Neutral Citation: [2016] IEHC 184

HIGH COURT

2013 No. 19 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

Applicant

AND

ROBERT LESKO

Respondent

HIGH COURT

2014 No. 164 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

Applicant

AND

ROBERT LESKO

Respondent

HIGH COURT

2014 No. 165 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

Applicant

AND

ROBERT LESKO

Respondent

HIGH COURT

2015 No. 57 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

Applicant

AND

ROBERT LESKO

Respondent

JUDGMENT of Ms. Justice Donnelly delivered this 11th day of April, 2016.

Introduction

1. The surrender of the respondent, pursuant to the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), is sought by the Czech Republic in respect of four European Arrest Warrants ("EAWs"). The Court is satisfied that the Minister for Foreign Affairs has, by the European Arrest Warrant Act 2003 (Designated Member States) Order 2005 (S.I. No. 27 of 2005), designated the

Czech Republic as a member state that has, under its national law, given effect to the Framework Decision of 13th June, 2002 on the European Arrest Warrant and surrender procedures between Member States ("the 2002 Framework Decision").

2. Surrender of the respondent is sought for the purpose of execution of sentences in respect of three of the EAWs ("the first EAW", "the second EAW", and "the third EAW"). He is sought for the purpose of prosecution in respect of the final EAW ("the fourth EAW").

3. The respondent has specific objections in relation to each of the four EAWs. These will be addressed separately by reference to each individual EAW. The respondent raises a number of general objections to surrender which will be determined by the Court under the heading of the fourth EAW. These objections are:

> a) That by virtue of his membership of the Roma community he has suffered, and would suffer on surrender, persecution, and his surrender would breach s. 37 of the Act of 2003. He claims he would be treated less favourably by virtue of membership of the Roma community in his prosecution for the offences under the fourth EAW or in any subsequent punishment.
>
> b) The respondent has medical conditions that would make his any surrender a disproportionate interference with his right to bodily integrity under s. 37 of the Act of 2003.

Section16 requirements
4. The Court must be satisfied of each matter set out in s. 16(1) of the Act of 2003 before the surrender of the respondent can be ordered. Some of these matters are entirely uncontroversial and it is expedient to deal with them at this point.

Endorsement

5. I am satisfied that each EAW has been endorsed in accordance with s. 13 of the Act of 2003 for execution in this jurisdiction.

Identity

6. I am satisfied based on the information in each EAW, the additional documentation and the affidavits of John Butler and James A. Kirwan, members of An Garda Síochána and the affidavit of the respondent that the respondent is the person in respect of whom each EAW has issued.

Sections 21A, 22, 23, and 24 of the Act of 2003

7. I am satisfied that I am not required to refuse the respondent's surrender on any of the four EAWs under sections 21A, 22, 23 or 24 of the Act of 2003.

First EAW (Record No. 2013/19 EXT)
8. The first EAW dated 14th February, 2012 was issued by the District Court in Ostrava, a competent judicial authority of the Czech Republic. The EAW sets out that the respondent was convicted in absentia by the enforceable judgment of the District Court in Ostrava on 1st June, 2010. The first EAW was endorsed on the 30th April, 2013, and the respondent was duly arrested on 27th November, 2013.

9. The first EAW states that the respondent is wanted to serve a sentence of 6 years and 6 months of imprisonment in respect of an enforceable judgment of Ostrava District Court from 1st June, 2010 (ref. 72 T 153/2005). The EAW recites that this is a cumulative sentence imposed in respect of 7 offences of burglary, robbery, theft and criminal damage committed in 2005 and 2006. Prior to the endorsement of the first EAW, a number of matters were clarified on foot of a request for additional information by the central authority. The issuing judicial authority clarified that contrary to the statement in the first EAW that it related to "7 offences", the EAW in fact related to 9 offences, the details of which had been set out in the body of the first EAW. The EAW stated that the respondent was lawfully sentenced by the District Court in Ostrava under the file number 72 T 153/2005 in connection with the judgment of the Regional Court in Ostrava from 22nd February, 2011, file number 3To 618/2010 to "cumulative unconditional sentence of imprisonment in duration of 6 years and 6 months."

Points of objection
10. The respondent raised the following points of objection to his surrender under the first EAW:

> - Lack of clarity, in particular with respect to whether the sentence was partially imposed in respect of offences under case file numbers 7 T 146/2003 and 15 T 180/2002
>
> - A s. 45 point regarding trial in absentia
>
> - The respondent had already served an 18 month sentence in respect of case file number 72 T 153/2005
>
> - One of the offences involving an allegation of robbery against a Mr. N. as described in case file number 72 T 153/2005 was withdrawn in the issuing state.

Part 3 of the Act of 2003

11. Apart from further considerations of s. 37, s. 38 and s. 45, I am satisfied that the respondent's surrender is not prohibited by any other section contained in Part 3 of the Act of 2003, as amended.

Section 38 - Correspondence / Minimum gravity

12. As regards the number of offences, the first EAW states at point (e) that it relates to 7 offences. It sets out five separate narratives regarding the circumstances in which the offences were committed. However, the additional information dated 13th December, 2012, states that the first EAW relates to 9 offences committed by 5 actions. This information explained in detail the offences which were committed under each of the narratives set out in the original EAW. It also explained why there had been a mistaken reference to 7 offences and not to 9 offences, i.e. that two of the described acts in turn each amounted to two offences but were accidentally counted as single offences instead of two offences. I am satisfied that this matter has been clarified and there

is no ambiguity.

13. For correspondence purposes, therefore, there are 9 offences in total, 5 which were committed from 21st to 23rd April, 2005, and 4 which were committed on 7th and 8th January, 2006. Subject to the point of clarification as to how many offences were covered by the first EAW, there was no real issue in relation to correspondence. Having scrutinised the acts described in the first EAW, I am satisfied that the acts if committed in this jurisdiction would amount to offences here. I have set out in table form the corresponding offence in this jurisdiction with the offences set out in the order in which they appear in the first EAW:

Offence Number	**Offence in issuing state**	**Nominated Corresponding offence in this state**
Offence 1	Robbery	Robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Offence 2	Transgression of infringement of domiciliary freedom	Burglary contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and/or entering/trespassing contrary to s. 11 and s. 13 of the Criminal Justice (Public Order) Act, 1994
Offence 3	Robbery	Robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Offence 4	Transgression of infringement of domiciliary freedom	Burglary contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and/or entering/trespassing contrary to s. 11 and s. 13 of the Criminal Justice (Public Order) Act, 1994
Offence 5	Attempt of transgression of infringement of domiciliary freedom	Attempted burglary contrary to common law and/or s. 11 of the Criminal Justice (Public Order) Act, 1994
Offence 6	Theft/attempted theft	Theft contrary to s. 4 Criminal Justice (Theft and Fraud Offences) Act, 2001
Offence 7	Damaging someone else's property	Criminal damage contrary to s. 2 of the Criminal Damage Act, 1991
Offence 8	Theft/attempted theft	Attempted theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001
Offence 9	Damaging someone else's property	Criminal damage contrary to s. 2 of the Criminal Damage Act, 1991

As the sentence imposed is one beyond the minimum sentence required by s. 38 and there is correspondence with each offence in this jurisdiction, I am quite satisfied that the respondent's surrender is not prohibited under s. 38 of the Act of 2003.

Objection based upon sentence served

14. The sentencing process leading up to the imposition of sentence on the respondent was complex. Complexity itself does not lead to lack of clarity. Complexity merely requires a court to examine carefully the sentencing details to ensure that clarity regarding the request for surrender has been demonstrated.

15. The EAW at point (c) indicates that the respondent received a 6 year and 6 month sentence and that the whole sentence is left to be served. Counsel for the respondent referred to point (e) of the EAW which states that the respondent was lawfully sentenced in absentia "to cumulative unconditional sentence of imprisonment in duration of 6 years and 6 months". Counsel further pointed to the fourth page of the EAW which elaborates on those sentences by reference to other cases. In particular, he referred to the statement that when the cumulative sentence was given on 1st June, 2010, "there was a verdict of sentence by the judgment by the District Court in Ostrava from 9th May 2006 under the file number 71T 66/2006 annulled at the same time."

16. In his affidavit of 2nd May, 2014, the respondent outlined the circumstances of his arrest on this first EAW and stated that upon arrest, when asked about the offences which are the subject of the warrant, he stated that they were all appealed and cancelled. He said that this answer made clear that he previously served an 18 month term of imprisonment in the correctional facility of Jirice from 1st July, 2006 in the issuing state, which he believed was in respect of the offences referred to in this first EAW under case file number 72 T 153/2005. Insofar as the sentence for which his surrender is now sought is a composite sentence including these offences, the respondent indicated that he cannot be surrendered to serve a further sentence in respect of the same matters.

17. There has been a great deal of additional information in this case. Indeed, four judgments have been furnished with the EAW, namely two judgments of the District Court in Ostrava dated 9th May, 2004, and 1st June, 2010, and two of the Regional Court in Ostrava dated 4th September, 2006, and 22nd February, 2011. Further additional information clarified the number of offences and also that the February 2011 judgment of the Regional Court referred to in the EAW was the appeal judgment from the District Court in relation to the sentence of the District Court. It was only after further query by the central authority that that issuing judicial authority stated in a reply of 6th June, 2014, that the District Court had sentenced the respondent under the case file number 72T 153/2010 to a non-custodial sentence of 7 years in prison, while at the same time revoking the sentence on 71 T 66/2006. This was appealed to the Regional Court which "upheld the verdict of guilty on 22.02.2011 under case no 3To 618/2010, and at the same time the court reduced the sentence for 6 years and 6 months".

