

THE HIGH COURT

RECORD NUMBER 2018/136 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

IVO SMITS

RESPONDENT

Judgment of Mr. Justice Paul Burns delivered on 14th July, 2020.

1. By this application, the applicant seeks an order for the surrender of the respondent to The Republic of Latvia ("Latvia") pursuant to a European arrest warrant ("the warrant") dated 8th June, 2015, issued by the Prosecutor General's Office of the Republic of Latvia ("the Prosecutor General's Office") as the issuing judicial authority. The surrender of the respondent is sought for the purpose of serving a sentence of 2 years' imprisonment less time in custody from 15th January, 2008 to 16th January, 2008 (two days).
2. The warrant was endorsed by the High Court on 30th April, 2020 and the respondent was arrested and brought before this Court 13th July, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. This was not put in issue by the respondent.
4. I am further satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. I am satisfied that correspondence exists between the offences in respect of which the sentence was imposed and offences under Irish law and no issue was taken by the respondent in that regard.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 are met. The term of imprisonment in respect of which the respondent's surrender is sought is in excess of four months.
7. The respondent delivered points of objection dated 10th September, 2018 which listed a large number of grounds. At hearing, Counsel for the respondent pursued three grounds of objection which can be summarised as follows:-
 - (a) there was a lack of effective judicial involvement or protection in respect of the issuing of the warrant;
 - (b) surrender was prohibited by s. 37 of the Act of 2003 as it would involve a breach of the respondent's rights under article 8 of the European Convention on Human Rights ("the Convention"); and
 - (c) surrender was prohibited by s. 37 of the Act of 2003 as it would involve a breach of the respondent's rights under article 6 of the Convention.

The submissions on behalf of the respondent interlinked these objections, particularly with reference to article 8 rights under the Convention being referenced in respect of objections (a) and (b) above.

Issuing of the European Arrest Warrant

8. Counsel for the respondent submitted that the warrant was issued by the Prosecutor General's Office and, on its face, did not indicate any judicial oversight in respect of its issue. Reliance was placed upon the decision of the Court of Justice of the European Union ("the CJEU") in *PF* (Case C-509/18), 27th May, 2019 as well as the decision of the High Court in *Minister for Justice and Equality v. Lisauskas* [2020] IEHC 121. It was submitted that on foot of those cases, where the warrant was not issued by a judge, in order to meet the necessary criteria of an issuing judicial authority, an entity such as the Prosecutor General's Office had to be both independent of the executive and subject to judicial oversight, such as by way of right to an appeal to a judge regarding the issuing of the warrant. He submitted that it was important that the issue of the warrant be proportionate and that the assessment of proportionality should be subject to judicial input or oversight. Counsel for the respondent conceded that where the warrant was issued simultaneously or almost immediately after the issue of a national arrest warrant by a judge, then there is little risk that the assessment of proportionality would be out of date, but if the warrant was issued long after the national arrest warrant, the proportionality assessment originally made by the Court could have become obsolete and the circumstances arising subsequently may be sufficient to warrant its amendment or revocation. In this regard, he relied upon the opinion of the Advocate General in *JR and YC* (Joined Cases C-566/19 and C-626/19), 12th December, 2019 which, at para. 80 thereof, contained a statement to that effect. Counsel did however concede that this aspect of the Advocate General's opinion did not appear to have been expressly adopted by the CJEU in its decision.
9. The respondent relied upon a report from a Latvian lawyer, Jelena Kvjatkovska, to the effect that under Latvian law, it is not possible to review or appeal to a court a decision taken by the Prosecutor General's Office to issue a European arrest warrant.
10. Counsel for the respondent accepted that, on first reading, the decision of the CJEU in *ZB* (Case C-627/19 PPU), 12th December, 2019 appeared to be against him insofar as it seemed to decide that in cases where surrender is sought on foot of a European arrest warrant for the purposes of serving a sentence, as opposed to prosecution for an offence, it is not necessary that there be a separate judicial remedy in respect of the issuing of the European arrest warrant by an authority which is not itself a court. However, he sought to distinguish or limit the reasoning of the CJEU in *ZB* to cases where the requested person had been brought before a court in the executing member state within a short period of the imposition of the sentence of imprisonment and the issuing of the European arrest warrant. In the present case, the respondent had been sentenced to a two-year term of imprisonment on 29th May, 2008 which was suspended in its entirety but which was activated on 20th October, 2008 due to a breach of the conditions of the suspended sentence. The activation of the suspended sentence was appealed but the appeal court

