

**THE HIGH COURT**

[2022] IEHC 261

**Record No. 2020/358/EXT**

**MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**VLADISLAV SILKO**

**RESPONDENT**

**Judgement of Mr. Justice Kerida Naidoo delivered on the 3rd day of May 2022**

1. This is an application for an order for the surrender of the Respondent to the Republic of Lithuania ("Lithuania") pursuant to a European Arrest Warrant ("the EAW") dated 6th May 2019 issued by Judge Ugnius Trumpulis of Vilnius Regional Court, the Issuing Judicial Authority.
2. The EAW seeks the surrender of the Respondent to enforce a sentence of 3 years and 2 months imprisonment. The sentence is an aggregate resulting from the imposition of sentences on 3 separate occasions for convictions for 23 offences imposed over the course of three separate dates as follows:
  - a. On 20th October 2016 a sentence of 1 year imprisonment was imposed, which was reduced by 1/3 and suspended on certain conditions.
  - b. On 14th March 2017 a sentence of 3 years 6 months imprisonment was imposed, which was reduced by 1/3 to 2 years 4 months. That was combined with the penalty imposed on 20th October 2016 and a combined penalty of 2 years 10 months was imposed, which was suspended on certain terms
  - c. On 26th April 2017 a sentence of 1 year 3 months was imposed for a number of additional offences, which was reduced by 1/3 to 10 months. A single sentence of 3 years 2 months was then imposed, combining the sentences of 20th October 2016, 14th March 2017 and 26th April 2017, which was suspended for 2 years, 4 months on certain terms.
3. On 20th September 2018 the suspension was revoked and the sentence of 3 years 2 months imposed.
4. An application for endorsement of this EAW was made on 30th November 2020. On that date the High Court directed that a section 20 request be made. The request was dated 30th November 2020. A response was furnished by Judge Rasa Pauzaite of Vilnius Regional Court dated 11th January 2021 (AI1). I am satisfied that Judge Pauzaite is a judge of equal jurisdiction as the Issuing Judicial Authority. The warrant was then endorsed by the High Court on 25th January 2021.
5. On the 14th of January 2022 the Respondent was arrested on foot of the endorsed EAW, brought before the High Court (Biggs J.) and remanded in custody. On 31st of January 2022 the Respondent filed a Notice of Objection grounded on the affidavit of his solicitor.

6. A second section 20 request was sent on 9th February 2022 (M1). A response was received on 25th of February 2022 consisting of a five-page letter from the Issuing Judicial Authority (M2a) and a six-page letter from the Deputy General of the Prison Department of Ministry of Justice of the Republic of Lithuania (M2b). A number of pages were missing from that response but an amended copy was received on 8th March 2022.
7. M2a consists of a table detailing the date and place of each offence as well as the criminal act associated with each offence and the relevant Article of the Criminal Code of the Republic of Lithuania ("CrC") under which each offence was prosecuted. M2b consists of information about prison conditions in Lithuania.
8. I am satisfied that the person before the Court, the Respondent, is the person in respect of whom the EAW was issued. No issue was taken with identity.
9. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act"), arise for consideration in this application and surrender of the Respondent is not precluded for any of the reasons set forth in any of those sections.
10. I am satisfied that the minimum gravity requirement of the Act of 2003 has been met. The sentence in respect of which extradition is sought is in excess of four months imprisonment.
11. I am satisfied that no issue arises under s. 11 of the Act. Although the exact location where each of the relevant hearings took place is not specified in the warrant or other information provided by the Issuing Judicial Authority it is apparent from the information provided that the relevant decisions were made within the territory of Lithuania. Therefore, no issue in respect of extraterritoriality arises.
12. By notice of objection dated the 27th of January 2022 and filed on 31st January 2022 the Respondent objected to surrender on six grounds, of which three were not pursued by him at hearing. The grounds upon which surrender is objected to are:
  - a. The Minister is put on full proof of all matters that are necessary to succeed in the application for the Respondent's surrender. The Respondent has made a number of specific arguments under this heading in respect of correspondence.
  - b. That the proposed surrender of the Respondent to the issuing state is prohibited by s. 45 of the Act of 2003. This argument relates specifically to the fact that the Respondent was not present at the hearing on 20th September 2018.
  - c. That the surrender of the Respondent would contravene s. 37(1)(c) of the Act of 2003 and Article 6 ECHR. This argument relates specifically to prison conditions in the issuing state.