18. The issuing judicial authority stated that the court maintained in force the aggregate sentence and that the decision came into force on 22nd February, 2011. According to the issuing judicial authority, aggregate sentencing is imposed when a court convicts an offender for a crime that he committed before the court of first instance declared judgment for a different offence. The court revokes the previous judgment in the verdict (or sentence) part.

19. The issuing judicial authority goes on to state:

> "[i]n current case, Lesko committed acts (within the cases no. 71 T 66/2006) in the period from 07.01.2006 to 08.01.2006. He was sentenced by the judgement of the District Court in Ostrava on 09.05.2006 and he was sentenced to imprisonment for 18 months. […]
>
> Lesko committed acts within the case no. 72T 153/2006 in the period from 21.04.2005 to 23.04.2005. These acts were committed before the District Court in Ostrava made the decision within the case no. 71T 66/2006 (from 09.05.2006). Therefore the court had to impose the "aggregate sentence" according to § 42 paragraph 2 of the Criminal Code. It means that the District court in Ostrava cancelled the part of the judgement that deals with the punishment, not with the guilt of Lesko in case no. 71T 66/2006 and in the case no. 72 T 156/2006, the punishment of 6 years and 6 months of imprisonment was imposed. As a result, the original punishment of 18 months (71T 66/2006) was increased by 5 years; however this decision came into force until 22.02.2011.
>
> Within the case no. 71T 66/2006, Lesko was in a custody from 08.01.2006 to 04.09.2006 and this period was later included to the period of imprisonment. The punishment of imprisonment Lesko began to execute on 05.09.2006 and finished 08.07.2007. Thus on the 08.07.2007, he fulfilled the entire term of imprisonment for 18 months.
>
> Nevertheless the "aggregate sentence" in the case no. 72T 156/2006 was declared 01.06.2010 (approximately 2 years after the imprisonment in case no. 71T 66/2006) and came into force 22.02.2011.
>
> Within the case no. 72T 153/2006 Lesko was in custody from 26.04 2005 to 29.11.2005.
>
> On 18.03.2011, the period of custody served by Lesko in the case no. 72T 153/2006 (23.04.2005 – 29.11.2005 - 221 days) was included into the period of imprisonment and at the same time the period of imprisonment from the case no. 71T 66/2006 (the period from 08.01.2006 to 08.07.2007 – 18 months) was also included.
>
> In fact, this means that Lesko is no longer obliged to carry out the sentence of imprisonment in the total period of 6 years and 6 months, but the sentence will be reduced by the period 18 months + 221 days, that means approximately 4 years and 5 months."

This Court notes that the reference to a "non-custodial sentence of 7 years" appears entirely at odds with the judgment of the District Court of Ostrava which had previously been furnished by the issuing judicial authority.

20. Prior to the receipt of the above final additional information, the respondent swore a supplemental affidavit regarding the composite sentence which is comprised of sentences imposed in the issuing state under case file numbers 72T 153/2005 and 71T 66/2006 having, he averred, had an opportunity to consider the various judgments served with the EAWs. In this supplemental affidavit, the respondent again stated that he believed he has served an 18 month term of imprisonment in the issuing state in respect of one of the matters of which the composite sentence is comprised which is in respect of case file number 71T 66/2006 and not 72T 153/2005. He averred that he was arrested in respect of this matter and remanded in custody on 8th January, 2006. He said that he spent four months remanded in custody pending trial, he was convicted of these offences on 9th May, 2006 on which date a sentence of 18 months was imposed. He said that having served the majority of this sentence in Jirice Prison, he was released on 8th July, 2007 and exhibits a letter from the head of the administration department in Jirice Prison confirming these dates and the sentence imposed and served.

The Minister's submissions

21. Counsel submitted that the respondent received a 7 year sentence under 72T 153/2005 which was reduced on appeal to 6 and a half years by 3To 618/2010. Counsel referred to the averment by the respondent at para. 2 of his affidavit sworn on 2nd May, 2014, that he had served "an 18 month term of imprisonment in the correctional facility of Jirice from 1st July, 2006…in respect of offences under case number 72T 153/2005". Counsel submitted that the respondent then changed this to a claim that he had served an 18 month sentence in respect of case file number 71 T 66/2006 (not 72T 153/2005) at para. 3 of his affidavit sworn on 24th May, 2014.

22. Clarification was sought by the central authority by letters dated 21st and 28th May, 2014. The additional information dated 6th June, 2014, from the issuing judicial authority confirms that the respondent did serve an 18 month sentence of imprisonment in respect of 71T 66/2006 from 8th January, 2005 to 8th July, 2007. He also spent a period of time in custody in respect of 72T 153/2006 from 26th April, 2005, to 29th November, 2005, (221 days). Counsel submits that the sentence of 6 years and 6 months, reduced by the period of 18 months + 221 days, can be calculated (using subtraction) as being 4 years and 144 days, which is approximately 4 years and 5 months.

The Respondent's submissions
23. Counsel for the respondent criticised the lack of clarity in the use of the word "approximately" by the issuing judicial authority. Counsel also criticised the changing nature of the information being given by the issuing judicial authority on the number of offences, the interchangeable and incoherent changing case file numbers and in particular the nature and duration of the sentence.

24. Counsel submitted that the respondent has always maintained that he has served an 18 month sentence on at least some of the offences on which the EAW is based and it would appear that he is correct in this contention. While this has now been confirmed by the authorities in the issuing state, counsel maintained that there is still a lack of clarity within the first EAW. Counsel relied upon *Minister for Justice Equality and Law Reform v. Connolly* [2014] 1 I.R. 720. Furthermore, counsel referred to *Minister for Justice and Equality v. Herman* [2015] IESC 49 and submitted that the Supreme Court in that case emphasised the requirement of certainty in the specific context of that aspect of Czech law which allows for a review by a later court of a sentence imposed by an earlier court. Although the circumstances of that case were somewhat different to the present, the Czech authorities in Herman sought to clarify in subsequent correspondence, the circumstances in which the later court decision affected the earlier but the Supreme Court was dissatisfied with the explanation.

25. In the present case, counsel for the respondent submitted that::

> i) there was a lack of clarity in that while the EAW on its fact seeks the surrender of the respondent to serve a term of imprisonment of 6 years and 6 months, in a later letter dated 6th June, 2014, the issuing state confirms that this can be reduced to a period of "approximately 4 years and 5 months";
>
> ii) any suggestion that a respondent is to serve an "approximate" term of imprisonment does not meet the requirement for "unambiguous clarity" under Irish case law;
>
> iii) in any event, the additional information appears on its face to also suggest that the period spent in custody by the respondent was already taken into account in calculating the 6 and a half year term of imprisonment, in referring to this period having been "later included to the period of imprisonment";
>
> iv) the EAW uses variously and interchangeably the case file numbers 72T 153/2005, 72T 153/2006, 72T 153/2010 and 72T 156/2006.

The Court's analysis and determination
26. In Connolly, the Supreme Court stated at para. 30 that *"[i]t is a mandatory requirement of the European arrest warrant procedure that there be unambiguous clarity about the number and nature of the offences for which the person sought is so sought".* In Herman, the Supreme Court said at para. 33 that *"[w]here the national judicial authority which issued a European Arrest Warrant seeks to change a fundamental element in the nature or purpose of the warrant, as opposed to providing further information or corrections of a minor nature, a new warrant should be issued in the form required by the Act, namely, in the form in the Annex to the Framework Decision, so that it may be endorsed for execution in the State by the High Court."*

27. There was an unexplained ambiguity in the EAW in Connolly as to the number of offences for which the respondent was sought. In Herman, the fundamental nature of the EAWs changed; the length of the sentence entirely changed and one warrant changed from execution to prosecution.

28. In the present case, there was a mistake in reciting how many offences were included in the EAW. It was subsequently clarified by the issuing judicial authority that 9 offences were included. The mistake was acknowledged and explained. The offences had been properly detailed in the first EAW as drafted. To that extent, this situation is entirely unlike either *Herman or Connolly*. There is no lack of clarity or ambiguity solely relating to the change in the information regarding the number of offences.

29. With respect to the length of the sentence, counsel for the minister relied upon the reply of the issuing judicial authority explaining the process by which the respondent came to be sentenced. This is helpfully explained as part of an aggregation of sentences which are the norm in the Czech Republic, which provide that a longer sentence will generally absorb a lesser sentence. Having explained the process by which this aggregation came about, the issuing judicial authority concludes: "[i]n fact this means that Lesko is no longer obliged to carry out the sentence of imprisonment in the total period of 6 years and 6 months, but the sentence will be reduced by the period 18 months + 221 days, that means approximately 4 years and 5 months".

30. In using the word "approximately", it must be noted that the issuing judicial authority has given full details of the length of time in custody. Looking at the periods of time from a purely mathematical point of view, it is indeed the case that the period of 18 months and 221 days when subtracted from 6 years and 6 months leaves "approximately 4 years and 5 months." What is really at issue is the duration of the sentence imposed upon him. Is it a sentence of 6 years and 6 months or a sentence of approximately 4 years and 5 months?

31. If the issuing judicial authority had stated that the respondent had 4 years and 5 months approximately of his 6 years and 6 month sentence remaining, surrender would not necessarily be prohibited despite the misstatement in the first EAW that he was to serve the whole sentence of 6 years and 6 months. While it is unsatisfactory that there would be such a misstatement, where it is clarified satisfactorily, there would be no bar to surrender.

32. Indeed, although s. 11(1)A requires an EAW to be in the form set out in the Annex to the 2002 Framework Decision, which said form makes provision for the remaining sentence to be served to be indicated on the EAW, it is arguably the case that it is not a requirement under the Act of 2003 that a statement regarding time to be served be positively made. In so far as s. 11(1A) is concerned, what is required to be stated on the warrant where the person has been convicted and sentenced are "the penalties of which that sentence consists." Furthermore, s. 38 (1)(a)(ii) which applies to these offences provides that the "person is required under the law of the issuing state to serve all or part of that term of imprisonment." Thus, provided a sentence of not less than 4

months has been imposed, the person must be surrendered to serve any part of that sentence.

