SUPREME COURT

1. Minister for Justice and Law Reform -v- Strzelecki [2015] IESC 15

- 26/02/2015 - Denham C.J., Murray J., Hardiman J., O'Donnell Donal J., Dunne J.

2. Minister for Justice and Equality -v- Connolly [2014] IESC 34

- 01/05/2014 – Denham CJ, Murray J, Hardiman J, Fennelly J, O'Donnell J.

3. Minister for Justice and Equality -v- Busby [2014] IESC 70

- 12/12/2014 - Denham CJ, Hardiman J, O'Donnell J, McKechnie J, Dunne J.

HIGH COURT

4. Minister for Justice & Law Reform -v- Andrzejewski [2014] IEHC 13

- 17/01/14 – Edwards J.

5. Minister for Justice & Equality -v- T.E. (No. 2) [2014] IEHC 51

- 24/01/2014 – Edwards J.

6. Minister for Justice & Equality -v- Haniszewski [2014] IEHC 50

- 24/01/2014 – Edwards J.

7. Minister for Justice & Equality -v- Brunell [2014] IEHC 131

- 21/02/2014 – Edwards J.

8. Minister for Justice and Equality -v- McArdle [2014] IEHC 132

- 21/02/2014 – Edwards J.

9. Minister for Justice & Equality -v- O'Donnell [2014] IEHC 138

- 11/03/2014 – Edwards J.

10. Minister for Justice and Equality -v- Herman [2014] IEHC 251

- 28/03/2014 – Edwards J.

11. Minister for Justice and Equality -v- J.A.T [2014] IEHC 320

- 09/05/2014 – Edwards J.

12. Minister for Justice and Equality -v- E.G.C. [2014] IEHC 250

- 14/05/2014 – Edwards J.

13. Minister for Justice and Equality -v- Kiernowicz [2014] IEHC 270

- 27/05/2014 – Murphy J.

14. Minister for Justice and Equality -v- Buckley [2014] IEHC 321

- 28/05/2014 – Edwards J.

15. Minister for Justice and Equality -v- E.S. [2014] IEHC 376

- 19/06/2014 – Edwards J.

16. Minister for Justice and Equality -v- Rostaş [2014] EHC 391

- 01/07/2014 – Edwards J.

17. Minister for Justice and Equality -v- B.H [2014] IEHC 403

- 30/07/2014 – Edwards J.

18. Minister for Justice and Equality -v- Craig [2014] IEHC 460

- 31/07/2014 – Edwards J.

19. Minister for Justice and Equality -v- Balmer [2014] IEHC 459

- 10/09/2014 – Edwards J.

20. Minister for Justice & Equality -v- Leskiewicz [2014] IEHC 584

- 07/10/2014 – Murphy J.

21. Minister for Justice & Equality -v- Olatunde [2014] IEHC 576

- 28/10/2014 – Edwards J.

22. Minister for Justice and Equality -v- Palonka [2014] IEHC 515

- 04/11/2014 – Edwards J.

23. Minister for Justice and Equality -v- Czajkowski [2014] IEHC 649

- 17/11/2014 – Murphy J.

24. Minister for Justice and Equality -v- Stalkowski [2014] IEHC 647

- 18/11/2014 – Edwards J.

25. Minister for Justice and Equality -v- Antkiewicz [2014] IEHC 650

- 19/12/2014 – Murphy J.

26. Minister for Justice and Equality -v- I.S. [2015] IEHC 36

- 12/01/2015 – Edwards J.

27. Minister for Justice and Equality -v- O'Connor [2015] IEHC 26

- 12/01/2015 – Edwards J.

Court should have considered fundamental rights when issuing State sought to add further charges to European arrest warrant

By: Ciaran Joyce BL, on March 3, 2015

Minister for Justice v. Strzelecki [2015] IESC 15 (Supreme Court, Denham CJ, 26 February 2015)

Supreme Court allows appeal of decision consenting to the prosecution of the appellant in respect of further offences after he had been surrendered to Poland on foot of a European arrest warrant, finding that the issue of fundamental rights is not excluded from consideration by the courts on a request for consent for further prosecution of a person who has been surrendered.