## **Section 45**

13. It is apparent from the warrant that the Respondent appeared in person at each of the three hearings resulting in a sentence being imposed which is sought to be enforced. I am therefore satisfied that no issue arises under s. 45 of the Act in that regard.
14. An issue does arise under s. 45 of the Act in respect of the revocation hearing of 20th September 2018. It arises by virtue of information contained in M2a about the ruling made on 20th September 2018 revoking the suspension of the penalty that had been imposed and imposing the sentence in respect of which extradition is sought. At page 5 of M2a it is stated that:

*"The court, upon receipt of a recommendation from the Probation Service and the conditions under Article 30 of the Law on Probation of the Republic of Lithuania being present, may abolish suspension of enforcement of the penalty and send the person to serve the sentence imposed on him. The Šalčininkai Chamber of the District Court of Vilnius Region, by its ruling of 20 September 2018 considered that Vladislav Silko had not observed the probation conditions, had committed administrative offences, had avoided cooperation with the Probation Service, thus, the purposes of probation were not achieved, abolished the suspension of the penalty enforcement and sent him to serve the penalty imposed by the judgement of conviction of the District Court of Vilnius City of 26 April 2017."*

15. It is accepted that the Respondent was not present at the hearing of 20th September 2018. Based on the above extract he says that on that date, or some other date, he was found guilty of "administrative offences". The Respondent says he does not know what those offences are, when they were committed, whether the Respondent was present for the hearing of those offences and/or what the penalty in respect of those offences is. The Respondent also says, correctly, that nothing in the warrant or the additional material provided by the Issuing Judicial Authority gives any information about the said "administrative offences" beyond what is set out in the extract above.
16. The Respondent therefore contends that he should not be surrendered on the basis that the purpose of his surrender is, at least in part, to serve a sentence of imprisonment that may have been activated by a conviction imposed in circumstances unknown. He says, therefore, that surrender in such circumstances could violate section 37 of the Act, would constitute a contravention of Articles 38.1 and 40.4.1 of the Constitution and/or would be incompatible with the obligations of the State under Article 6 of the European Convention of Human Rights and is therefore prohibited by section 45 of the Act.
17. The Minister says she does not concede that the revocation hearing was a trial for the purposes of section 45 of the Act, however, that is not the ground she relies on in answer to the Respondent. The Minister's substantive response to the point is that the Issuing Judicial Authority has confirmed that upon surrender the Respondent will have a right of appeal and a retrial against the revocation of the sentence in respect of which extradition is sought.

18. In my view it is clear from the extract above that the decision that the respondent “had committed administrative offences” was made on 20th September 2018 during the course of the hearing when the suspended sentence imposed on 26th April 2017 was revoked. The right of appeal and retrial extends to the hearing of 20th September 2018. It is not qualified in any way by the Issuing State and therefore captures the “administrative offences” referred to in M2a. It is also of note that the only penalty the Respondent is obliged to serve following the hearing on 20th September 2018 is the sentence imposed by the judgement of 26th April 2017. It is therefore apparent that if returned on foot of the warrant the only sentence that the Respondent will be obliged to serve is the sentence in respect of which extradition is sought. I am therefore satisfied that no issue arises under s. 45 of the Act.

### **Correspondence**

19. The EAW refers to 23 offences which were committed contrary to the following provisions of the Lithuanian Criminal Code (details of each of the offences are set out in table form in M2a):

- a. Article 182(1) CrC – swindling.
- b. Article 214(1) CrC – unlawful acquisition and possession of another person’s data.
- c. Article 215(1) CrC – unlawful use of another person’s identification codes.
- d. Article 198.1 CrC – computer-related crime.
- e. Article 198.2 CrC – computer-related crime.
- f. Article 22(1) and Article 182(1) – attempted swindling.

### **Article 2.2 – offences 1, 7, 8, 12, 16, 20, 21 and 23**

20. The Issuing Judicial Authority has indicated that there are a number of offences to which Article 2.2 of the European Council Framework Decision dated 13th June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended (“the Framework Decision”), applies, that same are punishable by a maximum penalty of at least three years imprisonment and has indicated the appropriate box for computer-related crime and swindling. Adopting the numbering from M2a the Court is satisfied that the offences to which Article 2.2 applies are numbered 1, 7, 8, 12, 16, 20, 21 and 23. There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same.

