

**THE HIGH COURT**

[2022] IEHC 492

**[2020 No. 152 EXT.]**

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**SANDRA PAGOJE**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 27th day of July, 2022**

- 1.** By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania ("Lithuania") pursuant to a European arrest warrant dated 9th March, 2020 ("the EAW"). The EAW was issued by Mr. Tomas Krusna, Chief Prosecutor of the Department for Criminal Prosecution of the Prosecutor General's Office of the Republic of Lithuania, as the issuing judicial authority. The EAW seeks the surrender of the respondent for the purposes of conducting a criminal prosecution in respect of four offences relating to participation in a criminal organisation, trafficking in human beings, illegal drug trafficking and money laundering.
- 2.** The EAW was endorsed by the High Court on 13th July, 2020 and the respondent was arrested and brought before the High Court on 26th August, 2020.
- 3.** I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in this respect.
- 4.** I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections. I note that the respondent maintained an objection to surrender on the basis that same was precluded by s. 21A of the Act of 2003, but in light of the judgment of the Supreme Court in *The Minister for Justice and Equality v. Campbell* [2022] IESC 21, this objection was withdrawn.
- 5.** I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences in respect of which surrender is sought carries a maximum penalty in excess of 12 months' imprisonment. Minimum gravity was not contested.
- 6.** At Part E of the EAW, a description is given of the circumstances in which the offences are alleged to have been committed. In essence, it is alleged that the respondent participated in a criminal organisation involved in trafficking human beings and the distribution of narcotics. It is alleged that the criminal organisation would target vulnerable people in Lithuania and traffic them to Ireland where they would be required by the criminal organisation to unlawfully deal in narcotics on behalf of the criminal organisation. Some members of the criminal organisation were in Lithuania while others were in Ireland and the UK.
- 7.** By virtue of s. 38(1)(b) of the Act of 2003, it is not necessary for the applicant to show correspondence between an offence in the EAW and an offence under Irish law where the offence in the EAW is an offence to which Article 2.2. of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, as amended ("the Framework Decision"), applies and under the law of the issuing state, the offence

is punishable by imprisonment for a maximum period of not less than 3 years. At Part E of the EAW it is certified that the offences referred to therein fall within Article 2.2. of the Framework Decision and are punishable with a maximum penalty of at least 3 years' imprisonment and the relevant boxes are ticked for "*participation in a criminal organisation*", "*trafficking in human beings*", "*illicit trafficking in narcotic drugs and psychotropic substances*" and "*laundering of the proceeds of crime*". There is nothing in the EAW that gives rise to any ambiguity or perceived manifest error such as would justify this Court in looking behind the certification in the EAW. In any event, I am satisfied on reading the documentation before the Court that, if necessary, correspondence could be established between the offences in the EAW and offences under Irish law. No issue was raised in respect of correspondence.

**8.** The respondent had a number of grounds of objection to surrender:-

- (i) Surrender in respect of the drug trafficking offence is precluded by reason of s. 44 of the Act of 2003 as the offences had been committed outside the territory of the issuing state and the requirements of s. 44 of the Act of 2003 had not been met;
- (ii) Sufficient particulars had not been furnished by the issuing state in order to comply with the requirements of s. 11(1A) of the Act of 2003;
- (iii) Surrender is precluded by reason of s. 37 of the Act of 2003 due to the respondent's personal and family circumstances;
- (iv) Surrender is precluded by reason of s. 37 of the Act of 2003 due to prison conditions in Lithuania (this objection was not maintained);
- (v) The EAW had not been issued by an issuing judicial authority within the meaning of the Act of 2003 or the Framework Decision (this objection was not maintained);
- (vi) Surrender is precluded by reason of s. 21A of the Act of 2003 as there had been no decision to charge and try the respondent with the offences at the time of the issue of the EAW (this objection was not maintained).

**9.** The respondent swore an affidavit dated 25th November, 2020 in which she avers that she arrived in Ireland in November 2013, returned to Lithuania in January 2014 and has been living in Ireland since around March 2014. She states she has been in full-time residence in Ireland since early 2014. She avers that her 2-year-old son was put into the temporary care of the HSE/Tusla upon her arrest. She avers that one of the co-suspects in the investigation [J.R.] is in remand in custody in Lithuania and that pre-trial arrest has been extended although no charges have been preferred against her as yet. In a supplemental affidavit dated 26th January, 2021, the respondent avers that her husband [A.P.] died in custody on 1st January, 2021, possibly from a heart-related complaint. Her son was returned to her care on 31st August, 2020. She avers that she has no family who could assist with the care of her child. She avers that her husband's niece [G.J.] has been living with her since 1st September, 2020, is 18 years old and is hoping to begin third-level education in Autumn 2021. She avers that her son depends upon her for his care.