33. Moreover, it must be also borne in mind that, the court operates with a presumption that the issuing state will comply with the provisions of the 2002 Framework Decision. It must be presumed that the respondent has a right to liberty, which includes his right to have any period deducted from his sentence to which he has an entitlement in the issuing state. It is for the issuing state to make those deductions. Indeed, the Court observes that when an order for surrender is made, the amount of the sentence that remains to be served in the issuing state will be subject to any time that the person has spent in custody on foot of the EAW in this jurisdiction, subject perhaps to deductions for periods in custody on other matters. These are matters for the issuing state and the court acts with the benefit of the presumption and with regard to the principle of mutual trust.

34. In this case, however, the issuing judicial authority has not simply corrected the balance of the sentence to be served. Instead, the issuing judicial authority has effectively stated that the sentence is different, i.e. "the sentence will be reduced…". This can be contrasted with a statement to the effect that the remaining portion of the sentence to be served is "X" term. That particular statement was made in respect of the second EAW as follows: "into the aggregate punishment in the duration of 20 (twenty) months out of which Robert Lesko will have to serve the remaining part, which is 18 (eighteen) months."

35. Moreover, the additional information refers to a new date, i.e. 18.03.2011, in which the period of imprisonment in case file number 72T 153/2006 was "included into the period of imprisonment and at that same time the period of imprisonment from 71T 66/2006 was also included." The Court notes that in this additional information, this sentence of 1st June, 2010 is given the case file number 72T 153/2010. That is somewhat confusing but, on its own, may not have been so lacking in clarity as to require the respondent's surrender being prohibited. There is also a further reference to 72T 153/2006 (not 2005) in the response of the issuing judicial authority and it is again confusing as to whether these all refer to the same matters.

36. Even allowing for an apparent misstatement regarding file numbers, there remains a very real discrepancy between this information and the EAW as regards the date of the sentence at issue. In the first EAW, the reference is to the sentence being imposed on 1st June, 2010, with reference to 72 T 153/2005. Later in the first EAW, there is a reference to that judgment being in connection with the decision of the Regional Court from 22nd February, 2011 and the sentence is again confirmed as one of 6 years and 6 months. Nowhere in the first EAW is there a reference to any proceedings taking place on the 18th March, 2011.

37. The central authority had specifically asked for a clear explanation of the fact that the respondent had apparently served 18 months on 71T 66/2006 on the sentence imposed in 72T 153/2005 and for clarification of the amount of sentence which is required to be served. The response came back as referred to above. The only interpretation the Court can place on the information before it, is that the respondent is now being sought to serve a sentence of approximately 4 years and 5 months. The Court so finds on the basis that the issuing judicial authority has stated that "the sentence will be reduced[…]" and that on the 18.03.2011 the relevant periods of custody served by the respondent were included in the period of imprisonment. The Court has considered, but rejected, that the use of the future tense "will be reduced" is indicative of a reduction in the length of the sentence to be served rather than the sentence itself. This conclusion is reached on the basis that a reading of the additional information as a whole makes clear that the nature of the sentence has been changed rather than the period remaining to be served.

38. It is impermissible, and contrary to the principles laid down by the Supreme Court in *Connolly* and *Herman*, to surrender the respondent on an EAW that was issued for a sentence of 6 years and 6 months but for which sentence his surrender is no longer sought. Instead, as appears from the additional information, that sentence was reduced and he is now sought to serve a sentence of approximately 4 years and 5 months. As stated above, the use of the word "approximately" may be acceptable when it concerns the length of time of sentence remaining and the true periods have been placed before the Court and all that is required is for basic mathematics to be applied. However, what is not acceptable is that the duration of the actual sentence imposed has been changed without the issuance of a new EAW.

39. While the Court has found as a matter of fact that he is now sought for a sentence of approximately 4 years and 5 months sentence, it was perhaps unnecessary for the Court to make such a finding. If there is ambiguity in the matter as to what sentence has been imposed upon him, that alone is sufficient to refuse surrender. In this case, the issuing judicial authority has been given every opportunity to clarify this sentence and it has not done so. On the other hand ambiguity may be clarified by resorting to a request for further information under s. 20 of the Act of 2003.

40. I considered if I should ask for any further information under s. 20 (1) but in the circumstances of this case, it would be wrong to do so. The main reason is that the issuing judicial authority were asked a clear question and gave the answer as set out above. In the view of the Court, the totality of the additional information indicates that the respondent is sought for a sentence other than that indicated on the EAW. However, even if all that had remained was ambiguity rather than clarity with regard to the length of the sentence, the Court is not of the view that this would be an appropriate case in which to seek clarification by way of s. 20 of the Act of 2003 for the reasons set out hereafter when viewed in totality. The entire question of the reduction in the sentence/period of time to be served was only raised because the respondent put this on affidavit. As stated above, this is unsatisfactory. It is also unsatisfactory that there appears to be either a misstatement in the Czech case file numbers or there are further case files that were never referred to before. Where further confusion has been brought into an already confused situation, there is no guarantee that any further answer would have brought clarity. It would not be in the interests of justice to further delay this matter by seeking further information, in particular in light of the length of time it has taken to finalise these matters. Finally, a s. 20 request might also result in further delay with respect to the prosecution of the offences set out in the fourth EAW (and indeed also a delay regarding the prosecutions of offences, if the respondent opts for a retrial in respect of the matters set out in the second and third EAWs).

Section 45 of the Act of 2003

41. The EAW contained a point (d) in the original format set out in the 2002 Framework Decision. It stated that the convicted person will be entitled to a new legal process in his presence after surrender. It set out the relevant Czech code. The central authority sent a letter prior to endorsement stating that an amended point (d), in accordance with the Framework Decision of 26th February, 2009, on the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial ("the 2009 Framework Decision"), would be required.

42. The issuing judicial authority replied saying that the EAW was in compliance with Czech procedural law but that the 2009 Framework Decision would not be implemented until 1st January, 2014. The issuing judicial authority said that when they had implemented the 2009 Framework Decision, point (d) "would be completed as follows:" Thereafter, the issuing judicial authority provided a completed new format point (d) in which reliance was placed upon point (d) (3.4). The central authority sent a further request for confirmation that the procedures set out in the new point (d) (3.4) would apply. The issuing judicial authority sent a reply saying that a procedure pursuant to point (d) 3.4 will be used.

43. The central authority then wrote seeking confirmation of the number of days in which the respondent can request a retrial or appeal following personal service of the court's decision. The earlier reply had appeared to state that it was 8 days. The issuing judicial authority sent a reply saying "[a]ccording to section 306a. 2 of the code of criminal procedures if the proceedings against a fugitive by a final conviction, and then present the reasons for which the proceedings against a fugitive has led, at the request of the convicted person brought within eight days from the deliver of the judgment of the Court of first instance, such a judgment and to the extent provided for in paragraph 1, the trial will be carried out again. About the right to propose the cancellation of the final convictions of the judgment must be at the service of the judgment of the person instructed. Appropriately, the Court shall, if required by an international treaty to which the Czech Republic is bound."

The Minister's submissions
44. Counsel indicated that the respondent's written submissions made reference to Article 306a of the Czech code of criminal procedure and quotes from the respondent's submissions that "this article appears to allow for the admission of evidence only where it is not prevented by other serious fact" and that "even where evidence is readmitted Article 306a appears to allow for a more limited form of hearing than that envisaged by para. 3.4.". Counsel submitted in this regard that the respondent does not advance his contention by any evidence from a Czech lawyer to the effect that the Article 306a procedure is wanting in this regard. Counsel pointed out that in contrast, there is an unequivocal statement that the procedure pursuant to point (d) 3.4. "will be used" in the letter from the Czech judge dated 4th March, 2013, and it was submitted that this is sufficient to comply with the provisions of s. 16 (1) (c) of the Act of 2003.

45. Counsel indicated that s. 4A of the Act of 2003 provides that, there is a presumption that the issuing state will comply with the 2002 Framework Decision and that the mutual trust and confidence underpinning the EAW regime requires that absent cogent and compelling evidence to the contrary, assertions by issuing states must be given due weight and respect.

The respondent's submissions
46. Counsel referred to the sentence of 1st June, 2010, being imposed in the absence of the respondent and the fact that point (d) of the EAW merely states that the respondent "will be entitled to a new legal process in his presence after delivery". Counsel submitted it is clear from the Court of Appeal decision in *Minister for Justice and Equality –v- Palonka* [2015] IECA 68 that strict compliance with the Table in s. 45 of the Act of 2003 is required, and one such requirement at point (d) (3.4) is that "when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed […]". Counsel indicated that it would appear that the nature of the re-trial envisaged by point (d) (3.4) is consistent with the Supreme Court decision of *Minister for Justice, Equality and Law Reform v. Marek* (Unreported, ex tempore, 5th February, 2009) on an earlier version of s. 45 in which Murray C.J. stated that any re-trial would have to be "a trial de novo, that is to say, a trial of the accused as if he was on trial for the first time for the offence or the offences in question".

47. However, counsel indicated that Article 306a is much more equivocal in its guarantee as to the nature of any retrial the respondent would receive if surrendered. He referred to its citation at p. 2 of the EAW and said that it appears to allow the admission of evidence only where it is "not prevented by other serious fact". Counsel submitted that there is no explanation either in the EAW or in the additional information as to what constitutes such a "serious fact" or whether it might apply to the respondent. Further, even where evidence is re-admitted, counsel submitted that Article 306a appears to allow for a more limited form of hearing than that envisaged by point (d) (3.4) simply by being "read to the defendant and he will be allowed to make his expression to them".

