

H376



[\[Home\]](#) [\[Databases\]](#) [\[World Law\]](#) [\[Multidatabase Search\]](#) [\[Help\]](#) [\[Feedback\]](#)

# High Court of Ireland Decisions

---

**You are here:** [BAILII](#) >> [Databases](#) >> [High Court of Ireland Decisions](#) >> The Minister for Justice and Equality -v- E.S. [2014] IEHC 376 (19 June 2014)

URL: <http://www.bailii.org/ie/cases/IEHC/2014/H376.html>

Cite as: [2014] IEHC 376

---

[\[New search\]](#) [\[Help\]](#)

---

**Judgment Title:** The Minister for Justice and Equality -v- E.S.

**Neutral Citation:** [2014] IEHC 376

**High Court Record Number:** 2011 262 EXT & 2011 263 EXT

**Date of Delivery:** 19/06/2014

**Court:** High Court

**Composition of Court:**

**Judgment by:** Edwards J.

**Status of Judgment:** Approved

Neutral Citation: [2014] IEHC 376

**THE HIGH COURT**

**[2011 No. 262 EXT.]**

**[2011 No. 263 EXT.]**

**IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 AS AMENDED**

**BETWEEN**

**THE MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**E. S.**

**RESPONDENT**

**JUDGMENT of Mr Justice Edwards delivered on the 19th day of June, 2014.**

**Introduction**

The respondent is the subject of two European arrest warrants dated 21st September, 2007, ("the 2007 warrant") and 3rd March, 2010, ("the 2010 warrant"), respectively, issued by a competent judicial authority in Poland. Each warrant seeks the rendition of the respondent for the purpose of prosecuting her for the offence or offences particularised in Part (e) of the warrant in each case. Both warrants were endorsed for execution in this jurisdiction by the High Court on 27th July, 2011. The respondent was arrested in execution of both warrants on 29th August, 2013, by Garda K.B. and was brought before the High Court on the same day pursuant to s. 13 of the European Arrest Warrant Act 2003 ("the Act of 2003"). In the course of the s. 13 hearing in respect of each warrant, a notional date was fixed for the purposes of s. 16 of the Act of 2003 and the respondent was remanded on bail to the date fixed. Thereafter both matters were adjourned from time to time, ultimately coming before the Court for the purposes of a surrender hearing.

The respondent does not consent to her surrender to Poland in either case. Accordingly, this Court is now being asked by the applicant to make orders pursuant to s. 16 of the Act of 2003 directing that the respondent be surrendered to such person as is duly authorised by the issuing state to receive her. The Court must consider, in both cases, whether the requirements of s. 16 of the Act of 2003, both controversial and uncontroversial, have been satisfied and this Court's jurisdiction to make an order directing that the respondent be surrendered is dependent upon a judicial finding that they have been so satisfied.

**Uncontroversial s.16 issues**

The Court has received and scrutinised true copies of both European arrest warrants. Further, the Court has taken the opportunity to inspect the original European arrest warrant on the Court file pertaining to each case, and each of which bears this Court's endorsement.

The Court has also received two affidavits of Garda K.B., sworn on 24th April, 2014, testifying as to his arrest of the respondent in each case. He states at para. 4 of his affidavit in each case that the woman that he arrested acknowledged that she was E.S. Moreover, she acknowledged the Part (a) details when they were put to her, and also that she was the person shown in a photograph attached to each of the warrants. In addition, counsel for the respondent has confirmed that no issue arises in either case as to either the arrest or identity.

I am satisfied following my consideration of these matters that:

- (a) Both European arrest warrants were endorsed for execution in this State in accordance with s. 13 of the Act of 2003;
- (b) Both warrants were duly executed;
- (c) The person who has been brought before the Court is the person in respect of whom

the European arrest warrants were issued;

(d) Both warrants are in the correct form;

(e) Both warrants purport to be prosecution type warrants and in each case the respondent is wanted in Poland for the purpose of being prosecuted for the offence or offences particularised in Part (e) of the warrant in question;

(f) The underlying domestic decisions on which the warrants are based are indicated as being, in the case of the 2007 warrant: "a decision consisting in the execution of a detention awaiting trial of the District Court in Strzelce Opolskie from 4th April 2006 for a period of 14 (fourteen) days from the day detention [*sic*]"; and in the case of the 2010 warrant: "a valid decision of District Court for Wroclaw-Krzyki dated 21 December 2009, File Number: VII Kp 587/09 concerning temporary arrest of the suspect for the period of 14 days since the date of detention";

(g) The nature and classification of the offences for which the respondent is wanted for trial are, in the case of the 2007 warrant: twelve offences against property contrary to Article 286, s. 1 of the Polish Penal Code and one offence against the conduct of economic transactions contrary to Article 300, s. 2 of the Polish Penal Code; and in the case of the 2010 warrant: a single multi-act offence where the conduct complained of is said to have constituted a crime under Article 286, s. 1 of the Polish Penal Code in connection with Article 12 of the Penal Code. The terms of Article 286, s. 1 of the Polish Penal Code are set out in the 2010 warrant and the offence in question might be generically described as a "deception" type offence. Article 12 provides that planned acts in close temporal proximity may be charged together as a single prohibited act. It is clear from additional information provided by the issuing authority in Opole, dated 12th May, 2014, that an offence contrary to Article 300, s. 2 of the Polish Penal Code is committed by unlawfully disposing of goods under seizure by a bailiff;

(h) The issuing judicial authority has not invoked para. 2 of Article 2 of Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/J.H.A.), O.J. L190/1 of 18.7.2002 ("the Framework Decision") in respect of the 2007 warrant and, accordingly in that case, the Court requires to be satisfied both with respect to correspondence and minimum gravity. However, the issuing judicial authority has invoked para. 2 of Article 2 of the Framework Decision with respect to the 2010 warrant by ticking the box in the list in Part E.1. of that warrant relating to "fraud". Accordingly, subject to being satisfied that there has been a valid invocation of the ticked box procedure, the Court need not concern itself with correspondence in respect of the single multi-act offence to which the 2010 warrant relates;

(i) In the case of the 2007 warrant, the description of the circumstances of the first twelve offences within Part (e) is similar. The Court has considered the circumstances set out and is satisfied to find correspondence in each case with the offence in Irish law of making gain or causing loss by deception contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001. Counsel for the respondent did not seek to challenge correspondence in respect of those offences;

(j) As regards the thirteenth offence, it is somewhat unusual and the description of circumstances alleged ought therefore to be recited. It is alleged in the warrant, which must be read together with the additional information, dated 12th May, 2014, that:

"the offence referred to in the European Arrest Warrant of 21.10.2007 as count II concerns disposal by [E.S.] of entire property in the form of passenger car, photocopier, computer and goods with total value of PLN 25,000, attached previously by a bailiff to prevent

its disposal. The bailiff was unable to recover any items of this property disposed of by [E.S.].”

Counsel for the respondent has invited the Court to find correspondence with the offence in Irish law of obstructing a person in lawful execution of an execution order, contrary to s. 24(1) of the Enforcement of Court Orders Act 1926, and the Court is satisfied to do so. Once again, Counsel for the respondent did not seek to challenge correspondence in respect of this offence.

(k) In the case of the 2010 warrant, there is no evidence of gross or manifest error in the ticking of the box relating to “fraud”;

(l) In the case of the 2007 warrant, the minimum gravity threshold is that which now finds transposition into Irish domestic law within s. 38(1)(a)(i) of the Act of 2003, as amended, namely that a potential sentence of at least 12 months imprisonment or deprivation of liberty should be available to be imposed by a court in the issuing state. Part (c) of this warrant makes clear that offences nos. 1 - 12 carry up to eight years imprisonment in the issuing state and offence no. 13 carries up to five years imprisonment in the issuing state. Accordingly, the minimum gravity threshold is comfortably met in each instance;

(m) In the case of the 2010 warrant, the minimum gravity threshold is that which now finds transposition into Irish domestic law within s. 38(1)(b) of the Act of 2003, as amended, namely that a potential sentence of at least 3 years imprisonment or deprivation of liberty should be available to be imposed by a court in the issuing state. Once again, as Part (c) of this warrant indicates that the offence to which this warrant relates carries up to eight years imprisonment in the issuing state, the minimum gravity threshold is comfortably met;

(n) There are no circumstances in either case that would cause the Court to refuse to surrender the respondent under ss. 21A, 22, 23 or 24 of the Act of 2003, as amended;

(o) As the respondent is wanted for prosecution in both cases no issue arises as to trial *in absentia* in either case.