21. The burden of proving correspondence in respect of the remaining offences rests with the Minister, who says that the remaining offences correspond with one or more of the following offences in Irish law:

- a. Making gain or causing loss by deception contrary to s. 6 of the Criminal Justice (Theft and Fraud) Act 2001 (“the Act of 2001”).

- b. Unlawful use of a computer contrary to s. 9 of the Criminal Justice (Theft and Fraud) Act 2001.
- c. Accessing information system without lawful authority contrary to s. 2 of the Criminal Justice (Offences Relating to Information Systems) Act 2017 ("the Act of 2017").
- d. Use of computer program, password, code or data contrary to s. 6 of the Criminal Justice (Offences Relating to Information Systems) Act 2017.

**Correspondence in relation to offences 9 and 17**

22. The Minister has been put on full proof of correspondence by the Respondent but the Court understands from both his written and oral submissions that no substantive issue is taken with correspondence in respect of all but two of the offences not covered by Article 2.2. The two offences in respect of which substantive submissions are made by the Respondent are offences 9 and 17. The Court will deal with those two offences first.
23. In adjudicating on the issue of correspondence the Court has been directed to the warrant and the additional information provided as well as two documents provided by the Minister as part of her submissions: a table of proposed corresponding offences (M3) and an annotated version of the additional information provided by the Issuing Judicial Authority dated 11th January 2022 (M4). Supplemental written submissions were filed by the Respondent and replied to by the Minister addressing the specific issue raised by the Respondent in relation to those two offences. Offence 9 is one of four offences (9, 10, 11 and 12) involving the bank account data of Božena Budrevič ("BB"). Offence 17 is one of four (17, 18, 19 and 20) offences involving an injured party, Dalia Aleksandrovič ("DA").
24. The issue in relation to both offences is the same. The Respondent says that in order to adjudicate on the issue of correspondence the Court can only have regard to the description provided by the Issuing Judicial Authority that relate to offences 9 and 17. The Minister says that because offences 9 and 17 are both one of a series of related offences the Court can, if necessary, have regard to the details provided in relation to the other three offences that form part of the same group to determine the issue of correspondence. The Minister therefore says the Court should analyse offence 9 not only on the basis of the description given of that offence, but also in the context of the details provided in relation to offences 10, 11 and 12. She says the Court should likewise analyse offence 17 in the context of the details provided about offences 18, 19 and 20. The Minister agrees that if the Court concludes that it must have regard only to the details relating to offences 9 and 17 in isolation that correspondence cannot be made out and the Respondent agrees that if the Court concludes it can read each offence in the context of each of the other three related offences that correspondence can be made out.
25. The first offence in respect of which a substantive argument arises is offence 9, the details of which are described at page 3 of M4 as follows:

*"The criminal act (one) stated in paragraph 4 of Part E of the European Arrest Warrant, stipulated in Article 214(1) of the CrC (Production of a counterfeit electronic means of payment, forgery of a genuine electronic means of payment or unlawful possession of an electronic means of payment or data thereof) was committed by the convict Vladislav Silko under the following circumstances: he, on 13 October 2015, at the time not exactly established, but not later than 16:15, having met Božena Budrevič in Daniskiai village, Šalčininkai region, asked her to help and allow using her bank account. Božena Budrevič agreed and gave her bank data, so Vladislav Silko unlawfully acquired the data verification of the user's identity of Božena Budrevič bank account LT03 7300 [account number redacted by the Court] at AB Swedbank, i.e., the data of the electronic banking connection code card, the user's ID code and the password."*

26. The Minister submits that if the above acts were performed in Ireland they would amount to an offence contrary to section 6 of the Act of 2017, which provides as follows:

*"A person who, without lawful authority, intentionally produces, sells procurers for use, imports, distributes, or otherwise makes available, for the purpose of the commission of an offence section 2, 3, 4 or 5-*

- (a) *any computer program that is primarily designed or adapted for use in connection with the commission of such an offence, or*
- (b) *any device, computer password, unencryption key or code, or access code, or similar data, by which an information system is capable of being accessed,*
- shall be guilty of an offence."*

27. Based on the description of the offence set out above there is no doubt but that the Respondent procured data of the kind described in s. 6(b) of the Act of 2017: *the user's identity of Božena Budrevič bank account LT03 7300 [account number redacted by the Court] at AB Swedbank, i.e., the data of the electronic banking connection code card, the user's ID code and the password.* However, the Respondent submits, and the Minister agrees, that for an offence contrary to s. 6 of the Act of 2017 to be made out the data must have been procured *"without lawful authority"*. The description of the offence provided by the Issuing Judicial Authority states that the Respondent *"asked her to help and allow using her bank account. Božena Budrevič agreed and gave her bank data"* and therefore does not explicitly state that the data was taken without lawful authority. If the Court must read the description of offence 9 in isolation an essential ingredient of the offence would be absent.