48. Counsel submitted, therefore, that any trial which allows for the exclusion of evidence due to a "serious fact", or for the mere reading of evidence such as appears to be allowed by Article 306a of the Czech Criminal Code, does not comply with the guarantee required by s. 45 of the Act of 2003, as amended, and that accordingly the surrender of the respondent should be refused for this reason.

The Court's analysis and determination
49. The Court has no difficulty in accepting the form of the information provided by the issuing judicial authority. The decision of the High Court (Edwards J.) in *Minister for Justice and Equality v. Surma* [2013] IEHC 618 is authority for the proposition that s. 16 (c) of the Act of 2003, as amended, constitutes a condition precedent for the surrender of a person, but that compliance therewith can be accomplished by additional information:

> *"The retrospective nature of the recent amendments to ss. 11, 16(1) and 45 respectively of the Act of 2003, will not create an insurmountable problem for the applicant in most cases. In practice, warrants not already endorsed are not being presented for endorsement until additional information in the form now required by the Table in s. 45 as amended has been obtained, and both the warrant and the additional information are presented to the Court at the time of endorsement and are read as one document. As regards the small number of cases where warrants not in the correct form had already been endorsed and in which proceedings were already underway on the 24 July 2012, the position can be remedied ex post facto the endorsement by the seeking of additional information in the required form, which again can be read by the Court with the warrant as though the material was all in one document. If necessary, the Court can seek this information of its own motion invoking its powers under s. 20(1) of the Act of 2003." (para. 121)*

50. The respondent is asking this Court to place an interpretation on a section of Czech law, namely Article 306a, that would contradict what the Czech authorities have clearly stated; that this respondent will receive a full retrial if surrendered. The respondent does so without putting forward any legal expert to explain the position with regard to re-hearings where there has been a conviction in absentia. To agree to what is being proposed by the respondent would be to set at nought the presumption set out in s. 4A of the Act of 2003 and also to jettison the principle of mutual trust in the judiciary of the member states of the European Union. The Court has no hesitation in accepting what has been stated by the issuing judicial authority. Therefore, the surrender of this respondent is not prohibited under s. 45 of the Act of 2003.

Withdrawn offence
51. The respondent claimed in an additional point of objection and on affidavit that a case involving an allegation of robbery against Mr. N. as described in case file number 72T 153/2005 was withdrawn in the issuing state. He said he was never rearrested or charged with this offence and cannot understand how it forms part of the composite sentence for which his surrender is sought. Counsel for the minister indicated that this point of objection is not referred to in the submissions filed by the respondent and, in any event, it is apparent from the additional information that his case was not withdrawn and proceeded to conviction and upheld on appeal, despite the change in testimony of Mr. N. Counsel therefore concluded on this point that the averment by the respondent that the case was withdrawn is clearly untrue and calls into question his general credibility.

52. In the view of the Court, this objection is not borne out. While it was clear that there was a change in testimony by Mr. N, the

District Court in Ostrava adjudicated on that aspect of the matter and concluded the change had been calculated to help the respondent so as to release him from the charges. The respondent's averments do not engage with the actual findings recorded in the judgment. The Court accepts what has been stated in the judgment of the Czech Court.

Second EAW (Record Number 2014/164 EXT)
53. The second EAW dated 17th August, 2011, was issued by the District Court in Ostrava, a competent judicial authority of the Czech Republic. The EAW recites that the respondent was convicted in absentia by the enforceable judgment of the District Court in Ostrava on 9th January, 2008. The second EAW was endorsed by the High Court on 13th October, 2014 and the respondent was duly arrested on foot thereof on 22nd October, 2014.

54. The EAW recites that the respondent is wanted to serve a cumulative sentence of 20 months of imprisonment imposed in relation to 2 offences of theft and criminal damage listed in the second EAW. The second EAW contained a recital that the remaining part of the sentence to be served is 20 months.

55. In point (e) of the EAW, after giving a description of the two offences for which he is sought, which offences were committed on 10th August, 2007, there is a further reference to two other judgments and sentences. These judgments, prima facie, were delivered prior to the date of commission of the offences to which the second EAW relates. These are a judgment under case file number 7T 146/2000 of the District Court in Ostrava of 16th February, 2005 concerning a general prison sentence in the duration of 20 months, which it states the respondent performed on 12th October, 2004 and to a judgment of the District Court in Ostrava as of 9th May, 2006, case file number 71T 66/2006 where he was sentenced to an aggregate prison sentence in the duration of 18 months, which the second EAW states he he has not performed yet. This latter sentence is the sentence the respondent averred that he had performed and which was later confirmed by the issuing judicial authority in the first EAW as having been performed. An issue arose as to whether these offences formed part of the sentence he received or whether the references were made to show that because he had previously been sentenced, the sentencing parameters for the current offences were higher.

Points of objection
56. The respondent objects to his surrender on the second EAW on the following basis:

- Lack of clarity in that it appears the sentencing court took into consideration an aggregate sentence of 18 months imprisonment on case file number 71T 66/2006, the respondent has served his sentence contrary to the indication in the EAW and that it is unclear to what extent the said 18 month sentence was relied on by the sentencing court.

- A point under s. 45 of the Act of 2003 in that the respondent claims he was not summoned in person to the appeal hearing.

Part 3 of the Act of 2003
57. Apart from further considerations of s. 37, s. 38 and s. 45, I am satisfied that the respondent's surrender is not prohibited by any other section contained in Part 3 of the Act of 2003, as amended.

Section 38- Correspondence / Minimum gravity
58. The offences for which he was convicted amount to offences under Czech law of theft and crime of damage of foreign property. No issue was taken with correspondence as clearly the acts of the respondent set out in the second EAW correspond with offences of theft and criminal damage in this jurisdiction. He has been sentenced to a term of imprisonment of more than 4 months. His surrender is therefore not prohibited by s. 38 of the Act of 2003.

The 18 month sentence already served
59. In his affidavit dated 11th February, 2015, the respondent states that the sentence on this matter and the third EAW appear to have taken into consideration an 18 month term of imprisonment imposed in the issuing state in respect of case file number 71T 66/2006 (which formed part of the matrix of sentences in the first EAW). He exhibited a document showing he had been released from prison having served that sentence.

60. The central authority requested information as to the impact of this 18 month sentence, if any, on the sentence to be served. Additional information dated 22nd June, 2015 clarified that the respondent has 18 months of this sentence left to serve, having already served 2 months of same. Indeed, the clarification can be contrasted with what was said in relation to the first EAW. In this case, they stated "into the aggregate punishment in the duration of 20 (twenty) months out of which Robert Lesko will have to serve the remaining part, which is 18 (eighteen) months."

The respondent's submissions
61. Counsel outlined that on 22nd October, 2014, the respondent was arrested on foot of two further EAWs. The second EAW, which was issued on 17th August, 2011, related to a 20 month sentence which was imposed in his absence on 9th January, 2008 on case file number 71T 235/2007-138. Counsel indicated that it appears that, as with the first EAW, an earlier sentence (case file number 71T 177/2007-45) was cancelled when this sentence was imposed. This sentence was appealed and affirmed on appeal on 15th January, 2009 under case file number 3To 909/2008-171.

62. Furthermore, counsel pointed to page 3 of the EAW upon which there was again reference to two earlier sentences of 20 months under case file numbers 7T 146/2003 and of 18 months under 71T 66/2006. Counsel stated that surprisingly, in view of the history of the first EAW, this paragraph states that the latter sentence is one which "he has not performed yet". Counsel submitted that this is clearly incorrect as conceded in the course of the correspondence in relation to the first EAW. Furthermore, it was stated that the respondent averred in his affidavit of 11th February, 2015 that he believes that the allegation underlying one of the offences on which the sentence is based was subsequently withdrawn and that he cannot understand how it now forms part of the sentence against him. This final averment by the respondent relates to the offence of robbery of Mr. N. and this has been dealt with in that part of this judgment concerning the first EAW.

The minister's submissions
63. Counsel for the minister indicated that point (e) of the second EAW sets out a description of the circumstances under which the offences were committed and that after setting out the facts, it states "whereas" and therefore previous convictions of the respondent for theft are set out including the sentence under case file number 71T 66/2006 which has already been served. Counsel indicated that it is apparent that the relevance of mentioning this is that this means that the crime of theft being dealt with in this EAW was dealt with pursuant to s. 247(1)(b) and (e) of the Czech code of criminal procedure.

64. Counsel outlined that s. 247(1)(e) provides for a discrete penalty of up to 2 years imprisonment for an offence of theft in circumstances where the offender was sentenced or punished for theft during the previous three years, therefore making the previous conviction of theft under case file number 71T 66/2006 relevant. Counsel indicated that to avoid any doubt, clarification was sought from the issuing state by letters dated 25th May, 2015, and 17th June, 2015, as to the impact, if any, of case file number 71T 66/2006. In reply, the issuing judicial authority stated the matter of 71T 66/2006 was cancelled by the judgment of the District Court in Ostrava by judgment of 1st June, 2010 in case file number 72 T 153/2005-1490 (this is the matter dealt with in the first EAW). However, the issuing judicial authority stated that 18 months of the 20 months was in fact required to be served, the respondent having served 2 months imposed on 71T 177/2007-45 which said sentence had been cancelled by the District Court on 9th January, 2008, and an aggregate sentence imposed on that matter.

The Court's analysis and determination
65. In this case, the Court is satisfied that the reference to the sentence under case file 71T 66/2006 was for the purpose of establishing his liability under Czech law to a particular penalty for the offence of theft. It does not form part of the sentence actually imposed and for which his surrender is sought in this second EAW nor does it relate to the period of imprisonment remaining to the served.