#### **Section 44 of the Act of 2003**

**10.** Section 44 of the Act of 2003 provides as follows:-

*"44.-A person shall not be surrendered under this Act if the offence specified in the relevant arrest warrant issued in respect of him or her was committed or is alleged to have been*

*committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State."*

**11.** It is, by now, well-established jurisprudence that s. 44 of the Act of 2003 sets out a two-part test for determining whether surrender is precluded by virtue of that section. Firstly, it must be established that the offence specified in the European arrest warrant was committed or is alleged to have been committed in a place other than the issuing state. Secondly, it must be established that the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State. In *Minister for Justice and Equality v. Trust Egharevba* [2015] IESC 55, at para 15 of her judgment, Denham C.J. stated:-

*"15. The requirements set out in s. 44 of the Act of 2003, as amended, are conjunctive. Thus, both conditions are required to be met for the appellant to succeed."*

**12.** It is noteworthy that the wording of s. 44 of the Act of 2003 refers to "*was committed or is alleged to have been committed*". This envisages 2 separate concepts, namely that of "*was committed*" and that of "*is alleged to have been committed*". The reference to "*was committed*" reflects the fact that a European arrest warrant may be issued in respect of a person who has already been convicted for the offence in question and, therefore, the relevant facts relating to the commission of the offence have been judicially determined including the location thereof. The reference to "*is alleged to have been committed*" reflects the fact that surrender may be sought in order for the person to be tried in respect of an alleged offence where it has not yet been judicially determined whether the offence was actually committed including the location thereof and, thus, the relevant criteria is where the offence is "*alleged to have been committed*". In this instance, surrender of the respondent is sought in order to stand trial in respect of the offences referred to in the EAW and, therefore, the Court must consider where the offences are alleged to have been committed and, in particular, whether it is alleged that the offences were committed in a place other than the issuing state.

**13.** Counsel on behalf of the respondent submits that, as regards the drugs offence, *i.e.* the offence contrary to Article 260(3) of the Criminal Code of the Republic of Lithuania ("the Code") alleged in the EAW, this was alleged to have been committed in a place other than the issuing state and, in particular, in Ireland and the UK.

**14.** The offence under Article 260 of the Code is described as:-

*"Unlawful Possession of Narcotic or Psychotropic Substances for the Purpose of Distribution Thereof or Unlawful Possession of a Large Quantity of Narcotic or Psychotropic Substances."*

**15.** Article 260(3) of the Code provides:-

*"A person who unlawfully produces, processes, acquires, stores, transports, forwards, sells or otherwise distributes a very large quantity of narcotic or psychotropic substances shall be punished by a custodial sentence for a term of ten up to fifteen years."*

**16.** Part E of the EAW contains a lengthy description of the circumstances in which the offences are alleged to have been committed, including the time, place and degree of participation of the requested person. This description sets out details of a transnational network or association, with its control centre in Lithuania, of which the respondent was a willing participant and which engaged in human trafficking of persons from Lithuania to Ireland and the UK (Northern Ireland) (sic.) where

they would be exploited to sell and distribute narcotics with the proceeds of such activities being remitted to Lithuania. The alleged role of the respondent in the enterprise is set out in detail. The relevant statutory provisions under the Code are also set out, including:-

*"Article 7. Criminal Liability for the Crimes Provided for in Treaties.*

*Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime were they commit the following crimes subject to liability under treaties:*

*... 2) trafficking in human beings (Article 147);*

*... 5) property laundering (Article 216);*

*... 12) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269)."*

**17.** Counsel on behalf of the respondent submits that there was no allegation that the respondent had ever produced, processed, acquired, stored, transported, forwarded, sold or otherwise distributed narcotics or psychotropic substances in the issuing state but, rather, the allegation was that such activities had taken place in Ireland and the UK. He submits that the EAW did not expressly allege conspiracy to commit the offence. Furthermore, he submits that the issuing judicial authority had specifically invoked provisions of Lithuanian law dealing with extraterritorial jurisdiction. Ultimately, he submits that if the Court is satisfied that the drugs offence is alleged to have been committed outside of the issuing state, then surrender is precluded by virtue of s. 44 of the Act of 2003 as Ireland does not exercise extraterritoriality in respect of any similar offences on the same basis as that invoked and relied upon by the issuing state.

**18.** Counsel for the applicant conceded that if the Court is satisfied that the drugs offence was alleged to have been committed outside the issuing state, then surrender in respect of that offence is precluded by virtue of s. 44 of the Act of 2003 as Ireland did not exercise extraterritoriality in respect of any similar offences on the same basis as that invoked and relied upon by the issuing state. However, she submits that, on the basis of the information furnished by the issuing state, it is alleged that the offence took place in Lithuania as well as Ireland and the UK.

