

THE HIGH COURT

[2022] IEHC 71
[2018 No. 350 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

M.E.H.

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 7th day of February, 2022

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 25th January, 2018 ("the EAW"). The EAW was issued by District Judge Vanessa Baraitson, of the City of Westminster Magistrates' Court, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to conduct a criminal prosecution against him in respect of a single alleged offence of rape.
3. The EAW was endorsed by the High Court on 12th November, 2018 and the respondent was arrested and brought before the High Court on 29th December, 2020 on foot of same.
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 prohibited 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 offence in respect of which surrender is sought carries a maximum penalty of life imprisonment.
7. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between the offence to which the EAW relates and an offence under the law of the State where the offence referred to in the EAW is an offence to which Article 2.2. 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"), applies and the offence carries a maximum penalty in the issuing state of at least 3 years' imprisonment. In this instance, the issuing judicial authority has certified that the offence referred to in the EAW is an offence to which Article 2.2. of the Framework Decision applies, that same is punishable by a maximum penalty of life imprisonment and has indicated the appropriate box for "rape". I am satisfied that there is no apparent mistake or ambiguity in the said certification such as

would justify this Court looking beyond same. No issue was raised in respect of correspondence.

8. As surrender is sought to prosecute the respondent, no issue arises under s. 45 of the Act of 2003.
9. Counsel for the respondent indicated to the Court that there are 3 grounds of objection to surrender as follows:-
 - (i) Surrender is precluded by virtue of s. 16 (1) of the International Protection Act, 2015, as amended ("the Act of 2015"), as the respondent has a right thereby to reside in this jurisdiction pending determination of an application by him for international protection;
 - (ii) Surrender is precluded by reason of s. 37 of the Act of 2003 as it would amount to a breach of the respondent's right to a private and family life as protected under Article 8 of the European Convention on Human Rights ("the ECHR"); and
 - (iii) Following the withdrawal of the UK from the European Union ("the EU"), there are no longer any surrender arrangements at law between this jurisdiction and the UK.
10. It should be noted that a ruling dismissing the objection based on s. 16 of the Act of 2015 was delivered by the Court on 26th July, 2021, prior to the granting of refugee status to the respondent by the Minister for Justice ("the Minister") in September 2021. This ruling is incorporated into this judgment.
11. The respondent swore an affidavit dated 10th March, 2021 in which he avers that he was born in Bangladesh in 1980. He avers that he became a member of the Bangladesh National Party and, as a result of his membership of that party, he feared for his life in Bangladesh. He moved to the UK in January 2011 on foot of a UK student visa and his wife followed him later that year on a dependent spouse visa. His visa was valid until 2014 but he had to apply for permission to remain in 2012 after the first college that he had attended had its licence revoked. He was granted permission to remain in the UK until December 2012. In 2013, he was granted further permission to remain in the UK until October 2015 in order to continue his studies. Both he and his wife worked part-time while in the UK. In 2015, his wife became pregnant and around the same time he was arrested and accused of a rape offence. He was returned for trial before Snaresbrook Crown Court. He avers that he was denied legal aid and could not afford private representation. His student visa had expired in October 2015 and, while he had submitted an application for a work permit, he had not received a response to same. He avers that he left the UK and came to Ireland to apply for political asylum. He avers that immediately upon arriving in Ireland on 19th April, 2016, he and his wife applied for international protection. His wife gave birth to a son on 3rd June, 2016. The family was initially in direct provision accommodation but, in 2017, they moved into private rented accommodation in Dublin. He avers that the Office of the Refugee Applications Commissioner decided that the UK was responsible for determining his application for

international protection and he commenced judicial review proceedings against that decision. He avers that those proceedings are still in being but are probably moot as effect can no longer be given to UK transfer orders made under the Dublin III Regulation since the end of the Brexit transition period. He avers that he fears being persecuted if returned to Bangladesh and exhibits a number of reports and a statement made by him in that regard. The respondent avers that his son has been diagnosed with autism spectrum disorder ("ASD"). He expresses a fear that his family will be destroyed if he is surrendered as there is little chance of his wife and son being able to join him in the UK. He also expresses a fear that he will be removed to Bangladesh once the criminal proceedings against him in the UK and any sentence that might be imposed upon him, if convicted, have come to an end.