28. As pointed out above offence 9 is one of four offences (9, 10, 11 and 12) involving the bank account data of Božena Budrevič ("BB"). The factual circumstances of the other three offences are also set out in M4 and the Minister submits that all four offences committed in respect of BB formed a series of related transactions. The Court, it is submitted, should therefore consider the acts of the Respondent in respect of all four

offences in order to decide the issue of correspondence in respect of offence 9. The particulars of offence 10 are, in summary, that the Respondent registered himself in BB's name on a credit website (www.credit24.it) and used the data given to him by BB to apply for credit of €1500. Offence 11 consists of a similar offence in respect of a different website (9UAB 4Finance www.vivus.it) to make an application for credit of €425. Offence 12 is one to which Article 2.2 applies and concerns the withdrawal of €1,925 from the account of BB (€1,925 being the total sum of money to which offences 10 and 11 relate). All four offences do, therefore, form part of a series of related acts that started with the procuring of BB's personal data and it is apparent that the acts to which offence 9 relate were done with the intention of performing the acts to which offences 10, 11 and 12 relate.

29. The Respondent points out that the offences are divided by the Issuing Judicial Authority into a series of "episodes" and that offence number 9 is set out as being a distinct episode. In my view the use of "episode" by the Issuing Judicial Authority to group the offences into sub-sets is descriptive and does not, by itself, mean the Court must read the description of offence number 9 in isolation.
30. The real argument advanced by the Respondent is that, as a matter of principle, the Court must read the description of offence 9 without having regard to the description of any related offence. In that regard the Respondent relies on a series of authorities, which establish that when considering the issue of correspondence the obligation on the Court is to examine the factual elements of the offence specified in the warrant to determine whether the facts outlined would, if committed in the State, constitute an offence.
31. The law that governs the appropriate test to be applied in deciding correspondence in general is well established. *In Minister for Justice, Equality and Law Reform v Altaravicius (No. 2)* [2007] 2 IR 265, McMenamin J. (at para. 44) stated:

*"This issue was fully examined by the Supreme Court in Attorney General v Dyer [2004] IESC 1, [2004] 1 IR 40. In the course of his decision, Fennelly J. identified a number principles set out in previous cases. These are:-*

1. *In considering whether correspondence has been established, the court looks to the facts alleged against the subject of their quest, as opposed to the name of the offence for which he or she is sought in the requesting state, and considers whether these facts or this conduct would amount in this State to a crime of the necessary minimum gravity;*
2. *In considering correspondence therefore the court is concerned not with the name of the offence in the requesting country but the criminal conduct alleged in the request or warrant, and;*
3. *In the absence of anything suggesting that the words used in a warrant had a different meaning in the law of the requesting state, the question of*

*correspondence was to be examined by attributing to such words the meaning they would have in Irish law."*

32. In relation to the specific argument raised in this case the Respondent relies on particular on *Attorney General v KME and Attorney General v TKE* [2010] IEHC 203. That case concerns a request from the United States of America that was heard by the High Court (Peart J.) pursuant to the Extradition Act, 1965. It concerned an application for extradition of a mother and grandmother who, it was said in the requesting documents, interfered with an American child custody order. The Respondents had taken two children from the United States to Ireland. One of the issues that arose was correspondence in circumstances where extradition was sought for the American offence of, in essence, retaining the children knowing that the retention violated the express terms of a court order, but the corresponding offence advanced was that of taking, sending or keeping a child out of the State in defiance of a court order. The fact the children had been taken from the United States was not set out in the details of the indictment provided to ground the request but was in the accompanying documentation.
33. Peart J. refused extradition of both Respondents and in relation to TKE said that it was not permissible to look at the entire request for extradition "*and see if within all the facts disclosed, including facts unrelated to the offence which is the subject of the indictment, some other or any offence would have been committed on those facts under Irish Law*". Although the Respondent says that aspect of the decision lends support to the argument being advanced by him in this case, in reality it appears that Peart J. was of the view that the offence in respect of which extradition was being sought did not correspond to the offence being advanced by the Attorney General and in that context it was not appropriate to trawl the other material provided to find a different offence to justify making an extradition order. Leaving the particulars of the case aside *Attorney General v TKE* is of limited assistance given that it is not concerned with the EAW regime.
34. In order to resolve any point in issue in any matter it is in my view appropriate for a court to have regard to any relevant material properly before it. In *Minister for Justice, Equality and Law Reform v Dolny* [2009] IESC 48 the Supreme Court (Denham J.) stated:
- "In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they will constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they will constitute an offence if committed in this jurisdiction."*
35. *Minister for Justice, Equality and Law Reform v Dolny* is therefore authority for the proposition that this Court is entitled "*to read the warrant as a whole*" to decide whether