affirmed the activation on 17th December, 2008. Thus, the national arrest warrant was issued and affirmed on appeal in December 2008, but the European arrest warrant was not issued until 8th June, 2015 and the respondent was not arrested until 13th July, 2018.

11. It was submitted that whatever proportionality assessment took place in 2008 when the national arrest warrant was issued, the respondent's circumstances had changed in the interim and a further proportionality assessment should have been made when the European arrest warrant was issued in 2015. It was further submitted that even if one assumed that a proportionality assessment had taken place in 2015, the respondent's circumstances had changed between 2015 and 2018, and in particular the respondent had married an Irish national in Ireland and established a family life here, so that a further proportionality assessment was necessary at the time of execution of the warrant. It was submitted that as there was no right of review or appeal of the decision to issue the European arrest warrant before the Latvian courts upon the respondent's surrender, there was a lack of effective judicial supervision as required under the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, as amended ("the Framework Decision"), and that surrender should be refused.
12. Counsel for the applicant submitted that public prosecutors are competent to issue European arrest warrants once a legal framework is in place; (a) to prevent the risk of prosecutors being subjected to individual instructions from the executive, and (b) to ensure there is effective judicial protection in consideration of the necessity and proportionality of issuing the European arrest warrant. He relied upon the decisions of the CJEU in *PF*, and also in *OG* and *PI* (Joined Cases C-508/18 and C-82/19), 27th May, 2019. He also relied upon the decision of the High Court in *Lisauskas*. It was further submitted that the CJEU held in *JR and YC* that effective judicial protection was ensured where the judge who issued the national arrest warrant also requested the Public Prosecutor to issue a European arrest warrant at the same time or subsequently. It was submitted that at this point in the procedure, the judge assessed that the conditions for issuing the European arrest warrant were met, including its proportionality.
13. It was submitted on behalf of the applicant that effective judicial protection was ensured despite the lack of a mechanism to appeal the decision to issue the warrant. It was pointed out that in the present case, additional information received from the issuing member state dated 17th May, 2019 indicated that the Prosecutor General's Office had issued the European arrest warrant on foot of a proposal from the Court. It stated:-

"On 17 April 2015, the court provided the Prosecutor General's Office of the Republic of Latvia (hereinafter referred to as – the Prosecutor General's Office) with the proposal on the issuance of European arrest warrant in respect of I. Šmits."
14. In light of this, it was submitted that there had been judicial input into the issuing of the warrant in such manner, and at such time as to meet the requirements for effective judicial protection and judicial oversight as set out in *JR and YC*.

15. Counsel on behalf of the applicant also submitted that there was an important distinction to be drawn between European arrest warrants seeking surrender for the purposes of prosecution and European arrest warrants seeking surrender for the purposes of serving a sentence. It was submitted that on foot of the decision of the CJEU in *ZB*, in cases seeking surrender for the purposes of serving a sentence, it was not necessary that there be a separate judicial remedy against the decision of a non-judicial authority to issue a European arrest warrant and that the question of proportionality was answered by a demonstration that the minimum gravity requirement had been met by the sentence of not less than four months having been imposed by a court.
16. I am satisfied that in this particular instance, the issuing of the warrant by the Prosecutor General's Office was taken on foot of a proposal of a court following receipt by the Court of information regarding the alleged residence of the respondent in Ireland. According to the additional information dated 17th May, 2019, this proposal was made by the Court on 17th April, 2015 and was followed by a request on 11th May, 2015 from the Prosecutor General's Office to the Court to provide additional materials which the Court provided on 25th May, 2015 and the warrant was issued on 8th June, 2015. In such circumstances, there was clearly sufficient judicial input into the issuing of the warrant, including the proportionality of issuing same, as to satisfy the requirements as set out in *JR and YC*. I am therefore satisfied that the respondent's objection to the issuing of the warrant by the Prosecutor General's Office in Latvia should be dismissed.
17. I am further satisfied that, applying the principles set out in *ZB*, this warrant was validly issued with sufficient judicial protection, including an assessment of the proportionality of its issuing. In *ZB*, surrender was sought for the purposes of enforcement of a custodial sentence. The European arrest warrant had been issued by a public prosecutor in Belgium who acted independently but whose decision to issue a European arrest warrant was not subject to the possibility of a separate appeal against that decision. The court in the Netherlands, the executing member state, sought the opinion of the CJEU as to whether it was required that there be an effective judicial protection against the decision to issue the warrant and in particular the proportionality of such a decision.
18. Unfortunately, at the time of the hearing and judgment herein, an official translation of the judgment of the CJEU was not to hand, however the official Journal of the European Union had translated the operative part of the judgment as follows:-

