High Court of Ireland Decisions

Judgment

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[2017] IEHC 418

THE HIGH COURT

Record No.'s 2016/236 EXT

2017/7 EXT

BETWEEN:-

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ROBERT PAWEL PTAK

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered this 15th day of June, 2017.

1. The surrender of the respondent is sought by Poland pursuant to two European Arrest Warrants ("EAWs") dated 14th October, 2013 ("the first EAW") and 2nd January, 2017 ("the second EAW"). In the first EAW, the respondent is sought for prosecution whereas in the second EAW he is sought for the purpose of serving two separate sentences. A number of the respondent's points of objection covered both EAWs but some objections

were specific to an individual European arrest warrant.

A Member State that has given effect to the 2002 Framework Decision
2. The surrender provisions of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") apply to those member states of the European Union ("E.U.") that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Council (EC) Framework Decision of 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States ("the 2002 Framework Decision"). I am satisfied that by the European Arrest Warrant Act 2003 (Designated Member States) (No. 3) Order 2004 (S.I. No. 206/2004), the Minister for Foreign Affairs has designated Poland as a member state for the purposes of the Act of 2003.

Section 16(1) of the Act of 2003

Identity
3. Initially, the respondent made a preliminary point of objection claiming that he was not the person sought in these European arrest warrants. He subsequently amended this point of objection and characterised his position as a neutral one, thereby leaving it to the Court to be satisfied as to identity. The person who is before the Court denied on arrest that he was the respondent to these European arrest warrants. On his arrest in respect of each EAW, the respondent gave a different name and a different date of birth to the particulars set out on the European arrest warrant. The details he gave are unknown to the authorities in Poland.

4. The respondent was identified by Sergeant Kirwan, member of An Garda Síochána, as the requested person by his very particular tattoos and also by the fact that he agreed that a photograph sent by Interpol of the person wanted was indeed a photograph of him. Furthermore, it has not been contested that Sergeant Kirwan is correct when he says that fingerprints taken from the respondent in custody match those of the person sought in the European arrest warrants. On the basis of the foregoing evidence, which I accept, I am satisfied that the person before me is the person in respect of whom each of the EAWs have issued.

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

Sections 21A, 23 and 24 of the Act of 2003
6. I am satisfied that the High Court is not required, under sections 21A, 23 or 24 of the Act of 2003, to refuse the surrender of the respondent on the second EAW and that the High Court is not required under s. 23 or s. 24 of the Act of 2003 to refuse his surrender on the first European arrest warrant.

7. The respondent included an objection based upon the provisions of s. 21A of the Act of 2003 in his points of objection to surrender on the first European arrest warrant. This first EAW states that the decision on which the EAW is based is an enforceable verdict on provisional detention. It also states that the maximum sentence is 5 years deprivation of liberty on one offence and 8 years deprivation of liberty on the second offence. Under both the length of custodial sentence or detention order imposed and the remaining sentence to be served, it refers to the preventative measure in the form of pre-trial detention for a period of 3 months.

8. Point (d) of the first EAW was not completed. The central authority sought confirmation that the respondent was sought for the purposes of prosecution and that he had not yet been sentenced in respect of the offences in light of the manner in which

point (c) of the EAW had been completed. The issuing judicial authority stated that the respondent was sought "in order to conduct criminal prosecutions" and the fact that he had gone into hiding and it was now "not possible to judge him". It was stated that this EAW did not refer to execution of custodial sentences.

9. I have no hesitation in holding that the respondent is sought for the purpose of criminal prosecution. I am also satisfied, in light of the presumption in s. 21A(2) of the Act of 2003, that a decision has been made to charge him with and try him for the offences set out in the first European arrest warrant. There is no ground for prohibiting his surrender under this section.

Part 3 of the Act of 2003

10. An issue arose in respect of the first EAW as regards the number of offences for which the respondent was sought. The first EAW records that he is sought for 18 offences. However, 20 individual offences are itemised at point (e) of the first European arrest warrant. There was correspondence between the central authority and the issuing judicial authority relating to other aspects that concerned the offences and there was a reference therein to offence "I" and to the other offences "II to XX". Counsel for the minister submitted that the response which refers to Offence I to that effect that "it is a distinct offence to other offences from II through XX" is sufficient to provide the clarity that is needed to show that he is being sought from 20 offences.

