

THE HIGH COURT

RECORD NUMBER 2019/392 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

D.E.

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 10th day of December, 2020

1. By this application the applicant seeks an order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 1st October, 2019 ("the EAW") issued by Judge Rupert Lowe, Canterbury Crown Court, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent for prosecution in respect of three alleged sexual offences concerning a child.
3. The EAW was endorsed on 9th December, 2019 and the respondent was arrested and brought before this Court on 22nd January, 2020. The respondent was remanded on bail.
4. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
5. I am satisfied that the minimum gravity requirements of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), are met in respect of the alleged offences referred to in the EAW which each carry a maximum penalty of 10 years' imprisonment.
6. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
7. At part E of the EAW, three offences are set out, being one offence of gross indecency with a girl under 14 years old and two offences of indecent assault on a child under 16 years old. The offences alleged all involve the same complainant but she is not named in the EAW and the alleged location of the offences is not given. As regards the third offence, this is set out as:-

"Offence three being offences committed by [D.E.] against the victim on multiple occasions after the offence detailed in offence two above."

8. As regards correspondence of offences, at part E of the EAW it is certified that the offences referred to therein fall within article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), and the relevant box is ticked for "sexual exploitation of children and child pornography". By virtue of s. 38(1)(b) of the Act of 2003, it is not necessary for the applicant to show correspondence between an offence in the EAW and an offence under Irish law where the offence in the

EAW is an offence to which article 2(2) of the Framework Decision applies and, under the law of the issuing state, the offence is punishable by imprisonment for a maximum period of not less than 3 years. In this instance, the issuing judicial authority has certified that the offences are offences to which article 2(2) of the Framework Decision applies and has indicated same by ticking the relevant box at part E of the EAW as aforesaid. There is nothing in the EAW that gives rise to any ambiguity or perceived manifest error, such as would justify this Court in looking behind the certification in the EAW. In any event, I am satisfied on reading the EAW that correspondence clearly exists in respect of those offences and offences under Irish law. No issue was taken in respect of correspondence between the offences referred to in the EAW and offences under Irish law.

9. The respondent delivered points of objection dated 12th February, 2020 which may be summarised as follows:-
 - (i) the EAW failed to contain sufficient details as required by s. 11 of the Act of 2003;
 - (ii) surrender is precluded by s. 37 of the Act of 2003 as it would amount to an unjustified breach of the respondent's right to a family life under article 8 of the European Convention on Human Rights ("the ECHR") or his right not to be subjected to inhuman and degrading treatment under article 3 thereof; and
 - (iii) surrender should be refused due to the uncertainty created by the UK's intended departure from the European Union ("the EU").
10. The respondent delivered an affidavit dated 18th March, 2020 in which he set out his personal circumstances. The respondent is now 78 years old and resides with his wife and son in the west of Ireland. The family moved to Ireland in September 2013 as they could afford to purchase a residence in the west of Ireland which was more suitable to the family's needs, whereas similar properties in the UK were too expensive. Both the respondent's wife and son suffer from significant physical disabilities. The respondent acts as a full-time carer, particularly in relation to his son. The respondent's son was born with spastic cerebral palsy with diplegia, he has limited mobility and is dependant in many of the activities of daily living. The respondent's wife has a congenital hemiplegia due to cerebral palsy which was exacerbated by a road traffic accident in 2004. The respondent's son has a good academic record and was hoping to attend third level college in autumn 2020, provided sufficient supports could be put in place.
11. The wife of the respondent also swore an affidavit herein dated 24th July, 2020, in which she stated she is 58 years old and set out her health difficulties, particularly after the road traffic accident in 2004. She also indicated that the reason the family moved to Ireland was because of the price of suitable housing that would meet their particular needs. She highlighted how the respondent had to date provided essential care to their son and herself.
12. The respondent relied upon a report from Ms. Noreen Roche, a nursing consultant, dated 16th October, 2020 which set out in detail the disabilities suffered by the respondent's