"Council Framework Decision 2002/584/JHA of June 13, 2002 on the European arrest warrant and the surrender procedures between State Members, as amended by Council Framework Decision 2009/299/JHA, of February 26th, 2009, must be interpreted as meaning that it does not preclude the legislation of a Member State which, while it attributes jurisdiction to issue a European arrest warrant for the execution of a penalty on an authority which, while participating in the administration of justice of that State Member, is not itself a court, does not provide for the existence of a separate judicial remedy against the decision of that authority to issue such a European arrest warrant."

19. In its judgment, the CJEU indicated at para. 36 that an executing member state could presume that the decision to issue a European arrest warrant for an immediately enforceable sentence of imprisonment meets the requirements of the Framework Decision since the requested person has benefited from all the guarantees specific to the imposition of such a sentence and, in particular, those resulting from fundamental rights and fundamental legal principles referred to in article 1(3) of the Framework Decision:-

"En effet, l'existence d'une procédure judiciaire antérieure statuant sur la culpabilité de la personne recherchée permet à l'autorité judiciaire d'exécution de présumer que la décision d'émettre un mandat d'arrêt européen aux fins de l'exécution d'une peine est issue d'une procédure nationale dans le cadre de laquelle la personne faisant l'objet d'un jugement exécutoire a bénéficié de toutes les garanties propres à l'adoption de ce type de décision, notamment de celles résultant des droits fondamentaux et des principes juridiques fondamentaux, visés à l'article 1er, paragraphe 3, de la décision-cadre 2002/584.

20. The CJEU indicated at para. 38 that any question as to the proportionality of the decision to issue the European arrest warrant is answered by a demonstration that the minimum gravity requirement had been met by a sentence of not less than four months having been imposed:-

"Par ailleurs, lorsqu'un mandat d'arrêt européen est émis en vue de l'exécution d'une peine, sa proportionnalité résulte de la condamnation prononcée, laquelle, ainsi qu'il ressort de l'article 2, paragraphe 1, de la décision-cadre 2002/584, doit consister en une peine ou en une mesure de sûreté d'une durée d'au moins quatre mois."

21. Counsel on behalf of the respondent sought to distinguish the present case from *ZB* on the basis that in *ZB*, there had been a close proximity in time between the issuing of the European arrest warrant and the arrest of the requested party on foot thereof, so that no significant change of circumstances was likely to have occurred between the date of issue and the date of arrest such as might impact upon the question of proportionality. He referred to the decision of the Advocate General in *ZB* and in particular at paras. 29-32:-

"Therefore a conviction will not inevitably be followed by an EAW: the trial court (or any other competent court), as the court responsible for granting effective judicial protection, must decide whether to approach the executing member state for the surrender of the convicted person, based on the criterion of proportionality, or whether to elect not to do so.

In that context, the time elapsed between the sentence and the issue of the EAW may be relevant. In some cases, there will be a risk of being out of time, even if the assessment of the proportionality of the EAW was undertaken during sentencing.

