Neutral Citation: [2015] IEHC 804

THE HIGH COURT

2015 No. 003 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

GRZEGORZ WLODARCZYK

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 16th day of December, 2015.

1. On 22nd December, 2014, the Regional Court in Katowice, a judicial authority of Poland, issued a European Arrest Warrant ("EAW") for the arrest of the respondent for the purpose of executing a custodial sentence of 12 years imprisonment imposed upon him on conviction for murder. The Minister for Foreign Affairs has, by order, designated Poland a Member State that has, under its national law, given effect to the Framework Decision pursuant to s. 3 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"). The main issue argued on behalf of the respondent was that, if surrendered, there is a real risk he will be subjected to inhuman and degrading treatment in Poland, as he is likely to be detained in conditions of isolation amounting to solitary confinement.

Background

2. The EAW records that the Regional Court in Katowice issued an enforceable judgment against the respondent on 23rd November, 2012. The EAW states that the length of custodial sentence imposed was in the order of 12 years imprisonment. It states that the remaining sentence to be served is 8 years, 8 months, and 5 days of imprisonment.

3. The respondent has sworn an affidavit in which he takes issue with the factual statement on the EAW that he was sentenced to 12 years imprisonment. He says that a sentence of 15 years imprisonment was imposed upon him on that date, but he believes it is not enforceable against him in circumstances where, following an appeal in respect of the sentence and for which he was not present, the sentence was reduced to one of 12 years. He says this is of specific concern to him. The respondent also has a grave concern that the total time he spent in custody on remand, which on his assertion was in excess of 5 or even 6 years, is not reflected in the EAW.

4. From the respondent's perspective, he says that he left Poland and was in the United Kingdom ("U.K.") in 2000. He returned to Poland in 2003 to give evidence for the prosecution in a criminal prosecution of what has become termed one of the "Octopus cases" in 2003. He gave evidence for the prosecution in a major trial concerning murder, drugs, and an organised crime group and the respondent says as a result of so doing, his life was threatened on behalf of the criminal gang in terms such as "we will get you, when this all dies down." He says that he returned to the U.K. in 2003 after that trial.

5. The respondent says he was arrested in the U.K. in early 2006 or early 2007 on foot of an EAW from Poland in respect of the offence for which his surrender is sought. He says he consented to his surrender from the U.K. to Poland and that prior to his surrender, he was granted bail in the U.K. in respect of the matter. He says that when he was surrendered to Poland, he was afforded protection as a prisoner on remand awaiting his own trial in respect of the offence. He needed that protection because there was an ongoing risk to his life as a result of having given evidence in the 2003 trial. He also says that when he was tried in Poland for the offence, he gave evidence against his co-accused and that was another reason for the serious concern for his life and safety and was why he was given protection throughout the period of time when he was on remand in Poland. The respondent then sets out in detail the conditions he says he was kept in while in custody and these will be detailed further below.

Section 16 issues

Uncontroversial Matters

6. I am satisfied that the EAW has been endorsed by the High Court in accordance with s. 13 of the Act of 2003, on 13th January, 2015. I am also satisfied that the person who appears before me is the person in respect of whom the EAW has issued.

Section 38

7. In this case, the issuing judicial authority at E.1, ticked the offence of "murder, grievous bodily injury". Murder is contained in the list of offences not requiring a finding of double criminality set out in Article 2 para. 2 of the Framework Decision of 13th June, 2002 on the European Arrest Warrant and surrender procedures between Member States ("the 2002 Framework Decision"). At E.2, headed "[f]ull descriptions of offence(s) not covered by section E.1 above", the issuing judicial authority has stated "[d]escription of acts as in point E". Clarification was sought by the central authority as to whether or not the issuing judicial authority was relying on the ticked box offence. The issuing judicial authority replied that the section E.2 in the EAW was included erroneously and the offence attributed to the respondent should be included only in section E.1. No issue or argument was made in relation to this clarification. Even if no such clarification had been received, the facts show clear correspondence with the offence of manslaughter at a minimum in this jurisdiction. The facts are that on the night of 25th/26th April, 2003, the respondent and a number of others acting in conspiracy battered and kicked and strangled the deceased who died from the multiple injuries inflicted upon him during the course of this assault. Minimum terms as to the sentence imposed have clearly been met in this case. If considered as an Article 2 para. 2 offence, the terms of minimum gravity have also been met. In all the circumstances, I am satisfied that his surrender is not prohibited by the provisions of s. 38 of the Act of 2003.