Denham CJ (nem diss): criminal law – European arrest warrant – whether objections under s. 37 of the European Arrest Warrant Act, 2003 on human or fundamental rights issues may be raised when a person has been surrendered previously under a European arrest warrant and the requesting State subsequently seeks consent to prosecute the surrendered person for offences additional to those the subject of the warrant on which he was surrendered – interpretation of s. 22(8) of the Act of 2003 – Article 13 of the European Convention on Human Rights – section 2 of the European Convention on Human Rights Act, 2003 – Council Framework Decision of 13 June, 2002 – Article 6 of the Treaty on European Union – High Court judge fell into error in excluding the appellant from raising s. 37 of the Act of 2003, as amended, or human rights, before the court – Irish law does not exclude issues of fundamental rights at any stage of a process under the Act of 2003 – allow the appeal – remit on preliminary point.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The issue of fundamental rights is not excluded for consideration by the courts on a request for consent for further prosecution of a person who has been surrendered. Thus, the issue may be raised and considered by a court. However, it may be in accordance with our jurisprudence, that such issue is determined by the Court to be a matter for litigation in the requesting state.

European arrest warrant did not contain enough specificity to order surrender

By: Ciaran Joyce BL, on June 5, 2014

Minister for Justice v. Connolly [2014] IESC 34 (Supreme Court, Hardiman J, 1 May 2014)

Supreme Court dismisses appeal by Minister for Justice of High Court's refusal to make an order surrendering a man to Spain on the basis that the warrant did not contain the required specificity and unambiguous clarity about the number and nature of the alleged offences for which it is asked to have him forcibly delivered.

Hardiman J (nem diss): European Arrest Warrant – appeal of the Minister of order of the High Court refusing to surrender respondent to Spain – whether European Arrest Warrant issued by the Spanish judicial authorities was deficient in that it did not contain a clear or satisfactory statement of the offence or offences for which it was intended to put him on trial in Spain – whether Court had power to entertain argument because it was not the point certified by the High Court as being a point of law of exceptional public importance – Section 16(12) of the European Arrest Warrant Act 2003 – Section 12(f) of the Criminal Justice (Miscellaneous Provisions) Act 2009 – no statutory provision is necessary to confirm or confer such jurisdiction – Farrell and Hanrahan The European Arrest Warrant in Ireland (Clarus Press, 2011) – open to this Court in the present appeal to consider any point which arises, and not simply the particular point which was certified – arrest warrant in this case seems internally inconsistent – appeal dismissed.

Quotation from judgment (courtesy of the Courts Service of Ireland):

I consider it to be an imperative duty of a court asked to order the compulsory delivery of a person for trial outside the State to ensure that it is affirmatively and unambiguously aware of the nature of the offences for which it is asked to have him forcibly delivered, and for which he may be tried abroad, and of the number of such offences.

Unnecessary for executing State to show offence can be prosecuted on similar basis in issuing State in European arrest warrant case

By: Ciaran Joyce BL, on December 17, 2014

Minister for Justice v. Busby [2014] IESC 70 (Supreme Court, Denham CJ, 12 December 2014)

Supreme Court, on a point of law of exceptional public importance concerning an order of surrender to the United Kingdom of a man accused of terrorist offences, pursuant to European arrest warrant legislation, holds that it is not necessary to show that the executing State could prosecute the act or omission of which the offence consists on a similar basis to the jurisdiction asserted by the issuing State.

Criminal law – European arrest warrant – point of law of exceptional public importance – whether, where an offence is deemed extra-territorial for the purposes of s. 44, is it necessary to show that the executing State could prosecute the act or omission of which the offence consists on a similar basis to the jurisdiction asserted by the issuing State – Article 2(2) of the Central Framework Decision – principle of mutual recognition of the judicial decisions of the legal systems of other member States – not necessary to show that the executing State could prosecute the act or omission of which the offence consists on a similar basis to the jurisdiction asserted by the issuing State.

Quotation from judgment (courtesy of the Courts Service of Ireland):

Applying the well established principles from case law (which do not include Minister for Justice Equality and Law Reform v. Bailey [2012] IESC 16, where the issue that arises in this case was not addressed) I would answer the question certified in the negative. Subject to such caveats as are described in the jurisprudence set out above, parity of process is not necessary. I would answer the question thus: it is not necessary to show that the executing state could prosecute the act or omission of which the offence consists on a similar basis to the jurisdiction asserted by the issuing state.