In addition, the Court is satisfied to note the existence of the European Arrest Warrant Act 2003 (Designated Member States) (No. 3) Order 2004 (S.I. No. 206 of 2004) (“the Designation Order of 2004”), and duly notes that by a combination of s. 3(1) of the Act of 2003, and Article 2 of, and the schedule to, the Designation Order of 2004, Poland (or more correctly the Republic of Poland) is designated for the purposes of the Act of 2003 as being a state that has under its national law given effect to the Framework Decision.

### **The Points of Objection**

Although a number of points of objection were pleaded, just one was ultimately proceeded with. The respondent relies upon a common point of objection in respect of both cases. She contends that the Court is prohibited from surrendering her under s. 37 of the Act of 2003 because to do so would breach the rights of herself and her daughter to respect for family life as guaranteed under Article 8 of the European Convention on Human Rights (“the Convention”) in circumstances where the interference with her said rights, and those of her daughter, that the proposed surrender measure would occasion, would be disproportionate to any legitimate aim being pursued.

### **The Respondent’s Evidence**

The Court has before it in each case an affidavit of the respondent sworn on 3rd March, 2014, in which she states, *inter alia*, that she was born on 31st May, 1979, in XXX, a small town in Poland and was the eldest of three children. She is now 34 years old. She has a brother and sister and her parents continue to live in Poland. When she was nineteen she finished school and went to college where she studied Information

Technology (IT). She started work in a hardware shop full-time to help pay her rent while at college. During this period she met a man who worked at the hardware business. She moved out of her parents' home when this man became her partner and he persuaded her to open her own hardware business when she finished college.

In the summer of 2001 the respondent set up a business selling building materials called XXX in XXX. Her partner encouraged her to launch it on a rather big scale and buy a large stock on credit terms. The respondent claims she was naive and relied on his encouragement to get started in business. She began to supply building materials to customers on credit terms. This proved to be a mistake as some of the customers failed to repay on their credit terms and within a very short time she was in financial difficulty which resulted in her failing to repay the credit on the stock within time. She attempted to make the business profitable for three years but was unable to do so. The respondent states that the stress of the business had a devastating impact on her health and she suffered from depression and suicidal thoughts for long periods of time.

The respondent then tried to continue the business on a smaller scale. She opened a small shop at the start of 2004 and started to supply plumbers with materials on a cash-only basis. She claims that this new business was working well and was turning a small profit after a short period of time. Around this time her boyfriend went to Ireland to find work. While the respondent says she was happy with her new business, after just three months she was approached by a debt collector, a Mr. M.Z., who was looking for repayment of the money that she still owed to the suppliers who had supplied goods to her first business. She claims this man was very aggressive and threatening to her and gave her a couple of days to repay the entire debt or he would come and close down her business. The respondent states that she had no prospect of paying him the money in three days and, as she was afraid of him, she decided to follow her partner to Ireland. The respondent contends that the sums of money due and listed in the European Arrest Warrants are all business debts that she accumulated as a result of her failed business venture.

The respondent came to Ireland in May 2004 and began to live in Dublin with her boyfriend who was already here. They rented a room in a house at XXX in XXX. This arrangement was casual in that there was no lease or agreement signed and the respondent rented a postbox in the XXX Hostel in XXX to register with the Irish authorities for a PPS number until she could move to a permanent address in September. She secured work within two days of arriving in XXX in XXX and a couple of months later she started a second job working evenings in XXX Bakery in XXX.

The respondent has deposed that shortly after coming to Ireland she began to send some money to the debt collector in Poland. She claims that she wanted the debt collector to send her receipts for the money she was sending him but he would not do so. As she had no way of knowing if he was repaying the debt that she owed or was taking the money for himself, she stopped making payments to him. The respondent has exhibited several Western Union money transfer receipts as evidence of the money she sent to the debt collector.

The respondent states that her relationship with her boyfriend ended and in September 2004 she moved into Apt. 29, XXX apartments in XXX with another Polish lady who had also rented a room in the house in XXX. In November 2004 she had to stop working in the bakery as she was making herself sick from the exhaustion of working at two jobs. In March 2005 her brother Ad.S. decided to move to Ireland from Poland and he stayed in the previously mentioned apartment. In June 2005 the landlord sold the apartment to the respondent's now close friend M.C.. The respondent's flatmate, the respondent's brother, and the respondent all moved next door to Apt. 28, XXX apartments. The respondent has continued to live at this address for the past eight and a half years. Shortly after the move to Apt. 28, the respondent's brother's wife, M., also came to Ireland. She also

moved into Apt. 28 and they all lived in the one apartment together. The respondent states that, as she commenced work in XXX at 10.00am, she would pay her share of the weekly rent to her flatmate (the other Polish lady, not related to her directly or by marriage, referred to above) to be deposited in the landlord's bank account. She subsequently discovered from the landlord that this flatmate did not pay the rent for several weeks before she left Ireland in September 2005. The remaining occupants had to pay this money back to the landlord, along with the normal rent, over the next couple of months.

The respondent described how after a year working in XXX she was promoted to Supervisor. In January 2006 the particular XXX outlet in which she was working closed down and the respondent immediately obtained alternative employment as a Clerk in XXX in XXX. In July 2006 she was appointed to the role of Accounts Assistant in the Finance Department of XXX. In September 2006 the respondent commenced an accountancy course in XXX College in order to become qualified as an Accounts Technician. In November 2007 XXX moved their headquarters to XXX in Co. XXX and she has worked in that location in their Finance Department ever since.

The respondent states that at the end of her first academic year in XXX College she was introduced to a man by a college friend and they started to go to dance classes together. He became her boyfriend and in March 2008 the respondent discovered that she was pregnant. She rang her boyfriend and told him that she was pregnant. She says that he left her and the following day flew back to Poland. The respondent claims to have been in touch with him for another while by means of e-mail and that he tried to persuade her to abort the baby. She refused to do so and gave him the chance to be the child's father. The respondent states that she told him that if he wanted to be involved as a father he had to declare his intentions at that point rather than doing so later. She claims that he decided not to and he has never come to see the child, now born and christened A. The respondent contends that due to her becoming a mother, and also due to financial difficulties, she was unable to sit her final exams and she had been planning to complete them in May 2014 once A. was at school. She states that she had been afraid of becoming a mother and having to care for a child on her own. Throughout this time she lived with her brother and his wife and they were kind to her. The respondent's daughter, A., was born on the 1st November 2008.

The respondent states that her brother and his wife returned to Poland in August 2009 and since then she has lived with A. in the apartment. She has been financially strained since her daughter was born as she has had to pay half of her wages on crèche fees and claims that, at times, she has had barely enough money for food for the two of them as she also has to pay the rent on the apartment. A. has never been separated from the respondent since she was born. Although the respondent is from Poland, A. has never been to Poland. However, they do speak Polish at home and A. understands Polish. The respondent's brother Ad.S. came back to live in Ireland in 2012 but only stayed for a few months and returned to Poland where he lives with his wife and two children. The respondent has a close relationship with her brother and he returns to Ireland frequently to visit her and A. Apart from her brother she does not have a close relationship with other family members.

The respondent states that A. is a very happy five-year old girl who has only known Ireland as her home. She has lived with her mother at XXX apartments since she was born. The respondent has cared for her as best she can and although she has never had any spare money since A. was born, she has spent all of her free time with A. and has paid for her to attend crèche while she, the respondent, worked. In August 2013 the respondent enrolled A. in a primary school at XXX, Co. XXX, in order that she can attend a good school away from the city and near to where the respondent works. A. is very happy there at present. According to her mother, she is a very sporty little girl and attends swimming and ballet classes. A school report is exhibited from the school to which the

Court has had regard.

The respondent maintains that prior to her arrest in August 2013 she was not informed of the situation in Poland and never given a chance to deal with the alleged offences contained in the warrants. She says that her arrest has been a great shock to her and to the life she has in Ireland with her daughter. Since her arrest the respondent fears that A. will suffer a lot if she is separated from her as a result of the respondent being surrendered to Poland. According to the respondent, in that event A. will have to go to live with her uncle in Poland and, although she knows him, it would be very difficult for her as she has never visited or lived in Poland. The respondent says that she has never been separated from A. overnight since she was born and any separation would be very difficult for both of them. The respondent also fears that the separation anxiety that A. will suffer will have a far reaching and detrimental impact upon her development. She would have to adapt to the Polish way of life and the school system in Poland which would be difficult for her. The respondent believes that, in the circumstances of this case, the impact on her daughter would be disproportionate to any public interest in the respondent's surrender to Poland. The respondent and A. have attended at XXX, Children's Therapy Services, at XXX in Dublin, and a report prepared by B. K. of that organisation, dated 16th February, 2014, is exhibited. The Court will refer to this later in this judgment.