wife and son, and the care needs of each, respectively. Ms. Roche did not have the benefit of a consultation with the respondent's son. In the opinion of Ms. Roche, the respondent's son required round the clock care while his wife required two hours' domestic assistance per day and a further four hours per week of heavy domestic assistance. She noted that neither the respondent's wife nor son could drive. Ms. Roche sought confirmation from the Health Service Executive ("the HSE") that it would provide 24/7 care and support for the family in the event of the respondent being surrendered. This correspondence was forwarded to the solicitors for the HSE, who replied to the respondent's solicitors attaching a letter from the HSE disability service manager for Galway physical and sensory services. This letter confirmed that both the respondent's son and wife were on the HSE waiting list for personal assistance supports, at numbers 33 and 96 respectively. There had been a failure by the respondent to revert to the HSE with details as to the quantum of supports required for his son to attend university. It was confirmed that the HSE would re-engage as regards the personal assistance applications and that any further service provision requests would be processed by means of assessment and allocated according to needs and resources available. Ms. Roche opined that due to funding shortages, the HSE would only be able to provide minimal services and in the absence of the respondent, the family would be unable to cope.

Lack of Particulars

13. In light of the respondent's objections based on an alleged lack of detail or specificity in the EAW, the Court requested additional information by letter dated 10th July, 2020. A reply was received from the UK authorities dated 13th July, 2020 which provided details as regards the name of the complainant and the location in respect of all three charges. As regards offence three referred to in the EAW, it was stated that the particulars in the proposed count on an indictment would be as follows:-

"[D.E.] between the 9th day of May 1998 and the 10th day of May 2001 on not less than 3 occasions otherwise than as specified in count 2 indecently assaulted [A.B.], a female person aged between 8 and 10 years.

[Multiple offence count – digital penetration of the girl's vagina]."

The reply went on to explain:-

"This charge would be a single, multiple offence count and not three separate charges of different periods making up the period between the 9th May 1998 and the 10th May 2001."

14. On foot of the reply of 13th July, 2020, counsel for the respondent submitted that the response was adequate as regards offences one and two but that as regards offence three, there was still not sufficient clarity as regards the dates of alleged offending. He submitted that in this jurisdiction, such a count would be regarded as bad on grounds of duplicity but accepted that indictment rules in this jurisdiction were not required to be adhered to in other jurisdictions for the purposes of enforcing an EAW. He submitted that there was still an unacceptable lack of clarity as regards the alleged dates of the acts said

to comprise offence three. The Court was referred to a preliminary ruling of Donnelly J. in *Minister for Justice and Equality v. S.T* [2016] IEHC 297. In that case the High Court sought additional information in respect of an EAW concerning five alleged offences, the fourth of which was outlined at para. 9:-

"[9] on various occasions between 1st January 1994 and 31st December 1996, both dates inclusive at [redacted] [S.T.] did use lewd, indecent and libidinous practices and behaviour towards [R.H.], born 12 November 1986, his cousin, and handle said [R.H.]'s penis, cause said [R.H.] to handle [S.T.]'s penis, cause said [R.H.] to penetrate [S.T.]'s mouth with his penis, and [S.T.] did penetrate the mouth of the said [R.H.] with his penis."

Donnelly J. was satisfied that the EAW was clear as to the number of offences, namely five, and that any purported duplicity was a matter for the legal system of the issuing state. She was satisfied that no concerns arose in relation to the rule of specialty or with the time frame set out for the offences. However, she was of the view that dates and places had not been identified and the Court had not been given any reason for such failure. Donnelly J. pointed out at para. 25:-

"[25] Moreover, it is not clear whether it is alleged that on each of the various occasions within the specified time frame, each of the alleged acts took place or if what is alleged that separate acts occurred on separate occasions. Furthermore, the court is not being given information as to how many times it is alleged that the offending behaviour took place."

The Court was told that surrender was ordered by Donnelly J. in that case upon receipt of further information from the issuing state, but counsel was unable to state the details of the request for additional information or the reply thereto.