If there is a delay in issuing the EAW, the implied or express assessment of proportionality contained in the judgement may have been superseded. In assessing the proportionality of an EAW, one of the determinants is the possible length of any period spent in custody in the executing member state; this period must be taken into account when considering whether or not the issue of an EAW is proportionate, having regard to the requested person's circumstances and the gravity of the offence for which he has been requested.

Similarly, the possibility cannot be discounted that, at the point when the EAW is issued, the person requested has established a sufficient link with the executing member state in order for framework decision 2008/909/JHA to apply. In this case, consideration would have to be given to whether the sentence for which the EAW is been issued could be served in that member state."

22. In its judgment, the CJEU did not adopt this part of the opinion of the Advocate General and on that basis, one might conclude that it deliberately did not do so. In any event, such reasoning does not make up part of the decision in *ZB*. I see nothing in the present case which materially distinguishes it from the reasoning in *ZB*, and on foot of the decision in *ZB*, I dismiss the respondent's objection in respect of the issuing of the warrant.
23. For the purposes of completeness, I should say that even if this Court was to adopt the reasoning of the Advocate General in *ZB* as regards lapse of time and its possible impact upon the question of proportionality in respect of a European arrest warrant seeking surrender for the purpose of serving a sentence, the matters put forward by the applicant in that regard are not of such weight or significance as could require a reversal of the decision to issue the warrant in this case. The applicant refers to the fact that he married an Irish national in Ireland in September 2017 with the permission of the Polish authorities, that he and his wife are trying to have a baby, that he has been in employment, that he participates in the local community and that he suffers from problems in relation to his back which have required medical attention, including surgery. I am not satisfied that those factors raise any risk that surrender would represent such an interference or disruption to the respondent's family life as could constitute a breach of his article 8 rights.

Section 37 of the Act of 2003 and Articles 6 and 8 of the Convention

24. The Court will deal with both of these submissions together as the argument put forward at hearing on behalf of the respondent linked the two submissions.
25. Counsel on behalf of the respondent submitted that the surrender of the respondent would be in breach of the State's obligations under the Convention, in particular articles 6 and 8 thereof. As regards his article 8 rights, it was submitted that as a result of a delay of approximately three years between the issue of the warrant and execution thereof, the respondent's right to a family life in Ireland which he had established in the interim would be unlawfully interfered with or breached if he were surrendered. It was emphasised that the respondent had obtained permission from the Polish authorities to marry an Irish

national in September 2017, that he and his partner were seeking to start a family and had only a limited window of opportunity in that regard due to his wife's medical condition, and that he was well settled in his local community in Ireland, working and participating in various community activities. He suffers from a back condition that required surgery. As regards his article 6 rights, it was submitted that in the absence of a mechanism whereby he could argue the question of proportionality in respect of the issue of the warrant before the Latvian courts, he was either entitled to argue same before the Irish courts, or alternatively that a lack of such a mechanism in Latvia amounted to a breach of his fair trial rights under article 6 of the Convention and therefore surrender should be refused.

26. The relevant part of s. 37 of the Act of 2003 provides:-

"(1) 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, or

(II) the protocols to the convention,

(b) his or her surrender would constitute a contravention of any provisions of the Constitution (other than for the offence specified in the European arrest warrant is an offence to which section 38(1)(b) applies)..."

27. It was submitted that the Supreme Court, in *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, left open the possibility of a refusal to surrender on grounds of proportionality in circumstances where the requested person would have no opportunity to make such arguments before the court of the issuing member state upon surrender. It was further submitted that the Supreme Court recognised a prohibition on the surrender of a requested person in *Vestartas* where the issuing member state did not provide a mechanism whereby the proportionality of the serving of the sentence could be adjudicated upon in judicial proceedings. It was submitted that the issuing member state had given no indication that such a mechanism would be available to the respondent, and an expert report obtained by the respondent in relation to the relevant Latvian law indicated that the respondent would have no right of appeal or review in respect of the issuing of the warrant.

28. Counsel on behalf of the applicant submitted that no such principle had been enunciated in *Vestartas*. Furthermore, it was submitted that the circumstances put forward by the respondent were in no way sufficient to raise any likelihood that surrender would amount to a breach of his rights under article 6 or 8 of the Convention.