The respondent states that the thought of having to be separated from her daughter, and of A. being left on her own, has caused her great distress. She has suffered from a severe depression and has had suicidal thoughts since she was arrested. She has attended her general practitioner, Dr. A.W., since her arrest in September 2013, and has received treatment for her low mood, panic attacks and suicidal thoughts. A report from Dr. W., dated 24th February, 2014, is also exhibited. The respondent has been prescribed anxiolytic medication and has been referred to Pieta House for counselling. A letter from Pieta House, dated 11th October, 2013, and exhibited by the respondent, confirms that she has been so referred.

The respondent confirms that she has also attended with the XXX Psychological Services who have prepared a report in relation to the impact of parent-child separation on both the respondent herself and A. in the event that she is surrendered to Poland. A report of M.L.B. and Dr. P.R. of XXX Psychological Services, dated 5th November, 2013, is exhibited, and the Court will refer to this in some detail later in this judgment.

The respondent has also attended with a Consultant Psychiatrist and Psychotherapist, Dr. S.O.D., who has prepared a report in relation her suicidal thoughts. This report is also exhibited and again the Court will refer to it in some detail later in this judgment.

A number of letters from neighbours, friends and a member of the Oireachtas expressing support for the respondent in her predicament have also been exhibited.

The respondent makes the point that there has been considerable delay in the issuing of these warrants and in seeking her surrender to Poland. She suggests that this delay indicates that the Polish authorities have felt no particular urgency in seeking her surrender for prosecution of the alleged offences contained within the warrants. The respondent says that when she left Poland in May 2004, she was aware that a debt collector was seeking repayment of her debts but she was never aware that she was wanted by the authorities for the prosecution of offences, or that she was at risk of being arrested or imprisoned. According to the respondent, the Polish authorities have known for a number of years of her whereabouts. She claims to have attended in person at the Polish embassy in Dublin in 2006 when she applied for a new passport. A few weeks later, on 4th April, 2006, she was issued a new passport and she personally collected this from the embassy. The respondent states that she provided all of her details to the Polish authorities in order to renew her passport. She says that despite providing them with her

contact details and seeking information from them, she was never made aware that she was wanted to face these or any other charges in Poland. The respondent states that she continued to live in Ireland, unaware that she was wanted in Poland. Moreover, later, while she was pregnant in 2008, her mother contacted her and told her that the police in Poland had called to her parents' home and were looking for her. Her mother is said to have told the police that the respondent was in Ireland and given them the respondent's contact details. No contact was made and soon after the respondent herself telephoned the police in XXX and sought to ascertain why they had wanted to speak to her. The respondent contends that she was told that they could not provide this information over the phone.

The respondent further states that, when she was pregnant, she received a text message from a debt collector. This debt collector had gone to her parents' house and had obtained her contact details from her mother. The respondent contacted the debt collector and provided him with her address in Ireland so that he could send her verifying documentation and details of an account to which she could make payments. She subsequently received documents from the debt collector and made efforts to deal with her debts. In January 2009 she sent money to her sister. According to the respondent, her sister made two lodgements on her behalf to cover the costs of goods and legal costs. The bank lodgement slips in Polish, with an English translation, are exhibited. These record, *inter alia*, the name of the payer's bank account as being that of one K.S., also the payee's account details and the amount lodged. However, these slips also contain a box in which a description of the transaction is recorded. The description recorded on both slips indicates the name "[E.S.]", a case reference number and an amount. In addition, on one slip, the further words "court proceedings fees reimbursement" also appear, while on the other slip the further word "interest" appears.

In her said affidavit, the respondent urges upon this Court that, whatever about her own life and rights, it is very unfair that her daughter's life could be altered so drastically by her mother's surrender and imprisonment for offences that are alleged to have occurred seven years before she was born, and in circumstances where the authorities knew of the respondent's whereabouts two years before her birth and failed to notify the respondent of same. She says that if she had been made aware of these proceedings at an earlier point in time she could have dealt with the matters prior to becoming pregnant. She makes the obvious point that her daughter is blameless in all of this and states that she finds it difficult to cope with the thought of the impact her surrender and imprisonment would have on A. Moreover, she points out that in addition to the delay in the issuing of the warrants by the Polish authorities, it is also the case that both warrants were not transmitted to the Irish authorities until the 6th July, 2011. Then, despite having being sent to Ireland in July 2011, the warrants was not executed until her arrest on 29th August, 2013, a further two years after they had been sent from Poland. The respondent maintains that the delay in the issuing, transmission to Ireland and execution of these warrants indicates that there is no pressing social need for her rendition or urgency in the prosecution of these cases.

The respondent contends that, in the circumstances of this delay, she has established her life here in Ireland with her daughter while unaware that she was wanted for prosecution of these alleged offences. She is struggling to deal with the prospect of being forcibly separated from her daughter. She believes that in the event that she is surrendered her daughter may suffer irreparable damage to her life and well-being which may have a profound effect on her development. In addition, she contends that she personally has also suffered deterioration in her mental health which has caused her great anxiety.

### **The Medical and Psychological Reports Exhibited**

The Court has already referred to the fact that several medical and psychological reports are exhibited by the respondent with her affidavit. The authors of these reports have each subsequently sworn affidavits of verification in respect of these reports. However, counsel



for the applicant has not sought to cross examine any of the experts concerned as to their findings or opinions, or to dispute those findings or opinions. Moreover, the applicant has called no evidence of his own in relation to the issues addressed by the respondent's experts. Indeed, counsel for the applicant stated in opening the case that it was accepted that the respondent was putting forward "a serious case", ostensibly supported by strong evidence.

As previously indicated a report was exhibited from B. K. of XXX, Children's Therapy Services. Ms. K., who is a psychologist, prepared this report at the request of the respondent's solicitors for submission in these proceedings. I am satisfied both as to the independence of the report and as to the credentials and expertise of its author. Ms. K. who described her assessment in some detail, has stated the following to be her findings and professional opinions:

#### "Analysis and Conclusion

An assessment of the impact on [A.S.] should she be separated from her mother was sought by her mother's solicitor. Consideration was also sought in relation to the impact on [A.] should she be cared for by the HSE, now the Child and Family Agency (CFA) or by her maternal uncle.

Ms [S.] attended for two interviews and Ms [S.] and [A.] attended for one observational session.

In considering the impact on [A.] of a separation from her mother, the following are taken into account: the current functioning of both parties, the health of their relationship and the nature of the separation.

[A.] was described by her mother as being a normal 5yr old girl with an unremarkable early developmental history. [A.] was observed to present as a playful, inquisitive and wilful child. Ms [S.] detailed a very close relationship with her daughter. A warm, caring relationship was observed by the author during their play together. Ms [S.] presented as believing that her depression and stress have not been noticed by her daughter; this is unlikely. The author is highly concerned by Ms [S.]'s description that her daughter's existence is her only reason for living.

[A.] has not known any carer other than her mother. At five years of age, she is completely dependent on her mother to have her needs met and especially for her emotional security. Ms [S.] clearly loves her daughter dearly and [A.] provides Ms [S.] with great comfort, as well as motivation to battle long-standing depression. While it is normal for a child to be completely dependent on their parent, it is not ideal that Ms [S.] is dependent on her daughter for her survival as this can lead to an enmeshed relationship and a risk of it becoming difficult for [A.] to individuate her needs from those of her mother's as she grows older. It is clear to the author that Ms [S.] wants the best for her daughter and it is hoped that when the current stress of the legal issues passes, that Ms [S.] will be better able to consider this. One example of this was how [A.] was described as continuing to sleep with her mother. At her age, most children are able to self-sooth adequately which allows them to settle and sleep alone. [A.] has not yet achieved this developmental task. Ms [S.] presented as content with this situation describing that she would miss [A.] if she was not sleeping in her bed.

The most striking issue in assessing the impact on [A.] should she be separated from her mother is the nature of that separation. The suddenness

of a separation, the longevity of a separation, and the type of separation all need to be considered important factors. Ms [S.] had chosen not to inform [A.] of the risk that she could be sent to prison in Poland but had told [A.] that they may go to Poland on a holiday. Should Ms [S.] be surrendered to the Polish authorities, due consideration should be afforded to allow [A.] time with her mother. Ideally, Ms [S.] should settle [A.] into her brother's care if this is to be the outcome. The nature/duration of [A.]'s separation from her mother will impact her. The impact on a young child of a suicide of their primary and sole carer would be significant and could be catastrophic for her. The impact on a young child of a separation from their primary and sole carer, where contact can be maintained and the relationship worked on, while significant and difficult would be preferable. Should Ms [S.] be assessed as at a high risk of completing suicide, the impact of this on her daughter would be devastating and it is likely that she would require long term psychological support. Ms [S.] struggled to consider the negative impact on [A.] should she commit suicide, which is of great concern. Given [A.]'s young age, her capacity to remember and hold her mother in mind needs to be considered — [A.] would benefit from frequent contact with her mother, should she serve a prison sentence in Poland.