66. It is again unsatisfactory, however, that it took until the respondent filed an affidavit for the Czech court to confirm that the outstanding balance of his sentence was 18 months and not 20 months. The reduction is explained by reference to circumstances other than the sentence imposed in respect of case file number71T 66/2006. The Court also finds it somewhat concerning that contrary to the statement in the EAW that he had yet to perform that sentence, it appears from the detailed additional information of the issuing judicial authority with respect to the first EAW, he has in fact served that sentence. However, that has been clarified as regards the first EAW and I have found that it does not affect the sentence actually imposed or to be served here.

67. The issue for the Court is whether the change in the period of time which remains to be served amounts to a ground for prohibiting his surrender. In this case, there is no ambiguity with regard to the length of the sentence actually imposed, it is for a period of 20 months. The length of the sentence has not varied. What has varied is the time which he has served. Although it is unsatisfactory that the time was not stated in the EAW, it is clear that he now only has to serve 18 months on this sentence. There is no ambiguity or lack of clarity on that aspect as of this date.

68. I do not believe that the failure to mention this in the EAW breaks down the mutual trust and confidence in the Czech judiciary under which this Court operates in accordance with the Act of 2003 which implements the 2002 Framework Decision. Furthermore, there is a presumption that the Czech state will comply with the requirements of the 2002 Framework Decision, which imports a presumption that they will comply with the rule of law and fundamental rights and freedoms. This Court must assume that when the respondent is lodged in prison to serve the sentence imposed on him, that the authorities will give him credit for all time spent in custody (including any as a result of the execution of the EAW).

69. The EAW being otherwise valid, there is no ground to prohibit the respondent's surrender based upon the erroneous statement in the EAW that he had the entire 20 month sentence to serve.

Section 45 of the Act of 2003
70. The original EAW did not contain the new version of point (d) required by the 2009 Framework Decision. The EAW did indicate that it was a trial in absentia but that he had been personally served with a summons as evidenced by a delivery ticket signed by him on 21st December, 2007. A new form point (d) was sent by additional information dated 7th September, 2014. This also confirms that he was personally served with the summons and there is a reliance on part 3.1a of point (d) of the EAW.

71. Counsel for the respondent referred to the statement in the additional information sent by the issuing judicial authority on 7th September, 2014, which stated that although the respondent was personally summoned to his trial on 9th January, 2008, he lodged an appeal. The summons for the appeal hearing, however, "was delivered by the court to the mentioned person by depositing the mail at the post office to the address designated as Robert Lesko's address for mail delivery".

72. It was submitted that it is this appeal hearing, and not the initial trial, that amount to the "proceedings resulting in the sentence" as referred to in the first paragraph of s. 45 of the Act of 2003. Counsel submitted in the context of this Court's decision in *Minister for Justice and Equality v. A.P.L.* [2015] IEHC 458 which is currently under appeal, that whichever term is used ("proceedings" or "trial"), both have to be read conjunctively with the phrase "resulting in the decision" which, it is submitted on the facts of the present case, is the appeal hearing rather than the initial trial.

73. Counsel for the minister outlined that the issuing judicial authority relied on the fact that the respondent was served personally with a summons for the trial on 21st December, 2007. She indicated that it is stated in the EAW that the confirmation of the date of receipt of the indictment and summons for trial for 21st December, 2007, is available per request and was requested and provided by way of additional information dated 22nd June, 2015. Counsel submitted that it is clear that on 21st December, 2007, the respondent accepted delivery of the summons for the "main trial". This main trial took place on 9th January, 2008.

74. Counsel then summarised that:

- the issuing judicial authority have provided documentary evidence that the respondent was personally served with a summons for the main trial, such summons advising that the court in the issuing state may perform the trial in the respondent's absence.

- it is this judgment which imposed the 20 month sentence and it is this judgment upon which the EAW is based.

- the respondent did not appear on 9th January, 2008 for the main trial and was convicted in his absence and was personally served with the judgment of same on 31st July, 2008.

- The respondent appealed the sentence, not the conviction and this appeal, in respect of which he was not personally served, took place on 15th January, 2009, and was dismissed.

- If the requested state issued the condition that the mentioned person will be allowed a new court case, it would seem that they would adhere to same.

- The new version of point (d) forwarded on 7th September, 2014 specifies that the Czech authorities rely on para. 3.1a of point (d) which is to the effect that the respondent was summoned in person on 21st December, 2007.

75. Counsel for the minister submitted that the "proceedings resulting in the sentence" or "the trial resulting in the decision" is the decision of 9th January, 2008 as stated in point (b) of the EAW. In this regard, she referred the Court to the case of *Minister for Justice, Equality and Law Reform v. Zachwieja* [2011] IEHC 513, wherein Edwards J. had to consider the meaning of trial (albeit in the context of the previous s. 45 of the Act of 2003). In his concluding decision, he stated as follows:-

> *"The Court is in agreement with counsel for the applicant that the words "tried for and convicted" in s. 45(a) of the Act of 2003 refer to one cumulative process, and not to two separate and distinct processes. In the Court's view s. 45 must be construed as not applying to a respondent unless he has been tried and convicted in totality in his absence. That said, the Court accepts that the concept of a trial imports or connotes that part of a criminal proceeding where the Court is seized of the issue as to whether the accused is guilty or otherwise of the charge(s) preferred against him, and that it does not refer to mentions solely in connection with some procedural aspect of the case."*

Edwards J. further stated:-

> *"The Court does not consider that respondent's reliance on the decision in Jason O'Brien v District Judge John Coughlan and the Director of Public Prosecutions [2011] I.E.H.C. 330 (Unreported, High Court, Kearns P., 29th July, 2011) is apposite in the circumstances of the present case. Certiorari was granted in the O'Brien case not because the applicant in that case was convicted in absentia, but because the District Judge, having convicted him, proceeded to then sentence him in absentia and to impose a substantial prison sentence upon him, without either adjourning the case to facilitate, or issuing a bench warrant to compel, the presence of the applicant before imposing sentence. However, that case has no direct application to a request for surrender on foot of a European arrest warrant. Neither does it provide a rationale for the s. 45 requirement by analogy, as counsel for the respondent suggests it does. It does not do so because that case concerned a sentencing hearing and it has been held by Peart J. in Minister for Justice, Equality & Law Reform v McCague [2010] 1 I.R. 456 that s. 45 of the Act of 2003 does not apply to a sentencing hearing as opposed to a trial hearing. In the course of his judgment Peart J. stated at p.485: -*
>
> "In my view the terms of s.45 of the Act are very specific and unambiguous. It refers to not being present for the trial of the offence and not to being present (sic) when sentenced for the offence. Given the terms of Article 5.1 of the Framework Decision this cannot even be seen as an accidental omission. In any event, there was no requirement that legislative effect be given to Article 5.1 at all. It is an optional provision for any member state to make provision for in its domestic legislation giving effect to the Framework Decision. On the facts of this case no undertaking is required in respect of a re-trial given that the defendant was notified of the date and place of his trial, and thereafter chose to be absent. In view of the clear words used in this section, the right to be present at a sentence hearing, separate from the right to present at trial, as referred to in relation to the respondent's arguments under s. 37 of the Act, does not come into play under this point of objection under s. 45 of the Act."
>
> *Messrs Farrell & O'Hanrahan in their excellent work entitled "The European Arrest Warrant in Ireland" (Clarus Press, 2011) have recorded in a footnote on p.209 of their work that Peart J.'s judgment in McCague was subsequently affirmed ex tempore by the Supreme Court."*

76. Counsel also referred to the case of *Minister for Justice and Equality v. Bartold* [2012] IEHC 108 where the issue regarding "trial" encompassing an appeal arose, again in the context of the previous version of s. 45 of the Act. Edwards J. in that case stated as follows:

> *"26. However, the Irish Supreme Court, in construing s. 45 of the Act of 2003, has said, certainly in regard to a trial at first instance, which is what that Court was concerned with in the Sliczynski case. that for the purposes of any Court in this country considering whether not to surrender a person on foot of a European arrest warrant, that it is not enough to establish that notification in writing was sent to the respondent at a designated address concerning the date of his trial. What is required under Irish law for the purposes of s. 45 is that a person be personally notified, that is there should be personal service on him, or there should at least be evidence that he actually was made aware of the date of the hearing.*
>
> *27. The Court has been invited by counsel for the applicant to distinguish Sliczynski and to take the view that Sliczynski is only intended to apply to a trial at first instance, and that it doesn't apply to a re-visitation of the issue of guilt or innocence on appeal because that is a process that is initiated by the respondent and one in respect of which the respondent is expected to show due diligence, so that if he furnishes an address at which he is to be notified he is required to remain in a situation where that can lead to effective notification of him.*
>
> *28. In this particular instance the evidence is that Mr. Bartold upped and left Poland. Having filed his Notice of Appeal, he could not be notified at the designated address because, of course, he had left and gone to Ireland. Counsel for the applicant urges that it would be absurd that somebody could escape surrender on that basis, effectively in circumstances where they had contrived a situation whereby they couldn't be extradited, and that the Court should not interpret the legislation in a way that allows for that.*
>
> *29. The Court challenged counsel for the applicant that that very situation arises also at first instance, but Ms. Noctor B.L. differentiates the trial at first instance from the appeal process by saying that the procedure of first instance is not one initiated by the respondent himself whereas the appeal process is initiated by the respondent and the respondent carries responsibilities as a result of that which don't exist in respect of a trial of first instance. I think there is force and strength in that argument and I consider that it represents a legitimate basis for differentiating the situation at first instance from the situation on appeal.*
>
> *30. Accordingly, I am not disposed to apply the Sliczynski judgment to a situation where a person has lodged an appeal , and having done so has absconded, and by reason of his absconding has had his appeal determined in his absence. I do not think that s. 45 was intended to apply to that situation. I believe that counsel for the applicant is correct in saying that s. 45 must be interpreted, insofar as it refers to trial and conviction, as referring to the trial and conviction of the respondent at first instance, and I so rule."*

77. In the proceedings for which the surrender of the respondent is sought on the second EAW, he did not appear in person at the first instance proceedings resulting in the sentence in respect of which the EAW was issued. The EAW and the additional documentation state that he was personally summoned and thereby informed of the date and place of the trial which resulted in the decision. The decision relied on in this second EAW is the decision that was taken on that date of trial. More particularly, this is the

date on which the true trial of the respondent was held, in the sense meant under s. 45 of the Act of 2003 as indicated by the High Court in *Zachwieja and Bartold*, albeit in cases concerning the original section 45. It is the point at which guilt or innocence is determined that is the trial referable to section 45.