11. The Court disagreed with that submission. While it might have been a typographical error, it was an unexplained error in relation to a matter which is of considerable importance, namely the precise number of offences for which he is to be surrendered. Furthermore, unlike, for example, a misspelt name or even a clearly incorrect date, the court could not disregard a clear contradiction in the EAW by assuming that 20 was the correct number of offences and not 18. Even the further information received from the issuing judicial authority did not put this issue to rest as this was based upon a direct question from the central authority concerning another matter and was not addressed specifically to elucidating the number of offences for which the respondent was sought.

12. The Court sought this information by making a request pursuant to s. 20 of the Act of 2003. This request was transmitted on behalf of the High Court by the central authority to the issuing state by letter dated 12th May, 2017 and sought clarification as to the number of offences to which the EAW related.

13. The issuing judicial authority replied by way of letter dated 15th May, 2017, stating that "[…] Ptak, Robert Pawel in case III Kop 148/13 is requested in connection with being accused of having committed 20 offences which have been described in details in Section E2, while the digit '18' as indicated in Section E1 is an obvious typing error which has been made in the translation of the European arrest warrant because in the original Polish version a digit '20' is indicated".

14. The error in the translation having been pointed out, I am satisfied that the reference to 18 offences was a typographical error and that there is no doubt that the respondent is being sought for prosecution for the 20 offences which are detailed in point (e) of the European arrest warrant. There is no basis for refusing his surrender on the basis of this typographical error.

Section 38 of the Act of 2003

The First European Arrest Warrant

15. All twenty offences have been designated as offences of either "participation in a criminal organisation" or "swindling" to which Article 2 para. 2 of the 2002 Framework Decision applies and therefore it is not necessary to show correspondence. The Court is

satisfied that there is no manifestly incorrect designation of these offences. However, the respondent takes issue with the lack of clarity as to which of these offences have been designated as "participation in a criminal organisation" and which have been designated as "swindling".

16. The Court rejects this argument for a number of reasons. In the first place, under the nature and legal classification of the offence, it states at point (e) 3:

> "Ad. I - Art.258 § 1 of the penal code - offence against the public order.-
>
> Ad. II-XX- Art. 286 § 1 of the penal code in relation to art 65 § 1of the penal code - offence against property:-".

This makes it clear that offence I is different from each of the other offences; it is a public order offence to wit participating in a criminal organisation, whereas the other offences are offences against property to wit swindling.

17. Secondly, the details of the offences themselves demonstrate that offence I is an offence of participation in a criminal organisation. The other 19 offences are formulated in a different manner and can be termed as substantive offences (included attempts) of swindling people out of money. The reference in some of those substantive offences to acting jointly or in concert with others as part of an organised group does not take away from the fact that the offence alleged is a substantive one of committing an act which amounts to a fraud or an attempted fraud.

18. Finally, I rely on the information provided by the issuing judicial authority in answer to the central authority's request for confirmation, such request being "[…] that Offence I is constituted by the act of being part of an organised group to commit offences and that this offence is covered by the ticking of the box for 'participation in a criminal organisation'. Please also confirm that that Offence I is a separate and distinct offence to the acts giving rise to the other offences, II to XX". The issuing judicial authority confirmed that offence I is the offence of participation in a criminal organisation and is a separate offence pursuant to Polish criminal law, as well as being a distinct offence to the other offences from II through XX.

19. In respect of each of the offences, the required minimum gravity in respect of sentence has been reached. The respondent's surrender on the first EAW is therefore not prohibited under the provisions of s. 38 of the Act of 2003.

The Second European Arrest Warrant

20. There are four offences set out in the second European arrest warrant. Three of these offences have been designated as offences of swindling to which Article 2 para. 2 of the 2002 Framework Decision applies and therefore it is not necessary to show correspondence. This is not a manifestly incorrect designation. The minimum gravity threshold has been reached.

21. The fourth offence requires correspondence to be shown. The details of this offence set out that the respondent opened a showcase in a telecommunications shop by using a fitted tool and stole a mobile phone from there. The details given demonstrate that, if committed in this jurisdiction, it would amount to an offence of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 ("the Act of 2001"). The requirements of minimum gravity have been met. The respondent's surrender is not prohibited in respect of the second EAW under the provisions of s. 38 of the Act of 2003.

Section 45 of the Act of 2003

The First European Arrest Warrant
22. The provisions of s. 45 of the Act of 2003 are not applicable to the first EAW as the respondent is being sought for prosecution. Therefore, his surrender is not prohibited by s. 45 of the Act of 2003 on the first European arrest warrant.