Being removed to the care of the state would be a last resort and not in [A.]'s best interests. It is always preferable, once deemed safe, for a child to remain within the extended family when parents can no longer care for their child. This is essential to their sense of identity, their capacity to maintain relationships and for their sense of being wanted, which is a core component of their self-worth. Ms [S.] has indicated to the author that it would be her preference for her brother and his family to care for [A.] should this be required. While he may be best placed to care for [A.], as the only family member with whom [A.] has a relationship, this would involve considerable change for [A.]: leaving behind her known world and the security of her mother, the cultural adaptation of moving to a foreign country and to a new school system, adjusting to living in a new family and coping with having two siblings who may also struggle with her joining their family.

In summary, Ms [S.] presented as a vulnerable parent with long-standing mental health difficulties who clearly loves her daughter. She described her plan to kill herself if she is separated from her daughter to serve a prison sentence in Poland. The impact on [A.]'s life, her mental health and her capacity to form healthy relationships will all be negatively impacted should this occur. [A.] is a five year old girl who is completely dependent on her mother for her care. Her father has not been a part of her life but she has had some contact with her maternal extended family, most noticeably her Uncle [Ad.]. This author was not asked to consider [A.]'s father's role in her future care. Should [A.] require the care of someone other than her mother it would be preferable that she would be cared for by her Uncle [A.] rather than be placed into the care of the state."

The Court also has the benefit of a report, dated 24th of February, 2014, from the respondent's G.P., Dr. A.W., which confirms that the respondent suffers from depression and suicidal ideation; that her mental health has deteriorated since September 2013 and the deterioration appears to be associated with the present proceedings and worry about possibly being separated from her daughter; that she is on antidepressant and anxiolytic medication; and that she has been referred to Pieta House and has been seeing a psychiatrist there.

The Court also has the report from XXX Psychological Services to which it has previously

referred. This is a joint report prepared by M.L.B., who is a Forensic Psychologist, and by Dr. P.R., who is a Clinical Psychologist, following their assessment of the respondent and her daughter. This lengthy and very detailed report is dated 5th November, 2013, and in it the authors state *inter alia*:

### **"12. Impact of Mother-Child Separation**

It is evident from direct interview, observation of parenting style, and the reports from those that know the [S.] family, that Ms. [S.] plays an active and crucial role in raising her daughter. She is the only parental figure in [A.]'s life and the bond and attachment between them is very intense and exclusive. Ms. [S.] takes her responsibility to her daughter very seriously and is concerned about her well-being and development. [A.] turns to her for guidance, support, direction, and emotional closeness.

Should Ms. [S.] be extradited to Poland, she has arranged for [A.] to live with her brother, who has a family with 2 young children in Poland. [A.] knows her uncle as he spent approximately 5 months living with them in Ireland in 2012, and through video calls. Ms. [S.] has addressed formalities with regard to this, and has applied for a passport and private insurance for [A.].

However, a separation from her mother will have potentially devastating consequences for [A.]. Ms. [S.] provides her daughter with security, predictability, and reassurance, which are particularly important in single-parent families where a child fully depends on one parent. Given her age, it is unlikely that [A.] will have a full understanding of why her mother is no longer with her should she receive a prison sentence. From her perspective, her mother will simply have disappeared from her life. In light of the exclusive and highly intense attachment that they share, the likelihood of [A.] experiencing a grief reaction is very high. Children this age who are subject to sudden or traumatic loss of a parent, particularly if this parent was the only attachment figure in their lives, experience the world as uncertain and unsafe and have anxieties and fears for their own safety. Children of [A.]'s age also have a tendency to attribute the parent's disappearance to themselves or their own behaviour and often engage in activities designed to elicit the return of the absent parent. When this proves ineffective, the children are likely to evidence states of protracted anxiety, depression, and despondency. Such levels of distress and hopelessness have a devastating impact on personal, social, and academic functioning, in both the immediate and long-term.

[A.] has a very strong and positive relationship with her mother. Should she be removed from her, she will miss significant periods of her life and development and the relationship will be irreversibly damaged. Once such a connection is severed, it is extremely difficult to re-ignite as the child's trust and security is shattered. Further, her capacity to form close and intimate relationships as she moves through adolescence and into adulthood will be significantly hampered as a result of a broken critical attachment.

Additionally, [A.] would have to adapt to an entirely new environment. She has never been to Poland, and while she understands Polish, she only uses it passively and has a clear preference for the English language. She reportedly only uses the occasional word in Polish and replies in English when addressed in Polish. [A.] is well settled in her school and daycare facility, has friends, attends numerous after school activities, and has close bonds with other adults in Ireland whom she considers family. The loss of

this familiar and predictable environment is likely to further compound the personal, social, and academic difficulties she will experience, particularly as her mother will not be available to support her in the transition. It is likely that [A.] will suffer significant emotional and psychological distress as a result of the difficult situation, and that her functioning will be compromised in both the immediate and long-term.

Another significant factor to be considered is Ms. [S.]'s current mental state and her psychological vulnerability. She has expressed suicidal ideation on several occasions and noted that the only thing that keeps her from following through on her suicidal thoughts is her daughter. However, she is very aware of the difficulties that [A.] will face in settling and adapting to a new culture and environment should she have to move to live with Ms. [S.]'s brother in Poland. Ms. [S.] noted that she would not be able to unsettle [A.] again following her release from prison at the end of her sentence. She expressed her opinion that she will consequently have lost her daughter for good. As she noted that her daughter was the only reason for her to continue living, there is substantial concern for Ms. [S.]'s safety should she receive a prison sentence.

### **13. Conclusions**

Ms. [S.] presented as a friendly, psychologically vulnerable single mother of a 5-year old girl, who engaged well in the assessment process. She fully cooperated with the assessment, participated in the child observation session, and gave consent for our service to obtain collateral information about her and her daughter.

All sources of information reflected the central and crucial role that Ms. [S.] has in her daughter [A.]'s life and the highly intense and exclusive relationship they share.

On the basis of the foregoing assessment, it is the opinion of the undersigned that Ms. [S.]'s separation from her daughter in this way would have a devastating and irreversible effect on [A.] 's life and development, both presently and into the future.

Furthermore, in light of her current mental state and suicidal ideation, there is substantial concern about the impact that an extradition to Poland would have on Ms. [S.]'s safety."

Finally, the Court has a report from Dr. S.O.D., Consultant Psychiatrist and Psychotherapist, dated 20th of February, 2014. Dr. O.D. is not the respondent's treating psychiatrist. She is, as stated by Dr. W., under the care of a psychiatrist at Pieta House. However, Dr. O.D. has conducted a psychiatric assessment and mental state examination of the respondent, and has prepared a report for the purposes of these proceedings, at the request of the respondent's solicitors. His findings and opinions are as follows:

#### **"Mental State Examination:**

At interview, Ms. [S.] appeared quite dishevelled and she wore no make-up and had made minimal effort to appear well-groomed. Although she engaged well, she was tearful throughout the interview. She maintained reasonably good eye-contact and a good rapport. Her speech was fluent, low in tone and volume and lacked normal modulation. She described her mood as 'worried and sad' and her affect (observed mood) was very depressed and anxious. She is completely preoccupied by her current legal difficulties. She finds it difficult to focus on anything else and described herself as 'very suicidal'. When I enquired as to any thoughts of taking her daughter with her, were she to complete suicide, she replied 'Definitely

not'. Her reasoning for this was that her daughter would get over the loss of her mother at this young age, and in the care of her uncle, but that it would be very destructive for her to lose her mother to prison and later to have to re-engage with her mother whenever her mother was released from prison. In terms of protective factors from suicide, she seems to have only the immediate care of her daughter to keep her from completing suicide. She has no spiritual beliefs that would serve as a barrier to suicide. She sees only the choice between 'ruining' her daughter's life by going to prison and subsequently re-emerging to upset her daughter further or giving her daughter to her brother, [Ad.], to raise so that [A.]'s only upset would be a short-term loss associated with her mother no longer being around. Her careful consideration of these options is of grave concern to me.

I see her as a much damaged lady having been reared by two alcoholic parents. She obviously suffers from a significant degree of anxiety, which is normal given her childhood experience. She is adamant that she will do whatever she can to protect her daughter from the effects of having a mother in prison, even if that means the loss of her mother through suicide which she sees as a short-term loss.