Section 21A, 22, 23 and 24 of the Act of 2003, as amended

8. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under the above provisions of the Act of 2003, as amended.

Part 3 of the Act of 2003, as amended

9. Subject to further considerations of s. 45 and s. 37, I am satisfied that I am not required to refuse the surrender of the respondent on any other section contained in Part 3 of the Act of 2003, as amended.

Section 45 of the Act of 2003, as amended

10. At point (d) of the EAW, the issuing judicial authority has certified that "yes, the person appeared in person at the trial resulting in the decisions." The respondent does not take issue that he was present at his own trial. His objection is that the EAW does not record the true result of that trial. This is not framed by him as a point under s. 45, rather it is directed towards demonstrating that the sentence is not enforceable. The Court is bound to consider the provisions of s. 45 and also whether the EAW gives clarity to the sentence for which the surrender of the respondent is sought.

11. In reply to the request by the central authority for any comments on the respondent's affidavit, the issuing judicial authority stated that "the circumstance that the sentence imposed in respect of the above mentioned individual is not enforceable and the circumstance that the defendant spent more than 5 years in custody on remand in respect of the proceedings against him, Case Files No. XXI K 150/11, are not true because they have no justification in the realities of the said proceedings." The issuing judicial authority went on to state that "[t]he Circuit Court of Katowice in the decision (Case Files No. XXI K 150/11) of 23rd November, 2012, found Grzegorz Wlodarczyk guilty of…[the offence set out in the EAW]." The sentence that was imposed by the Circuit Court of Katowice, having found the respondent guilty of the offence of murder, was one of 12 years imprisonment. It is stated that he was credited with the period of his temporary detention between 17th March, 2009 and 12th July, 2012.

12. The issuing judicial authority says that an appeal was lodged against that sentence and the Appeal Court of Katowice on 13th June, 2015 upheld the decision of the Circuit Court of Katowice. It is stated that his defence counsel was present. Of course, the respondent was not present at that appeal as he was in custody in this jurisdiction.

13. In his supplemental affidavit, the respondent says that he was completely unaware of that appeal and he did not instruct any lawyer in respect of an appeal in or about that time. He continues to aver that the appeal had been some years ago and the result of that was that he was initially sentenced to 15 years but, following the appeal, he was sentenced to 12 years. Counsel for the respondent pointed to the Case File Number of the Circuit Court of Katowice being number XXI K 150/11, which she said indicates the year 2011. She submitted that clearly postdates the time he was in custody on remand for this offence (even accepting the time on remand as set out by the issuing judicial authority).

14. While it may appear unusual that an appeal was being conducted while his surrender was being sought, it is the experience of this Court that many respondents seek to pursue parallel proceedings in the issuing state. More importantly, from the point of view of this Court, the fact that there was a subsequent appeal which upheld the original decision does not undermine this EAW or interfere in any way with the decision I must make under the s. 16 application. The EAW continues to subsist and have validity in this jurisdiction in the absence of any express indication from the issuing judicial authority to the contrary. In the circumstances of this particular case, the sentence for which he is sought is that of the 12 years imposed by the Circuit Court in Katowice. The appeal upheld that decision and I have no reason to doubt that the enforceable judgment upon which he has been sought is that of the Circuit Court in Katowice.

15. With respect to the averments by the respondent as to the chain of proceedings which resulted in his request for surrender, I am not prepared, in the circumstances, to accept his bare assertions over what has been sent by the issuing judicial authority. His assertions as to the length of time he was on remand reveal his own uncertainty over time periods. On the other hand, the issuing judicial authority is in possession of the case files when issuing the EAW and sending additional information. As Macken J. stated in Minister for Justice v. Sliczynski [2008] IESC 73: *"[i]n the relationship which may exist between the High Court and/or the respondent pursuant to s. 20 of the Act of 2003 and the issuing judicial authority, exchanges such as those in the present case are, in my view, to be considered as operating on the same high level of confidence and mutual trust since these exchanges between the judicial authorities constitute an integral part of the overall scheme of the European Arrest Warrant. This must have as a consequence that when an issuing judicial authority is asked for additional information pursuant to either of the aforesaid subsections of s. 20, the exchanges must be accorded the appropriate mutual respect. In consequence, it may be assumed that a reply furnished by the judicial authority of the requesting Member State has been fully and properly prepared by an appropriate responsible person, and will include true and accurate responses to the information or documentation sought."*

