

THE HIGH COURT

[2021] IEHC 632
[2021 No. 113 EXT]

BETWEEN

THE MINISTER FOR JUSTICE

APPLICANT

AND

ROBERT ADAM LACH

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 23rd day of September, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Poland pursuant to a European arrest warrant dated 24th May, 2016 ("the EAW"). The EAW was issued by Judge Jerzy Pavel Naworski, President of the Regional Court in Torun, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of one year, three months' imprisonment imposed upon the respondent on 5th June, 1998, all of which remains to be served.
3. The respondent was arrested on foot of a Schengen Information System II alert and brought before the High Court on 7th May, 2021. The EAW was produced to the High Court on 18th May, 2021.
4. I am satisfied that the person before the court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
7. At part E of the EAW, it is indicated that it relates to one offence committed on 17th December, 1997 concerning an attempted theft from a motor vehicle. I am satisfied that correspondence can be established between the offence referred to in the EAW and an offence under the law of the State, namely criminal damage contrary to s. 2 of the Criminal Damage Act, 1991 and/or the common law offence of attempting to commit the offence of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. Correspondence was not contested.
8. At part D of the EAW, it is indicated that the respondent appeared in person at the trial.
9. It should be noted that the offence, the subject matter of the EAW, was the subject matter of an earlier European arrest warrant in respect of which surrender was ordered by the High Court on 15th December, 2008, which said order was upheld on appeal on 30th

January, 2009. For reasons which the parties have not been able to explain to the Court, surrender was not effected on foot of that earlier European arrest warrant. An application to extend time for effecting surrender was refused by the High Court on 9th February, 2009.

10. The respondent's solicitor, Mr. Tony Hughes, swore an affidavit dated the 5th day of July, 2021 in which he avers that the offence, the subject matter of the EAW, was the subject matter of a previous surrender request in proceedings bearing record number 2008/108 EXT. in which surrender was not effected and the respondent was released from custody in 2009. He avers that, following his release in 2009, the respondent heard nothing further about the matter until his recent arrest under the Schengen Information System II alert. He avers that the respondent married in 2013 and has a son for whom he provides. He avers the respondent is employed as a truck driver and resides in Limerick.
11. Counsel for the respondent submits that surrender is precluded by reason of s. 37 of the Act of 2003 in that such surrender would be incompatible with the State's obligations under the European Convention on Human Rights and/or the Constitution or, in the alternative, that the proceedings constitute an abuse of process given the previous application for surrender, the failure to give effect thereto and the lapse of time until the current EAW was issued.
12. Upon production of the EAW, it was noted that part (f) of the EAW indicates that the respondent was "*being searched for in the European Union, except for Ireland in view of being released by the Court in Dublin*". In light of this, the Court sought confirmation from the issuing judicial authority that the respondent's surrender was being sought from Ireland. By reply dated 8th June, 2021, the issuing judicial authority confirmed that it was still waiting for the respondent to be surrendered. As far as part (f) of the EAW is concerned, it states:-

"In section F of the European Arrest Warrant, for information purposes only, it was indicated that previously Robert Lach had been detained in the territory of Ireland and then he had been released by the Court in Dublin and Irish authority excluded the search in that territory."

This appears to indicate that the Polish authorities were under the impression that the Irish authorities had "*excluded*" any search for the respondent in Ireland. It is not known what was the basis for such a perception on the part of the Polish authorities.

13. Having heard submissions from the parties, the Court sought an explanation for the lapse of time between 9th February, 2009, when the High Court refused to extend the period for effecting surrender in respect of the earlier European arrest warrant, and 24th May, 2016 when the current EAW was issued. The issuing judicial authority was asked to set out what steps had been taken during that period to obtain the surrender of the respondent and to explain why a new European arrest warrant was issued on 24th May, 2016. The issuing judicial authority was also asked to explain the lapse of time from 24th

May, 2016 until 12th May, 2021 and why the EAW was not transmitted to Ireland until after the arrest on foot of the Schengen Information System II alert had taken place.