As regards a diagnosis, I believe that Ms. [S.] suffers with what was previously known as 'Double depression'. She has suffered with chronic low grade depression and anxiety (dysthymia) throughout her life, the result of her early adverse life existence. This is very commonly observed in children who have been abused in childhood as Ms. [S.] was, albeit by emotional deprivation and the anxiety of growing up with two unpredictable alcoholic parents. Her emotional neglect by her parents is obvious and explains why she is very 'black and white' or 'all or nothing' in her thinking. Her recent symptoms of anxiety and depression provide the "double" blow which she has sustained, leading to this atypical presentation of mixed anxiety and depression which would generally be considered to represent an Adjustment Disorder of mixed anxious and depressive sub-types.

She lacks the psychological insight to see the enormous potential for bad psychological outcome in the long-term for [A.] was she to end her own life. My recent information has been that she has already arranged for her daughter to be sent back to Poland to stay with her uncle. This is of great concern to me as it is consistent with the initial part of her suicide plan.

**Risk Assessment:**

1. Ms. [S.] is a very isolated figure with very little support and no family in this country. Her own family seem much damaged and the degree of support she is receiving is tenuous at best.

2. Ms. [S.] suffers with an Adjustment Disorder of mixed anxious and depressive sub-types with very little evidence of resilience in her personality. She certainly does not recognise any supportive traits. Her coping style, as evidenced by the way in which she dealt with the early collapse of her business, is an avoidant one. She cannot see that this is the coping mechanism that she is pursuing again, this time by avoiding the consequences of her actions by possible suicide.

3. Ms. [S.] has no real fear of death and does not believe in any life beyond this one. As such, it means that there are no consequences for her, and very few for her daughter, if she were to complete suicide.

4. Ms. [S.] does not believe that she would do anything other than 'ruin' her

daughter's life were she to face the charges, obtain a custodial term in prison and emerge back into her daughter's life in the future. Having had such a poor experience of life herself, as a result of her own extremely lacking parenting, she is not willing to risk her daughter's future. She believes that her own suicide would be the best possible outcome in the current situation.

5. Her suicidal plans are 'imminent', being 'on-going and unpredictable' but not necessarily immediate. I am greatly concerned however to hear from her solicitor that she has initiated the transfer of her daughter to her brother's care.

6. Risk assessment in this case is extremely complex because of the subject's particular constructs in relation to good and bad outcomes and the apparent lack of ability to see another way of dealing with this situation by using the support of her brother to mitigate the effect of a custodial sentence were it to be applied. I am conscious of the great size of Poland and that the likelihood of visits to see her mother in prison would be extremely limited given the economic and political circumstances of that country.

7. Having considered the obvious possibility that Ms. [S.] is using the threat of suicide to avoid the warrant being progressed, I remain of the belief that she is a lady who is not 'bluffing'. I believe that there is a substantive risk of her carrying out her threat to end her life, given her inability to see any other worthwhile alternative. This is a complex assessment albeit that it might not seem so. I deal with people who threaten to take their own lives almost every day of my working life and I have yet to lose a patient because I ignored their threat. On the other hand, I cannot say that this low suicide risk is due to anything other than the fact that I have resources available to me to offer ongoing support in the community to those who suffer with mental illness.

8. Ms. [S.]'s threat of suicide is clearly one which she has considered carefully, in her eyes, and I could not tell the Court that the risk will be anything other than 'high' were the warrant to be progressed. In that scenario, I would revert to my role under the Mental Health Act (2001) and have her committed to a place of safety under the terms of the Act until such time as she no longer poses a risk to herself by reason of mental disorder, being a severe Adjustment Disorder, in this case."

### **Additional Information Requested**

The applicant, in his role as Central Authority, separately requested additional information in respect of each warrant from both issuing judicial authorities (the District Courts in Opole, and in Wroclaw, respectively), concerning the reasons for the ostensible delays in these cases. The extent of the explanation provided is that contained in a letter providing additional information in relation to the 2007 warrant, dated 12th May, 2014, from the District Prosecutor's Office in Opole, which states *inter alia*:

"In view of ineffectiveness of search operations conducted in the territory of Poland in the period from 24.11.2004, with respect to the suspect [E.S.] on 21.10.2007 a European Warrant of Arrest was issued with the number III Kop 61/07, following which on 20.11.2007 an international search was instituted. Subsequently, from 08.04.2008 correspondence was conducted with the Interpol Office in London in the matter of the above European Arrest Warrant, providing on several occasions additional explanations as to the contents of this warrant. The conducted search was still ineffective.

After establishment of the place of stay of the fugitive in the territory of Ireland, the District Court in Opole sent on 06.07.2011 the European Arrest Warrant, which resulted in arrest of the suspect on 29.08.2013 in the territory of Ireland."

There has been no apparent engagement by either judicial authority with the evidence contained in the respondent's affidavit to the effect that her contact details in Ireland were provided to the Polish police in 2008 by the respondent's mother or with the respondent's assertion that shortly thereafter she personally contacted the police in XXX in response to their approach to her parents. Neither has there been any engagement with her evidence that her contact details were provided to the Polish embassy in Dublin as far back as 2006.

### **Relevant Statutory and Convention Provisions**

Section 37(1)(a) of the Act of 2003 provides:

"A person shall not be surrendered under this Act if—

(a) his or her surrender would be incompatible with the State's obligations under—

(i) the Convention,..."

Section 37(2) of the Act of 2003 defines "Convention" as follows:

"In this section—

"Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950, as amended by Protocol No. 11 done at Strasbourg on the 11th day of May, 1994."

Article 8 of the Convention 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 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."

### **Applicable Legal Principles**

In its judgments in *Minister for Justice and Equality v T.E.* [\[2013\] IEHC 323](#) and *Minister for Justice and Equality v R.P.G.* [\[2013\] IEHC 54](#), this Court conducted an extensive review of relevant Irish, English, European Court of Human Rights, and Court of Justice of the European Union ("the C.J.E.U.") case-law and sought to distil from that jurisprudence a series of principles for application both in that case and in future cases.

Among the cases reviewed were *Minister for Justice, Equality and Law Reform v. Gorman* [\[2010\] IEHC 210](#), [\[2010\] 3 I.R. 583](#); *Minister for Justice, Equality and Law Reform v. Gheorghe* [\[2009\] IESC 76](#); *Minister for Justice, Equality and Law Reform v. Bednarczyk* [\[2011\] IEHC 136](#); *Lauder v. United Kingdom* (Application no. 27279/95, 8th December, 1997) [\(1998\) 25 E.H.R.R. CD 67](#), [\[1997\] E.C.H.R. 106](#); *King v. United Kingdom* (Application no. 9742/07, 26th January, 2010) [\[2010\] E.C.H.R. 164](#); *Babar Ahmad and Ors. v. United Kingdom* (Application no. 24027/07, 10th April, 2012) [\[2012\] E.C.H.R. 609](#); *Huang v. Secretary of State for the Home Department* [\[2007\] 2 A.C. 167](#); *Zigor Ruiz*

*Jaso & Ors. v. Central Court of Criminal Proceedings (No. 5) of the National Court Madrid* [[2007](#)] [E.W.H.C. 2983](#); *Norris v. Government of United States of America (No. 2)*, [[2010](#)] [2 A.C. 487](#); *Z.H. (Tanzania) v. Secretary of State for the Home Department* [[2011](#)] [2 A.C. 166](#); *R.(H.H.) & (P.H.) v. Deputy Prosecutor of the Italian Republic, Genoa, also R.(F-K) v. Polish Judicial Authority* [[2013](#)] [1 A.C. 338](#); *In re Ciprian Vasile Radu* (Case C-396/11, C.J.E.U., 29th January, 2013) and *Minister for Justice and Equality v. Ostrowski* [[2013](#)] [I.E.S.C. 24](#), [[2014](#)] 1 I.L.R.M. 88 (in particular the judgment of McKechnie J.). This represents an indicative, but by no means exhaustive, list of the many cases and judgments reviewed.