15. I note that different jurisdictions have come up with different solutions as to how allegations of historic child abuse offences are framed and prosecuted due to the nature and quality of evidence in respect of same. Recognition of different legal practices and procedures is inherent in the EAW system and such differences cannot in themselves be a reason to refuse surrender. In the present case, the location and timeframe for offence three has been set out and the number of separate instances of offending has been stated to be "not less than three".
16. I am satisfied that sufficient details as to the offences in respect of which the surrender of the respondent is sought have been provided. The number of offences has been set out, the location and timeframe for each offence has been set out and the nature of the acts complained of and the identity of the complainant have all been set out. I do not believe the respondent is at any disadvantage due to any lack of detail in the EAW as regards issues such as correspondence, specialty, or indeed any other aspect of the EAW system. I dismiss the respondent's objection on grounds of lack of detail.

Article 8 ECHR

17. It was submitted on behalf of the respondent that the surrender of the respondent is precluded by s. 37 of the Act of 2003 as it would amount to an unjustified interference with the respondent's right to a family life under article 8 ECHR and is therefore incompatible with the State's obligations under that convention and/or the Constitution. Counsel on behalf of the respondent accepted that the threshold for a successful application on such grounds was very high and that the circumstances of the respondent would have to be established by way of cogent evidence to be truly exceptional. He submitted that the caselaw did not rule out the rare possibility that the Court could, in an appropriate case, refuse surrender solely on the basis of article 8 ECHR.
18. On behalf of the applicant, it was submitted that while the family circumstances of the respondent, in particular the medical problems experienced by his wife and son, were very difficult, such circumstances were insufficient in themselves to override the public interest in surrendering the respondent on foot of the EAW in respect of such serious offences.
19. Both parties referred the Court to the decisions of the Supreme Court in *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17 and *Minister for Justice and Equality v. Vestartas* [2020] IESC 12.
20. *J.A.T. (No. 2)* concerned a refusal of surrender on grounds of abuse of process. In that case, an application was made on behalf of the UK for the surrender of the respondent to face prosecution in respect of what were referred to in the warrant as "tax fraud offences", which were alleged to have occurred between 1997 and 2005. A European arrest warrant seeking the respondent's surrender was issued on 7th March, 2008. The respondent was arrested on foot of same and his surrender was refused by the Supreme Court on 21st December, 2010. A second European arrest warrant was issued and the respondent was arrested on foot of same on 24th July, 2012. The UK authorities stated that the second warrant had taken into account the judgment of the Supreme Court in the first set of proceedings. His surrender was ordered by the High Court despite a finding of abuse of process. On appeal, the Supreme Court refused surrender, with no dissenting judgments.
21. Denham C.J. was satisfied that there was an evidential basis upon which the High Court could, and did, find that there was an abuse of process. She was satisfied not to interfere with that finding. She regarded the issue which the Supreme Court had to determine as whether, in light of the findings of the High Court, it was sufficient or appropriate for the High Court to simply admonish the parties responsible while surrendering the appellant.
22. As regards delay, at para. 65 of her judgment, Denham C.J. was of the opinion that:-

"[65] *The time which has passed since the alleged offences, the first arrest on the first EAW, the second EAW, and the hearing of this appeal, is not of itself a factor upon which a request for surrender would be refused. However, this time period has to be considered in light of all the circumstances of the case.*"

23. In terms of how a court should normally deal with an abuse of process, she further stated at paras. 72-77:-

"[72] In general, if there is an abuse of process by authorities they should not benefit. The rule of law, and the right to fair procedures, requires that such a general principle be applied.

[73] Of course, there may be circumstances where a court considers that there has been an abuse of process, but to a limited degree, and applying the principle of proportionality, a surrender procedure could proceed. However, such a finding would arise only in a situation where a process was found to be an abuse, but in a limited manner, and with limited effect.

[74] In this case there is an accumulation of factors.

[75] It is clear, and remains the law, that simply because a second European arrest warrant is issued that does not of itself indicate any abuse of process. See Bolger v. O'Toole, unreported, Supreme Court, 2nd December, 2002, and Gibson v. Gibson, ex tempore, Supreme Court, 10th June, 2004, Keane C.J..