16. I am quite satisfied that the indication of the date of conviction being 23rd November, 2012 is correctly and appropriately attributed to the Circuit Court in Katowice by the issuing judicial authority. The respondent has averred that that was a conviction for which he received 15 years. I am satisfied that he is incorrect in this regard. Even accepting that the reference to /11 is to the year 2011, a year which postdated his original remand in custody, in my view nothing turns on this. It could be that his case had been sent forward from another court and hence the new year number, it could be that there was another reason for the subsequent year date. This does not affect the fact that I have a clear statement from the issuing judicial authority, clarifying that it was a 12 year sentence which had been imposed upon him by the Circuit Court in Katowice following conviction by that Court. I therefore accept that he was present at that trial and that he is sought for a 12 year sentence imposed upon him in proceedings at which he was present. There is no lack of clarity on that matter.

17. The provisions of s. 45 of the Act of 2003 state that a person shall not be surrendered if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the EAW was issued unless the EAW indicates certain matters set out at point (d) of the 2009 Framework Decision and as set out in the Table at section 45. I am quite satisfied that the respondent appeared in person at the proceedings, that is to say, he did appear at the trial, which resulted in the sentence order in respect of which this EAW has issued. His surrender is therefore not prohibited by the provisions of s. 45 of the Act of 2003.

Section 37

18. The main point of objection to surrender by the respondent is that there are substantial grounds for believing that he is at real risk of being held in solitary confinement should he be returned to the issuing state. The respondent says that he was in custody from the date of his surrender, in or around mid 2007 or possibly mid 2006, until towards the end of 2012 and in respect of the offence of murder only. He says that he was granted bail on the application of his lawyer, shortly prior to the date upon which he was sentenced following his conviction.

19. The respondent says that he was detained on remand in four separate prisons namely Warsaw, Sosnowiec, Katowice and Wojkowice. He says that he was kept in Warsaw for a very short period and then in Sosnowiec for approximately 6 months. He says that he was then in Katowice prison for approximately 2½ years and in Wojkowice prison until he was bailed in the latter part of 2012.

20. He says that the protection he was afforded meant that he was effectively kept in solitary confinement. He says that the nature of the detention he endured, involved being in a cell on his own for 23 hours a day. He was afforded one hour a day of exercise in the yard on his own. He ate all his meals alone. He was permitted one five minute shower each week. Sometimes he was permitted to use

the library but not more than once a week. He could not see persons in the cells beside him and tried to communicate with them by shouting to them. He was brought to the canteen once a week where items such as cigarettes could be purchased. He was not permitted to communicate with other prisoners when in the canteen. He says that there was no natural light in his cell but there was a plastic internal window in the cell through which he could not see out and through which an electric light shone into the cell. He was permitted to receive correspondence although he believed his mother sent him correspondence that never made its way to him. He says that he received food parcels once each month and his own clothing was sent to his family each month for cleaning. He said he was entitled to a visit once each week as a remand prisoner. He says that his request to go to mass was entirely dependant on the prison officer to whom he made the request. He says that for the time he was a remand prisoner, there was nothing available to him of a cultural, educational, social or stimulating nature. There was no form of work available to him.

21. He says that he firmly believes his life is at risk in the event of his surrender to Poland and he requires ongoing protection. He says that he spent well in excess of 5 years and probably in excess of 6 years in complete isolation in the nature he has described. He says and believes that this amounts to inhuman and degrading treatment and punishment.

22. The central authority again sought clarification / additional information from the issuing judicial authority. The issuing judicial authority was asked "[p]lease clarify whether it is correct that the respondent spent time on remand in solitary confinement as outlined by him." The issuing judicial authority was also asked "[i]n the event of the respondent's surrender to Poland, please confirm whether special arrangements will be made to protect the respondent's life and the details of same." The issuing judicial authority was also asked to confirm the exact period of time that he had spent in custody.

23. The issuing judicial authority responded as set out in para. 10 above. In the opinion of the issuing judicial authority, the aim of the respondent in his statements was to make it impossible to surrender him. With respect to the issue of solitary confinement, the issuing judicial authority replied "[f]rom the information obtained from the Director of Zaklad Karny [*prison*] in Wojkowice it results that Grzegorz Wlodarczyk did not stay in an isolation ward of the prison dispensary or in solitary confinement."