12. The respondent's wife, [S.T.], swore an affidavit dated 26th February, 2021. She avers that she is the respondent's second wife and that his first wife was very unhappy and threatened to kill her. She avers that the family of the respondent's first wife was politically connected. As a result of these threats, she felt frightened. She confirms that their son, [E.], was born on 3rd June, 2016 and sets out the extent of his special needs as a result of his diagnosis of ASD. She exhibits a number of reports and correspondence concerning [E.]'s difficulties and diagnosis. She avers that the respondent and [E.] are very close and that, since the respondent's arrest, [E.]'s behaviour has dis-improved. She refers to a risk that [E.]'s condition will regress the longer the respondent is separated from the family. She expresses doubts as to whether she would be permitted to visit the respondent in the UK and a worry that the respondent will eventually be deported to Bangladesh by the UK authorities.
13. The respondent's solicitor, Ms. Elise Martin-Vignerte, swore an affidavit dated 13th March, 2021 exhibiting a detailed report relating to the diagnosis of ASD in respect of the respondent's son, [E.].

Section 16 of the Act of 2015

14. The Ruling of the Court on this objection, as delivered on 26th July, 2021, is set out herein at paras. 15 to 34.
15. Section 16 of the Act of 2015 provides, inter alia, as follows:-
 - "16.(1) *An applicant shall be given, by or on behalf of the Minister, a permission that operates to allow the applicant to enter and remain or, as the case may be, to remain in the State for the sole purpose of the examination of his or her application, including any appeal to the Tribunal in relation to the application.*
 - (2) *A permission given under subsection (1) shall be valid until the person to whom it is given ceases under section 2(2) to be an applicant.*
 - (3) *Subject to subsection (6), an applicant shall—*
 - (a) *not leave or attempt to leave the State without the consent of the Minister,*

- (b) *not seek, enter or be in employment or engage for gain in any business, trade or profession,*
- (c) *inform the Minister of his or her address and any change of address as soon as possible, and*
- (d) *comply with either or both of the following conditions, as may be notified in writing to him or her by an immigration officer:*
 - (i) *that he or she reside or remain in a specified district or place in the State;*
 - (ii) *that he or she report at specified intervals to—*
 - (I) *an immigration officer, or*
 - (II) *a specified Garda Síochána station.*
- (4) *An immigration officer may, by notice in writing, withdraw a condition referred to in subsection (3)(d) or vary it in a specified manner, and a reference in this Act to a condition imposed on an applicant under subsection (3)(d) shall be construed as including a reference to such a condition as varied under this subsection.*
- (5) *An applicant who contravenes subsection (3) or (4) shall be guilty of an offence and shall be liable on summary conviction to a class D fine or imprisonment for a term not exceeding 1 month or both.*
- (6) *Paragraphs (a), (b) and (d) of subsection (3) and section 20 shall not apply to an applicant—*
 - (a) *to whom section 2(3) applies, or*
 - (b) *who, were he or she not an applicant, would be entitled to remain in the State under any other enactment or rule of law.”*

16. At hearing, it was accepted by the parties that the Irish authorities had now accepted that Ireland was the appropriate state to deal with the respondent’s application for international protection and that the applicant had been given a permission to allow him to remain in the State for the sole purpose of the examination of his application pursuant to s. 16(1) of the Act of 2015.

17. Counsel on behalf of the respondent submits that the permission given to the respondent pursuant to s. 16(1) of the Act of 2015 conferred upon the respondent a right of residence in the State until his application for international protection was determined and that, until such final determination took place, he could not be removed from the State including by way of surrender on foot of a European arrest warrant.

18. To describe the respondent as having a right of residence in the State might be an oversimplification of his status at law. Pursuant to s. 16(1) of the Act of 2015, the respondent has been given a permission that operates to allow him to enter and remain

or, as the case may be, to remain in the State for the sole purpose of the examination of his application including any appeal in respect of same.