**19.** Counsel for the applicant submits that, on the basis of all the documentation before the Court, it was clear that what was alleged was in the nature of a conspiracy whereby the respondent, along with other members of a criminal organisation, knowingly participated in a criminal enterprise which spanned a number of states and that the acts of each conspirator are imputed to the other conspirators so that an act carried out in furtherance of the conspiracy in one state could be imputed to a co-conspirator in another state.

**20.** By letter dated 26th November, 2020, a differently constituted court sought additional details of the offences alleged against the respondent. By additional information dated 20th January, 2021, the nature and details of the criminal association and its activities are set out. The criminal association carried out crimes in Lithuania, Ireland and the UK. Members of the criminal association acted in accordance with the roles prescribed to them and without the contribution of each member, the criminal association would not have been able to function smoothly or at all. It was indicated that the respondent participated in the activities of the criminal association together with her husband until 26th August, 2020 when she was detained in Ireland. It was indicated that she carried

out the instructions given by [K.K.] through [A.P.] in relation to the commission of crimes, trafficking of human beings and distribution of narcotic substances. She searched for, and purchased, flight tickets for members of the criminal association as well as persons recruited. She performed these tasks being aware that the recruited persons would be exploited for the commission of crimes *i.e.* distribution of narcotics supplied by the criminal association. Details of a number of flights purchased by the respondent are set out. It is further stated:-

*"Finally, with a view to legalise the property (i.e. money) which she knew has been acquired from a criminal offence (i.e. trafficking in human beings and distribution of narcotic substance), S. Pagojė used that money for living, for improvement of living conditions and for other needs. Following [A.P.]'s instructions she also sent the money to the Republic of Lithuania or took them herself to Lithuania and organised its storage (concealment) at other persons in Lithuania."*

**21.** By letter dated 11th February, 2021, the Court sought additional information concerning the alleged offences and, in particular:-

- (a) Whether it is alleged that the requested person was part of an organised criminal group;
- (b) Whether it is alleged that the narcotics-related offence referred to in the EAW was carried out on behalf of such organised criminal group;
- (c) Whether it is alleged that during the commission of the narcotics-related offence referred to in the EAW, some members of the group remained in Lithuania;
- (d) Whether, as regards commission of the narcotics-related offence, it is alleged that any roles were carried out by members of the group who were in Lithuania, and if so, what was the nature of that role;
- (e) Whether it is alleged that the commission of the narcotics-related offence was planned or controlled by persons in Lithuania;
- (f) Whether it is alleged that the requested person knew he was part of such an organised group;
- (g) Whether it is alleged that the requested person knew that some members of the group were in Lithuania;
- (h) Whether it is alleged that the requested person knew the commission of the narcotics-related offence was planned or controlled by persons in Lithuania; and
- (i) Whether it is alleged that any of the narcotics, the subject matter of the narcotics-related offence referred to in the EAW, were ever upon the territory of Lithuania at any time.

The issuing judicial authority was also requested to furnish any other information to show that the narcotics-related offence referred to in the EAW was committed within the territory of Lithuania and, insofar as the Lithuanian Courts may exercise extraterritorial jurisdiction in respect of offences under Article 260 of the Code, to indicate the legal basis for the exercise of such extraterritorial jurisdiction.

**22.** By reply dated 3rd March, 2021, the issuing judicial authority enclosed a letter dated 1st March, 2021, from the Organised Crime and Corruption Investigation Division of the Klaipeda Regional Prosecutor's Office in Lithuania. This letter indicates that a criminal organisation had been

established to recruit persons in Lithuania and to exploit them in Ireland and the UK (Northern Ireland) for distribution of narcotic substances. It is expressly stated that:-

*"... this criminal association was actively committing crimes in three countries namely Lithuania, UK (Northern Ireland) and Ireland. In addition, it was found out that the money received from narcotic substances trafficking was unlawfully legalised in Lithuania by the members of criminal association."*

The additional information also states:-

*"Please note that this criminal association has been proactively committing crimes in three countries namely, Lithuania, Ireland and UK (Northern Ireland), and the leader of the association [K.K.], while being in Lithuania, organised the crimes committed in Ireland and UK (Northern Ireland). The crimes started in Lithuania with recruiting people who would be then brought to Ireland and UK (Northern Ireland) where they were exploited for distribution of narcotic substances, and the money received from commission of these crimes would come back to Lithuania where it was unlawfully legalised."*

The letter goes on to state:-

*"Members of criminal association were acting in accordance with the roles prescribed to them, and their duties included performance of concrete actions in Ireland of (sic.) UK (Northern Ireland) or in Lithuania, or on all the three countries. Without contribution of each member, the criminal association would not have been able to function smoothly or function at all."*

**23.** As regards the matters specifically listed at paras. 5(a)-(i) in the request for additional information, the letter did not reply in the same format but, rather, gave a narrative reply as follows:-