24. In answer to the special arrangements that might be put in place to protect his life, the issuing judicial authority stated as follows: "[a]rticle 88b of the Executive Criminal Code says that if in relation to the ongoing or concluded criminal proceedings, in which a convict takes or took part as a suspect, defendant, witness or aggrieved party, there has been a serious threat or there is a direct fear of serious threat for his/her life or health, the director of prison provides special protection for such a convict in the form of increased isolation and security. Taking the above into consideration, in the case of surrender of Grzegorz Wlodarczyk and putting him in prison, and if there is any threat for his life or health, a director of an appropriate prison unit will take steps to increase his protection and security."

Submissions

25. Counsel on behalf of the respondent relied strongly upon the personal experiences of the respondent, submitting he was detained for a considerable period of time in conditions which amount to solitary confinement. She referred to the fact that there was little engagement by the issuing judicial authority, with the issues raised by the respondent in his affidavit and pointed specifically to the fact that only one prison out of four responded. She submitted that whether the court accepts that it was five or six years he spent on remand as he says, or over three years as the issuing judicial authority says, the reality is that there has been a substantial period of time in conditions which amount to inhuman and degrading treatment.

26. Counsel submitted that the evidence is uncontested that he is a man with a threat to his life and that the evidence from the issuing judicial authority shows a person in that position is liable to protection in the form of increased isolation and security. She relied upon the Committee for the Prevention of Torture ("CPT") reports from 2009 and 2013 in respect of Poland and indeed on the replies from Poland. While she accepted that the reports are limited in the extent to which they deal with this issue of prisoners on protection, she submitted that there is important corroborative evidence to be gained from the reports in respect of the treatment of those prisoners who are categorised as "N" prisoners, that is dangerous prisoners who are subjected to a harsher regime. She submitted that there was no evidence that the respondent was a dangerous prisoner but she referred to the nature of the regime outlined in the reports as being quite similar.

27. It appears that the categorisation of prisoners in Poland as dangerous prisoners had been criticised by both the CPT and the European Court of Human Rights ("ECtHR"), particularly in circumstances where there had been no review of status. However, I am satisfied that between the reports in 2009 and 2013, the Polish authorities had taken steps to reduce the numbers of prisoners categorised as "N" prisoners and had also required that their status be reviewed every three months.

28. In the 2013 report, the CPT welcomed the developments but recommended that the procedure for allocating and reviewing a prisoner's "N" status should be refined and be part of a positive process to address the prisoners' problems and permit their reintegration into the mainstream prison population. With regard to the regime applied to "N" status prisoners, it was said that it was very restricted. Out of cell time consisted of one hour of outdoor exercise per day taken either alone or in the company of a cellmate, a weekly shower and access to a common room equipped with various relaxation facilities up to four times a week at one prison and twice a week at another prison. No common room was available in a third prison. There was no work and only those in one prison had access to educational activities. It was noted by the delegation that in each of the three establishments they visited, staff working with "N" status prisoners (both the educators and the custodial officers) were making genuine efforts to maintain regular interaction with the inmates and to facilitate the contact with the outside world. While commending those efforts, the CPT stressed that the regime for "N" status prisoners should be fundamentally reviewed. Solitary confinement or small group isolation for extended periods is more likely to de-socialise than re-socialise prisoners. Security measures varied depending upon the individual risk assessment.

29. Counsel submitted that the affidavit evidence of the respondent was of a regime remarkably similar to the "N" regime which was so criticised by the CPT. In the circumstances, counsel submitted that the prospect of this respondent being further subjected to isolation of the type he had already endured for a period of over eight years, must be in breach of his rights, if not under Article 3 of the European Convention of Human Rights ("ECHR"), then in breach of his rights under Article 40 of the Constitution.