The Second European Arrest Warrant
23. Counsel for the respondent strongly submitted that his surrender was prohibited in respect of two of the offences in the second EAW, which had resulted in a sentence of 1 year and 8 months imprisonment, on the basis that the EAW did not indicate the matters required by s. 45 of the Act of 2003. The second EAW recites that he is sought to serve two separate sentences, one in relation to Case File No. II K 1039/11 in which a sentence of 1 year and 8 months deprivation of liberty was imposed and the second in relation to Case File No. II K 654/11 in which a sentence of 1 year and 6 months deprivation of liberty was imposed.

24. In respect of Case File No. 654/11, it is indicated that he appeared in person at his trial resulting in the decision. No issue is taken with this designation. The Court is satisfied that his surrender is not prohibited by s. 45 of the Act of 2003 in respect of this sentence which covers the third and fourth listed offences in point (e) of the European arrest warrant.

25. In respect of Case File No. II K 1039/11, the issuing judicial authority has indicated that he did not appear in person at the trial resulting in the decision. Point (d) in the EAW is completed as follows (bold as in original):

> "1. If you have ticked the box under "No", please confirm the existence of one of the following:
>
> **a. the person was summoned in person on 12th July 2011 in case file No. II K 1039/11 and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;**
>
> OR
>
> b….(*omitted* as not relevant)
>
> OR
>
> c….(*omitted* as not relevant)
>
> OR
>
> d. the person was served with the decision and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be reexamined, and which may lead to the original decision being reversed or changed,
>
> AND

the person expressly stated that he or she does not contest this decision,

OR

the person did not request a retrial or appeal within the applicable time frame,

Or

…(*omitted* as not relevant)

AND

…(*omitted* as not relevant)

AND

…(*omitted* as not relevant)

2. if you have ticked the box under points 1b, 1c or 1d above, please provide information about how the relevant condition has been met."

26. A point noted by the Court is that, although these judgments were indicated to have been initially conditionally suspended judgments, execution of which was indicated by the court on a later given date, there was no application by the respondent to have this case put back to await the outcome of the Supreme Court decision in *Minister for Justice and Equality v. Lipinski* [2017] IESC 26. The Court must apply the law as it is and there is no reason to await the finalisation of the *Lipinski* proceedings. Moreover, there is no evidence, unlike in *Lipinski*, that this respondent was not present at the hearing to remove the suspended part of the sentence.

27. The objection on behalf of the respondent was that because the issuing judicial authority had ticked (or bolded) two different parts of point (d) in the second EAW, this Court could not be sure of the designation which the issuing judicial authority has made. Referring to *Minister for Justice and Equality v. Palonka* [2015] IECA 69, counsel submitted correctly that where reliance is being placed upon points (d) 3.1b, 3.2 or 3.3 in the Table to s. 45 of the Act of 2003, point (d) 3.4 must be completed. It is blank in the second EAW in so far as it relates to the offences covered by Case File No. II K 1039/11.

28. Counsel for the respondent pointed to *dicta* of this Court in *Minister for Justice and Equality v. Ahmed* [2016] IEHC 83 in which the Court at para. 29 doubted the propriety of disregarding the lack of a correct format in an EAW "[…] *where there is an absence of a clear designation from an issuing judicial authority that a particular part of the Table is being relied upon".* That *dicta* may now have to be read in conjunction with the decision of the Court of Justice of the European Union ("CJEU") in the case of *Openbaar Ministerie v. Pawe³ Dworzecki* (Case C-108/16 PPU, Fourth Chamber, 24th May 2016) in so far as the CJEU has said at para 50, in relation to the scenarios described in point (d) that, *"the executing judicial authority may in any event, even after having found that they did not cover the situation at issue, take into account other circumstances that enable it to be assured that the surrender of the person concerned does not mean a breach of his rights of defence.".*

29. This Court is satisfied, however, that it is not necessary for the purposes of the present case to address whether a re-visitation of the *dicta* in *Ahmed* is required. This

Court is satisfied that the *dicta* relied upon related to a set of circumstances which does not apply here, *i.e*. the *dicta* related to circumstances where there had been no clear designation by the issuing judicial authority. In this case, there is a clear designation at point (d) 3.1a, *i.e*. that the respondent was summonsed in person on 12th July, 2011 and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he did not appear for the trial. Furthermore, the Court is also satisfied that there is no other designation in this case; point (d) 3.3 is not completed, on the contrary only a subsection of it is bolded. There is no indication that the issuing judicial authority actually wishes to rely upon that designation as it is not completed fully (by either bold texting or ticking of it). In any event, they cannot rely upon it without completing the box (or at least otherwise giving a clear indication that they are relying on that particular box).