14. By reply dated 21st July, 2021, the issuing judicial authority sets out the following timetable:-

- A sentence of one year and six months' imprisonment was imposed on 13th June, 1998 but conditionally suspended for four years;
- The execution of the term of imprisonment was ordered on 16th October, 2002, which decision was upheld on appeal on 11th December, 2002;
- The respondent failed to appear at prison on the date set by the court, 7th January, 2003;
- In March 2003, the respondent's mother submitted a petition of grace which was unsuccessful;
- By decision of 6th August, 2003, the District Court in Torun asked the police about the status of the search for the respondent;
- On 25th July, 2006, the court refused a request on behalf of the respondent to delay execution of the imprisonment penalty and this was upheld on appeal on 25th October, 2006;
- In August 2007, the police informed the District Court in Torun that the respondent was in Ireland;
- On 16th October, 2007, the District Court in Torun requested the Regional Prosecutor's Office in Torun to address the Regional Court to have a European arrest warrant issued;
- A European arrest warrant was issued on 28th December, 2007. It is stated that since then, the District Court has been waiting for the execution of the warrant by Ireland;
- On 9th October, 2009, the District Court again refused a request on behalf of the respondent to delay the penalty execution which was upheld on appeal;
- On 18th May, 2015, the court again refused an application on behalf of the respondent to delay execution of the penalty and this was again upheld on appeal on 30th June, 2015;
- By decision of 18th April, 2016, the issue of a new European arrest warrant was ordered, as the "*British party*" had failed to return the original European arrest warrant;

- In October 2017, the District Court consented for the publication of the picture and data relating to the respondent in the Internet network;
 - An application on behalf of the respondent to execute (presumably to delay execution) the penalty was refused by the District Court on 14th January, 2019 and upheld on appeal on 26th February, 2019; and
 - The police systematically informed the District Court in Torun about the respondent's stay in the territory of "Great Britain".
15. The above timetable was furnished in response to the Court's request for additional information and the issuing judicial authority did not specifically address the reasons for the delay/lapse of time in issuing the current EAW or the failure to send same to Ireland prior to the arrest of the respondent on foot of a Schengen Information System II alert.
16. Counsel on behalf of the respondent submits that the respondent was detained in custody for six months in 2008/2009 on foot of the earlier European arrest warrant. He submits that the failure to effect surrender on foot of the earlier European arrest warrant was not the fault of the respondent but can only be attributed to the Polish and/or Irish authorities. He submits it is unconscionable for the issuing state to now seek the surrender of the respondent in circumstances where the respondent has moved on with his life and, in particular, has married and had a child since the failure to effect surrender on foot of the earlier warrant. He submits that the circumstances of the present case are, to all intents and purposes, the same as those in *Minister for Justice and Equality v. Zbigniew Bednarczyk* [2021] IEHC 316, in which the High Court refused to order surrender in circumstances where the surrender of Mr. Bednarczyk had been ordered on 19th April, 2012 but actual surrender was not effected. No application was made to the High Court to extend the time for surrender and Mr. Bednarczyk was simply released from prison. The Polish authorities did not seek the surrender of Mr. Bednarczyk again until 2019.
17. Counsel on behalf of the applicant submits that the present case can be distinguished from *Bednarczyk* as this is a conviction warrant relating to a sentence, whereas in *Bednarczyk*, surrender was sought to prosecute. Furthermore, unlike in *Bednarczyk*, the respondent in the present case did not believe that the matter was over and done with and would not trouble him further but, rather, was at all times aware of the fact that he had a prison sentence to serve in Poland and, indeed, made applications to the Polish courts to delay execution of the sentence in 2009 and 2015 which were refused. He submits that the respondent cannot point to any particular prejudice over and above the fact that he married and had a son subsequent to the failure to effect surrender under the first warrant. He referred the Court to para. 74 of the Supreme Court decision in *The Minister for Justice and Equality v. Ivo Smits* [2021] IESC 27 as follows:-
- "74. *I think it necessary to observe that a lawfully issued EAW in respect of a sentence does not somehow become legally invalidated by subsequent delay. The presumption that guides the courts of the executing State is that a sentenced*

person has enjoyed all necessary guarantees in the process leading to the imposition of the sentence and that the decision to issue the warrant involved an assessment of proportionality, with appropriate judicial protection. If that presumption is not rebutted, the decision to issue the warrant must be seen as valid. A valid order does not, by passage of time, 'become' either incorrect, unlawful or void. Use of the word 'stale' does not assist with the legal analysis. It is well established that delay is not, in itself, a ground for refusal of surrender unless it is so egregious that the application for surrender amounts to an abuse of process."