30. Counsel for the respondent relied upon the decision of the Court of Appeal in *McDonnell v. The Governor of Wheatfield Prison* [2015] IECA 216 in which the Court of Appeal stated, inter alia, at para. 87 that *"[i]t is not suggested, nor would it be reasonable that it would be constitutionally permissible to keep a prisoner indefinitely in solitary confinement. A high level of threat or some extreme circumstances may justify severely restrictive conditions of detention on a temporary basis. Justification is a function of the level of threat to life or safety measured against the severity of the temporary conditions. Ultimately, that judgment is one for the Court but a substantial margin of appreciation has to be allowed to the Governor and his staff."*

31. In counsel for the respondent's submission the judgment, while overturning mandatory orders made by the High Court, confirmed that to keep a person in solitary confinement indefinitely would be a breach of his or her rights. She submitted that it was not a case

dealing solely with the separation of powers. Counsel relied upon the decisions of the High Court in *Attorney General v. Damache* [2015] IEHC 339 and *Minister for Justice, Equality and Law Reform v. McGuigan* [2013] IEHC 216. She referred to the criticism by this court in *McGuigan*, of the failure by the issuing judicial authority to engage with the issues in that case. She submitted that there was a failure to engage with what had been put forward on behalf of this respondent. In those circumstances, in light of the affidavit he had filed, there were substantial grounds for believing that he is at risk in the event of his surrender to Poland.

32. Counsel for the minister submitted that the first question arising was whether the court had been put on enquiry and, in counsel's submission, the court had not been so put on enquiry. Counsel contrasted this case with the evidence in other cases such as *Minister for Justice and Equality v. Tagijevas* [2015] IEHC 455 where reports and expert evidence were put forward.

33. Counsel pointed in particular to the following:-

a) the experience of a sentenced prisoner may be different to that of a remand prisoner

b) the respondent was very vague as to his sentence

c) the respondent was vague regarding the details of his solitary confinement and in particular did not refer to the prison in which he suffered same or that it was in effect the same in all four prisons. There was no convincing argument being put forward in this case from an expert witness and there was no convincing evidence in the form of reports from international treaty monitoring bodies or from NGOs.

34. Counsel submitted that the CPT report was limited. Counsel also submitted that even on what is being put forward, it could not be said to be solitary confinement. Counsel submitted that any regime that would be imposed upon the respondent would be only imposed if justified. Counsel also submitted that the *McDonnell* case was not solely a decision based on the separation of powers but was a decision based upon the particular facts of that case. Counsel submitted that on the facts of that case, it was held that the declaration that he was being kept in solitary confinement in breach of his constitutional rights had been in error.

35. Counsel for the respondent replied that the respondent was not vague as regards the treatment he had received and that that averment was related to the time spent in all the prisons. Insofar as it was being suggested that the *McDonnell* case held that it was constitutionally permissible to detain indefinitely in solitary confinement, it was not. *McDonnell* was concerned with a situation where the protection was being afforded on a temporary basis only.

The Court's analysis and determination

36. Under the provisions of s. 37(1)(c)(iii)(II) of the Act of 2003, as amended, a person shall not be surrendered if there are reasonable grounds for believing that "he or she would be tortured or subjected to other inhuman or degrading treatment." That treatment is prohibited in absolute terms by Article 3 of the ECHR. It is also prohibited under the Constitution. Reasonable grounds equate to substantial grounds. The courts must proceed on an assumption that the issuing Member State will respect human rights and fundamental freedoms. That assumption is capable of being rebutted.

37. The Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45, [2010] 3 I.R. 783 set out the applicable legal principles when considering a claim of apprehended prohibited treatment. The tests applicable are set out at para. 31 as follows:

"(i) [a] court should consider all the material before it, and if necessary material obtained of its own motion;

(ii) [a] court should examine whether there is a real risk, in a rigorous examination;

(iii) [t]he burden rests upon a respondent, such as the respondent in this case, to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention;

(iv)[i]t is open to a requesting state to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from a respondent as to conditions in the prisons of a requesting state with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the respondent were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. On the other hand, the requesting state may present evidence which would, or would not, dispel the view of the court;

(v) [t]he court should examine the foreseeable consequences of sending a person to the requesting state;

(vi) [t]he court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to governmental sources, such as the State Department of the United States of America;

(vii) the mere possibility of ill-treatment is not sufficient to establish a respondent's case;

(viii) [t]he relevant time to consider the conditions in the requesting state is at the time of the hearing in the High Court.[…]"