[76] In analysing a case where there has been a finding of an abuse of process, the circumstances of each case are relevant and critical to the ultimate decision.

[77] I have reviewed the circumstances of this appeal, which include the following factors:-

- (a) this is the second EAW issued in relation to the offences alleged;*
- (b) failings in the first EAW could have been addressed in the first application;*
- (c) a considerable time has passed since the alleged offences and a considerable time has passed since the arrest of the appellant on the first EAW;*
- (d) the medical condition of the appellant, who is a vulnerable person;*
- (e) the medical condition of the appellant's son, for whom the appellant is a significant carer;*
- (f) the family circumstances;*
- (g) the oppressive effect which the two sets of EAWs have had on the appellant; on his son; and on his family;*
- (h) no explanation has been given for delays;*
- (i) there has been no engagement by the authorities with the issues as to the first EAW or the delays;*

- (j) *the Central Authority has a duty to bring to the attention of the issuing State authorities defects or internal contradictions in a warrant, and to consider whether all the documentation is complete and clear, before being relied upon for the purpose of seeking to endorse an EAW;*
- (k) *the duty of the Court to protect fair procedures; and*
- (l) *the principle that a party in litigation should not benefit from proceedings which were de facto abusive of the Court's process."*

24. Having taken such factors into account, Denham C.J. concluded at para. 85:-

"[85] While no single factor, as set out above, governs this appeal, in circumstances where the High Court has found, correctly in my view, that there has been an abuse of process, I am satisfied that the factors, referred to in this judgment, taken cumulatively, are such that there should not be an order for the surrender of the appellant."

25. From the foregoing, it is clear that Denham C.J. did not regard the family circumstances of the respondent as sufficient in themselves to justify refusal of surrender.

26. O'Donnell J., with whom MacMenamin and Laffoy JJ. concurred, reluctantly agreed that the appropriate judicial response was to refuse surrender, stating at para. 1:-

"[1] I was myself doubtful, however, that even cumulatively, the matters relied on by the appellant were sufficient to justify a refusal of surrender in this case. But in the light of the views of my colleagues, and the judgment of the Chief Justice, I do not dissent from the Order proposed. I would, however, emphasise that this is a rare, and indeed exceptional case. While exceptionality is not in itself a test, it can be a useful description, and it is, in my view, only cases which can truly be so described that will be those rare cases in which it may be said that surrender would offend due process and interfere with the rights of the appellant to such an extent that it must be refused."

27. O'Donnell J. sought to identify the principles involved, to identify the factors grounding a refusal and to determine the weight to be accorded to them. He doubted whether it was appropriate or useful to introduce the concept of a "duty of care" on the part of requesting authorities or the Irish authorities. He emphasised that the law of European arrest warrants was intended to provide a new and streamlined process for surrender between member states and represented a significant departure from the earlier approach. In his view, the starting point was that considerable weight is to be given to the public interest in ensuring that persons charged with offences face trial. As a decision to refuse surrender will often provide a form of limited immunity to a person so long as they remain in this jurisdiction, he stressed it is only if some quite compelling feature, or combination of features, is present that it would be appropriate to refuse surrender on grounds of due process or interference with rights. At para. 4 of his judgment, he

emphasised it was important that the court should rigorously scrutinise the factual basis for any such claims against that background.

28. As regards the case before him, O'Donnell J. identified three factors as having been asserted as cumulatively leading to an order refusing surrender, namely the fact that it was a repeat application, the delay/lapse of time and the article 8 ECHR/personal and family rights aspects. He emphasised that a repeat application based on a fresh warrant could not in itself be regarded as an abuse of process. Dealing with delay/lapse of time, he was not satisfied that, taken alone, or in conjunction with the repeat application, delay/lapse of time in the circumstances established an abuse of process or justified refusal of surrender. Turning to the remaining factor of rights pursuant to article 8 ECHR, O'Donnell J. noted that the respondent was in a very difficult health situation but emphasised that the matter was not to be tested against some generalised consideration of personal sympathy, but rather as to whether the circumstances were such that it rendered it unjust to surrender the respondent. He noted that the respondent was the primary and, effectively, the sole caregiver for his son in circumstances where that care was particularly important, and that his son would undoubtedly suffer very severely if the appellant was surrendered for trial. He stated at para. 10 that, on their own, such matters would not justify refusal of surrender:-