18. Counsel for the respondent, by way of reply, submits that the circumstances of the present case were egregious and/or exceptional and, in any event, the paragraph quoted from Smits was not relevant to a case such as this in which a surrender order had in fact been made but not given effect to and then a long lapse of time intervened before any subsequent attempt to give effect to same or renew the application for an order for surrender.
19. The Court sought clarification of the matters referred to in the additional information dated 21st July, 2021 and, by reply dated 18th August, 2021, it is indicated that the terms "*the British party*" and "*the territory of Great Britain*" as set out in the additional information dated 21st July, 2021, were meant to be references to Ireland. It is indicated that due to the complexity of arrangements for transferring the respondent to Poland, it was not possible to effect his surrender within the ten day period required by the Irish authorities and that, on application for an extension of time, the High Court rejected the explanation provided by the Polish side and refused an extension and released the respondent. It is stated that due to the fact that the respondent had been arrested and released in Ireland and the Irish authorities were no longer searching for him, the current EAW indicated, for information purposes only, that according to information provided by the International Police Cooperation Office of Police Headquarters, that the respondent is wanted in the European Union, excluding Ireland.
20. The additional information dated 18th August, 2021, while clarifying the earlier correspondence, does not significantly add to the factual matrix within which this matter is to be considered.
21. As regards the respondent's personal and family circumstances, it should be borne in mind that Article 8 ECHR does not guarantee a person a private and family life, but rather guarantees "*respect for his private and family life*". Private and family life are expressly stated to be subject to interference by public authorities where necessary in a democratic society. Article 8 ECHR provides:-
 1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic*

society in the interests of national security, public safety or the economic well-being 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.”

22. In *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, MacMenamin J. stated as follows at para. 68:-

*“68. In carrying out an assessment in our law for the purposes of s.16 of the Act, therefore, it is not accurate to speak of the task as one which is not governed by any predetermined approach, or pre-set formula, balancing competing public and private interests. In fact, the constant and weighty public interest in ordering surrender is not only underlined by Article 8(2) considerations such as necessity under law, freedom and security, but the words of ss.4A and 10 of the Act. The test must be seen in light of the clear exposition in the judgments in *Ostrowski*. A court may often have to take private and family rights considerations into account. But it can only do so having regard to the limitation contained in Article 8(2) of the ECHR, and the public interest considerations inherent in the Act and the Framework Decision. To surmount these, in any case, would necessitate that the evidence requirement be high. The assessment does not involve a balance between the rights of the public and those of the individual. It is one, rather, where, as the Act provides, a court shall presume that an issuing state will comply with the requirements of the Framework Decision - unless the contrary is shown on the basis of cogent evidence.”*

23. As regards delay, in *Vestartas*, MacMenamin J. stated at para. 89 that:-

“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.”

24. It is clear that there is a significant public interest in surrender where the requirements of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended (“the Framework Decision”) are met. How s. 37 of the Act of 2003 is to be approached in light of this significant public interest, particularly as regards article 8 ECHR, is set out by MacMenamin J. in *Vestartas* at para. 94:-

*“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."

25. The issue of abuse of process in the context of the Act of 2003 came before the Supreme Court in *Minister for Justice and Equality v. J.A.T. No. 2* [2016] ISEC 17. That case concerned an application on behalf of the United Kingdom ("the UK") for the surrender of the respondent to face prosecution in respect of what were referred to in the European arrest 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.
26. 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.
27. As regards delay, Denham C.J. was of the opinion at para. 65 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."
28. 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."*

29. 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.”

30. From the foregoing, it is clear that Denham C.J. accepted that there had been an abuse of process and regarded the listed factors as relevant matters in determining that the appropriate judicial response to same was to refuse surrender.
31. O'Donnell J., with whom MacMenamin and Laffoy JJ. concurred, reluctantly agreed that the appropriate judicial response was to refuse surrender at para. 1 of his judgment:-

"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."
32. 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.
33. 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, delay/lapse of time and 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 constituted an abuse of process or justified refusal of surrender, as outlined at para. 9 of his judgment. 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 that, on their own, such matters would not justify refusal of surrender.