29. In *Vestartas*, the surrender of Mr. Vestartas was requested by the Republic of Lithuania to serve the remainder of a prison sentence due to a breach of his parole conditions. Mr. Vestartas was born in 1989. The offences had been committed between 2003 and 2006. He had been released on parole in 2009 and his parole was revoked in 2011. Mr.

Vestartas came to Ireland in late 2011 or 2012. The European arrest warrant was issued in 2013 and a replacement warrant was issued in 2016. Mr. Vestartas and his partner had made a life in Ireland for themselves and their two children who are Irish citizens. Both he and his partner were in employment and the children were well settled. The High Court had refused surrender following a type of proportionality analysis of the offences, the sentence, any delay and the respondent's family circumstances. The Supreme Court overturned the High Court decision emphasising that only in the most exceptional or egregious cases would delay alter the public interest in surrender. The Supreme Court emphasised that the High Court is not to engage in a balancing exercise where public and private interests are placed equally on the scales. The Supreme Court held at para. 94 that only in truly exceptional cases grounded on cogent evidence would article 8 rights justify a refusal of surrender:-

"For an article 8 defence to succeed, it can only be on clear facts based on cogent evidence. The evidence must be sufficient to rebut the presumption contained in s. 4A of the act (see para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s. 37(1), they must be such as would render an order for surrender 'incompatible' with the State's obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights, referred to in article 8(1), was such as to supervene the limitations on the right contained in article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."

30. The Supreme Court found no exceptional factors such as would bring the case within the parameters of exceptionality where the public interest in surrender would be outweighed by article 8 rights.
31. It should be noted that it was a feature of *Vestartas* that the issuing member state had indicated that Mr. Vestartas had not been served personally with the decision of the Lithuanian court revoking his parole in 2011 but that he would be served with a copy of same upon surrender and would have seven days within which to request a retrial or appeal which would allow the merits of the activation of sentence to be re-examined and could lead to the original decision being reversed. The Supreme Court appeared to take a certain degree of comfort from the existence of such a mechanism and MacMenamin J. stated at para. 96:-

"Were it to be the situation that, on surrender, the respondent would be entirely shut out from raising these circumstances, this might be a different case. Arguably, such a preclusion would be a denial of fundamental rights."

32. Referring to the availability of an appeal, MacMenamin J. further stated at paras. 98-100:-

"These are important considerations regarding future compliance with fundamental rights in the event of the respondent's surrender. There is no evidence that the respondent would be precluded from raising any or all of the features of the case in the courts of the Republic of Lithuania."

On the basis of s. 4A of the 2003 Act, recited at para. 30 earlier, and the absence of any contrary evidence, this Court must presume compliance with the Framework Decision and the protections it contains. It must presume that any determination in Lithuania of what part, if any, of the balance of the sentence the respondent will now have to serve after a substantial lapse of time will be a judicial decision, following a proceeding where the respondent will be able to fully exercise his rights of defence, or mitigation, in an effective manner and thereby influence any final decision which could potentially lead to loss of freedom.

*No case has been made that, on surrender, a new hearing as to sentence or penalty in the Lithuanian courts will have any predetermined outcome; rather, it will be decided on the basis of the facts then adduced [see, *Tupikas* (Case C-270/71; 10th August, 2017) at paras. 78-80, and *Ardic* (Case C-571/71 PPU; 22nd December, 2017) at para. 76].”*

