 36 of the *Olsson* case "*the only thing which stood in the way of commencement of such prosecution was the requirement of the presence of the respondent and the interview where he could respond to the investigation*".

23. As pointed out by O'Donnell J. at paragraph 33 of *Olsson*, the issuing state does not have to demonstrate a decision. A court is only to refuse to surrender a requested person when it is satisfied that **no** decision has been made. By virtue of s. 21A(2) it is presumed that such a decision has been made and it is for the respondent to prove by cogent evidence to the contrary that a decision has not been made to charge the respondent and try him for the offences alleged.

24. Decision
It is now twelve years since the Framework Decision and eleven years since its transposition into Irish law by means of the European Arrest Warrant Act 2003. One might have anticipated that by now both the central authority and the judicial authority would by dint of experience be familiar with the operation of the criminal justice systems of designated states to the extent that a decision on surrender in any given case, would not depend on the parsing, analysing and construing of letters passing between issuing authorities and executing authorities, in which there is always a risk of matters getting lost in translation. In the instant case, phrases used in the earlier correspondence are certainly suggestive of a case that is still in the investigation stage and some of the phrases used might if taken in isolation put a dent the presumption of a decision to charge and try the respondent. However the Court is satisfied on the information contained in the entirety of the correspondence that there has been an intention to try the respondent since the 15th September 2009 when charges were presented against him at District Court Gdañsk-South and an order was made that he be detained on remand as described in section B.1 of the warrant. On the information presented as a whole, not merely has the presumption of a decision to charge and try not been rebutted, there is positive information of an intention to try subject only to the holding of an interview required by Polish law.

25. Having found that the presumption contained in s. 21A(2) has not been rebutted, the Court now proposes to deal with the other points of objection raised by the respondent.

26. Prohibition on surrender under S 37(1) of the EAW 2003 as amended

It is contended on behalf of the respondent that his surrender is contrary to s. 37 of the European Arrest Warrant Act 2003, as amended. The specific points of objection are as follows:

> *3. The surrender of the Respondent would be contrary to section 37 of the European Arrest Warrant Act, 2003, as amended, the Respondent's constitutional rights and his rights pursuant to the European Convention on Human Rights, including in respect of his private and family rights.*
>
> *4. The surrender of the Respondent would amount to a disproportionate interference with the Respondent's constitutional rights and his rights pursuant to the European Convention on Human Rights and in particular Article 8 of the European Convention on Human Rights in circumstances where he has resided in this jurisdiction since 2006 and has established significant roots in and ties to the State.*
>
> *5. The delay between the alleged commission of the offences and any potential surrender date of the respondent, is such that his surrender would be in breach of section 37 of the European Arrest Warrant Act, 2003 as amended, the respondent's constitutional rights and his rights pursuant to Article 8 of the European Convention on Human Rights.*

27. The Evidence
A five page affidavit has been sworn by and filed on behalf of the respondent. The contents of the affidavit are uncontroverted. The evidence is that the respondent came to Ireland in September 2006. He was separated at the time he came to Ireland and was subsequently divorced in 2009. He has a 26 year old daughter by his marriage who came to join him in Ireland in October 2006 and who returned to Poland in 2009. He has been in a relationship with a Polish woman since in or about 2010. She has a 22 year old daughter who is currently living and studying in Poland.

28. Since his arrival in Ireland, he has been in virtually continuous employment with a variety of employers and has worked for Kepak on a fulltime basis since March 2010. He has had many different addresses, four of which are set out in his affidavit. Three other addresses in Celbridge and Lucan appear on the payslips exhibited at PC4 in his affidavit.

29. Since February 2013 the respondent and his partner have been living in rented accommodation in Lanesborough Co. Longford. He has made a very favourable impression on the people from whom he is renting who have provided him with a testimonial which is exhibited at PC6 in his affidavit.