*"We confirm that Sandra Pagojé was part of the criminal association established and led by [K.K.]. As all the other members of this association, Sandra Pagoje carried out the tasks assigned to her. Besides, please note that her husband [A.P.] had a high position within the criminal organisation namely, he was the closest trustee of [K.K.]."*

*Trafficking in narcotic substances in Ireland and UK (Northern Ireland) was one of the crimes committed by this criminal association. In order to distribute narcotics, other crimes were committed as well, i.e. socially vulnerable people were recruited in Lithuania and brought to a foreign country. When being in the foreign countries, such persons were forced to distribute narcotics, i.e. became victims of human trafficking.*

*As it has been mentioned above, there is sufficient data showing that this criminal association was actively operating and committed crime in three countries namely, Lithuania, UK (Northern Ireland) and Ireland. Members of the criminal association were searching for socially vulnerable persons in Lithuania, recruited them and transported them to Ireland and UK (Northern Ireland). In these countries, the recruited persons were exploited for commission of crime, i.e. distribution of narcotic substances. Each member of the criminal association was acting within the scope of the role assigned to him by the leader of the association; sometimes the scope of the role could change due to the circumstances*

*existing at the time. In addition, every member of the criminal association was aware of the functions and tasks performed by other members, and knew what they had to do to ensure successful operation of the criminal association.*

*One of the preconditions for successful operation of the criminal association was that there should be enough people on the streets to sell narcotic substances. In most cases socially vulnerable persons (e.g. having addictions, of poor financial status) were recruited and were taken (quite often by deceit) to Ireland and Northern Ireland (United Kingdom).*

*When committing the criminal offence of distribution of narcotic substances in Ireland and UK (Northern Ireland), the leader of the criminal association was leading and coordinating the activities also while staying in Lithuania. The persons who were supposed to distribute narcotic substances of the criminal association were recruited in Lithuania by the members of the criminal association who have been assigned a specific task to do so. The persons transported from Lithuania (victim of human trafficking in most cases) were exploited for distribution of narcotic substances. All issues related to recruitment and transportation of people were dealt with by [K.K.] and [A.P.]. Besides, as mentioned before, while being in Lithuania [K.K.] coordinated the entire activities of the criminal association including distribution of narcotic substances. [K.K.] was also in charge of acquisition of narcotic substances to be distributed.*

*Based on the data collected in the case, Sandra Pagojè knew she was part of the criminal association, because he carried out the instructions given by [K.K.] (through her husband [A.P.], the closest trustee of [K.K.]) in relation to the human trafficking and distribution of narcotic substances as well as other instructions. We also confirm that Sandra Pagojè knew that some members of the group were in Lithuania on permanent basis or for some periods of time."*

**24.** As regards the request to furnish further information showing the narcotics-related offence was committed within the territory of Lithuania, the letter replies as follows:-

*"As it was mentioned above, narcotics were distributed in Ireland and UK (Northern Ireland), but distribution was only one of the crimes committed by the criminal association. People were recruited in Lithuania and then brought to the abovementioned countries where they were forced to commit the crime. The leader of the criminal association, [K.K.] was in charge of acquisition of narcotics, and coordinated the criminal activities while being in Lithuania as well. Meanwhile, other members of the criminal association carried out [K.K.]'s orders and tasks assigned both in Lithuania and in Ireland and UK (Northern Ireland). Besides, the money received from distribution of narcotics, in addition to other uses in foreign countries, was also transported back to Lithuania and legalised."*

**25.** As regards the legal basis on which the Lithuanian courts might exercise extraterritorial jurisdiction in respect of the offence under Article 260 of the Code, the additional information stated:-

*"Answer to Question 7. Please note that the members of criminal association, the victims of human trafficking and the witness are citizens of the Republic of Lithuania and most of them are located in the Republic of Lithuania, thus the prosecution against this criminal association, including the crime under Article 260 of the Lithuanian Criminal Code committed*

*by the association, should be conducted in the Republic of Lithuania. Besides, as we have mentioned above, the majority of the members of criminal association have been detained in Lithuania.*

*Another reason why this criminal association should be prosecuted in the Republic of Lithuania is that Lithuania is in the possession of most of the evidence collected in the case, and there is an ongoing criminal prosecution against other members of the criminal association including the leader thereof.*

*Upon detention of members of criminal association and the street dealers (who are victims of human trafficking in most cases) during the proceedings in Ireland and Northern Ireland, narcotic substances and money were found and seized. The material of these proceedings has been transferred to the Republic of Lithuania.*

*The Republic of Lithuania exercises its jurisdiction in this case on the grounds of the Criminal Code of the Republic of Lithuania, in particular Articles 5 and 7."*

Article 5 provides:-

*"Citizens of the Republic of Lithuania and other permanent residents of Lithuania shall be held liable for the crimes committed abroad under this Code."*

Article 7 provides:-

*"Persons shall be liable under this Code regardless of their citizenship and place of residence, also of the place of commission of a crime and whether the act committed is subject to punishment under laws of the place of commission of the crime where they commit the following crimes subject to liability under treaties:*

...