33. I find that the article 8 factors relied upon by the respondent fall far short of the concept of exceptionality as set out by the Supreme Court in *Vestartas*. It is an unfortunate fact that the deprivation of the liberty of a requested person almost invariably causes significant disruption to the family life of both that person and his or her family members. There is nothing in the circumstances of the respondent herein to take this case outside of the norm and to render it truly exceptional such that his surrender would be incompatible with the State’s obligations under article 8 of the Convention or the significant public interest thresholds set out by the Act of 2003.
34. As regards the lack of a judicial mechanism in Latvia for a review of proportionality, I am not convinced that the judgment in *Vestartas* goes as far as is submitted on behalf of the respondent. While it was a factor in that case that the issuing member state had indicated that Mr. Vestartas would have an entitlement to an appeal, I do not read the judgment as holding that in the absence of such an appeal mechanism, surrender would necessarily have been refused. Nor do I take the judgment as holding that it is a prerequisite to surrender for the purposes of serving a sentence, or part thereof, that the issuing member state must provide such an appeal or review mechanism by a court. For instance, a member state may provide for an application to a parole board for periodic review by such board, which while not a judicial entity, may nevertheless provide sufficient protection of a requested person’s rights. However, before such considerations could arise in a particular case which would warrant the Court embarking on an enquiry in respect of same, the respondent would have to adduce cogent evidence that there was a real risk that his article 8 rights would be breached if surrendered.
35. As regards the activation of a suspended sentence, it is worth noting that the Supreme Court confirmed in *Minister for Justice and Equality v. Lipinski* [2018] IESC 8, based on the decision of the CJEU in *Ardic*, Case C-571/17 PPU, at para 3.7:-

“It is clear, therefore, that a hearing at which a suspension of sentence is revoked on grounds of infringement of conditions attaching to that suspension is not considered to be part of a ‘trial resulting in the decision’ for the purposes of the

Framework Decision unless the revocation decision changes 'the nature or the level of the sentence initially imposed'. If the consequence of the revocation is to alter the sentence originally imposed then different considerations may apply."

36. Thus, if a requested person had been present at the hearing at which the sentence had been initially imposed, there is no requirement that the European arrest warrant must set out the various matters as indicated in article 4A of the Framework Decision or s. 45 of the Act of 2003, including matters relating to retrial or appeal.
37. It is also worth noting that article 4A of the Framework Decision and s. 45 of the Act of 2003 only require an issuing member state to inform a requested person of his right to a retrial or appeal, and the timeframe in which to bring same, following surrender in circumstances where he did not appear at the trial resulting in the decision and he was not personally served with the decision, i.e. the initial decision imposing the sentence of imprisonment as opposed to the activation of same as per *Lipinski*. It appears therefore that when surrender is sought to serve an activated sentence in circumstances such as in *Lipinski*, article 4A of the Framework Decision does not envisage a requirement to inform of a right of appeal or re-hearing because there is no such automatic right. I do not consider the decision in *Vestartas* as seeking to establish a right of appeal in such cases. Nor do I consider the decision as seeking to establish a right of appeal in all other cases where surrender is sought to serve a sentence.
38. I read the judgment in *Vestartas*, not as setting a prerequisite in all cases where surrender is sought to serve a sentence, but rather as leaving open the possibility that in certain cases, where cogent evidence has been adduced to support the contention that there is a real risk of a breach of a requested person's rights under article 8 of the Convention, the absence of a judicial appeal or review mechanism might lead to a refusal to surrender. For instance, a member state may provide for an application to a parole board for a periodic review which, while not a judicial entity, may nevertheless provide sufficient protection of a requested person's rights.
39. In *Minister for Justice and equality v. J.A.T. (No. 2)* [2016] IESC 17, the Supreme Court was faced with an objection to surrender on the grounds that it would be incompatible with the State's obligations under article 8 of the Convention, and thus prohibited by s. 37 of the Act of 2003, in circumstances where the respondent had a dependent adult son who suffered from paranoid schizophrenia and in respect of whom the respondent was the primary carer. There was also an abuse of process argument made. While the Supreme Court ultimately refused surrender, O'Donnell J. emphasised the exceptional nature of a successful objection to surrender based upon article 8 rights at para. 10:-

"It seems to me to be relevant that this is a second application, and moreover, that there has been avoidable delay on the part of the authorities in both jurisdictions in the preparation, submission, and execution of the second warrant, even though the evidence of the respondent's circumstances, and those of his son, had been adduced in the first European Arrest Warrant proceedings. These factors – repeat application, lapse of time, delay, impact on the appellant's son, and knowledge on

the part of the requesting and executing authorities of those factors – when weighed cumulatively, are powerful. Even then, and without undervaluing the offences alleged here, it is open to doubt that these matters would be sufficient to prevent surrender for very serious crimes of violence. This illustrates that the decision in this case is exceptional, and even then close to the margin.