30. He states that he has financial responsibilities both in respect of his 26 year old daughter who at the time of swearing the affidavit was about to embark on a nursing degree and to whom he had committed assistance in discharging a monthly course fee of €125, and to his partner's 22 year old daughter who is studying Fine Arts in Poznan and who he has been subventing in the sum of €100 weekly since 2013. In this connection the Court notes that all of the payments to his partner's daughter which are exhibited at PC10 of his affidavit post date his arrest on foot of the European Arrest Warrant on the 6th January 2014.

31. The respondent has also invited the Court, when striking the balance between the State's obligations under the Framework Decision and the respondent's right to family life, to take into account the damage surrender would entail for his employment prospects in the future. He avers that as a 50 year old man in Poland he has no prospect of obtaining secure employment particularly in any role involving the type of physical work in which he is currently engaged. His surrender therefore would have an ongoing adverse impact on his ability to meet his family responsibilities.

32. The final element which the respondent raises in support of his contention that his surrender would amount to a disproportionate interference with his Article 8 rights is the delay which has occurred in issuing the arrest warrant and in prosecuting same once it had issued. He avers that he has never been "*off the radar*" since he came to Ireland. He immediately applied for a PPS number and has been in paid employment paying tax for virtually the entire period from his arrival in the state in 2006 to the time of the issuing of the arrest warrant in July 2012. He asserts that with proper diligence the Polish authorities could have located him earlier.

33. The applicant submits that on the evidence a surrender would not be a disproportionate interference with the respondent's Article 8 rights to respect for his family life; that such delay as has occurred has been explained and the delay in any event is not excessive.

34. Because delay had been raised in the point of objections correspondence ensued on that issue, on the 16th May, 2014. The following questions were raised by the central authority:-

> *Is there any explanation for the following delays:*
>
> *(a) The delay between the offences which date from November 2005 and March 2007 and the temporary detention order issued on the 15 September, 2009.*
>
> *(b) The delay between the detention order being made on 15 September 2009 and the issuing of the European Arrest Warrant on the 12th July, 2012.*
>
> *(c) The delay between the issuing of the European Arrest Warrant on the 12th July, 2012, and its forwarding to the Irish authorities in March 2013.*

35. The response came from the District Prosecutor's office on 22nd May 2014. Having set out the penalties for the various offences in the warrant the letter goes on to state:

> *I wish to point out that the reason for delay between crimes committed by suspect Piotr Czajkowski between November 2005 and March 2007, that he was charged for and decree of the court issued on 15.09.2009, concerning his pretrial detention was due to the fact that the investigations were being conducted against him as well as many other suspects, with the purpose of collecting the significant evidence confirming commitment (sic) of the offenses (sic) and also impossibility of establishing the whereabouts of the suspect in the territory of Poland and conducting necessary procedural acts with his participation. Following the Court's decree of a pretrial detention of suspect Piotr Czajkowski on the 15th 15.09.2009, a further search of the suspect had been implemented and conducted in the area of Poland. Since the search was unsuccessful, an application to the appropriate court had been made with the request to commence the search for the suspect as a matter of a European Arrest Warrant. On the 12.07.2012, the District Court in Gdañsk, by request of the District Prosecutor's Office in Gdañsk, issued a European Arrest Warrant against suspect, Piotr Czajkowski. Thus, the reason for delay was the*

impossibility of establishing the whereabouts of the suspect in the territory of Poland and the process of searching for him.

I also wish to point out the fact that once the Polish party received information confirming the whereabouts of suspect Piotr Czajkowski, in Irish territory, obtained on the basis of information from a social system regarding a co-habitant of the suspect, from the Office of International Police Co-Operation Sirene, the European Arrest Warrant, issued by the Court on 12.07.2012, was sent immediately to the appropriate authorities in the Republic of Ireland.