*12) the crimes related to possession of narcotic or psychotropic, toxic or highly active substances (Articles 259-269)."*

**26.** I note that the first part of the test in s. 44 of the Act of 2003 is concerned with where it is alleged the offence was committed. This is separate from the concept of jurisdiction. The first part of the test set out in s. 44 does not refer to whether or not the issuing state has or claims jurisdiction to prosecute the matter, but rather requires the executing judicial authority to be satisfied as to where the offence is alleged to have been committed. It is only where the executing judicial authority is satisfied that the offence is alleged to have been committed outside the issuing state that it then needs to turn to the second limb of the test in s. 44 in order to ascertain whether the act or omission of which the offence consists would not constitute an offence under Irish law by virtue of having been committed in a place other than Ireland.

**27.** In the present matter, the respondent is alleged to have been part of a conspiracy to commit all of the offences referred to in the EAW. The fact that the word conspiracy is not used in the particulars of the nature and classification of the offence as set out in the EAW is neither conclusive nor of great significance. It is clear from the circumstances of the offences as set out in the EAW and in the additional information furnished that what is alleged is a conspiracy, an agreement, a plan or howsoever one may choose to describe the enterprise entered into by the respondent and



his associates to do certain acts in different locations in furtherance of that enterprise. Conspiracy to commit a particular crime consists of an agreement entered into by 2 or more persons to bring about the commission of that crime. Insofar as each of the conspirators carries out an act or omission in furtherance of bringing about the commission of the crime intended, then each acts with the agreement, consent and authority of the others and each conspirator is, in effect, an agent of his co-conspirators so that his act or omission is also that of his co-conspirators. Conspiracy may transcend national borders. Acts taken in furtherance of the conspiracy may occur in a number of different states. One of the conspirators may never enter a state where another of the conspirators carries out some act or omission in furtherance of the conspiracy. Notwithstanding such matters, each conspirator will be taken to have carried out such act or omission wherever it was carried out by one of the other conspirators. That this is so is clearly demonstrated in a number of authorities, including:-

*Attorney General v. Garland* [2012] IEHC 90;

*Ellis v. O'Dea (No. 2)* [1991] 1 I.R. 251;

*Minister for Justice and Equality v. D.F.* [2016] IEHC 82;

*Minister for Justice and Equality v. S.F.* [2016] IEHC 81; and

*Minister for Justice and Equality v. Trust Egharevba* [2015] IESC 55

**28.** Counsel for the respondent submits that it seems odd that a person alleged to have had possession of narcotics in Ireland can also be alleged to have possessed them in Lithuania when there is no allegation that the narcotics were ever in Lithuania. However, possession consists of more than mere physical possession and includes the concept of control. Thus, there is nothing odd or anomalous in a person in County Donegal being regarded as having possession of narcotics which are physically located in County Dublin. Similarly, there is nothing odd or anomalous in a person in Lithuania having possession of narcotics which are physically located in Ireland if he is exercising joint control over same. Similarly, there is nothing anomalous in a group of individuals acting in concert across a number of national boundaries being regarded as having joint possession of narcotics in each and every one of the states where the parties to that criminal enterprise are located and operating in furtherance of the criminal enterprise. The joint and transnational possession of the narcotics stems from the joint and transnational nature of the conspiracy or criminal enterprise.

**29.** In dealing with the concept of possession, in *The People (DPP) v. Conroy* [2021] IESC 48, Charleton J. stated at para. 12:-

*"12. ... Once the article is proven to be the proscribed item and the relationship of the accused to it is of power to use, direct the use of, or handle the item, possession may be established. Proof of ownership is not a concept in modern legislation since the mischief which these kind of offences seek to criminalise is the use to which the object may be put. Possession is a concept which leaves the accused's purpose out of the equation for basic possession offences; though there may be an add on of a more serious offence involving possession with a purpose, such as having a firearm with intent to commit an offence or having controlled drugs with the intention of selling or supplying same to another person. Liability is based on the accused's control over a defined object, perhaps in common design with another person, or by using another person as an agent, as in a courier, and the degree*

of awareness, often variously defined, which establishes the accused's relationship to the outlawed object." (Emphasis added)