19. Counsel on behalf of the respondent accepts that the temporary status afforded to the respondent by virtue of s. 16(1) of the Act of 2015 could not operate as a ground for permanent refusal of surrender. However, he submits it should operate to preclude the Court from ordering, or at least giving effect to, any order for surrender pending the final outcome of the application under the Act of 2015.
20. Counsel on behalf of the respondent referred the Court to the European Council Directive 2005/85/EC dated 1st December, 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status ("the Asylum Procedures Directive"). He submits that, insofar as Ireland has transposed the Asylum Procedures Directive into domestic law, it has done so on a piecemeal basis. He submits that, in particular, s. 16 of the Act of 2015 transposed the right to remain in a Member State pending determination of an application for international protection, as provided for by Article 7(1) of the Asylum Procedures Directive, but does not transpose into Irish law Article 7(2), which provides for surrender while an application for international protection was pending.
21. Article 7 of the Asylum Procedures Directive provides as follows:-
 - "1. *Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.*
 2. *Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant or otherwise, or to a third country, or to international criminal courts or tribunals."*
22. Counsel for the respondent submits that had the Oireachtas intended to permit surrender pending determination of the application, then the provisions of Article 7(2) of the Asylum Procedures Directive would have been expressly incorporated into the Act of 2015. In effect, he submits that in the absence of such an express statutory transposition of Article 7(2), the Court is bound to assume that the Oireachtas had made a conscious decision to preclude surrender/extradition pending determination of the application for international protection.
23. Counsel on behalf of the applicant submits that pursuant to s. 10 of the Act of 2003, the State is under an obligation to surrender the respondent to the issuing state provided the necessary requirements of the Act of 2003 and the Framework Decision have been met. Section 10 of the Act of 2003 provides as follows:-

"10. — Where a judicial authority in an issuing state issues a relevant arrest warrant in respect of a person —

- (a) against whom that state intends to bring proceedings for an offence to which the relevant arrest warrant relates,
 - (b) who is the subject of proceedings in that state for an offence in that state to which the relevant arrest warrant relates,
 - (c) who has been convicted of, but not yet sentenced in respect of, an offence in that state to which the relevant arrest warrant relates, or
 - (d) on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the relevant arrest warrant relates,
- that person shall, subject to and in accordance with the provisions of this Act, be arrested and surrendered to the issuing state."

24. Where the surrender of a person is requested pursuant to a European arrest warrant, the grounds for refusing such surrender are exhaustively set out in the Framework Decision. It is not open to the courts of a Member State to introduce additional grounds for the refusal of surrender. Counsel on behalf of the applicant submits that the respondent was, in effect, seeking to introduce a new ground for refusal of surrender, albeit in the guise of a temporary bar to surrender. He submitted that it was not necessary for the Oireachtas to have expressly incorporated Article 7(2) of the Asylum Procedures Directive into the Act of 2015, as the transposition of same could be achieved in a number of ways, including the pre-existence of an obligation to surrender and/or the judicial interpretation to be applied to any alleged competing legislative provisions.
25. In essence, counsel for the respondent submits that, in the absence of an express statutory provision allowing for surrender pending determination of an application for international protection, such surrender is prohibited by s. 16(1) of the Act of 2015, while counsel on behalf of the applicant submits that, in the absence of an express legal bar to such surrender, the Court is obliged to effect surrender pursuant to s. 10 of the Act of 2003.
26. I note the Guidance Note on Extradition and International Refugee Protection issued by the United Nations High Commissioner for Refugees in April 2008("UN Guidance Note"). I note, in particular, Part II of same entitled "*Extradition and the Principle of Non-Refoulement*" which specifically addresses the issue raised herein. Paragraph 37 of the said UN Guidance Note provides:-
- "37. *If it is established that surrender to the requesting State would not amount to a breach of the requested State's non-refoulement obligations under international law, the asylum-seeker may be extradited. However, the States involved would need to ensure that he or she will have access to a fair and efficient asylum procedure, either in the requested or in the requesting State.*"