38. The above principles have been applied by the High Court in a large number of cases concerning prison conditions. Examples are *Minister for Justice and Law Reform v. Mazurek* [2011] IEHC 204 (concerning Poland) and *Minister for Justice, Equality and Law Reform v. McGuigan* already cited above (concerning Lithuania) and *Minister for Justice and Equality v. Savikis* (ex tempore, 31st July, 2014, High Court) (concerning Lithuania). Each case must be decided on the strength of the evidence before it and the application of the well-established law to that evidence. As Edwards J. said at para. 142 in McGuigan, his judgment *"does not purport to propound any new principle of law and does not therefore have precedent value."*

39. These tests are well-established and little further amplification is necessary. By the nature of the test, the Court is required to be forward-looking in its approach. That has relevance to the weight to be attached to the respondent's evidence. This evidence relates to his treatment a number of years ago and in particular relates to his treatment in a remand prison.

40. Counsel for the minister queried whether the term "solitary confinement" would accurately describe this situation. He relied upon para. 71 of the judgment of the Court of Appeal in *McDonnell v. Governor of Wheatfield Prison* where the court stated at para. 71:

"*That description is usually employed to describe a form of extreme punishment by which the prisoner is deliberately excluded from human contact."* It is certainly the case that "solitary confinement" is a phrase that is often used when describing certain conditions to which a person has been confined as punishment for a limited number of days. However, even the Court of Appeal at para. 87 suggest that other types of protective custody might perhaps amount to unjustified solitary confinement if a prisoner is kept there indefinitely. Certainly, the ECtHR does not restrict the use of the term "solitary confinement" to detention imposed for punishment. Administrative segregation detention can amount to a solitary confinement prohibited under Article 3 of the ECHR. Moreover, the ECtHR in its judgments has used the phrase "solitary confinement" to describe detention which in the particular circumstances does not violate Article 3 and detention which does violate Article 3 in the particular circumstances.

41. It is my view that the proper approach is to consider whether the detention (however so termed by prisoner, prison regime or legal provisions) is in violation of Article 3. Solitary confinement is the short hand for the type of isolated detention which includes 22-24 hour in-cell lock-up, that is usually at issue. Describing the detention thus does not, on the case law in this jurisdiction and others, make it per se a prohibited detention. If, however, the isolated detention amounts to total sensory deprivation, it is prohibited absolutely and cannot be justified on security grounds. I am quite satisfied that despite the respondent's claim that he was kept in "complete isolation", his conditions of detention are nowhere near a level of total sensory deprivation. Furthermore, if solitary confinement is imposed for a significant period as a punishment (as distinct from administrative segregation), such confinement will more readily fall foul of Article 3. An assessment must be made in each case of the nature and circumstances of the detention at issue.

42. In this case, the height of the respondent's case is that he was in isolated detention for considerable periods of time while on remand previously. I do not accept that he is accurate about the length of time he spent in that custody as I accept the detailed information provided to me by the issuing judicial authority dealing with the length of time he spent in pre-trial custody. That is not the defining issue, as even if he was incorrect in the length of time he spent in those conditions, but correct in the details of that confinement, the period of time he did spend in such confinement was considerable.

43. I also accept that the details in the CPT reports, concerning the conditions of incarceration for "N" prisoners, lends a certain credence to the evidence of the respondent regarding his own experiences. However, the "N" prisoners were categorised as dangerous prisoner, this respondent was not so categorised. The respondent's case is that as a prisoner in need of protection, the protective custody he is at real risk of being subjected to will amount to inhuman and degrading treatment. Overall, the attempt to link treatment of dangerous prisoners and those in protective custody is of limited assistance. For example, such a link does not, of itself, provide substantial grounds for believing that, in a custodial prison, the respondent will be treated in a similar manner as he was held on remand.

44. The reality is that the evidence provided by the respondent is very limited. This Court must be forward looking and operate on the assumption that the Polish authorities will comply with the provisions of the 2002 Framework Decision and will thereby vindicate his fundamental rights. The evidence before me does not address the issue as to how a convicted prisoner (which he now is but was not when he experienced the conditions of which he complains) will be treated. It is entirely conceivable that protective custody operates on an entirely different basis in a custodial prison where, in the nature of prisons, there is usually more control on prisoner intake and categorisation. This may permit for better forward planning as to the mixing of prisoners. Groups of protective custody prisoners might possibly be held together or he may possibly be held with other clearly established non-violent offenders. In any event, there was an evidential burden on the respondent to address prospectively his real risk of being subjected to the conditions of which he complains. He has not met this burden.