"[10] It seems clear that the respondent is in a very difficult health situation, although the Court might expect a more detailed expert report. Again, however, this matter must not be tested against some generalised consideration of personal sympathy, but rather as to whether the circumstances are such which render it unjust to surrender the respondent. It will almost always be the case that considerations such as these, which undoubtedly evoke some sympathy, would never, in themselves, be remotely a ground for refusing surrender any more than they would be a ground for prohibiting a trial in this jurisdiction. The respondent, however, is also the primary, and effectively the sole caregiver for his son, who in turn is in a situation where that care is particularly important. For the reasons set out in the judgment of the Chief Justice, it seems clear that he will undoubtedly suffer very severely if the appellant is surrendered for trial. He is not a person against whom there is any accusation of wrongdoing. The impact on the appellant's son is, for me, an important consideration. While the appellant's son is not a child, he is, in my view, a member of the appellant's family for the purposes both of Article 8 of the ECHR and the Constitution. Nevertheless, I agree with the learned trial judge in this case that these considerations would, themselves, not be enough to establish a ground for refusing surrender if the first warrant had been in a proper form and these matters, which were present at that time, had been the sole ground for resisting surrender. I do not, however, agree that the fact that neither the respondent's health issues nor his son's condition has deteriorated in the intervening time means that this consideration is now irrelevant."

29. He then set out what he considered to be the relevant factors to be weighed cumulatively at para. 10:-

"[10] It seems to me to be relevant that this is a second application, and moreover, that there has been avoidable delay on the part of the authorities in both jurisdictions in the preparation, submission, and execution of the second warrant, even though the evidence of the respondent's circumstances, and those of his son, had been adduced in the first European Arrest Warrant proceedings. These factors – repeat application, lapse of time, delay, impact on the appellant's son, and knowledge on the part of the requesting and executing authorities of those factors – when weighed cumulatively, are powerful. Even then, and without undervaluing the offences alleged here, it is open to doubt that these matters would be sufficient to prevent surrender for very serious crimes of violence. This illustrates that the decision in this case is exceptional, and even then close to the margin."

30. It is clear from the decisions of both Denham C.J. and O'Donnell J. in *J.A.T. (No. 2)* that the family circumstances of the respondent were not enough in themselves to justify refusal of surrender.

31. In *Vestartas*, the Supreme Court considered article 8 ECHR in the context of European arrest warrant proceedings. MacMenamin J., delivering the judgment of the court, stated at para. 23:-

"[23] Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence. But that guarantee is subject to the proviso that public authorities shall not interfere with the exercise of that right, except such as in accordance with law, and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Article 8(2)). The terms of Article 8(2) are, therefore, sufficiently broad to encompass orders for extradition, or in this case, surrender. But as will be seen, these Article 8 considerations arise within a statutory framework which it is now necessary to consider."

He referred to *J.A.T. (No. 2)* and noted in that case clear, cogent medical evidence had been adduced by the respondent, but also noted the other additional factors in that case such as the repeat application, lapse of time, delay and knowledge on the part of the issuing and executing authorities of the respondent's particular family circumstances, as well as the impact of the proceedings upon him and his family. He described the circumstances in *J.A.T. (No. 2)* as "an almost unique set of circumstances".

32. As regards delay or lapse of time, MacMenamin J. stated at para. 89:-

"[89] Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues. The High Court judgment holds that there had been a significant dilution of the public interest which would

ordinarily apply (para. 37). It posed what was characterised there as a modified and weakened public interest in surrender, evidenced by the elapses of time and other factors. Against this, it posed the private and family factors in the case (para. 38). But for the reasons set out above, there was a misapprehension as to the nature of the assessment. This is not a balancing exercise where public and private interests are placed equally on the scales. It is nonetheless necessary to have regard to the circumstances.”