27. It is clear from Article 7(2) of the Asylum Procedures Directive and paras. 35 to 37 inclusive of the UN Guidance Note, that there is no principle of international law which prohibits the surrender or extradition of a person seeking international protection/asylum, provided the relevant safeguards are in place to protect against non-refoulement and to ensure access to a fair asylum procedure. Indeed, it would appear to be the case that international law expressly recognises that a system of surrender/extradition can operate in such circumstances.
28. I do not believe that the Oireachtas, in enacting s. 16(1) of the Act of 2015, created a bar to surrender under the Act of 2003, either permanent or temporary, or created an exception or an obstacle to the State giving effect to its international obligations under the Framework Decision, or other international treaties relating to extradition entered into by the State. Had the Oireachtas intended s. 16(1) of the Act of 2015 to have such a radical impact upon the State's obligations under international law and under domestic law, it would have specifically stated that this was to be the case.
29. The proposition contended for by the respondent is likely to result in the following scenario whereby:-
- (a) if successful in his application for international protection, he may be surrendered pursuant to a European arrest warrant;
 - (b) if unsuccessful in his application for international protection, he may be surrendered pursuant to a European arrest warrant; but
 - (c) while his application for international protection is pending, he may not be surrendered pursuant to the EAW herein.

No logical basis has been put forward for such a position.

30. The permission granted to the respondent by the Minister pursuant to s. 16(1) of the Act of 2015 is solely for the purpose of having his application for international protection determined. The surrender of the respondent does not prevent such a determination taking place at the appropriate time. There is no prospect of refoulement while the application for international protection is pending or, if surrender takes place, prior to determination of the criminal proceedings in the UK.
31. The respondent is of course entitled to protection of his fundamental rights in the course of any surrender procedure and surrender should not take place where same would amount to a breach, or constitute a real risk of a breach, of those fundamental rights, including his right to be protected from refoulement pending an application for international protection. Provided such rights are adequately protected, I see no reason why s. 16(1) of the Act of 2015 should be interpreted in the manner contended for on behalf of the respondent.
32. While it is not for this Court to determine the *bona fides* of the respondent in respect of his application for international protection, it is, nevertheless, worth noting in the context

of a request for his surrender that despite residing in the UK for a number of years, it was only after he was returned for trial in relation to the alleged rape that he left that jurisdiction, entered this jurisdiction and made a claim for international protection. The prolonged deferment of surrender in the circumstances of this case, which involves an allegation of rape, could have a profound impact upon the complainant and the intended prosecution of the respondent in respect thereof. In particular, the complainant would be left in a position where she would have to endure the stress and anxiety faced by a complainant in such cases for an indefinite period of time, possibly a number of years, depending upon the progress of the respondent's application for international protection, including appeals and possible judicial review of decisions in respect thereof. Similarly, the respondent would be subjected to prolonged stress and anxiety while awaiting surrender for trial. I do not believe that the Court is obliged to reach an inexorable interpretation of s. 16(1) of the Act of 2015 which will bring about such an outcome.

33. It is open to the Court to seek an assurance from the issuing state that the respondent will not be deported to Bangladesh following determination of the prosecution of the respondent in respect of the offence referred to in the EAW, including the completion of any sentence imposed in respect thereof, and that he would be permitted, if he so wished, to return to Ireland at that stage. Similarly, it is open to the Court to seek assurances from the applicant, being the relevant Minister in this jurisdiction, that, if surrendered, the respondent, upon the determination of the prosecution for the offence referred to in the EAW, including the completion of any sentence imposed in respect thereof, would be permitted to re-enter and remain in the State for the sole purpose of the examination of his application for international protection. Indeed, it may be possible for the application to be processed here while the respondent is in the UK, if surrendered, but that is a matter for the relevant authority to determine, subject to fair procedures.
34. I am satisfied that the permission to remain in the State pursuant to s. 16(1) of the Act of 2015, does not, in principle, automatically operate as a bar to this Court making an Order for the surrender of the respondent, or necessitate this Court postponing the effect of such an Order, should the other conditions for surrender under the Act of 2003 be met.
35. Subsequent to the Ruling as set out in paras. 15 to 34 above, the Minister granted refugee status to the respondent on 29th September, 2021.
36. By letter dated 8th October, 2021, the UK Home Office indicated that it was not possible to give an assurance that the respondent would not be deported from the UK to Bangladesh, should he be convicted and sentenced to a term of imprisonment in excess of 12 months, but that in coming to a decision on the matter, the Secretary of State would consider whether such deportation would contravene the respondent's rights under the ECHR or the United Nations Convention and Protocol Relating to the Status of Refugees.
37. Following the grant of refugee status by the Minister, a further response was requested from the UK authorities and by letter dated 2nd December, 2021, the UK Home Office confirms that the Secretary of State would not seek the deportation of an individual in breach of the UK's international obligations. The letter concludes: -

"It is likely however, given that we have since been informed Mr Haque has been recognised as a 1951 Convention Refugee by the Minister for Justice of Ireland that, on completion of any sentence of imprisonment or following any other disposal of the prosecution by the UK courts, he would be returned to the Republic of Ireland."