**30.** Taking into consideration all of the documentation before the Court, I am of the opinion that it is alleged that all of the offences referred to in the EAW were committed in Lithuania, the UK and Ireland. It is clear that what is alleged is a transnational conspiracy involving trafficking in people, trafficking in narcotics and money laundering. This web of conspiracy had its centre in Lithuania. It is in the nature of a criminal conspiracy that the various actors play their assigned parts in different locations to bring about the common criminal aim. In such circumstances, the actions of one conspirator are attributed to the other conspirators regardless of where each of the conspirators may be located. The concept of possession involves not just physical possession but also the intentional exercise of control over an item which may be elsewhere or even in the physical possession of another. Possession can be had jointly between a number of individuals. It is clearly alleged that [K.K.] was the main organiser and controller of the conspiracy. As such, he had possession of the narcotics due to his exercise of control over same but also due to his joint possession of same with the other conspirators. This was so regardless of where the narcotics were physically located. The narcotics were thus jointly possessed in Lithuania, the UK and Ireland. That joint possession is attributable to all of the conspirators including the respondent herein. In such circumstances, it is appropriate to allege that the narcotics offence in respect of which surrender is sought was committed in 3 different jurisdictions, including Lithuania.

**31.** I am not satisfied that the narcotics offence specified in the EAW is alleged to have been committed in a place other than the issuing state. On the contrary, I am satisfied that it is alleged that the narcotics offence specified in the EAW was committed in the issuing state as well as in Ireland and the UK.

**32.** It follows that the respondent has failed to satisfy the first requirement of s. 44 of the Act of 2003 and, as the 2 requirements of the section are conjunctive, the respondent has failed to meet the conditions set out in s. 44. In such circumstances, I dismiss the respondent's objection to surrender grounded in s. 44.

**33.** While I do not regard it as a matter of great significance, for the sake of completeness I note the submission on behalf of the respondent that the issuing state referred to the extraterritorial nature of the jurisdiction in respect of the offences. At Part E of the EAW the relevant statutory provisions in Lithuania are set out, including Article 7 of the Code dealing with liability for crimes provided for in treaties, as set out above. I do not regard that reference as an indication that it is alleged the drug offence took place outside Lithuania. The said article also refers to human trafficking which it is not disputed clearly took place in Lithuania as well as other countries (property laundering is also referred to in that provision of the Code, and while the respondent is not sought in respect of same, the details of same refer to acts inside and outside of Lithuania.). Moreover, at Part F of the EAW the issuing judicial authority is invited to provide any remarks on extraterritoriality:-

*"(f) Other circumstances relevant to the case (optional information):*

*(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)."*

At that section of the EAW, the issuing judicial authority made no reference to extraterritoriality but merely to the stopping of the calculation of time for the statute of limitations. The subsequent

references to extraterritorial jurisdiction in the additional information supplied must be seen in the context of the request for additional information which expressly sought such information. In short, I do not regard the information set out in the EAW or additional information as supporting the contention that the drugs offence is alleged to have been committed only outside of Lithuania, as opposed to within Lithuania and other states.

### **Section 11(1A) of the Act of 2003**

**34.** Counsel for the respondent submits that the issuing judicial authority had failed to furnish sufficient information to meet the requirements of s. 11(1)(A) of the Act of 2003, which provides:-

*"11.-(1A) Subject to subss.(2A), a relevant arrest warrant shall specify—*

- (a) the name and the nationality of the person in respect of whom it is issued,*
- (b) the name of the judicial authority that issued the relevant arrest warrant, and the address of its principal office,*
- (c) the telephone number, fax number and e-mail address (if any) of that judicial authority,*
- (d) the offence to which the relevant arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned,*
- (e) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of one of the offences to which the relevant arrest warrant relates,*
- (f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and*
- (g)(i) the penalties to which that person would, if convicted of the offence specified in the relevant arrest warrant, be liable,*
- (ii) where that person has been convicted of the offence specified in the relevant arrest warrant but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence, or*
- (iii) where that person has been convicted of the offence specified in the relevant arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists.*

*(2) Where it is not practicable for the relevant arrest warrant to be in the form referred to in subsection (1), it shall include such information, additional to the information specified in subsection (1A), as would be required to be provided were it in that form.*

*(2A) If any of the information to which subsection (1A) (inserted by section 72(a) of the Criminal Justice (Terrorist Offences) Act 2005 refers is not specified in the relevant arrest warrant, it may be specified in a separate document."*

**35.** In *Minister for Justice and Equality v. Cahill* [2012] IEHC 315, Edwards J. identified the rationale for the requirements set out therein. He held that this might be summarised as having 3 broad objectives insofar as the Irish courts are concerned, the first being to enable the High Court,

in its capacity as executing judicial authority, to be satisfied that it is appropriate to endorse the warrant for execution in this jurisdiction, secondly, to enable the executing judicial authority to be satisfied as to correspondence in cases in which double criminality is required to be demonstrated and, thirdly:-