78. In this case, there is no dispute but that the respondent was notified by being personally summoned for his original trial on which his guilt or innocence was determined. In the view of the Court, this is sufficient compliance with s. 45 of the Act of 2003.

79. For the avoidance of doubt, in so far as it was argued that this is unlike the decision in *Bartold*, where there was a reference to the person becoming a fugitive and not appearing for their appeal, that fact is not of any real relevance to the principle behind the decision. It is the presence at the trial that is of significance with regard to section 45. There can also be no question of an unfair trial by reason of his absence from any appeal, where he chose to appeal and in doing so designated an address for delivery to which the notification of the time and date was delivered. It was the responsibility of the respondent to ensure that he kept in touch at this address.

Third EAW (Record Number 2014/165 EXT)
80. The third EAW, dated 22nd August, 2011, was issued by the District Court in Ostrava. The EAW sets out that the respondent was convicted in absentia by the enforceable judgment of the District Court in Ostrava on 15th November, 2010. The respondent is now wanted to serve a sentence of 14 months of imprisonment imposed in relation to the offences listed in this EAW. This is a cumulative sentence imposed in respect of 4 offences; respectively, theft, unauthorised possession of a credit card, theft and criminal damage. The EAW recites that he has the remaining 14 (fourteen) months to be served. The third EAW was endorsed by the High Court on 13th October, 2014, and the respondent was duly arrested on foot thereof on 22nd October, 2014.

Points of Objection
81. The respondent raised points of objection in respect of the service of the 18 month sentence referred to previously and a point under s. 45 concerning a retrial on the merits.

Part 3 of the Act of 2003
82. Apart from further considerations of s. 37, s. 38 and s. 45, I am satisfied that the respondent's surrender is not prohibited by any other section contained in Part 3 of the Act of 2003, as amended.

Section 38 - Correspondence / Minimum gravity
83. Counsel for the minister nominated as corresponding offences; respectively theft contrary to s. 4, handling contrary to s. 17 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, theft contrary to s. 4 and criminal damage contrary to s. 2 of the Criminal Damage Act, 1991. No point of objection was raised by the respondent with regard to correspondence. I am satisfied that the description of the offences set out in the EAW corresponds with the offences nominated by the minister. I am also satisfied, having regard to the sentence imposed, that the required minimum gravity has been reached. His surrender is not prohibited by s. 38 of the Act of 2003.

The 18 month sentence served on case file number 71 T 66/2006
84. This issue arose because point (e) (1) of the EAW commences by reference to an 18 months sentence under 71 T 66/2006 "which he has not performed yet." The respondent relied upon the same affidavit referred to under the second EAW above. Similarly, enquiries were made by the central authority. Counsel for the respondent again reiterated his earlier submissions stating that the reference to the 18 month sentence imposed is incorrectly stated as "he has not performed yet." Counsel also pointed to the fact that at the beginning of the EAW, a particular case file number (71T 111/2008) was referred in relation to the sentence at issue, whereas the EAW refers to a different case file number (71 T 235/2007) at the point at which the EAW is signed by the issuing judicial authority.

85. I am satisfied that the reference to the 18 month sentence under case file number 71 T 66/2006 was made for the purpose of establishing that the previous conviction of the respondent for theft in the "description under which the offences were committed" was committed within 3 years of the respondent being sentenced or punished for a crime of theft. In such a situation, Czech law provides for a particular sentence.

86. The central authority wrote seeking information regarding the impact of the service of the sentence under case file number 71 T 66/2006 upon the sentence which he is sought to serve under this EAW, i.e. 14 months, and the issuing judicial authority replied on 22nd June, 2015, as follows:-

> "As for the European Arrest Warrant issued in connection with the judgment of the District Court in Ostrava, the file number 71 T 111/2008 as of 15th November, 2010, where Robert Lesko was imposed the aggregate punishment of imprisonment, unconditional, in duration of 14 (fourteen) months, for its performance he was included in prison with security where no implementation of the sentence earlier served can be included from the previously services sentences of the convicted Robert Lesko."

87. The issuing judicial authority also replied that the respondent mixed up several of his convictions and judgments in his affidavit. In particular, they say that the judgment of T66/2006 was subsequently cancelled by the judgment of the Court on 1st June, 2010 in 72 T 153/2005-1490 (this is the judgment underlying the first EAW).

88. In relation to the case file numbers, I am satisfied that the aggregation of sentences provides an explanation for the difference between the file numbers. Most importantly, there is no difficulty with the fact that a 14 month sentence has been imposed for these offences and that 14 months remain to be served. I am satisfied there is no lack of clarity or ambiguity that would prohibit his surrender.

Section 45 of the Act of 2003
89. Again, this EAW had included a point (d) under the original format required under the 2002 Framework Decision. A new format point (d) of the EAW was forwarded with additional information received in on 7th September, 2014, and which sets out the respondent's right to a new trial on the merits. It is stated, inter alia, at para. 3.4 of point (d) that he has the right to participate in a retrial "which allows the merits of the case, including new evidence, to be re-examined…".

90. There was a similar submission made by counsel that any retrial will be in accordance with Article 306a of the Czech criminal code and, therefore, a trial in accordance with this article is not consistent with the requirements of both the Irish case-law and the Table of s. 45 of the Act of 2003 itself. This point has been dealt with under the first EAW above. For the reasons set out therein, I reject this point of objection. I am satisfied that, although this respondent was not present at his trial, point (d) (3.4) has been duly

completed and he will be entitled to a retrial on the merits. His surrender on the third EAW is not prohibited under s. 45 of the Act of 2003.

Fourth EAW (Record Number 2015/51 EXT)
91. The fourth EAW dated 19th February, 2015, was issued by the District Court in Ostrava . The surrender of the respondent is sought for prosecution in relation to two offences. The EAW was endorsed by the High Court on 24th March, 2015 and the respondent was duly arrested on foot thereof on 14th April, 2015.

Points of Objection
92. The respondent's points of objection concerned delay, breach of his right to bodily integrity and lack of correspondence.

Part 3 of the Act of 2003
93. Apart from further considerations of s. 37 and s. 38, I am satisfied that the respondent's surrender is not prohibited by any other section contained in Part 3 of the Act of 2003, as amended. Section 45 of the Act does not apply to this EAW as it is a warrant for prosecution.

Section 38 – Correspondence / Minimum gravity
94. The EAW referred to two offences. The original EAW did not name the type of offences according to the Czech penal code, although it gave the sections of the penal code. The central authority sought clarification prior to the endorsement of the EAW. From the additional information dated 16th March, 2015, the two offences are called namely robbery and extortion to which a maximum sentence of 10 years and 3 years applies respectively. Minimum gravity requirements have been established in relation to each of these offences.

95. Counsel for the minister proffered robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 as a corresponding offence. Counsel outlined a number of potential corresponding offences relative to the second offence of extortion, including an offence of demanding with menaces contrary to s. 17 of the Criminal Justice (Public Order) Act, 1994. Although a point of objection was raised with regard to correspondence, no submissions were made in this regard. The first offence is a straightforward offence of robbery. In relation to the second offence, whereby the respondent allegedly demanded that a person make a false report to the police that a car (which he had crashed) had been stolen or else he would harm her son, the Court is satisfied that the allegations, set out in the fourth EAW, would, if proven in this jurisdiction, amount to offences of robbery and of demanding with menaces. His surrender is therefore not prohibited under the provisions of s. 38 of the Act of 2003.

Alleged delay
96. The offences for which the respondent is sought for prosecution were allegedly committed on 1st July, 2008. The respondent makes a complaint about delay in the prosecution of these offences. The respondent accepts, however, that the case law establishes that an argument based on prosecutorial delay will be rejected in the absence of evidence that, if surrendered, the respondent would not have an effective remedy for that delay. In this case, however, it is submitted that the alleged delay in seeking his prosecution affects the public interest in his surrender. This will be dealt with in the context of his submissions that surrender would be a breach of his right to bodily integrity and his right to respect for his personal and family rights.

Section 37 (1)(a) and (b) and (c)(iii)(II) – right to life and to bodily integrity and (c)(ii) treated less favourably
Roma Community – treated less favourably

97. In his affidavit of 2nd May, 2014, the respondent described himself as a member of the Roma community and said that he had resided in the city of Ostrava in the northern Czech region whose population is 1.2 million approximately. He said that from the age of 12, he was subjected to persecution at the hands of the community and the authorities in the issuing state. He stated that he was frequently arrested by police for no reason and beaten and threatened. He described that the abuse became even more serious after 1990 when his parents joined a governmental organisation, the Roma Civic Initiative, advocating for the rights of Roma people. This organisation, as the Czechoslovak and Czech political party, formed in 1989 as a political platform representing the Roma ethnic group.