As a result of its review, the Court was satisfied to set forth and adopt the following principles of law for application in the European Arrest Warrant context in cases where Article 8 of the Convention is engaged:

1. The test imposed by Article 8(2) is not whether extradition is on balance desirable but whether it is necessary in a democratic society;
2. There is no presumption against the application of Article 8 in extradition cases and no requirement that exceptional circumstances must be demonstrated before Article 8 grounds can succeed;
3. The test is one of proportionality, not exceptionality;
4. Where the family rights that are in issue are rights enjoyed in this country, the issue of proportionality involves weighing the proposed interference with those rights against the relevant public interest;
5. In conducting the required proportionality test, it is incorrect to seek to balance the general desirability of international cooperation in enforcing the criminal law and in bringing fugitives to justice, against the level of respect to be afforded generally to the private and family life of persons;
6. Rather, the assessment must be individual and particular to the requested person and family concerned. The correct approach is to balance the public interest in the extradition of the particular requested person against the damage which would be done to the private life of that person and his or her family in the event of the requested person being surrendered;
7. In the required balancing exercise, the public interest must be properly recognized and duly rated;
8. The public interest is a constant factor in the horizontal sense, i.e., it is a factor of which due account must be taken in every case;
9. However, the public interest is a variable factor in the vertical sense, i.e., the weight to be attached to it, though never insignificant, may vary depending on the circumstances of the case;
10. No fixed or specific attribution should be assigned to the importance of the public interest in extradition and it is unwise to approach any evaluation of the degree of weight to be attached to it on the basis of assumptions. The precise degree of weight to be attached to the public interest in extradition in any particular case requires a careful and case specific assessment. That said, the public interest in extradition will in most cases



be afforded significant weight;

11. The gravity of the crime is relevant to the assessment of the weight to be attached to the public interest. The graver the crime, the greater the public interest. However, the opposite effect, namely 'the lesser the crime the lesser the interest' may not follow in corresponding proportion. Where on the spectrum the subject offence may sit is an aspect of each case which must also be explored as part of the process;

12. The public interest in extraditing a person to be tried for an alleged crime is of a different order from the public interest in deporting or removing an alien who has been convicted of a crime and who has served his sentence for it, or whose presence in the country is for some other reason not acceptable. This does not mean, however, that the Court is required to adopt a different approach to Article 8 rights depending on whether a case is an extradition case or an expulsion case. The approach should be the same, but the weight to be afforded to the public interest will not necessarily be the same in each case;

13. Delay may be taken into account in assessing the weight to be attached to the public interest in extradition;

14. In so far as it is necessary to weigh in the balance the rights of potentially affected individuals on the one hand, with the public interest in the extradition of the requested person on the other hand, the question for consideration is whether, to the extent that the proposed extradition may interfere with the family life of the requested person and other members of his family, such interference would constitute a proportionate measure both in terms of the legitimate aim or objective being pursued and the pressing social need which it is suggested renders such interference necessary;

15. It is self-evident that a proposed surrender on foot of an extradition request will, if carried into effect, result in the requested person being arrested, being possibly detained in custody in this State for a period pending transfer to the requesting state, and being forcibly expelled from the State. In addition, he/she may have to face a trial (and may possibly be further detained pending such trial) and/or may have to serve a sentence in the requesting state. Such factors, in and of themselves, will rarely be regarded as sufficient to outweigh the public interest in extradition. Accordingly, reliance on matters which could be said to typically flow from arrest, detention or surrender, without more, will be of little avail to the affected person;

16. Article 8 does not guarantee the right to a private or family life. Rather it guarantees the right to respect for one's private or family life. That right can only be breached if a proposed measure would operate so as to disrespect an individual's private or family life. A proposed measure giving rise to exceptionally injurious and harmful consequences for an affected individual, disproportionate to both the legitimate aim or objective being pursued and the stated pressing social need proffered in justification of the measure, would operate in that way and in breach of the affected individual's rights under Article 8;

17. It will be necessary for any Court concerned with the proportionality of a proposed extradition measure to examine with great care, in a fact specific enquiry, how the requested person, and relevant members of that person's family, would be affected by it. In particular, it will be necessary

for the Court to assess the extent to which such person or persons might be subjected to particularly injurious, prejudicial or harmful consequences, and then weigh those considerations in the balance against the public interest in the extradition of the requested person;

18. Such an exercise ought not to be governed by any pre-determined approach or by pre-set formula; it is for the Court seized of the issue to decide how to proceed. Once all of the circumstances are properly considered, the end result should accurately reflect the exercise;

19. The demonstration of exceptional circumstances is not required to sustain an Article 8 type objection because, in some cases, the existence of commonplace or unexceptional circumstances might, in the event of the proposed measure being implemented, still result in potentially affected persons suffering injury, prejudice or harm. The focus of the court's enquiry should therefore be on assessing the severity of the consequences of the proposed extradition measure for the potentially affected persons or persons, rather than on the circumstances giving rise to those consequences;

20. Where the Article 8 rights of a child or children are engaged by a proposed extradition measure, the best interests of the child or children concerned must be a primary consideration. They may be outweighed by countervailing factors, but they are of primary importance;

21. If children's interests are to be properly taken into account by an extradition court, it will require detailed information about them and about the family as a whole, covering all considerations material to or bearing upon their welfare, both present and future. Primary responsibility for the adduction of the necessary evidence rests upon the party raising Article 8 rights in support of an objection to their surrender;

22. In an appropriate case, where it is satisfied that there are special features requiring further investigation to establish how the welfare of a child or children might be affected by a proposed extradition measure, and/or as to what the best interests of the child or children in question might require, an extradition court can, of its own motion, seek further evidence.

### **The Court's Analysis and Conclusions**

It is necessary in the first instance to assess and weigh the public interest in the respondent's extradition. It is then necessary to consider the degree to which the proposed extradition measure, *i.e.*, the proposed surrender of the respondent to Poland so that she might face trial for the various offences covered by the two European arrest warrants, will interfere with, and operate to the prejudice of, the family life of the respondent and her child. Having determined that, it is then necessary to balance the public interest in her extradition against those private interests.

If, upon a balancing of the relevant public and private interests, it appears that the proposed measure is disproportionate to the legitimate aims being pursued, and that it is not justified by a pressing social need in the circumstances of the case, then the Court ought to uphold the s. 37(1) objection, and not surrender the respondent, as to do so would breach her right and/or the rights of her children, to respect for family life as guaranteed by Article 8 of the Convention.

Conversely, if, upon a balancing of those interests, it appears that the proposed measure

is indeed proportionate to the legitimate aims being pursued, and continues to be justified by a pressing social need, the Court will be at liberty to surrender the respondent and will be obliged not to uphold the s. 37(1) objection.

In considering the public interest in the respondent's rendition, it is necessary to examine, in the first instance, the gravity of the offences to which the two warrants relate. In doing so, the circumstances of the offending conduct and the range of available penalties should be taken into account.

However, it would not be appropriate to measure the seriousness of the offence solely, or even substantially, by reference to the maximum penalty available unless there is reason to think that, as a matter of likelihood, the maximum penalty would be applied. That having been said, an executing judicial authority is faced with an immediate difficulty. An executing judicial authority will usually be ill-equipped to infer with any precision what sentence might in fact be imposed by a court in the issuing state for any particular offence, not least because sentencing policy is a matter for the issuing state. It can never be taken for granted that an issuing state will view a particular form of offending conduct in exactly the same way as it would be viewed here in Ireland, even assuming the executing judicial authority was in possession of all facts relevant to sentencing (which is rarely the case).

Nevertheless, while bearing these difficulties in mind, this Court considers that it is legitimate, and within the bounds of what is permissible, for an executing judicial authority engaged in assessing the seriousness of an offence for the purposes of weighing the public interest to be attached to a proposed rendition measure to attempt to estimate in a crude way where on the spectrum of potential custodial penalties a case is thought likely to fall, e.g., in the upper or lower half of the available range or, alternatively, in the lower third, middle third or upper third of the available range. However, it can do no more than that.

The majority of the offences arise under Article 286, s. 1 of the Polish Penal Code, a provision which generically criminalises conduct in the nature of deception which causes loss to another. In these particular cases, the alleged deception involves ordering goods from suppliers without having either the intention or ability to pay for them. The sums involved are not insignificant, but neither are they enormous. They are in the upper five figure range, measured in Polish Zloty. The Court is aware that the Euro to Zloty exchange rate is very approximately 1:4, or €1 = 4 PLN, as of the date of this judgment. Although the alleged victims were other business entities rather than private citizens, loss was certainly caused and it is reasonable to infer that such loss may well have caused not just inconvenience but real financial hardship to some of the victims. While the respondent has made some attempts at restitution, the precise amount repaid to date is unclear on the evidence. Such evidence, as has been placed before the Court, suggests that it is in the high three figure, or at most low four figure range, again measured in Polish Zloty.

Theoretically, these deception offences could attract up to eight years imprisonment. However, these cases could not by any yardstick be regarded as the worst manifestation of deceptive conduct. It appears to this court to be unlikely in those circumstances that the maximum sentence would be applied in the event that the respondent is convicted.