*"44. The third objective, and the critical one in the circumstances of the present case, is to enable the respondent to know precisely for what it is that his surrender is sought. A respondent is entitled to challenge his proposed surrender and in order to do so needs to have basic information about the offences to which the warrant relates. Among the issues that might be raised by a respondent are objections based upon the rule of specialty, the ne bis in idem principle and extra-territoriality to name but some. In order to evaluate his position, and determine whether or not he is in a position to put forward an objection that might legitimately be open to him to raise, he (and also his legal advisor in the event he is represented) needs to know, in respect of each offence to which the warrant relates, in what circumstances it is said the offence was committed, including the time, place, and degree of participation in the offence by the requested person."*

**36.** In *Minister for Justice & Equality v. Harrison* [2020] IECA 159, Donnelly J. stated at para. 55 in dealing with the requirements of s. 11:-

*"55. .... Whether an ideal amount of information is contained in the EAW is not the test, it is one of sufficiency."*

**37.** At para. 48 of her judgment, Donnelly J. stated:-

*"48. Subsection 11(1A)(e) of the Act of 2003 has been the subject of repeated pronouncements by the Supreme Court and High Court. It was quite correctly not questioned at this appeal that the subsection did not require a statement of the evidence in relation to the offences. It was accepted, in accordance with the decision of the Supreme Court in Minister for Justice and Equality v. Stafford [2009] IESC 83, that the EAW does not have to establish a strong case or even a prima facie case. In Stafford, the case against the requested person was a circumstantial one and the Supreme Court accepted that nonetheless, the requirements under the Act of 2003 and Framework Decision were satisfied."*

**38.** In *Minister for Justice and Equality v. Baron* [2012] IEHC 180, subsequently approved by the Supreme Court, Edwards J. was dealing with a case where Article 2.2. of the Framework Decision had been invoked for conspiracy to commit a number of drug-related offences. A point of objection was raised by the respondent that the degree of involvement, time and place of offences was not sufficiently specified as required by s. 11 of the Act of 2003. Edwards J. held that it was not necessary for a warrant to detail all evidence linking a respondent to the offences and that a general outline was sufficient. He emphasised at para. 176 of his judgment that the court is not concerned with the degree of involvement which would be required to be sufficient for a trial:-

*"176. .... It is sufficient if the information both specifically asserts a link and gives a general outline of the basis for that assertion, or alternatively sets forth sufficient alleged circumstantial facts that would, if proven, allow a court to infer the necessary link. It is not necessary, however, to provide every detail of the proposed evidence by means of which the circumstances in question might be established in Court."*

**39.** I am satisfied that sufficient details have been furnished by the issuing judicial authority in accordance with s. 11(1A) of the Act of 2003. The name and nationality of the respondent are set out; the name of the issuing judicial authority and its address are set out together with other contact details; the offences to which the EAW relates together with the nature and classification under the law of the issuing state are set out; details of the arrest order are set out; the circumstances in which the offences are alleged to have been committed including the time, place and the degree of involvement of the respondent are set out and the penalties to which the respondent would, if convicted, be liable are set out.

**40.** I am further satisfied that the absence of any further details other than those already provided in the EAW and in the additional information provided, will not result in any injustice caused to the respondent either in terms of contesting this application for surrender, or following surrender, adequately dealing with the case against him in the issuing state.

### **Section 37 of the Act of 2003**

**41.** This objection was not vigorously pursued but for the sake of completeness I will address same. The respondent avers that she has been living in Ireland since 2014. She has a young son who is approximately 4 or 5 years old at this stage. Unfortunately, her husband, whose surrender was also sought in respect of the same matters, died in custody in Ireland in the course of these proceedings. Her son is wholly dependent upon her for his care. While a niece of her husband was residing with them, this niece was due to start third-level education in the Autumn of 2021.

**42.** Section 37 of the Act of 2003 provides, *inter alia*, that a person shall not be surrendered if his or her surrender would be incompatible with the State's obligations under the European Convention on Human Rights ("the ECHR"), the protocols thereto or would constitute a contravention of any provision of the Constitution. It is submitted on behalf of the respondent that the respondent's right to a private and family life under Article 8 ECHR would be breached if her surrender is ordered.

**43.** In *Minister for Justice & Equality v. Vestartas* [2020] IESC 12, the Supreme Court considered Article 8 ECHR in the context of European arrest warrant proceedings. MacMenamin J., delivering the judgment of the court, stated at para. 23:-

*"23. Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence. But that guarantee is subject to the proviso that public authorities shall not interfere with the exercise of that right, except such as in accordance with law, and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Article 8(2)). The terms of Article 8(2) are, therefore, sufficiently broad to encompass orders for extradition, or in this case, surrender. But as will be seen, these Article 8 considerations arise within a statutory framework which it is now necessary to consider."*