38. On foot of the grant of refugee status and the correspondence from the UK Home Office, I am satisfied that there is no bar to the surrender of the respondent to the UK arising out of his refugee status.

Section 37 of the Act of 2003 and Article 8 ECHR

39. On 26th July, 2021, the Court delivered its ruling on the objection to surrender based on Article 8 ECHR. That ruling is set out herein at paras. 40 to 47.

40. Counsel on behalf of the respondent submits that surrender would amount to a breach of his right to a private and family life as protected under Article 8 ECHR. He submits that the respondent's son has specific medical and educational needs. It is further submitted that while the respondent's wife and son had their own separate applications for international protection under the Act of 2015, these applications were very much bound up with the respondent's application, although it was conceded that they could apply to be allowed to remain in the State on humanitarian grounds even if the respondent's application failed.

41. As was made clear by MacMenamin J. in the Supreme Court decision in *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, Article 8 ECHR does not purport to guarantee an absolute right to a private and family life. He stated at para. 23 of his judgment:-

"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."

42. The interplay between Article 8 ECHR and the State's obligation to surrender pursuant to the Act of 2003 was considered at length by MacMenamin J. 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."

43. While acknowledging the particular medical and educational needs of the respondent's son, I am not satisfied that the personal or family circumstances of the respondent are so truly exceptional as to justify refusal of surrender. Disruption to the private and family life of a requested person and his or her immediate family is inherent in the surrender process provided for by the Act of 2003. In many cases, such disruption will be of a significant nature.
44. In *The Minister for Justice & Equality v. N.M.* [2013] IEHC 322, the respondent was the sole carer of two of her children aged 15 and 17 years old, one of whom suffered from autism. Despite the fact that alternative care arrangements would have to be put in place in respect of the child, the court held that the private rights of the respondent and her dependent children did not justify a refusal of surrender.
45. In *Minister for Justice and Equality v. D.E.* [2020] IEHC 657, the respondent acted as carer for his wife and son, both of whom suffered from significant physical disabilities, yet surrender was ordered, and upheld by the Supreme Court, and a period of postponement allowed for alternative care arrangements to be put in place.
46. I note the respondent's wife and son also have applications pending for international protection, and to some extent these may be dependent upon the respondent's application. These applications must be determined in accordance with fair procedures and there is no reason to believe that this will not be so.
47. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine if surrender of the respondent would be incompatible with the obligations of the State under the ECHR, the protocols thereto, or the Constitution. I am satisfied that surrender would not be incompatible with such obligations.
48. When the matter came back before the Court following the decision of the Court of Justice of the European Union ("the CJEU") in SN and SD (Case C-479/21 PPU), the respondent made a further submission that surrender of the respondent is precluded by reason of s. 37 of the Act of 2003, following the granting of refugee status to the respondent by the Minister. In essence, the respondent argued that the granting of refugee status to him had created an unacceptable level of uncertainty as regards the status of his wife and child so that surrender would represent a disproportionate and unjustified interference with the Article 8 ECHR rights of the respondent and his family.
49. The wife of the respondent, [S.T.], swore a supplementary affidavit dated 11th January, 2022 in which she avers that the respondent was granted a declaration of refugee status

on 29th September, 2021. She avers that her application was not processed alongside her husband's application and that same is still being processed with an interview due to take place on 25th January, 2022. She avers that her solicitor has contacted the protection authorities to see if she and her son can benefit from her husband's refugee declaration as his 'dependents' but that a response to same has not yet been received. She avers that she is concerned that it may take a long time before her application for protection is determined and that she cannot leave Ireland without the Minister's consent while the application is pending. This could restrict her ability to visit her husband in the UK if he is surrendered. She outlines the difficulties which she has faced since her husband was arrested on foot of the EAW. She avers that her son has been attending a special ASD class and is currently on a waiting list for a therapist. She sets out the limitations which incarceration places upon contact and communication between the respondent and his son. Naturally, she is worried about the future of her family.