30. The Court is therefore satisfied that the issuing judicial authority is giving a clear assurance to this Court that the respondent was summonsed in person for his trial. That clear assurance is not lessened or disturbed in any way by the additional indication of a matter which must also be presumed to be correct, *i.e*. that he has not requested a retrial or appeal within the applicable time.

31. The Court has also considered the wording of the Council (EC) Framework Decision of 26th February, 2009 (2009/299/JHA) on the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial ("the 2009 Framework Decision") and the Table at point (d) of s. 45 of the Act of 2003. The Table, which is based upon Article 4a of the 2009 Framework Decision, asks for confirmation of the existence of one of a number of conditions which are set out therein if it is indicated that the person was tried *in absentia*. Furthermore, in Recital 6 to the 2009 Framework Decision, there is a reference to these being alternative conditions under which recognition and execution of a decision rendered following a trial in which a person did not appear should not be refused. There is no mandatory provision, however, in either the 2009 Framework Decision or the Act of 2003 that surrender must be refused if an issuing judicial authority indicates that two conditions have been met. Indeed, it may often be the case that two conditions have been met, *e.g*. a person could have been personally served and also mandated a lawyer to represent him or her.

32. The Court observes that it may be preferable that only one condition is indicated by an issuing judicial authority, as this is all that is required under the 2009 Framework Decision. However, the Court does not accept that the *dicta* in Palonka at para. 30 that *"[t]he section does not permit any derogation or discretion in relation to compliance with section 45, or any part of it" [and that] [t]he section is stated in mandatory and clear terms*" requires the Court to either refuse surrender or request clarification if another part of point (d) is also ticked. The text of s. 45 of the Act of 2003 states that "[a] person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex […] [to the Framework Decision]" (emphasis added). Taken literally, this would indicate that each of those points 2, 3 and 4 have to be filled in. That would be an absurd interpretation because in accordance with the requirements of the Table, point (d) 4 does not have to be completed if the issuing judicial authority is relying on point (d) 3.1a.

33. In *Palonka*, the Court of Appeal held that the section made it clear that point (d) 4 must be filled in where there was reliance on point (d) 3.1b, 3.3 or 3.4. The fact that such a requirement was mandatory was clear from the provisions of the text in s. 45 of the Act of 2003 as well as the Table in s. 45 of the Act. On the contrary, the text of s. 45 and the Table to s. 45 of the Act do not mandate that only one option be confirmed,

rather there is a request that confirmation of the existence of one of the conditions set out therein be given where there has been a trial *in absentia*.

34. Furthermore, the Court also notes that there is no literal interpretation of s. 45 of the Act of 2003 that requires *only* one condition to be relied upon. If there was any ambiguity, the Court is obliged to have regard to the requirement in the case of *Criminal Proceedings Against Pupino*, (Case C-105/03 [2005] ECRI 5285) that in interpreting the Act of 2003, the courts "[…] *must do so as far as possible in the light of the wording and purpose of the Framework Decision in order to attain the result which it pursues*. […]" (para. 43 *Pupino*). It would be contrary to the objectives of the 2002 and 2009 Framework Decisions, which were to simplify surrender, if a designation of two conditions, rather than one condition was sufficient to delay or refuse surrender. There is nothing in s. 45 of the Act of 2003 that requires the Court to hold that s. 45 of the Act requires the Court to interpret that section as meaning that where two conditions are indicated or partially indicated, that it must refuse surrender or seek further information before surrender can be made.

35. The Court also observes that, in this particular case, the issuing judicial authority has only confirmed the existence of one condition, as only one condition has been completed. The Court is also satisfied that there is no lack of clarity in the EAW or breach of fundamental rights of the respondent indicated by reference to the fact that the respondent did not appeal in the applicable timeframe.

36. In those circumstances, it can readily be seen that s. 45 of the Act of 2003 places on the Court a requirement to be satisfied that there is a clear designation as to reliance on one of the conditions (but not necessarily only one of them) under which surrender may still be required, even though there has been a trial *in absentia*. If the condition relied upon is other than the condition regarding personal service of the date and place of the trial, information as to how that condition has been satisfied must also be given.