98. The respondent outlined how in 1993 when he was returning home, he was stopped by a police car at an address in Ostrava and arrested. He said that he was attacked by four police officers and a police dog and made strip naked before being told to run in the snow behind the police car for about 500 metres. He said he was then given back his clothes and told to walk home, a distance of about 10 kilometres. He described how he was again arrested in 1995 and taken to a Privoz police station and beaten and racially insulted and called a black pig. He said that when he told them that he would report them for this treatment, they handcuffed him to heating pipes and 15-20 police officers proceeded to kick him repeatedly. He indicated that this ordeal lasted for 7-8 hours until his father arrived at the station. The respondent outlined that he reported this incident to an independent police investigator who initiated a prosecution against the police officers involved but that he and his family were put under continual pressure by the police to drop the matter, which resulted in his father suffering a heart attack. He said that he decided to leave the issuing state and travelled to the Netherlands in July 1995 and that he learned that while he was there, some of the police officers who had assaulted him were convicted and sentenced for their role in the assault on him. He stated that he then returned to the issuing state in November 1995 hoping to start his life over and he said that he got married on 30th December, 1995.

99. He indicated, however, that from the moment he returned to the issuing state, he was targeted by the local police in Ostrava as a result of the previous case and that he and his family were continually harassed and questioned over criminal matters in which he had no involvement. He stated that the constant pressure resulted in the breakdown of his marriage in 2000 and that in September 2001 his parents decided to move to Ireland with his daughter. He said that he initially decided to stay in the issuing state with his girlfriend and son but that in 2008, he was arrested in the company of his girlfriend by non uniformed police officers and taken to a wooded area where he said that he and his girlfriend were tied to trees and beaten for approximately 15-30 minutes. He said that his girlfriend was asked how she could live with a black monkey and that they would gas all the gypsies like Hitler used to. He said that they were then released and told that if they reported the incident, it would be worse for them. He described how he finally decided that he could no longer live in the issuing state and travelled to Ireland to live with his parents in September 2008. His girlfriend swore two affidavits in support of the respondent, the first of which was obviously an unmodified copy of the respondent's affidavit.

100. The respondent indicated that his experience of abuse as a result of his membership of the Roma community is by no means unique and that this community has for many years suffered abuse and discrimination in the issuing state. He said that there is continuing discrimination against the Roma community in the issuing state as reported repeatedly by international human rights organisations. In this regard, the respondent referred to Amnesty International's annual report of 2008 on the Czech Republic, which report refers to "concerns about allegations of ill-treatment and excessive use of force by police officers, in particular against Roma and children, including their detention and coercion into confessing minor crimes". He also referred to its 2012 report which states

that "the Council of Europe Commissioner for Human Rights noted that racist and anti-Roma discourse was still common among mainstream politicians at both national and international levels".

101. The respondent also exhibited the Executive Summary of the United States State Department Human Rights report of the Czech Republic of 2011 which described societal discrimination against the Roma community as a "serious problem" and that governmental efforts to overcome it were "inadequate". In its section on National/Racial/Ethical Minorities, it stated that:-

> "Societal prejudice against the country's Romani population at times resulted in violence. Throughout the year extremists targeted Romani neighborhoods as venues for their protests and occasional violence. Police investigated several incidents of torches or Molotov cocktails being thrown at Romani houses. Extremist groups also marched through Romani areas carrying torches and chanting slogans. Some human rights organizations criticized the government's response to discrimination against Roma as inadequate.
>
> ….
>
> The national media gave disproportionate coverage to crime and acts of violence committed by Roma compared with similar behavior on the part of the majority population or other minorities.
>
> Some mainstream politicians have been outspoken in their criticism of Romani communities. Their statements often vilified the Romani minority, blaming it for community problems and assigning collective guilt for crimes. Some politicians called for municipalities to move Romani residents to the outskirts of town into what is often substandard housing, ban alcohol in areas with high Romani populations, and limit residency options for Roma who commit multiple minor crimes."

102. The respondent also produced to the Court the most recent report of the European Commission against Racism and Intolerance on the Czech Republic. This report found that "despite a range of measures adopted by the authorities at national level, little progress has been made in concrete terms in recent years towards improving either the living conditions of Roma or their integration in Czech society". The respondent pointed in particular to the concerns expressed by the Commission as regards discrimination in the operation of the criminal justice system, and he stated that while the Commission notes that the issuing state has made some progress in relation to the contents of criminal provisions and the training of police officers aimed at combating racially motivated offences, it also noted at para. 21 of the report that concerns that the criminal justice system "does not always provide sufficient protection against racially motivated offences, indicating that crimes committed against members of the Roma community in particular may remain unreported due to victims' fear of, or lack of trust in, the police" and they also report that no action at all is taken in other cases to follow up on complaints logged by the police concerning racial violence.

103. The respondent indicated that the report also cites the concerns of non-governmental organisations that the police and judiciary require an excessively high standard of proof in establishing the presence of a racist motivation in an offence. The respondent said that the Commission further noted at para. 165 that reports of police ill-treatment of minorities, particularly the Roma, as well as concerns that the possibility of a racist motive behind such ill-treatment is not always examined and, where sentences are handed down, these appear to be light. At para. 172 of the report, having noted the passing of legislation requiring the police to observe rules of politeness and to respect the dignity of others, along with a National Strategy on Policing Minorities, the Commission found that despite this development, "the authorities' analysis of the strategy's impact to date shows that there remains considerable room for progress [...] NGOs also report that police officers tend to associate Roma or foreigners with criminality but that where crimes are perpetrated against the Roma by non-Roma, these tend to be downplayed by both the authorities and the general public."

104. The respondent outlined in his affidavit that the Czech Republic was cited along with other countries in the region by the Council of Europe Commissioner for Human Rights in its report of February, 2012 entitled 'Human Rights of Roma and Travellers in Europe', where at para. 3.1 it stated that there were "repeated patterns of discrimination and ill-treatment by police towards Roma" and that in these instances "criminal investigations of racially motivated misconduct by police frequently appear to be manifestly biased or discriminatory".

105. The respondent concluded by reiterating that he has suffered persecution in the issuing state and that there is a real risk that he would suffer further abuse and persecution if surrendered. He stated that he would not be adequately protected from such persecution by the authorities in the issuing state and accordingly that his surrender would be contrary to his right to life and bodily integrity. He said that if surrendered, he would be treated less favourably in the course of his prosecution and any eventual punishment he might receive in the issuing state in respect of the offences set out in the first EAW.

The respondent's submissions

106. Counsel submitted that the test was that set out in *Minister for Justice and Equality v. Rettinger* [2010] 3 I.R. 783 as regards ill-treatment or discrimination that might be suffered if surrendered. It was submitted that it was a matter for the Court to assess the evidence before it as to whether the concerns are justified or not. Counsel relied upon *Minister for Justice and Equality v. Rostas* [2014] IEHC 391 where the High Court refused to surrender a person on the basis of a lack of a fair trial where the concerns of the court had not been alleviated by any additional information from the issuing state. It was submitted that, in this case, there had simply been no response at all to the concerns raised.

The Minister's submissions

107. Counsel relied upon the synopsis given by Edwards J. in analysing s. 37 of the Act of 2003 in the context of prison conditions and potential inhuman and degrading treatment in *Minister for Justice, Equality and Law Reform v. Mazurek* [2011] IEHC 204. Counsel summarised the approach as follows:

> 1. There is a normal presumption that the issuing state will comply with Article 6.1. and respect human rights and fundamental freedoms.
>
> 2. To avoid surrender, the respondent must establish a real risk of ill treatment. Mere possibility is not sufficient but it does not need to be proven that the respondent will probably suffer ill treatment.
>
> 3. The subject matter of the Court's enquiry is the level of danger to which the person is exposed.
>
> 4. The Court should consider all the material before it, including material obtained of its own motion.
>
> 5. The respondent, although bearing no legal burden, bears an evidential burden of adducing cogent 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 the ECHR.

6. It is open to a requesting state to dispel any doubts by evidence.

7. The Court should examine the foreseeable consequences of sending a person to a requesting state.

8. The Court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to government sources such as the U.S. State Department.

108. Counsel for the minister identified three specific incidents of which the respondent complains:

a) The 1993 attack by police officers and the dog.

b) The 1995 attack in the police station. Counsel submitted that the police officers were prosecuted and punished.

c) In 2008, he was taken to a wooded area, tied to a tree and beaten for 15 to 30 minutes. In relation to the matter, counsel pointed to the affidavit of his girlfriend which was put forward as corroboration. She pointed out that his girlfriend had sworn two affidavits which were slightly different.

109. Counsel referred to the fact that nowhere does the respondent provide evidence that, either in terms of trial or punishment, he will he be treated less favourably. The reports relied upon refer to general discrimination and states that crime by Roma are more widely reported and with greater emphasis. The reports do not say that they are treated unfairly in the course of prosecution or that they get higher sentences.

The Court's analysis and determination

110. Where a respondent seeks to prohibit his or her surrender on the basis that there are substantial grounds for believing that he or she is at real risk of inhuman and degrading treatment if surrendered or that he or she will be treated less favourably by reason of his or her ethnicity in the prosecution or punishment of the offences, there is an onus on a respondent to provide cogent evidence to the Court to establish those grounds. The Court accepts that the synopsis by counsel for the minister of the approach that the courts must take as set out above is correct.

111. Despite the fact that in three of these EAWs, the respondent is sought to serve sentences in respect of convictions for 15 different offences, he does not make any complaint in respect of his treatment by the particular police officers who investigated those crimes or against the judiciary who tried him in relation to them. Furthermore, despite the fact that he accepts that he has served a number of sentences in respect of various matters, he does not make any complaints as regards the conditions under which he was imprisoned. The respondent's complaints of being frequently arrested by the police for no reason and of increasing threats are at a level of generality save for the three instances that are given.

112. In truth, the matters complained of by the respondent are historic in nature. Indeed, the matter in 1995 was actually investigated and prosecuted and the perpetrators punished. This is not evidence of State indifference or State discrimination; on the contrary, it is evidence of state engagement in the protection of human rights. In relation to the 2008 matter, it may well be that he was subjected to a nasty incident with respect to non-uniformed police officers. However, he made a decision to leave and not report the matter because, he says, of threats. This once off event does not give him immunity from prosecution or punishment. This is especially so where the State has already evidenced a willingness to pursue assaults and also in light of the forward looking attitude that this Court must take to matters concerning the protection of rights on surrender.