50. Counsel on behalf of the respondent submits that surrender of the respondent to the UK would constitute a disproportionate interference with the respondent's Article 8 ECHR private and family rights due to the following:-
 - (a) The fact that the respondent's wife and son cannot leave the jurisdiction without the consent of the Minister while their application for refugee status is pending;
 - (b) If the application on behalf of the wife and son for refugee status is unsuccessful, then the respondent could apply to have residence granted to them on foot of his own refugee status but this amounts to a permission to be allowed to enter the State in order to reside with the respondent and, since the respondent would not be resident in the State if surrendered, then such application could not succeed; and
 - (c) If the respondent is convicted of the offence to which the EAW relates, then the Minister is obliged to revoke his refugee status and this would impact upon his family's status if their entitlement to reside within the jurisdiction is dependent upon his refugee status.
51. Counsel on behalf of the respondent submits that, in the circumstances, the Court should seek specific assurances from the Minister regarding the entitlement of the respondent and his family to enter and/or remain in this State pending and subsequent to any proceedings, including completion of any sentence which might be imposed, in the UK.
52. Counsel on behalf of the applicant disputes the respondent's submissions in terms of how the Act of 2015 might operate and, in particular, certain technical aspects of same. He further submits that the respondent is asking the Court to refuse surrender on the basis of speculation as to what may or may not happen in the future and, in effect, was attempting to have this Court micromanage and tie the hands of the Minister as regards future processing of any applications brought by or on behalf of the respondent and his family under the Act of 2015.

53. As matters stand, the respondent has been granted refugee status. An application for refugee status regarding his wife is currently pending before the relevant Irish authorities. Such application may or may not be successful and it is not for this Court to speculate upon the outcome of same. The surrender of the respondent is sought in order that he be prosecuted in respect of a single alleged offence of rape, a most serious matter. If surrendered, the respondent may be acquitted or convicted of such offence. Again, it is not for this Court to speculate upon the outcome of those proceedings. The submissions of the respondent are based upon speculation as to how events may or may not play out in the future. I am not satisfied that it is now necessary for the Court to seek any assurances from the Minister regarding the entitlement of the respondent or his family to enter and/or stay in the State, for the purposes of determining this application. It is not appropriate for this Court to seek such assurances based upon speculation.
54. I am not satisfied that the further matters averred to by the respondent's wife in her supplementary affidavit as regards the disruption and difficulty which the respondent's surrender will cause her, and more particularly their son, taken together with the earlier evidence and submissions in that regard, constitute such exceptional circumstances as would justify refusal of surrender.
55. Bearing in mind the wording of s. 37 of the Act of 2003, this Court must determine whether the surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would amount to a breach of a provision of the Constitution. I am satisfied that surrender would not be so incompatible with such obligations and nor would it constitute a breach of any provision of the Constitution.
56. Any applications brought by or on behalf of the respondent, his wife and/or his son as regards their entitlement to enter or reside in this State must be determined in accordance with fair procedures and there is no reason to believe that this will not be done. Moreover, I see no reason why an application by or on behalf of the respondent or members of his family could not be brought at an appropriate time before the Irish courts to vindicate any rights of the respondent or his family under the ECHR or the Constitution, such application being brought at an appropriate time when the relevant factual context of same is sufficiently clear as opposed to being speculated upon.
57. I further note that the UK is a signatory to the ECHR and is a party to international conventions in respect of protection for refugees. There is no reason to believe that the fundamental rights of the respondent and/or his family members, or their entitlements under UK or international law, would not be respected and vindicated by the UK executive or the UK courts, should those courts be called upon to do so.
58. I dismiss the respondent's further objection to surrender based upon Article 8 ECHR and/or s. 37 of the Act of 2003.

UK Withdrawal from the European Union

59. At the request of the respondent, this matter was adjourned to await the judgment of the CJEU in *SN and SD* (Case C-479/21 PPU). Following the decision of the CJEU in that case, the ground of objection based upon extradition arrangements entered into between the UK and the EU following the departure of the UK from the EU were not pursued.

Conclusion

60. I am satisfied that surrender is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act.

61. Having dismissed the objections to surrender, it follows that this Court will make an Order for the surrender of the respondent to the UK.