37. The Court is satisfied that there is a clear designation in this case as to the respondent's personal service in respect of the summons. That is all that is required. By virtue of the principles of mutual trust and recognition, the Court must accept that designation.

38. The Court is satisfied that the respondent's surrender is not prohibited in respect of the sentence imposed upon him in Case File No. II K 1039/11 and his surrender on any part of the second EAW is not prohibited by the provisions of s. 45 of the Act of 2003.

Section 11 of the Act of 2003

"Unestablished date"

39. The respondent objects to his surrender under the provisions of s. 11 of the Act of 2003 in respect of count I in the first EAW as he says that it fails to disclose the date of the alleged commission of the offences when it refers to "an unestablished date". The respondent submitted that there is no explanation as to why an unestablished date is referred to at all. He submitted that the absence of detail takes from him the rights to which he is entitled, such as assurances as to no possibility of double jeopardy becoming an issue or with respect to specialty.

40. The offence set out at count I on the first EAW is as follows:

"In a period between an unestablished date and 16th May 2011 in Legnica acting jointly and in concert with other persons whose dossiers were separated to conduct separate proceedings, they participated in an organized group of which intent was committing *offences consisting in placing advertisements in the OTOMOTO internet* portal in form of

fictitious, price attractive offers for selling passenger cars supposedly imported from abroad and in making preliminary sales agreements under which they collected advance payments by way of the made agreements having neither intent nor possibilities of satisfaction of them in which they induced the injured persons to make adverse dispositions of their property".

41. In *Minister for Justice and Equality v. Adams* [2012] 1 IR 140, Edwards J. held that the alleged lack of specificity with respect to time, date and place was not relevant in the context of those proceedings. Correspondence of offences had been required to be demonstrated and Edwards J. held that he had sufficient information to be satisfied thereon. In this particular case, as has been demonstrated above, there is sufficient information regarding the alleged offences to enable the court to establish correspondence.

42. The Supreme Court has clarified that point (e) of the EAW, requiring the details of the offences, is concerned with more than correspondence. In *Minister for Justice and Equality v. Connolly* [2014] 1 I.R. 720, the Supreme Court (Hardiman J.) stated at paras. 25-26 (p. 731) as follows:

> *"It is in my view absolutely essential that the offence or offences for which the person is wanted is specified. In Minister for Justice v. Stafford [2009] IESC 83, (Unreported, Supreme Court, 17th December, 2009) Denham J. [as she then was] said:*
>
> > '[15] It is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act 1965, as amended, and indeed classically in extradition law. A description of the act, or the acts alleged, are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the court and so a decision may be made as to whether there is, for example, 'double criminality'.'
>
> *Denham J. made a similar statement in Minister for Justice v. Desjatnikovs [2008] IESC 53, [2009] 1 IR 618 at p. 632:-*
>
> > '[35] The fact that there is a precise description of the facts of the case is important, even though the issue of double criminality is not required to be considered. It is important that there be a good description of the facts. An arrested person is entitled to be informed of the reasons for his arrest and of any charge against him in plain language which he can understand*. Also, in view of the specialty rule, the facts upon which a warrant is based should be clearly stated'*. (emphasis supplied).'
>
> *This latter point was addressed in* Minister for Justice and Equality v. Cahill *[2012] IEHC 315.* Speaking of s. 11 of the Act of 2003, Edwards J. said at p. 8:-
>
> > 'The…objective… is to enable the respondent to know *precisely for what it is that his surrender is sought*. A respondent is entitled to challenge his proposed surrender and in order to do so needs to have basic information about the offences to which the warrant relates. Among the issues that might be raised by a respondent are objections based upon the rule of specialty, the *ne bis in idem* principle and extraterritoriality, to name but some'."

43. Therefore, the court must be certain that the description of the offences set out in the EAW, is sufficient to cover all of the questions which could arise. In this case, for example, no question of extraterritoriality arises as there is a precise description of where the offences have occurred, *i.e*. Legnica.

44. In so far as offence I on the first EAW concerns the reference to "an unestablished date", it is entirely unlike the situation which obtained in Connolly. The offence is very clear in that it sets out that it is participation in an organised group (a criminal organisation by virtue of the designation of the offence) with very specific criminal intentions which are set out in detail. The final date of the alleged offence is set out in some detail but the initial date has not been established. As the Supreme Court has stated in *Minister for Justice, Equality and Law Reform v. Stafford* [2009] IESC 83, it is not the evidence that must be set out, rather it is the offence. In *Stafford*, the details of the offence were limited because of the circumstantial nature of the evidence that was available. That had not prevented the surrender. In this case, the fact that the initial date cannot be established by the issuing state is not a bar to surrender.