**44.** As regards delay or lapse of time, MacMenamin J. stated at para. 89:-

*"89. Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other*

*constitutional or ECHR issues. The High Court judgment holds that there had been a significant dilution of the public interest which would ordinarily apply (para. 37). It posed what was characterised there as a modified and weakened public interest in surrender, evidenced by the elapses of time and other factors. Against this, it posed the private and family factors in the case (para. 38). But for the reasons set out above, there was a misapprehension as to the nature of the assessment. This is not a balancing exercise where public and private interests are placed equally on the scales. It is nonetheless necessary to have regard to the circumstances."*

**45.** The threshold to meet in order to avoid surrender due to Article 8 ECHR considerations is a high one. In *Vestartas*, MacMenamin J. stated at para 94:-

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

**46.** The circumstances of the respondent's family clearly evoke a high degree of sympathy and the Court has considerable sympathy for the respondent's son. However, As O'Donnell J. pointed out in *J.A.T. (No. 2)*, concern and sympathy are, unfortunately, emotions which are not infrequently encountered in these courts and persons accused of crime may often themselves come from circumstances, or have suffered experiences, which can elicit sympathy. The issues raised herein cannot be determined on the basis of sympathy but rather in accordance with the applicable legal principles.

**47.** Having given this matter long and careful consideration, and bearing in mind all of the relevant circumstances, I am not satisfied that an order for the surrender of the respondent to face prosecution in respect of the serious offences alleged can be said to be incompatible with the State's obligations under Article 8 ECHR. Undoubtedly, the respondent's family circumstances are difficult and surrender will be very disruptive. Article 8(1) ECHR guarantees the right to respect for an individual's private and family life, home and correspondence, but such right is expressly limited by the terms of Article 8(2) ECHR. The effect of Article 8(2) ECHR is that public authorities may interfere with the exercise of that right where same is in accordance with law and is necessary in a democratic society in the interests of national security, public safety, the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. There is a strong public interest in surrender. The alleged offences are serious offences. There is no suggestion of culpable delay. The circumstances put forward by the respondent would not be a bar to prosecution in this jurisdiction. There is no suggestion of abuse of process. Significant disruption to the family life of an accused or requested person and to the circumstances of other family members is almost an inevitable consequence of criminal proceedings or surrender proceedings.

**48.** In terms of the applicant's personal circumstances, I am satisfied that same are not so "truly exceptional" as to justify a refusal of surrender. I dismiss the respondent's objections to surrender based upon either delay or his right to a private and family life. Ultimately, bearing in mind the wording of s. 37 of the Act of 2003, this Court must determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto or would contravene a provision of the Constitution. I am satisfied that surrender would not be incompatible with the obligations of the State and nor would it contravene any provision of the Constitution. I dismiss the respondent's objection that surrender is precluded by virtue of s. 37 of the Act of 2003.

**49.** While the respondent's family circumstances are not sufficient to render her surrender incompatible with the State's obligations under Article 8 ECHR or under the Constitution, that is not to say that such circumstances are irrelevant or of no consequence. The Court must have regard to the provisions of the Act of 2003 in its entirety. Section 18 of the Act of 2003 provides:-

*"18.-(1) The High Court may direct that the surrender of a person to whom an order under subsection (1) or (2) of section 15 or subsection (1) or (2) of section 16 applies be postponed in accordance with this section where—*

*(a) the High Court is satisfied that circumstances exist that would warrant that postponement, on humanitarian grounds, including that a manifest danger to the life or health of the person concerned would likely be occasioned by his or her surrender to the issuing state,*

*(b) the person is being proceeded against for an offence in the State, or*

*(c) the person has been sentenced to a term of imprisonment for an offence and is required to serve all or part of that term of imprisonment in the State.*

*(2) The postponement shall continue until the High Court makes an order under subsection (4).*

*(3) Where the High Court decides to postpone a person's surrender under this section, it shall remand the person in custody or on bail and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.*

*(4) The High Court shall make an order ending the postponement of surrender —*

*(a) where paragraph (a) of subsection (1) applies, when the High Court is satisfied that the circumstances referred to in that paragraph no longer exist,*

*(b) where paragraph (b) of subsection (1) applies, when the High Court is satisfied that the proceedings in respect of the offence concerned have been finally determined (where the person concerned is not required to serve a term of imprisonment), or*

*(c) where paragraph (c) of subsection (1) applies, when the High Court is satisfied that the person concerned is no longer required to serve any part of the term of imprisonment concerned.*

*(5) Section 15 or 16, as the case may be, shall apply to the person concerned as of the date of the order under subsection (4) as though that order were an order made under subsection (1) or (2) of section 15 or (1) or (2) of section 16, as the case may be."*

It may be that a reasonable opportunity should be afforded to the respondent to make arrangements for the welfare of her son upon her surrender and the Court is prepared to hear an application pursuant to s. 18 of the Act of 2003 in that regard.

**Conclusion**

**50.** 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.

**51.** Having dismissed the respondent's objections to surrender it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Lithuania.