33. Contrasting the facts in *Vestartas* with those in *J.A.T. (No. 2)*, at para. 94 MacMenamin J. held:-

“[94] The contrast with the exceptional facts in J.A.T. is plain. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s.4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s.37(1), they must be such as would render an order for surrender ‘incompatible’ with the State’s obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself.”

34. The present case illustrates that the facts as set out in *J.A.T. (No. 2)* are not as exceptional as one might assume at first, certainly as regards the difficult medical circumstances of the family. The Court has before it clear and cogent medical evidence as to the significant physical disabilities and care needs of the respondent’s family. The respondent, despite his advancing years, acts as primary carer for both his wife and son, whose care needs are significant with his son requiring round the clock supports. As matters currently stand, there is little in the way of support from the HSE although, in fairness to the HSE, it has engaged with the family, particularly as regards supporting the son’s planned attendance at university. The HSE must operate within the finite resources made available to it. The respondent’s son and wife are at numbers 33 and 96, respectively, on the HSE waiting list for personal assistance support. In the meantime, the respondent continues to care for both his wife and son in circumstances where it is the opinion of Ms. Roche that without him, the family could not cope. However, there is an absence of the other factors present in *J.A.T. (No. 2)*, such as repeat application, delay and knowledge on the part of the issuing and executing authorities as to the impact the combined proceedings were having on the family. There is no basis for any suggestion of abuse of process.
35. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine whether the respondent’s family circumstances are such as would render an order for surrender “incompatible” with the State’s obligations under article 8 ECHR. In the words of MacMenamin J. in *Vestartas*, at para. 94:-

"[94] This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2) and over the significant public interest thresholds set by the 2003 Act itself."

36. Unlike in *J.A.T. (No. 2)*, there is no suggestion of an abuse of process in the present case, there is no suggestion of any culpable delay on the part of the issuing state or the executing state, or indeed any failure to have due regard for any relevant features of the matter. A lengthy passage of time between the date of the alleged offending and the commencement of criminal proceedings in cases of alleged sexual abuse of children is not unusual. The public interest in surrender is a strong one, particularly given the serious nature of the allegations. As O'Donnell J. noted in *J.A.T. (No. 2)* at para. 10:-

"[10] Even then, and without undervaluing the offences alleged here, it is open to doubt that these matters would be sufficient to prevent surrender for very serious crimes of violence. This illustrates that the decision in this case is exceptional, and even then close to the margin."

37. The circumstances of the respondent's family clearly evoke a high degree of sympathy and the Court has considerable sympathy for the respondent's wife and son. As O'Donnell J. pointed out in *J.A.T. (No. 2)*, concern and sympathy are, unfortunately, emotions which are not infrequently encountered in these courts and persons accused of crime may often themselves come from circumstances, or have suffered experiences, which can elicit sympathy. The issues raised herein cannot be determined on the basis of sympathy but rather in accordance with the applicable legal principles. It was accepted by the parties that none of the circumstances relied upon by the respondent would preclude prosecution in this jurisdiction.
38. Having given this matter long and careful consideration, and bearing in mind all the relevant circumstances, I am not satisfied that an order for the surrender of the respondent to face prosecution in respect of the serious offences alleged can be said to be incompatible with the State's obligations under article 8 ECHR. Undoubtedly, the respondent's family circumstances are very difficult and surrender will be very disruptive. The respondent's wife and son depend upon him for their respective care needs. Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence, but such right is expressly limited by the terms of article 8(2) ECHR. The effect of article 8(2) ECHR is that public authorities may interfere with the exercise of that right where same is in accordance with law and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. There is a strong public interest in surrender. The alleged offences are serious offences. There is no suggestion of culpable delay. The circumstances put forward by the respondent would not be a bar to prosecution in this jurisdiction. There is no suggestion of abuse of process. Significant disruption to the family life of an accused or requested person and to the circumstances

of other family members is almost an inevitable consequence of criminal or surrender proceedings. I dismiss the respondent's objection that surrender is precluded by virtue of s. 37 of the Act of 2003.