113. The matters that have been brought to the attention of the Court by the respondent in the form of reports and judgments, do not give rise to a concern that there is a real risk that his rights will be violated upon surrender.. As regards the most serious allegation, namely, the Amnesty International Report concerning the ill-treatment and excessive use of force by police officers in particular against Roma and children, it must be noted that this report is eight years old at this time. The Court is required to be forward looking in its approach and must act with the benefit of the presumption that the Czech Republic will comply with its obligations under the 2002 Framework Decision.

114. Most of what is relied upon is general societal prejudice against Roma and certain inadequate responses by government. Nonetheless, it must be acknowledged that the police investigate offences against Roma. These reports state that there has been little progress on living conditions for Roma or their integration but again it is noted that this respondent made no complaint about either his prison conditions or his particular living conditions in the Czech Republic.

115. The respondent's main complaint was that in the European Commission Against Racism and Intolerance report on the Czech Republic, it was stated that non-governmental organisations said that the police and judiciary require an excessively high standard of proof in establishing the presence of a racist motivation in an offence committed against Roma. That is not a finding that there is "an excessively high standard of proof" required. More importantly, these relate to the prosecution of offences where Roma people are victims. There is a conspicuous and telling absence of any complaint about how Roma people are treated in the judicial system.

116. The Court does recognise that the reports do not make for happy reading with regard to the treatment of Roma people generally in the Czech Republic. There are some specific concerns about prison conditions in that the Commission for Human Rights of the Council of Europe in the report on the Human Rights of Roma and Travellers in Europe noted that the Czech Helsinki Committee report for 2009 indicated that Roma prisoners had been subjected to racially-motivated verbal harassment by prison staff and that some had not been allowed speak on the telephone in Romani. There are also clear societal issues regarding discrimination against Roma across Europe which require to be addressed. That fact does not mean that there are substantial grounds for believing that this respondent will be treated less favourably in the judicial and penal system because he is Roma. On the contrary, the overall thrust of the information before the Court is that the judicial and penal system (save for the incidents referred to above) is not a cause of concern within the Czech Republic under this heading in so far as the treatment of Roma coming before the Courts or being imprisoned is concerned.

117. Counsel for the respondent relied upon the fact that the issuing judicial authority did not engage in this case with his complaints. It is important to note that what was sent to the issuing judicial authority by the central authority was a copy of his affidavit. The letter then stated "please forward any comments the issuing judicial authority wishes to make in respect of the averments contained therein." The issuing judicial authority apparently did not wish to make any because it did not make any. Indeed, it is difficult to know what the judicial authority could have said.

118. There was no allegation against any judicial authority, unlike in the Rostas case where the issue at stake was the fairness of the trial that the respondent had received. The matters complained of by the respondent were historic and had either been dealt with or as in the 2008 incident, were apparently never even reported. The references to the reports were simply that, i.e. references. There was very little that could be engaged with in a concrete sense by a judicial authority. In my view, the lack of a response to this is understandable. It does not put this Court on further enquiry and it does not provide any corroboration for the claims that the respondent makes.

119. This respondent has been convicted of a number of matters for which he has no particular complaint. He has been in custody on some of these offences and has no particular complaints. His personal complaints are historic or do not in fact give cause for concern, e.g. there was actually a prosecution as regards the 1995 incident. In relation to the 2008 incident, he chose not to complain to the authorities.

120. I am satisfied that this respondent has not established on cogent evidence that there are substantial grounds for believing that he is at risk of being treated less favourably than a non-Roma in the prosecution or punishment of these offences or that he is at real risk of being subjected to inhuman and degrading treatment. Having regard to the conclusions as aforesaid, it is unnecessary to make any specific findings concerning the general credibility of the averments of the respondent following on from his specific but incorrect averment that the case of robbery against Mr. N. had been withdrawn, despite the invitation of counsel for the minister to do so.

Medical conditions

121. The respondent stated that from 1990, he began to lose his sight and that he is now blind for all practical purposes and that he also suffers with hepatitis, asthma and depression and that these are factors which should be considered by this Court in considering the proportionality of his surrender. In this regard, he exhibits a report from his G.P. who stated that the respondent has "multiple medical problems" as follows:

> "1. He is registered blind secondary to glaucoma and previous ocular injury
>
> 2. He has chronic Hepatitis C which he [is] currently having treated in the Hepatology Dept., in St. James' Hospital.
>
> 3. He has Type II Diabetes Mellitus
>
> 4. He has multiple joint pains
>
> 5. He has morbid obesity
>
> 6. He suffers from severe anxiety/depression for which he is being treated
>
> 7. He suffers from Asthma and Chronic Obstructive Pulmonary Disease
>
> 8. He has Hypertension (high blood pressure)
>
> 9. He has Gastro Oesophagael Reflux Disease."

122. Counsel for the respondent conceded at the hearing that the medical issues may not amount to "a knock out" blow in respect of his surrender but submitted that it was a factor to be weighed in the balance. The Court has looked at the issue of his medical condition under a number of headings; disproportionate interference with his right to bodily integrity and right to life and also with his Article 8 ECHR and corresponding constitutional rights.

123. The respondent is indeed a man who suffers from a variety of health issues. However, there is no suggestion that any of these matters could not be treated in the Czech Republic or indeed in the Czech prisons. In the view of the Court, it has not been established that there are substantial grounds for believing that he is at real risk of having his right to life or bodily integrity interfered with if he is surrendered due to the fact that he has these medical conditions. I have no hesitation in rejecting this ground of objection to surrender.

124. As regards Article 8, the case-law on this area is well established. As was stated in *Minister for Justice and Equality v. E.P.* [2015] IEHC 662 at para. 107:

> *"The case law establishes that while there are general points of principle, the consideration of an Article 8 point is fact specific to each case. The conclusion a court reached in an earlier case as to where the balance lay is not a precedent which can bind another court assessing individual and particular facts of the case at hand. While there is a strong public interest in general in the extradition of a person who is wanted for criminal prosecution or to serve a sentence, the actual level of public interest may vary depending on such factors as the nature of the alleged or committed crime and the delay in seeking extradition. There are also all manner of variables that may arise in a requested person's private and family life."*

125. The Court must calculate the public interest in his surrender. Surrender has been refused in respect of the first EAW. In respect of the second EAW, he is sought for a 20 month sentence of which 18 months must be served. In respect of the third EAW, he is sought for a 14 month sentence, all of which must be served. In respect of the fourth EAW, he is sought for prosecution. The offences in the first EAW were committed in 2007 and relate to breaking the windows of a house and then breaking into a car, causing damage and stealing a number of items from the car. The respondent by his own admission left the country when this matter was outstanding against him. He is responsible for the delay. He came to Ireland and it was only in July 2010 that his presence was known here. The EAW issued in August 2011 and there then appears to have been a further delay in sending the matter to Ireland.

126. In respect of the third EAW, he is sought for four offences arising out of two incidents committed on 22nd October, 2007 and 10th May 2008. They are also offences of dishonesty or theft. Again, he left the country knowing these were against him. There was subsequent information as to his presence here and there was a delay before the EAW issued in August, 2012.

127. In respect of the fourth EAW, these are the offences for prosecution and they are alleged to have occurred on 1st July, 2008. That warrant issued on 19th February, 2015. It is the delay in issuing that EAW of which the respondent makes a significant complaint. It does appear that an arrest warrant was issued by the District Court in Ostrava in December, 2008.

128. In relation to these matters, the Court takes into account that the two conviction EAWs amount to evidence of an element of recidivism on the part of the respondent. The offences, while not crimes of violence or against children, are, nonetheless, of a type that cause real distress and upset to people. He received sentences in excess of the minimum gravity for surrender and has substantial portions of them to serve. There is a moderate to high public interest in his surrender on that alone.

129. The Court must also take into account the lapse of time since the offences were committed and sentence imposed, to the date of the application for the EAW and its transmission to this jurisdiction. This is a calculation of the public interest and is not to be regarded as a punishment for any delay. In the first place, the respondent is responsible for the early delay. He left the Czech Republic knowing these matters were outstanding against him. There was, however, a subsequent period of unexplained lapse of time after his presence in this jurisdiction was known. This dilutes the public interest in his surrender to a moderate public interest.

130. As against that, the respondent puts forward his present medical condition. These are conditions of long standing. There is no evidence that any of it has been made worse by any lapse of time in relation to these EAWs. There is no evidence that he will suffer any particularly injurious or harmful consequences as a result of his surrender. I must accept, and do accept, that he will receive all appropriate treatment in the Czech Republic.

131. Balancing the moderately high public interest in his surrender against his private interests and in particular his medical conditions, I am satisfied it would not be disproportionate to surrender him.

132. As regards the prosecution offences, where he is to be surrendered in respect of other offences, the Court does not consider that there could be any disproportionate interference with his private life in respect of this matter. For the avoidance of doubt, however, the Court also holds that, despite the lapse of time since his presence in this jurisdiction was detected to the issue of the EAW, the public interest in his surrender in respect of these offences is also moderately high. The facts established show that there will be no disproportionate interference with his private life.

133. Therefore, on the basis of his medical condition, or indeed on the basis of any other ground, his surrender on the second, third or fourth EAW, would not amount to a disproportionate breach of his Article 8 ECHR rights or his right to respect for his private life under the Constitution.

Conclusion

134. For the reasons set out above, the surrender of the respondent is prohibited in relation to the first EAW, but there are no grounds for prohibiting his surrender on the second, third and fourth EAW. I therefore may make an Order under s. 16 of the Act of 2003 for his surrender on the second, third and fourth EAWs to such other person in the issuing state who is authorised to receive him.