45. The court must assess the rule of specialty in accordance with the provisions of the Act of 2003. The court must accord to the issuing state a presumption that it will comply with the requirements of the 2002 Framework Decision unless the contrary is shown. Nothing has been placed before the court to rebut the presumption that the issuing state will comply with the provisions of the 2002 Framework Decision which include a respect for the rule of specialty. Furthermore, nothing has been placed before the court to rebut the presumption contained in s. 22(3) of the Act of 2003 that the issuing state does not intend to (a) proceed against the respondent, (b) sentence him or detain him for the purpose of executing a sentence or (c) otherwise restrict him in his personal liberty in respect of any offence pre-dating his surrender other than those specified in the European arrest warant. The fact that the prosecuting authority cannot establish the precise date in which a criminal organisation allegedly operated does not mean that there is any risk that a respondent will be liable to being prosecuted for another offence.

46. The court has to be satisfied that the description in the EAW is also sufficiently clear and unambiguous to allow the respondent know precisely for what his surrender is sought. Furthermore, the description must be sufficiently detailed to permit any issue with regard to double jeopardy being resolved. The Court is satisfied that the manner in which the offences are described by reference to a lengthy period of time over which they apply, does not present any difficulty. The respondent is aware that these allegations have been made against him spanning a period, the earliest date of which cannot be identified. Sufficiently precise details of the nature of the offending have been given so as to ensure that there is no lack of clarity and there is no risk of double jeopardy. It is clear that what is being alleged is that he was part of a criminal organisation which engaged in a particular set of offences involving the internet portal OTOMOTO. What is perfectly clear is that the respondent cannot be tried for another offence of participating in an organised group, which said group was involved in any way in placing these advertisements on OTOMOTO at any point before 16th May, 2011.

47. In the form of EAW contained in the Annex to the 2002 Framework Decision, time, as well as place, is specifically mentioned as part of the circumstances that must be described. Where a wide time frame is given to cover an allegation, particularly an allegation covering a period of years, there is a correspondingly greater requirement to give greater detail as to the surrounding circumstances of the alleged offence. Those circumstances may illustrate the reason for the wide time frame. Such illustration will assist the executing judicial authority with respect to all the matters with which it must be satisfied, but it will also give to a respondent the information that he or she requires as a minimum.

48. The issue in this case is whether there has been the required specificity with regard

to the allegations contained in the European arrest warrant. In this EAW, there has been a great deal of information about the alleged nature of the activities of the organised group. More particularly, the reason for the lack of an earlier date has clearly been stated, *i.e.* that the date has not been established. Counsel for the respondent submitted that there has to be evidence by way of a "digital footprint" which establishes the initial date. In the view of the Court, that does not take into account the nature of the offence, it is not the advertising on the website that is the commission of the offence, it is the participation in the organised group of which the intent was to place these advertisements. In the other charges in the first EAW, there is reference to "having opened a bank account" for various people (including, in some charges, the respondent), and that certain specific acts were committed. The Court merely mentions these by way of example to show that other actions may well have been part of this organised group. Those actions could also involve preliminary steps to opening bank accounts or using computers. This indicates that actions involving participation in the organised group intent are highly likely to have been carried out on dates on which it is impossible to establish.

49. The Court must place mutual trust and mutual confidence in the Polish judicial authority. The judicial authority has stated that the date on which this offence commenced is unestablished. There is no reason to question that statement; on the contrary, a cursory consideration of the nature of this type of offence demonstrates that certainty as to date may be impossible to ascertain. The fact that the initial date is unestablished does not prevent surrender in these circumstances.

Lack of clarity about earlier sentence

50. One of the respondent's points of objection was that by referring to Article 64 ss. 1 of the Polish Penal Code and the fact that the respondent allegedly committed certain of the offences in the first EAW having earlier been convicted and sentenced for another offence, his surrender was prohibited as there was a lack of information about the sentence leading to the use of this article to increase the respondent's potential sentence. He also submitted that as the article was used to calculate the potential sentence, the respondent should be entitled to know how that was calculated. He also submitted that correspondence had not been satisfied with regard to this other offence and the minimum gravity requirements had not been met. This was not pursued at the hearing in circumstances where this Court had ruled against this point in a separate case.