36. In the Court's view this correspondence shows that the offences with which the respondent has been charged, being three offences of fraud and one offence of participation in a criminal organisation between November 2005 and March 2007, involved a complex investigation "*against him as well as many other suspects*". The authorities were unable to locate him in Poland. A decision to charge him was made in absentia and a decree of pre-trial detention issued on the 15th September 2009. Following this further efforts were made to locate him in Poland. These were unsuccessful. A decision was made to issue a European Arrest Warrant for the purpose of widening the search. This was done on the 12th July 2012. Thereafter the search became Europe wide. Sometime shortly before the EAW was forwarded to the central authority in this jurisdiction the Polish authorities learned that he was in Ireland. They learned this through finding the respondent's partner on a social system through the Office of International Police Co-operation, Sirene. This last piece of information is, in the Court's view, significant because it suggests an ongoing active search for the respondent. The Polish authorities had clearly become aware of the identity of the respondent's partner even though, on his evidence, they only became partners in 2010. The Court has no explanation for the delay which occurred between March 2013 when the warrant was sent to the central authority in this jurisdiction and the 13th November 2013 when the warrant was endorsed by this Court.

37. The Court has had the benefit of being referred to two decisions of Edwards J. relating to Article 8. The first is *The Minister for Justice and Equality v B.H* (unreported, High Court, Edwards J., 25th September 2013) in which he recapsulates the principles to be applied in assessing proportionality in the context of Article 8 rights which he first set out in *Minister for Justice and Equality v T.E.* [2013] IEHC 323, following an extensive review of the authorities in Ireland, England and the European Court of Human Rights. The third decision to which the Court was referred is an *ex tempore* decision of Edwards J. *The Minister for Justice and Equality v Wieslaw Ciecko* (unreported, High Court, Edwards J., 18th December 2013), in which Edwards J. considered how delay might in certain circumstances dilute the public interest in extradition.

38. Decision of the Court
On the basis of the evidence and the information placed before the Court in this specific case, the Court is quite satisfied that the surrender of the respondent is not disproportionate in the context of his Article 8 rights to respect for his family and private life. The offences to which the warrant relates are all serious offences each of which carries a maximum sentence of 10 years. Undoubtedly, there is a serious and weighty public interest in the prosecution of such offences. In the Court's view there has not been delay such as would materially dilute the weight to be attached to the public interest in extradition. The explanation for delay is reasonable in circumstances where the respondent left Poland two months after the date of the last alleged fraud offence. He has not been back to Poland since September 2006. While some slight criticism might be levelled at the Polish authorities for not extending their search Europe wide until almost three years after the decree for the respondent's pre-trial detention, there is nothing in the evidence to suggest that the Polish authorities ought to have known that the respondent had left their jurisdiction, let alone the fact that he was living in Ireland. The information before the court is that as soon as the Polish authorities learned through Sirene that the woman with whom the respondent is living was in Ireland, they acted promptly. The facts on delay in this case are in stark contrast with the facts in the Ciecko case. In that case there was an unexplained delay of more than a decade and in addition there was a failure to explain why the sentence in respect of which surrender was sought had not been imposed when the respondent appeared before the issuing state's court four years after the sentence had first been imposed. There is no similar lacuna in this case.

39. The evidence offered by the respondent as to the effect of surrender on his family life suggests that the impact on his family is such as would normally flow from arrest, detention or surrender. To quote principle 15 in the list of 22 set out in *Minister for Justice and Equality v T.E.* [2013] IEHC 323:

It is self evident that a proposed surrender on foot of an extradition 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"

40. While the surrender of the respondent may well pose some difficulties for the grown daughters of him and his partner, those daughters are both adults who will have to adjust to changed circumstances, as adults frequently do. Similarly, the effect of surrender on employment is a consequence which flows directly from surrender and could not be said to be a "*measure giving rise to exceptionally injurious and harmful consequences for an affected individual*" as set out in principle 16 in *Minister for Justice and Equality v T.E*.

41. For these reasons the court is not persuaded that the surrender of the respondent would amount to a disproportionate interference with the respondent's right to respect for his family life and private life enshrined in Article 8 of the European Convention on Human Rights.