34. 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."

35. As regards matters that could be properly addressed by admonishment, O'Donnell J. doubted whether same would amount to an abuse of process at all.

36. From the foregoing, it appears that O'Donnell J. ultimately agreed that the facts in *J.A.T. No. 2* constituted an abuse of process, as he refused surrender. While he disagreed with the separate judgment of Denham C.J. on some of the issues which she had included in her estimation of relevant factors, he expressly prefaced his judgment by indicating that, in light of the views of his colleagues and the judgment of the Chief Justice, he did not dissent from the decision to refuse surrender. He was clear that each of the factors said to constitute an abuse of process would not in itself justify a refusal to surrender and, even taken cumulatively, the matter was close to the margin.

37. Having regard to the public interest in ensuring that persons charged with offences face trial, O'Donnell J. expressed doubt as to whether such factors would be sufficient to prevent surrender for very serious crimes of violence. However, he fell short of saying that such factors could never be sufficient to prevent surrender. He stated at para. 3, *"Something is either an abuse of process, or it is not"*, while he went on to indicate at para. 12:-

"12. But the normal and logical remedy for an abuse of process is the striking out or staying of the proceedings constituting abuse."

38. O'Donnell J. therefore appears to have left open the possibility that if the factors constituting abuse of process were sufficiently exceptional, the appropriate remedy would be to strike out or stay the proceedings.

39. If this matter was coming before this Court for the first time, then bearing in mind the reasoning of the Supreme Court in *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, I would not regard the lapse of time as so egregious in itself as to justify refusal of surrender. Also, bearing in mind the reasoning of the Supreme Court in *Vestartas*, I would not regard the personal or family circumstances of the respondent as so exceptional in themselves as to justify a refusal of surrender.
40. However, unlike *Vestartas*, in the current case there has also been very significant delay in the actual prosecution of the European arrest warrant proceedings. In effect, the current proceedings are an extension or follow on from the proceedings commenced in 2008 in respect of which a final order for surrender was made in 2009. It is difficult to see how a delay of seven years in seeking to effect surrender could be justified in this case (taking the issue of the current EAW as the appropriate cut-off point). It is even more difficult to see how a delay of 11 years in seeking to effect surrender could be justified in this case (taking the arrest of the respondent on foot of the current EAW as the appropriate cut-off point). I am not satisfied that a reasonable explanation or justification for either delay has been provided. It may well be that even in such circumstances, the significant public interest in surrender could justify surrender as regards alleged offending of a particularly serious nature. In the present case, the offending is far from the most serious level of offending. The date of offending was in 1997 and the sentence was imposed in 1998. As regards the sentence imposed of one year and three months' imprisonment, the respondent must be credited with a period of approximately six months spent in custody in this jurisdiction in respect of the same sentence on foot of the earlier warrant. I am satisfied that the request for surrender was effectively allowed to go into abeyance for a prolonged period. There was a complete failure on the part of both the issuing and executing authorities to follow up on the matter with any degree of alacrity or expedition following the respondent's release from custody in 2009. This lack of expedition is particularly significant where the respondent had been held in custody in this jurisdiction for approximately six months prior to the failure to effect surrender.
41. It is undoubtedly the case that the issuing of a second warrant, where the initial warrant had been unsuccessful due to some technical defect, does not of itself amount to an abuse of process. Similarly, the re-transmission of a warrant where surrender has failed to take place is not in and of itself an abuse of process. Indeed, the Court of Justice of the European Union in *Vilkas* (Case C-640/15) has made it clear that Member States should persevere with attempts to surrender where the surrender was not effected due to circumstances beyond control of the states, even if the requested person had been released from custody. This is undoubtedly so. However, the issue of the second EAW and the application for surrender on foot of same must be considered along with, and in the light of, all relevant surrounding circumstances and must be assessed on a cumulative basis with such circumstances. Bearing in mind the reasoning of the Supreme Court in *J.A.T. No. 2*, I consider that the facts of the present case, taken cumulatively, are exceptional and constitute a rare case where surrender should be refused on grounds of abuse of process.