or not the acts described would constitute an offence in the State if carried out here. The Court is satisfied that principle applies to the issue it has to determine in this case. Therefore, in order to determine correspondence in respect of offence 9 it is appropriate to read the details of that offence in the context of the other three offences involving BB. The Respondent agrees that having done so it follows that the Court is entitled to be satisfied that although it appears BB gave the relevant data to the Respondent, and allowed him to use her bank account, to “help” him, his objective in procuring her data was to commit offences 10, 11 and 12 and he therefore procured the data without lawful authority within the meaning of section 6 of the Act of 2017 in circumstances where the acts that comprise offences 10 and 11 would, if done in Ireland, amount to offences contrary to section 2 of the Act of 2017.

36. I am therefore satisfied that correspondence exists between offence 9 and an offence under the law of the State, namely use of computer program, password, code or data contrary to s. 6 of the Criminal Justice (Offences Relating to Information Systems) Act 2017.
37. The Respondent advances the same argument in respect of offence 17, which is one of four offences involving an injured party, Dalia Aleksandrovič (“DA”). The factual details provided in respect of offences 17, 18, 19 and 20 describe a course of conduct on the part of the Respondent very similar to that which was involved in offences 9, 10, 11 and 12. Like the description of offence 9 the detail provided in respect of offence 17 is to the effect that DA voluntarily gave her bank data to the Respondent in response to a request for help from him. I am satisfied that it is appropriate to read offences 17, 18, 19 and 20 together and having read the details provided in respect of all four offences I am satisfied that although the data was given to the Respondent voluntarily it was nonetheless procured by him without lawful authority within the meaning of s. 6 of the Act of 2017 in circumstances where the acts that comprise offences 18 and 19 would, if done in Ireland, amount to offences contrary to s. 2 of the Act of 2017.
38. I am therefore satisfied the correspondence exists between offence 17 and an offence under the law of the State, namely, use of computer program, password, code or data, contrary to s. 6 of the Act of 2017.

**Correspondence in relation to remaining offences**

39. As pointed out above, the Minister is on full proof of correspondence in respect of the remaining offences but no substantive submission is made by the Respondent on the issue of correspondence in respect of them. The offences can conveniently be grouped together by reference to the name of the owner of the banking data the use of which is the subject of each offence. The conduct involved is very similar across all groups, it essentially consists of gaining access to the personal data of an individual and using that information to secure credit, or attempting to secure credit, in the name of the owner of the data and, in certain instances, accessing the credit as cash.

**Offences 1, 2 and 3**

40. Offences 1, 2 and 3 all relate to the data of Jelizaveta Davydova ("JD"). Article 2.2 applies to offence 1. Offence 2 involved the Respondent (acting with others) using a computer with an identified IP address to register on an internet credit website (www.credit24.it) in the name of JD and then using her personal data to get a loan in the sum of €1600. Offence number 2 was charged in Lithuania pursuant to Article 214(1) whereas offence 3 was charged under Article 215(1) but the facts in respect of offence 3 are substantially the same as those underpinning offence 2, the differences being that it was a different website (www.smscredit.lt) and the value of the loan was €300. The Minister submits that both offences correspond with the offence of unlawful use of a computer contrary to s. 9 of the Act of 2001. The essential elements of s. 9 of the Act of 2001 are that the person charged or convicted of the offence:

- a. acted "dishonestly", which means that they acted "without a claim of right made in good faith" (s. 2 of the Act of 2001). That element of the offence would be made out where, as here, a person uses someone else's identity and/or information to secure credit,
- b. "operates or causes to be operated a computer", which on the basis of the information provided by the Issuing Judicial Authority is what took place here; and,
- c. did so "with the intention of making a gain for himself or herself or another, or causing loss to another". On the basis of the information provided by the Issuing Judicial Authority the purpose of the conduct was to secure credit with the intention of making a gain for the Respondent and/or others or causing a loss to the credit provider.