A possible aggravating feature is the number of broadly similar offences. However, there are also certain mitigating circumstances that might well be taken into account. It seems unlikely that the deception offences would, individually or cumulatively, attract a sentence in the upper half of the available sentencing range in circumstances where the respondent has no previous convictions (as has been confirmed to this Court), has attempted to make restitution and where there is nothing to suggest the existence of aggravating

circumstances beyond those mentioned.

Taking the nature of the offending conduct into account, the range of available sentences, and the Court's very approximate assessment as to where on that range the cases are likely to fall, the Court has reached the following conclusions. The deception type offences are neither minor offences nor gravely serious offences. They must be regarded as crimes of dishonesty of moderate seriousness, but towards the lower end of that subrange, e.g., at 3 or 4 on a scale of 0 to 10, where 0 to 2 represents minor offences, and 8 to 10 represents gravely serious offences.

The offence of obstructing the Court Bailiff carries up to five years imprisonment. Again, while this is by no means an insignificant offence, the circumstances in which it was allegedly committed were such that, in this Court's view, the maximum available penalty of five years imprisonment is unlikely to be applied. Beyond that, the most that can be indicated is this Court's belief that it is more likely than not that the actual sentence would be in the lower half of the available range, taking into account the absence of previous convictions, the other potential mitigating circumstances, and nothing to suggest the existence of significant aggravating circumstances.

All of the above having been said, the offence of obstructing the Court Bailiff is nonetheless also to be regarded as being an offence of moderate seriousness.

The fact that all of the offences are to be regarded as being of moderate seriousness is, at least in principle, indicative *per se* of a significant public interest in prosecuting the respondent and seeking to have her face trial, particularly when the matter is viewed from the perspective of the issuing state. The issuing state is entitled to maintain a police and criminal justice system and to charge and try persons who are alleged to have committed criminal offences within its territory. It would be inimical to that legitimate public interest if the alleged offender could seek to evade justice by simply crossing into the territory of another state. For that reason, there have long been extradition/rendition arrangements between states on the basis of bilateral or multi-lateral treaties, or international agreements. In recent years the member states of the European Union have all subscribed to the Framework Decision and now operate the simplified and more expeditious rendition arrangement that constitutes the European arrest warrant system. It is therefore reasonable and legitimate for the issuing state to seek to pursue the present respondent using that system and to seek to have the respondent surrendered to it on foot of European arrest warrants so that she may face trial for the offences to which those warrants relate.

However, there are two important features of these cases which are connected, and which have a bearing on the actual rating that must be afforded to the public interest in these cases. The first is the fact that the respondent was not under police investigation, at least to her knowledge, when she left Poland. She had not been interviewed or even approached by the police, not to mind having been charged. Moreover, there was no inhibition to her leaving Poland, and no requirement that she should notify anybody as to her intentions. Accordingly, she is not to be characterised as having left Poland as a fugitive from criminal justice. The second matter of importance is that, in both cases, and in one to a greater degree than the other, there has been significant ostensible delay in pursuing the respondent. The question for this Court is whether these factors, or some of them, bear on the question of whether there is, at this point, a pressing social need for the respondent's rendition. If there is no longer a pressing social need for that to happen, or if the social need for it to happen is less now than it might otherwise be, it may have the effect of reducing the weight to be afforded to the public interest considerations in this case.

In the case of the 2007 warrant, the offending conduct is alleged to have taken place on various dates between May 2001 and May 2004 in XXX in XXX Province. It is not known

when the Polish police in that locality first received a complaint about the conduct. We know from the respondent's affidavit that she came to Ireland in May 2004. It appears from Part (f) of the warrant that what is described as a "preparatory proceeding" was certainly underway prior to 18th November, 2004, on which date it was said to have been suspended, though for an unstated reason. Although one might speculate that this was because the authorities could not readily locate the respondent in the locality in which they were seeking her, the Court cannot rely on speculation and there is insufficient evidence to justify the drawing of an inference to that effect. Moreover, if that had been the case one would have expected the Deputy District Prosecutor to have said so in his additional information, dated 12th May, 2014, but he does not say so. The respondent's evidence, which is not contradicted, is that she was unaware that she was under investigation when she left Poland to come to Ireland, and she had not been contacted by the police at any stage prior to leaving.

According to the additional information, dated 12th May, 2014, search operations were conducted within Poland from 24th November, 2004, and we are told that up until the 27th September, 2007, when the first European arrest warrant in time issued, these had proved ineffective in locating her. We also know from the warrant that the District Public Prosecutor's Office in Strzelce Opolskie successfully sought a 14-day detention order in respect of the respondent from the District Court in Strzelce Opolskie on 4th April, 2006. This is the domestic decision on which the European arrest warrant is based. Following the issuance of the European arrest warrant on the 27th September, 2007, an international search for the respondent was instituted and the assistance of Interpol was called in aid.

The respondent's evidence is that she was not hiding from the Polish authorities at any stage and was living openly in Ireland at all times since her arrival here. She says that she engaged with the Polish embassy here in 2006 and made her exact whereabouts known when applying for a passport. The fact that she did apply for a passport at the embassy in Dublin in 2006 is borne out by evidence contained within the warrant itself. In Part (f) of the 2007 warrant, it is specifically noted that "[i]t comes out from the information of the County Police Headquarters in [XXX] that [E.S.] stays on the territory of Ireland and uses the passport number [XXX] issued on 4th April 2006 by the Consul of the Republic of Poland in Dublin". While it is not stated when the County Police Headquarters in XXX obtained this information, they certainly had it as early as 27th September, 2007, when the European arrest warrant was issued. Moreover, it is readily to be inferred that her exact residential address could have been obtained from the Polish embassy in Dublin from at least that time. Moreover, in circumstances where there has been no engagement whatsoever with the respondent's evidence that the police were also informed of her exact whereabouts by her mother in 2008, or with the respondent's own evidence that she personally made telephone contact with the police in XXX in 2008, the Court considers that it is justified in concluding, certainly in respect of the 2007 warrant, that the case put forward by the applicant on behalf of the issuing judicial authority that she could not be located, and was not located until relatively recently, simply does not stand up to critical analysis.

Although the first warrant in time was issued on 27th September, 2007, it was not transmitted to Ireland until 6th July, 2011. There has been no explanation for why it took almost four years to do so, particularly in circumstances where the respondent's location was actually known from 2008, and readily to be ascertained from at least as early as 27th September, 2007. Moreover, although this warrant was received in this jurisdiction on 6th July, 2011, following which it was presently promptly for endorsement by the Central Authority, and was duly endorsed by this Court on 27th July, 2011, it was then not executed until 29th August, 2013, for some unexplained reason. There may well have been a perfectly good reason for this but no explanation suggesting a good reason has been provided to the Court.

In the case of the 2010 warrant, the offending conduct all took place in April 2002 in XXX.

Again, it is not known when the Polish police in that locality first received a complaint about the conduct. We know from the respondent's affidavit that she came to Ireland in May 2004 and that she contends that she was unaware of any investigation into these matters at that time. She specifically contends that she had never been contacted by the Polish police in connection with the matter. The warrant was not issued until 3rd March, 2010, and there is no explanation as to why it took so long to do so.

We are told in Part (f) of this warrant that the Prosecutor of the District Prosecutor's Office in Wroclaw - Krzyki has been conducting investigations into the matter and that "[t]aking into consideration the fact that the suspect evades judiciary organs, thus being a fugitive from justice, by not staying at her permanent address, it was not possible to serve her the decision of presentation of charges or interview her as a suspect and execute trial proceedings with her participation. The proceedings were suspended because it proved impossible to ascertain the suspect's place of residence." Further information was requested from the District Court in Wroclaw but none has been provided. Specifically, there has been no engagement with the respondent's contention that she was never contacted by the authorities before she left Poland for Ireland, and that there was no inhibition to her doing so. Seemingly, the basis for deeming her a fugitive was the inability to contact her at her "permanent address". However, there is nothing to suggest that she was under any legal obligation to notify police or anybody else in Poland of her decision to leave the country and, in doing so, to change her address. She was not charged nor was she to her knowledge even under investigation, and there is nothing to suggest that she was obliged to notify anybody in officialdom in respect of her plans.

We are further told in Part (f) of the warrant that:

"By means of the decision dated 21 December 2009, District Court for Wroclaw-Krzyki, in the case: File Number: VII Kp 587/09 ordered a preventative means in form of temporary arrest of [E.S.] for the period of 14 days since the date of detention. On 2 February 2010 Prosecutor of District Prosecutor's Office for Wroclaw-Krzyki Wschód, File Number: Ds. 814/04 ordered the search for the suspect by means of a wanted notice.