39. I also dismiss the respondent's objection to surrender based upon a perception that, if surrendered, he would be subjected to inhuman and degrading treatment. There was no evidence to support this and in fairness it was not pursued at hearing.

UK Withdrawal from the European Union

40. I also dismiss the respondent's objection to surrender based on the planned withdrawal of the UK from membership of the EU. In fairness to counsel for the respondent, this was not pursued with any vigour. I find there is no merit in this objection and that the matter has been dealt with by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act, 2019 (part 15) (Commencement) Order, 2020. No cogent evidence was adduced to show any real risk of the respondent's fundamental rights being violated should he be extradited to the UK.

41. I am satisfied that the surrender of the respondent is not prohibited by virtue of s. 37 or any other provision of part 3 of the Act of 2003.

Postponement

42. While the respondent's family circumstances are not sufficient to render his surrender incompatible with the State's obligations under article 8 ECHR or under the Constitution, that is not to say that such circumstances are irrelevant or of no consequence. The Court must have regard to the provisions of the Act of 2003 in its entirety. Section 18 of the Act of 2003 provides:-

"(1) The High Court may direct that the surrender of a person to whom an order under subsection (1) or (2) of section 15 or subsection (1) or (2) of section 16 applies be postponed in accordance with this section where —

(a) the High Court is satisfied that circumstances exist that would warrant that postponement, on humanitarian grounds, including that a manifest danger to the life or health of the person concerned would likely be occasioned by his or her surrender to the issuing state,

(b) the person is being proceeded against for an offence in the State, or

(c) the person has been sentenced to a term of imprisonment for an offence and is required to serve all or part of that term of imprisonment in the State.

(2) The postponement shall continue until the High Court makes an order under subsection (4).

(3) Where the High Court decides to postpone a person's surrender under this section, it shall remand the person in custody or on bail and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.

- (4) *The High Court shall make an order ending the postponement of surrender —*
- (a) *where paragraph (a) of subsection (1) applies, when the High Court is satisfied that the circumstances referred to in that paragraph no longer exist,*
- (b) *where paragraph (b) of subsection (1) applies, when the High Court is satisfied that the proceedings in respect of the offence concerned have been finally determined (where the person concerned is not required to serve a term of imprisonment), or*
- (c) *where paragraph (c) of subsection (1) applies, when the High Court is satisfied that the person concerned is no longer required to serve any part of the term of imprisonment concerned.*
- (5) *Section 15 or 16, as the case may be, shall apply to the person concerned as of the date of the order under subsection (4) as though that order were an order made under subsection (1) or (2) of section 15 or (1) or (2) of section 16, as the case may be.”*

43. There is cogent medical evidence before the Court as to the significant physical disabilities and care needs of the respondent’s family. The respondent acts as carer for both his wife and son, whose care needs are significant, with his son requiring round the clock supports. As stated earlier herein, there is currently little in the way of support from the HSE, although this is not a criticism of the HSE. Also, as pointed out earlier herein, the HSE must operate within the finite resources made available to it. The respondent’s son and wife are at numbers 33 and 96 on the HSE waiting list, respectively, for personal assistance support. In the meantime, the respondent continues to care for both his wife and son.
44. I am satisfied of the need to afford the respondent and his family a reasonable opportunity to make arrangements for the care needs of the respondent’s wife and son. I am satisfied that this warrants postponement of surrender on humanitarian grounds pursuant to s. 18(1)(a) of the Act of 2003. However, such a postponement cannot be open-ended and counsel for the respondent accepted that this is so.
45. This Court will postpone surrender for a period of six months to afford time for reasonable alternative care arrangements for the respondent’s wife and son to be put in place. I note the care requirements outlined by Ms. Roche and I should make it clear that I am not suggesting that the optimum level of care recommended by Ms. Roche must be put in place before postponement will be ended.
46. Having dismissed the respondent’s objections, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to the UK and a further order pursuant to s. 18(1)(a) of the Act of 2003 postponing the surrender of the respondent for a period of six months.