41. I am therefore satisfied that correspondence can be established between offences 2 and 3 and an offence under the law of the state, namely; unlawful use of a computer contrary to s. 9 of the Act of 2001.

#### **Offences 4, 5 and 6**

42. Offences 4, 5, 6, 7 and 8 relate to the data of Aleksandras Deničuk ("AD"). Article 2.2 applies to offences 7 and 8. The course of conduct described in respect of these offences by the Issuing Judicial Authority is very similar to that involved in all of the other groups of offences in respect of which extradition is sought. The details provided in respect of offence 4 are, in summary, that the Respondent "falsely informed the latter (AD) on allegedly to be receiving money, asked to help and allow using his bank account. Aleksandras Deničuk believed him and gave his bank data, so Vladislav Silko unlawfully acquired the data of verification of the user's identity of Aleksandras Deničuk bank account.". The Minister submits that those facts give rise to correspondence with the offence of deception contrary to s. 6 of the Act of 2001 and/or use of a computer program, password, code or data contrary to section 6 of the Act of 2017.

43. Deception contrary to s. 6 of the Act of 2001 is committed where "A person who dishonestly, with the intention of making again for himself or herself or another, or of causing loss to another, by any deception induces another to do or refrain from doing an

act". Using unlawfully obtained data to apply for credit in the name of another would constitute deception for the purposes of the Act. The Court is also satisfied that the purpose of the conduct to which offence number 4 relates was with the intention of making a gain for the Respondent or another or causing loss to another and was done with the intention of inducing another to do an act, namely; extend credit. The Court is therefore satisfied that correspondence can be established between offence number 4 and an offence under the law of the State, namely, section 6 of the Act of 2001.

44. The Minister also submits that there is correspondence between offence number 4 and s. 6 of the Act of 2017. The Respondent is said to have procured the data from AD unlawfully and the Court is satisfied that the information was procured for the purpose of doing acts that would amount to the commission of an offence under s. 2 of the Act of 2017. I am therefore also satisfied that correspondence exists between offence number 4 and offence under the law of the State, namely, s. 6 of the Act of 2017.
45. Offence 5 involved the Respondent (acting with others) using a computer with an identified IP address to register on an internet credit website (UAB 4Finance) in the name of JD and then using JD's personal data to apply for a loan in the sum of €750. The facts in respect of offence number 6 are substantially the same as those underpinning offence number 5, the differences being that it involved a different website (www.credit24.it) and the value of the loan applied for was €500. The Minister submits that both offences correspond with the offence of unlawful Use of a Computer contrary to s. 9 of the Act of 2001.
46. The Minister submits that both offences also correspond with the offence of accessing a computer system without lawful authority contrary to s. 2 of the Act of 2017, which provides that:

*"A person who, without lawful authority or reasonable excuse, intentionally accesses an information system by infringing a security measure shall be guilty of an offence."*
47. The information provided by the Issuing Judicial Authority relating to offence 5 says that the Respondent "unlawfully used the unlawfully acquired data for verification of identity - the identification code, the personal password for connection, the passwords of electronic banking - and by deceit connected the name of Aleksandras Deničuk to the electronic banking system of AB Swedbank <https://Swedbank>. It in breach of the security measures of information thereof..." (p. 3 of M4). The information relating to offence 6 is to substantially the same effect (p. 3 of M4).
48. I am therefore satisfied that correspondence can be established between offences 5 and 6 and an offence under the law of the State, namely, s. 2 of the Act of 2017.
49. I am also satisfied that correspondence can be established between offences 5 and 6 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.