... in any future case, where all or any of the above factors may be relied on, it would not, in my view, be necessary to carry out any elaborate factual analysis or weighing of matters unless it is clear that the facts, come at least close to a case which can be said to be truly exceptional in its features. Even in such cases, which must be rare, it is important that the considerations raised are scrutinised rigorously.”

As stated earlier, there is nothing in the circumstances of the respondent herein to take this case outside of the norm and to render it truly exceptional such that his surrender would be incompatible with the State’s obligations under article 8 of the Convention or the significant public interest thresholds set out by the Act of 2003.

40. I turn to the respondent’s contention that his surrender in circumstances where he would not have a right to vent his article 8 objections to serving the imposed sentence reviewed by a judge amounts to an unjustifiable interference or breach of his fair trial rights under article 6 of the Convention. I do not accept the validity of this argument. It is of course the case as acknowledged in *Vestartas* at para. 17 that:-

“Surrender may be refused if it is established on cogent evidence that to make such an order would involve exposing a person to a situation where there is a real risk that he or she may be exposed to a denial of fundamental rights. Ireland will not refuse to surrender a person to another country with whom it has a bilateral or multilateral agreement merely on the basis that he or she might be treated differently, or under a different regime, than in this State.”

41. However, the Court in *Vestartas* also acknowledged at para. 18:-

“It is self-evident that the manner, procedure and mechanisms by which fundamental rights will be protected in different Member States may vary according to national laws and Constitutional traditions. Checks and balances in each national system may, too, vary, even though they might have the same objective, such as ensuring a fair trial. As Murray C.J. observed in Brennan, few legal systems would wholly comply with the precise requirements of our Constitution (para. 39).

Nonetheless, Murray C.J. was of the view that, in considering an application for surrender of this type, an Irish court must have the jurisdiction to consider circumstances where it might be established that surrender would lead to an egregious or flagrant denial of fundamental human rights (para. 40). An instance of this would be if it were clearly demonstrated that there was so fundamental a defect in the system of justice in an issuing state as to give rise to a situation

where the grant of an application to surrender will actually violate such fundamental rights.

For an order of surrender to be refused on such grounds, the question is not whether the legal regime in an issuing state is at variance from that under the Constitution. Rather, it is whether it can be established, on cogent, clear evidence, that the circumstances are so egregious, or the undermining of the rule of law so flagrant, so as to create a real risk that the granting of an order to surrender would lead to a denial of fundamental human rights. Such a denial could arise from circumstances in Ireland or in the issuing state.”

42. Applying the reasoning above to the present case, the respondent has failed to satisfy the Court that the circumstances are so egregious, or the undermining of the rule of law so flagrant, as to create a real risk that the granting of an order for surrender would lead to a denial of fundamental human rights. The respondent obtained a suspended two-year custodial sentence which was activated upon his breach of the terms of suspension. He must be taken to have known the terms and conditions under which his term of imprisonment had been suspended. He left the jurisdiction of Latvia and ultimately a European arrest warrant was issued seeking his surrender for the purposes of serving the sentence. He established a private and family life for himself and his partner in Ireland whom he married in 2017. The opinion of the expert witness adduced before the Court is that upon surrender, he will have no automatic right to apply to a court to review the proportionality of having him complete all or any of the sentence. In all the circumstances of the present case, I do not accept that the absence of such a right is so egregious or amounts to such a flagrant undermining of the rule of law that there is a real risk that to grant an order for surrender would lead to a denial of fundamental human rights.
43. I dismiss the respondent’s objections to surrender based upon s. 37 of the Act of 2003.
44. I am satisfied that the surrender of the applicant is not prohibited under part three of the Act of 2003.
45. Having dismissed all the respondent’s objections, it follows that this Court will make an order under s. 16 of the Act of 2003 for the surrender of the respondent to the Republic of Latvia.