42. An entitlement or obligation to persevere with attempts to effect surrender does not mean that issuing states or executing states are absolved from any obligation to act with expedition and treat applications for surrender as matters of urgency. There is a significant difference between (a) lapse of time between the date of commission of an offence or imposition of sentence and the commencement of a process seeking surrender in respect thereof, on the one hand, and (b) significant lapse of time within the course of an application for surrender or the execution of an order for surrender, on the other hand.
43. I do not believe that *Vilkas* is authority for the proposition that an issuing state and/or the executing state may permit a prolonged and inexcusable delay in effecting surrender to occur so that some 11 years after a failure to effect surrender, the executing judicial authority is obliged in all circumstances to make a further order for surrender.
44. Bearing in mind the reasoning of the Supreme Court in *J.A.T. No. 2*, the facts of the present case must be taken cumulatively in order to ascertain whether same can reasonably be regarded as exceptional and constitute a rare case where surrender should be refused on grounds of abuse of process. In that regard, the following matters are of significance:-
- inordinate and inexplicable delay/lapse of time between the initial failure to effect surrender and the application for an order for surrender before this Court (approximately 11 years);
 - the failure of the Polish authorities to transmit the EAW issued in 2016 to Ireland for execution, despite the fact that the respondent, to their knowledge, had been residing in Ireland at the time of the failure to effect surrender under the first European arrest warrant, and a simple enquiry with An Garda Síochána would have confirmed his continued residence in Ireland;
 - the detention of the respondent in this jurisdiction on foot of the earlier EAW for approximately six months prior to the failure to give effect to the order for surrender;
 - the respondent's changed family circumstances, although these are not particularly strong in this case; and
 - the fact that the respondent on a number of occasions following the failure to effect surrender made applications to the Polish courts in respect of the sentence, the subject matter of this EAW.
45. Proceedings brought on behalf of an issuing state seeking the surrender of a person must be conducted with expedition. Such proceedings are to be treated as matters of urgency under the European Council Framework Decision dated 13th June, 2002 on the Surrender Procedures Between Member States, as amended ("the Framework Decision"). It is incumbent upon the parties to such proceedings, and the executing judicial authority, to ensure that such proceedings are determined with reasonable expedition. In many cases

an element of delay may be unavoidable due to the need to seek additional information from the issuing state and/or to await legal developments before Superior Courts or the Court of Justice of the European Union. However, I am satisfied that once an order for surrender is made, effect must be given to same as soon as possible as provided for under the Framework Decision and, if the timeframe envisaged in the Framework Decision cannot be adhered to, then there is an obligation on the part of the issuing state and executing state to move to give effect to the order with reasonable expedition. Again, certain delays may be inevitable, for instance due to the recent Covid-19 pandemic. What is required is that the issuing state and executing state move with reasonable expedition to give effect to the surrender as ordered. What should not be permitted is that the issuing state and/or the executing state can simply sit back and do nothing, or nothing of any practical effect, for a prolonged number of years and then seek to have surrender effected.

46. In this instance, I do not regard the timetable or additional information provided by the issuing judicial authority as justification for the failure to attempt to give effect to the original surrender order with any degree of expedition or urgency.
47. The question remains as to whether the respondent's applications to the Polish courts to delay execution of sentence are to be regarded in some way as justifying or excusing the lack of expedition on the part of the Polish and Irish authorities or as effectively estopping the respondent from relying upon such lack of expedition. Certainly, if the respondent's applications to delay execution of the sentence had been successful, then clearly the delay would be explicable and justifiable by reference to the respondent's actions. However, on each and every occasion which the respondent attempted to obtain a delay in the execution of the sentence, his applications were refused and so such applications cannot be regarded as an explanation or justification for the failure of the authorities to act with expedition in seeking to give effect to the original surrender order.
48. I am satisfied that to permit the lapse of time between the initial failure to effect surrender and the application to this Court for a fresh Order for surrender, without sufficient extenuating circumstances, would be unjustifiable and would amount to an abuse of the process of this Court. I should emphasise that the use of the phrase "abuse of process" is not intended to convey any *mala fides* on the part of the authorities or any conduct intended to oppress the respondent.
49. In light of the above, I refuse the application for an order for surrender.