**Offences 10, 11, 13, 14, 15, 17, 18, 19 and 22**

50. The factual details and relevant offences under Lithuanian law of the remaining offences in respect of which correspondence must be established are sufficiently similar to the other offences already discussed that the same reasoning can be applied to them. I am therefore satisfied that correspondence can be established in respect of the remaining offences as set out below.
51. I am satisfied that correspondence can be established between offences 10 and 11 and an offence under the law of the State, namely, s. 2 of the Act of 2017. I am also satisfied that correspondence can be established between offences 10 and 11 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.
52. I am satisfied that correspondence can be established between offence 13 and an offence under the law of the State, namely, section 6 of the Act of 2001. I am also satisfied that correspondence exists between offence number 13 and an offence under the law of the State, namely, s. 2 of the Act 2017.
53. I am satisfied that correspondence can be established between offence 14 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.
54. I am also satisfied that correspondence can be established between offence 15 and an offence under the law of the State, namely, s. 2 of the Act of 2017. I am also satisfied that correspondence can be established between offence 15 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.
55. I am satisfied that correspondence can be established between offence 18 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.
56. I am satisfied that correspondence can be established between offence 19 and an offence under the law of the State, namely, s. 2 of the Act of 2017. I am also satisfied that correspondence can be established between offence 19 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.
57. I am satisfied that correspondence can be established between offence 22 and an offence under the law of the State, namely, unlawful use of a computer contrary to s. 9 of the Act of 2001.

**Prison conditions**

58. The Respondent submits that his surrender is prohibited by section 37(1)(c) of the European Arrest Warrant Act 2003 because prison conditions in Lithuania are such that there are reasonable grounds for believing that he will be subjected to inhuman or degrading treatment in the requesting state. Proof of that issue rests with the Respondent. In support of his argument the Respondent's solicitor has exhibited at "BC2" a report of the United States Department of Justice from 2020. He also refers the Court to

*Viktoras Michailovas v the Republic of Lithuania* [2021] NIQB 60, a decision of the High Court of Northern Ireland. Relying on those two documents the Respondent says there are reasonable grounds for the Court to believe he would be subjected to inhuman or degrading treatment including, sub-standard cell size, inter-prisoner violence and, specifically in relation to the Respondent, inadequate healthcare.

59. In reply the Minister has open to the Court the contents of M2b, the document which was forwarded by the requesting state in response to a request for additional information from the High Court of 9th February 2022. It sets out detail of prison conditions in Lithuania. In his written submissions the Respondent says, inter alia, that the contents of M2b are vague, general responses that give inadequate detail to allow the Court to be satisfied about the adequacy of the conditions in which the Respondent would be held if extradited.
60. In adjudicating on this issue the Court should first ask whether the general deficiencies in the Lithuanian prison system are such that the Court should conduct an enquiry into the conditions in which the Respondent will be held if surrendered.
61. Prison conditions in Lithuania have been considered in a number of recent decisions including *Minister for Justice and Equality v Jarokovas* [2021] IEHC 270 and *Minister for Justice and Equality v Kairys* [2022] IEHC 57. In those cases the High Court was satisfied by the information provided by the Lithuanian authorities as to the adequacy of prison conditions in Lithuania and surrender was ordered in each case. In *Jarokovas* the judgement referred in detail to a letter from the Prisons Department of the Ministry of Justice in Lithuania, the contents of which are echoed in the information that issued from the same source to the Court in the instant case. Section 4A of the Act of 2003 provides that it shall be presumed that a requesting state will comply with the requirements of the Framework Decision, unless the contrary is shown and the Framework Decision incorporates respect for fundamental human rights.
62. I have considered the material put before me by both the Respondent and the Minister and I am satisfied that no new issues have been raised beyond what was considered by the High Court in earlier cases dealing with the same issue. I therefore find that the Respondent has failed to satisfy the Court that general deficiencies in the Lithuanian prison system are such that this Court should conduct an enquiry into the conditions in which the Respondent would be held if surrendered. I am not satisfied that there are substantial grounds for believing that, if surrendered, the Respondent will face a real risk of a breach of any of its fundamental rights and, in particular, his right not to be subjected to inhuman or degrading treatment or punishment.
63. I am satisfied that the presumption provided for in s. 4A of the Act of 2003 has not been rebutted in this instance. I am also satisfied that surrender of the Respondent to Lithuania would not constitute a breach of any provision of the Constitution, is not incompatible with the State's obligations under the European Convention on Human Rights or the protocols thereto.
64. I reject the Respondent's objection to surrender based on prison conditions in Lithuania.

**Conclusion**

65. I am satisfied that surrender of the Respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act. Having rejected the Respondent's objection to his surrender, it follows that this Court will make an order pursuant to s. 16 of the Act for the surrender of the Respondent to Lithuania.