Moreover, in the course of the proceedings it was ascertained that District Court in Opole on 21 September 2007 issued the European Arrest Warrant in relation to [E.S.] as part of preliminary proceedings conducted by Prosecutor of District Prosecutor's Office in Strzelce Opolskie, File Number: 2 Ds. 779/04.

In the light of these circumstances, District Prosecutor's Office in Wroclaw filed a motion to District Court in Wroclaw in the matter of application of European Arrest Warrant (hereinafter: ENA) in relation to the suspected person [E.S]."

Once again there is no explanation for why it took from 2002 until 2009 to bring the matter before the District Court of Wroclaw, and as to why very basic enquiries that could have ascertained the respondent's whereabouts were seemingly not made before then, e.g., enquiries addressed to the police in XXX, or to the respondent's parents, seeking details of the respondent's whereabouts and location. The extent of the search seems to have been to check if she was at her last known "permanent address".

This warrant was transmitted to Ireland at the same time as the 2007 warrant, and it was endorsed by this Court on the same date as that other warrant, *i.e.*, on 27th July, 2011. The criticisms made in relation to the 2007 warrant with regard to what happened (or more correctly what did not happen) in this country after it was endorsed, apply with equal force to this warrant.

I am satisfied that there has been considerable delay in these cases and that from at least the date of the issuance of the first warrant in time in September 2007, such delays, which have occurred both in Poland and in Ireland, have been largely culpable and unjustified. In the case of both warrants, the Polish authorities, *i.e.*, those in Opole and in Wroclaw, respectively, have failed to adequately account for their delays from September 2007 (when the respondent's whereabouts was either actually known to, or was at least available to be ascertained by, the police in XXX) until 6th July, 2011, when the warrants arrived in Ireland. The Irish authorities have failed to adequately account for their delay from 27th July, 2011, until 29th August, 2013. Overall, more than ten years have elapsed since the last incident of offending conduct described, and more than thirteen years have elapsed since the earliest incident of offending conduct. This is in circumstances where the respondent is wanted for trial and has a right to an expeditious trial. In circumstances where the respondent did not leave Poland as a fugitive and was unaware that she was under investigation, and has not sought to evade either the Polish police or the Gardaí in any way, none of the ostensible delays that have occurred can be attributed to her conduct or behaviour. She bears no personal responsibility for such delays as have occurred.

It can be stated in general terms that the effect of delay in any case will very much depend on the circumstances of the case. Delay will rarely have the effect of completely negating any social need for a rendition to be carried into effect. By the same token, there will always be cases where the public interest in a rendition is overwhelming or, at any rate, is so strong that delay could not operate to dilute it in a meaningful way. However, between those two extremes, gross overall delay, or significant ostensibly culpable delay, or a combination of both, may operate to reduce the pressure based upon social need for a rendition to be carried into effect. It all depends on the circumstances of the case.

It has been argued on behalf of the respondent that the degree of delay in these particular cases, both the overall delays and the culpable components of those delays, is such that this Court would not be justified in concluding that there is any continuing pressing social need for this respondent's rendition.

In the Court's view the degree of delay in these cases is not so great as to justify it in arriving at that conclusion. Indeed, it does not approach what would be required to justify that view. However, the Court does consider that to the extent that there continues to be some social need for the respondent's extradition, it must now be regarded as existing at a much diluted level on account of the significant and unexplained delays which are patent in this case.

In conclusion with respect to the public interest side of the equation, while a significant public interest in the respondent's rendition exists in principle, it is no longer accompanied by the strongly pressing social need that typically exists for such a rendition to be carried into effect. Rather, the pressure for that to happen, exerted by such residual social need as continues to exist, is very much reduced. Overall, the Court has concluded that what would otherwise be a significant public interest in the respondent's rendition now requires to be downgraded in the circumstances of this case, such that at the present time there exists no more than a moderate interest public interest in that occurring.

It is necessary at this point to move to the private interest side of the equation. The private rights and interests of the respondent and her daughter A. must also be considered and taken into account. The respondent alleges that to surrender her in the circumstances of this case would be a disproportionate measure in terms of the legitimate aim being pursued by the issuing state. The contention is that the proposed surrender of the respondent would have such profound consequences for the respondent and/or her daughter A., in terms of the respondent's mental health, and also in terms of the maintenance of the mother/daughter relationship and the care and nurture of A., as to be

unjustified and in breach of their rights to respect for family life as guaranteed under Article 8 of the Convention.

It is clear that the respondent has put down appreciable roots in this country. She is here now for approximately ten years, and for almost all of that time has been in gainful employment. Indeed, she has sought to acquire qualifications to improve her job prospects, and is studying for and hopes to qualify as an Accounts Technician. She currently holds a position of significant responsibility with a reputable supermarket franchise. She has been in that position now for some time and is apparently held in high regard by her employers.

The respondent is a single mother of a little girl, A., who will be six on 1st November, 2014. They live together in a rented apartment, of which the respondent is now sole tenant. A. is herself an Irish citizen, having been born in Ireland, and notwithstanding the Polish ethnicity of both of her parents. Her father is no longer involved in either her life or the life of her mother, the respondent. A. is in national school in the area in which her mother works. She has been predominantly exposed to Irish society and culture, although Polish is spoken at home and A. understands Polish. It is clear from the evidence that the respondent is currently providing excellent nurture and support for her daughter, and that their relationship is exceptionally close.

The respondent has a number of mental health issues. The Court has already extensively reviewed the medical evidence and it is not necessary to repeat it. In summary, the picture is one of a psychologically vulnerable young woman who has suffered from chronic low-grade depression and anxiety throughout her life, and who is now experiencing increased depression and anxiety largely in reaction to concerns arising from the present proceedings and worry about what may happen to A. in the event that she, the respondent, is surrendered. The Court is satisfied that there is strong medical evidence, which is not challenged, that the respondent has had, and continues to have, serious suicidal ideation, and that there is substantial concern that she may indeed take her own life. Dr. O.D., who does not regard the respondent as "bluffing", characterised her situation thus:

"In terms of protective factors from suicide, she seems to have only the immediate care of her daughter to keep her from completing suicide. She has no spiritual beliefs that would serve as a barrier to suicide. She sees only the choice between 'ruining' her daughter's life by going to prison and subsequently re-emerging to upset her daughter further or giving her daughter to her brother, [Ad.], to raise so that [A.]'s only upset would be a short-term loss associated with her mother no longer being around. Her careful consideration of these options is of grave concern to me."

While it cannot be the sole determining factor, it would clearly be in the best interests of A. for the respondent not to be surrendered. Both mother and daughter are extremely close, and to separate them in circumstances where the child has no significant relationship with any other adult is likely to be profoundly distressing, and potentially damaging, for her. The experts from XXX Psychological Services have opined that the respondent's separation from her daughter would have a devastating and irreversible effect on A.'s life and development, both presently and into the future.

It is also a matter of significance that this is not a case where the respondent relies upon roots put down in circumstances where she knew that she was being pursued by the issuing state, and in the knowledge that she was in peril of facing a rendition request at any time. The evidence is all one way that the respondent was not aware that she was the subject of any criminal investigation at the time at which she left Poland, and had no reason to believe that she would be sought for criminal prosecution. The Court accepts her deposition, in the absence of evidence to the contrary, that she merely believed that she was being pursued for civil debts, and that, even in regard to that, she intended to



make restitution when in a position to do so. There is evidence of some actual restitution being made, although it appears to fall a long way short of being full restitution. Nevertheless, the fact of it having been made in circumstances where the respondent was unaware of any criminal investigation in Poland, or of potential charges in Poland, lends some support to her claims, and is inconsistent with the contention that she fled Poland to avoid criminal prosecution. If she had indeed fled to avoid criminal prosecution, she would have been extremely foolish to risk disclosing her whereabouts by making small restitution payments. Indeed, her entire behaviour, and that of her parents, is inconsistent with the contention that she left Poland as a fugitive. In this Court's assessment, the respondent was justified in believing that she was free to put down the roots in this jurisdiction that she has put down, and she is now significantly prejudiced by the delay of the authorities in pursuing her.

In conclusion, this Court is satisfied that the respondent's surrender will be injurious and harmful, as opposed to distressing and difficult, in its consequences to those concerned. Having regard to the fact that there exists only a moderate public interest in the respondent's rendition, I am satisfied that the adversities that may have to be faced in the event of the respondent being surrendered are such as to render the proposed surrender a disproportionate measure in all the circumstances of the case. The Court will, in those circumstances, uphold the s. 37(1) objection and refuse to surrender the respondent.

---

**BAILII:** [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

URL: <http://www.bailii.org/ie/cases/IEHC/2014/H376.html>