45. I have also considered the reply of the issuing judicial authority. I accept it was limited as it seemed to address just one prison. This, in part, may have been brought about because of the respondent's inaccurate averments as to the length of time he was on remand in relation to this matter. The issuing judicial authority dealt with Wojkowice, a prison which, on the respondent's calculations, it is to be inferred that he spent about 2 years there. That reply says he did not spend time in "an isolation ward of the prison dispensary or in solitary confinement." At face value, it certainly undermines the respondent's statement. On the other hand, it is possible that the use of the phrase "solitary confinement" is creating difficulties of the type demonstrated by the arguments over the decision in *McDonnell* as referred to above.

46. This confusion might, in the ordinary course, lead this Court to ask the issuing judicial authority for further information. I do not believe it is necessary in this case. This is a case where the solitary confinement/isolated detention was brought about by the need for protective custody. There were signs in the respondent's own description that there were attempts to ameliorate his situation, e.g. he had access to the library, to the canteen and he was brought to mass (his complaint therein was that access to mass was dependent upon the whim of the prison officer to whom the request was made). This is evidence that the Polish authorities had a certain sensitivity to the necessity for social interaction. As a remand prisoner, it appeared there was nothing available to him by way of a cultural, educational, social or stimulating nature or indeed any work. This may all be different in the future.

47. Moreover, there is no evidence as to the practice for prisoners on protection in custodial prisons, there are no CPT reports, other Treaty monitoring bodies' reports or other NGO reports that raise issues of substance with regard to conditions for prisoners who are segregated for their own protection in Poland. Given the presumption under s. 4A of the Act of 2003, it must be presumed in the absence of evidence to the contrary, that, even if it is deemed necessary for his own protection to hold him in positions of increased isolation and security, particular regard will be had to ensure that necessary levels of social interaction will be organised for him so as to ensure his detention is not reaching inhuman and degrading levels. If there had been no indication of any attempt to ameliorate his conditions on remand, the Court may have deemed it necessary to enquire further into his conditions in a custodial setting on surrender. However, in this case there was an indication of such sensitivity. Furthermore, and of particular significance, is that by the 2013 report of the CPT, the conditions of "N" prisoners had improved. There was also a largely positive response by Poland to recommendations in that CPT report (although a reasoned refusal/inability to comply was indicated under some headings).

48. In all the above circumstances, I am satisfied that there is no necessity for this Court to make a further inquiry into the conditions of detention this respondent is likely to face.

49. Counsel for the respondent has complained about the length of time the conditions of solitary confinement/isolated detention may apply, i.e. about 8 further years of detention. While no length of time has been laid down either by this court, or the ECtHR, beyond which solitary confinement is unacceptable, the legal position is that solitary confinement cannot be indefinite. The evidence before me is that, even in the case of "N" prisoners, there is a review of the presence or absence of reasons for allocating a person to the "N" category every 3 months. Those decisions may be appealed by the prisoner to a court of law.

50. There is no reason to believe that the status of the respondent, as a person needing protection, will not be reviewed on a regular basis and possibly every 3 months. Even if it were to be accepted that a prisoner who has "informed" or "given State's evidence" runs

a real risk of never being classified as other than needing protection, and thus detention in "increased isolation and security", this does not, of itself, mean that such detention will breach Article 3 of the ECHR or Article 40.3 of the Constitution. What is required is evidence establishing substantial grounds for believing, that there is a real risk that the particular conditions of the extended period of protective custody will amount to inhuman and degrading treatment.

51. In the particular circumstances of this case, with particular reference to the evidence and presumption referred to above, there are no substantial grounds for believing that the Polish authorities will not ensure that his detention does not reach a level that amounts to inhuman and degrading treatment. In the circumstances, nothing on the papers before me, when considered in totality, gives rise to substantial grounds for believing that there is a real risk that he will be subjected on return to a form of detention amounting to inhuman and degrading treatment.

52. For all of those reasons, I am not satisfied that the respondent has established substantial grounds for believing that there is a real risk that he will be subjected to inhuman and degrading treatment should he be surrendered to Poland.

Conclusion
53. For the reasons set out above, I am satisfied that, in accordance with the provisions of s. 16(1) of the Act of 2003, as amended, I may make an Order directing the surrender of the respondent to such person as is duly authorised by Poland to receive him.