51. The respondent pursued a related point of objection in respect of both EAWs that "[…] it is unclear from the Warrant whether the Respondent's surrender is sought to serve sentence of the Regional Court of Legnica II Criminal Department of the 23rd March 2003, case file No. IIK 580/02 and reactivated on 27th November 2006 for the penalty of two years and the Respondent's surrender should be refused." He also submitted that he was entitled to full details of that other offence.

52. The Court is satisfied that the respondent's surrender is not prohibited on this basis. He is being sought for surrender for 20 offences on the first EAW and for 4 offences on the second European arrest warrant. He is not being sought for surrender in respect of this other offence on either of these European arrest warrants. It is a misreading of each of the EAWs to say that his surrender is being sought for that offence. The other conviction and sentence is being mentioned in the context of these offences allegedly being committed in the context of recidivism. His maximum sentence has been indicated on this European arrest warrant. There is no basis for saying that his surrender must be prohibited because the Court does not have details of an offence for which his surrender is not being sought. Correspondence is not required to be made out for that sentence nor is the Court required to have any information about the details of that conviction or

the sentence imposed.

The Earlier Sentence and Section 22 of the Act of 2003
53. The Court is also satisfied that, as the respondent's surrender is not sought for this other offence, he will not be sentenced in respect of it. There are no grounds for believing that the presumption that the issuing state will respect the rule of specialty will not apply or for believing that there is a real risk that it will not apply. Therefore, there is no basis for refusing the respondent's surrender on the grounds of s. 22 of the Act of 2003 in respect of either of the EAWs before the Court.

Reference to Preventive Measures
54. The first EAW states that the domestic decision upon which that EAW is based was the judicial decision on the application of a preventive measure in the form of pre-trial detention for a period of 3 months. At point (h) in the EAW, which deals with custodial life sentences (which are not applicable in this EAW), was a bolded statement saying "[t]he offence being a base to issue this warrant is not amenable to punishment of life imprisonment, as well as there were no reasons to apply preventive measures". The respondent objected to surrender on the basis that this statement called into question the decision on which the EAW was based.

55. The central authority requested information as to what was meant by the reference to preventive measures at point (h) of the first European arrest warrant. The issuing judicial authority said in reply that in Polish criminal law, preventive measures are applied to a person who, due to mental disease or mental impairment, at the time of commission of a prohibited act, was completely incapable of recognising its significance or controlling his conduct. The issuing judicial authority stated that such circumstances do not exist in relation to the requested person.

56. Counsel for the respondent quite understandably made this objection on the basis of the information on the face of the first European arrest warrant. The Court is satisfied that, although the similar phrase "preventive measure" is used, the context for each is different. One relates to pre-trial detention and the necessity for same, whereas the other relates to preventive detention of those who had a mental disease or impairment at the time of the commission of the prohibited act. In light of the clarification regarding this distinction, the Court rejects this point of objection.

Section 37 of the Act of 2003

Article 3 of the European Convention of Human Rights
57. The respondent's points of objection included an objection that his surrender was prohibited under Article 3 of the European Convention on Human Rights ("ECHR") by virtue of the prison conditions in Poland. In light of the recent judgment of this Court in *Minister for Justice and Equality v. Jaworski* (Record No. 2013/82 EXT), this respondent did not pursue this point of objection. The Court is satisfied that it has not been established on substantial or reasonable grounds that there is a real risk of this respondent being subjected to inhuman and degrading treatment by virtue of the prison conditions in Poland.

Article 8 of the European Convention on Human Rights
58. The respondent claimed in his points of objection that surrender would violate his rights under Article 8 of the European Convention on Human Rights. He did not swear any affidavit in these proceedings nor did counsel offer any submissions in relation to this point. In those circumstances, the Court is satisfied that it is not required to carry out any analysis of the situation regarding the respondent or the offences or alleged offences in order to assess whether his rights have been violated. The Court therefore

rejects this point of objection.

Conclusion

59. For the reasons set out in this judgment, the Court rejects all of the points of objection filed on behalf of the respondent. The Court, being otherwise satisfied that the requirements of s. 16(1) of the Act of 2003 have been met, may make an Order for the respondent's surrender to such other person as is duly authorised by Poland to receive him in respect of both of the European arrest warrants.