42. Non compliance with s. 11
At paragraph 2 of the amended points of objection it is pleaded:

The European arrest warrant does not comply with the requirements of section 11 of the European Arrest Warrant Act, 2003, including the fact that the Respondent cannot know precisely for what it is that his surrender his (sic) sought. The foregoing is referable to both the warrant itself and the various additional information (provided in response to requests for additional information made by the Central Authority).

43. In advancing this submission counsel for the respondent relied on the decision of the Supreme Court in *Minister for Justice and Equality v Connolly* [2014] IESC 34. The Court was specifically referred to the judgment of Hardiman J.

44. S. 11 of the European Arrest Warrant Act 2003, as amended, gives effect to Article 8 of the Framework Decision and requires among other matters that the nature and legal classification of the offences for which surrender is sought, be set out in the warrant together with a description of the circumstances in which the offence was committed, including the time, place and degree of

participation in the offence by the requested person. In his judgment in *Connolly*, at paragraphs 48 to 51, Hardiman J. underpinned his view that it is "*...absolutely essential that the offence or offences for which the person is wanted is specified*", by setting out the relevant passages from the earlier decisions of the Supreme Court in *The Minister for Justice Equality and Law Reform v Stafford* [2009] IESC 83 and the High Court in *The Minister for Justice Equality and Law Reform v Cahill* [2012] IEHC 315. In the former case Denham J (as she then was) said :

> *It is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act 1965 and indeed classically in extradition law. A description of the Act or Acts alleged are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the Court and so a decision may be made as to whether there is for example, "double criminality".*

Later in the same case, she said:

> *The fact that there is a precise description of the facts of the case is important, even though the issue of double criminality is not required to be considered. It is important that there be a good description of the facts. An arrested person is entitled to be informed of the reasons for his arrest and any charge against him in plain language which he can understand. Also in view of the specialty rule, the facts upon which a warrant is based should be clearly stated.*

45. In the *Cahill* case as quoted by Hardiman J. the rational for the requirement to specify the offence/offences for which a person is sought was stated as follows:

> *The objective is to enable the respondent to know precisely for what it is that his surrender is sought. A respondent is entitled to challenge his proposed surrender and in order to do (so) needs to have basic information about the offences to which the warrant relates. Among the issues that might be raised by a respondent are objections based on the rule of specialty, the ne bis in idem principle and extraterritoriality, to name but some.*

46. In the *Connolly* case there was confusion as to the nature and number of the offences for which the respondent's surrender was sought. The High Court considered that this confusion resulted from lazy cut and paste style drafting. The Supreme Court, in the judgment of Hardiman J. remarked, at paragraph 62:

> *...the net position of one scrutinising the warrant to see what it relates to is that it claims, first, to relate to a single offence; secondly to relate to 2 offences and finally, ten pages later, it mentions 2 offences quite different in nature from the offence or offences of "endangerment of public health" already mentioned.*

47. In the instant case, in the Court's view there is no such confusion. The four offences for which the respondent's return is sought are clearly set out as is their nature and legal classification and the circumstances in which they were allegedly committed.

48. It is true that upon receipt of the warrant the central authority was initially uncertain as to whether the warrant was a prosecution or an execution warrant. As stated earlier in this judgment this uncertainty arose because the issuing authority had completed both section C **and** section D.2 of the warrant. Section C suggested a prosecution warrant while section D.2 suggested an execution warrant. The matter was clarified by the letter dated the 4th September 2013 from the issuing authority. They had filled in section D.2 because the respondent was not present when the decision on pre-trial detention was made on the 15th September 2009. The warrant and the additional information supplied by the issuing authority leave no uncertainty or confusion as to the purpose for which the respondent is sought nor the offences in respect of which he is sought.

49. The Court, being satisfied that the requirements of s.16 have been met and further being satisfied that there are no grounds upon which his surrender is prohibited orders that the respondent be surrendered to such person as is duly authorised by the issuing state to receive him.