Polish national surrendered having fled to evade justice

By: Ciaran Joyce BL, on February 5, 2014

Minister for Justice v. Andrejewski [2014] IEHC 13 (High Court, Edwards J, 17 January 2014)

High Court surrenders Polish national back to Poland on foot of an arrest warrant after finding that he had attempted to evade justice by coming to this jurisdiction and had therefore "fled" within the meaning of legislation.

Criminal law - European arrest warrant – Poland – s.13 of European Arrest Warrant Act 2003 – s.16 of Act of 2003 – objection to surrender based upon s.10 of Act of 2003, namely a contention that respondent did not flee – s.6 of Criminal Justice (Miscellaneous Provisions) Act 2009 – s.71 of Criminal Justice (Terrorist Offences) Act 2005 – interpretation of word "flee"–reasonable to infer that respondent left Poland to evade justice, and must accordingly be considered as having fled – respondent deliberately trying to conceal actual whereabouts by sowing misinformation – respondent surrendered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In the circumstances it is clear that the respondent was not in fact co-operating with his supervisor, and sought to place himself beyond the reach of the Polish court authorities. While it may have been his subjective intention to only seek to evade the Polish civil court authorities, and in particular the bailiff, it is nevertheless the case that in evading his court appointed supervisor, and in coming to Ireland without informing that supervisor, he must be treated objectively as having placed himself beyond the reach of the criminal court which had only conditionally released him, and which had required him to co-operate with, and subject himself to supervision by, it's supervisor. The only inference that can be drawn in this Court's view is that he came to Ireland to evade justice, and he must be regarded as having fled in the Tobin sense.

Woman accused of money laundering surrendered to France despite objection they are extra-territorial offences

By: Ciaran Joyce BL, on February 19, 2014

Minister for Justice v. T.E. (No. 2) [2014] IEHC 51 (High Court, Edwards J, Ireland - High Court, 24 January 2014)

High Court surrenders woman to France after finding that she could not demonstrate that the offences of money laundering and conspiracy were: 1) committed in a place other than Ireland; and 2) that the acts of which the offences consist do not, by virtue of having been committed in a place other than Ireland, constitute an offence under Irish law.

European arrest warrant – France – charge of money laundering and criminal conspiracy emanating from human trafficking – s.13 of European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – objection to surrender based upon s.44 of the Act of 2003, namely the offence was committed in a place other than the issuing state and by virtue of having been committed in a place other than the State, does not constitute an offence under the law of the State – allegation that offences in question were transnational and were committed in more than one place – reciprocity – s.72(1) of Criminal Justice Act 2006 – s.6 of Criminal Justice (Amendment) Act 2009 – S.7 of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 – Court cannot be satisfied that she personally entered into the alleged criminal conspiracy in France – alleged conspiracy offence is an extraterritorial offence – s.71 of Criminal Justice Act 2006 – necessary reciprocity exists – respondent surrendered in respect of both offences.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The circumstances of the offences set out in the European arrest warrant make it clear that the money laundering activities of the organised group in question were transnational and involved participants in France, Ireland and Nigeria, acting in concert, handling the proceeds of crime by passing them from one to the other. It is therefore the case that the criminal organisation collectively committed, or facilitated the commission, of serious offences both in Ireland and in France; and that it also engaged in activities that may have involved the actual commission or the facilitation of the commission, of similar type offences in Nigeria, if indeed money laundering is an offence there.

Polish national surrendered to serve sentence despite alleged wrongful intercession by Minister

By: Ciaran Joyce BL, on February 19, 2014

Minister for Justice v. Haniszewski [2014] IEHC 50 (High Court, Edwards J, Ireland - High Court, 24 January 2014)

High Court surrenders man to Poland to serve a sentence for illegal heroin supply despite objections: 1) that the Irish Central Authority acted ultra vires in requesting information before the warrant was endorsed by the High Court; 2) that the sentence of imprisonment is not immediately enforceable; and 3) that the man did not "flee" Poland.

European arrest warrant – Poland – sentence to be served for illegal supply of heroin – s.13 of European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – whether Minister/Irish Central Authority acted ultra vires – whether sentence of imprisonment is immediately enforceable – whether respondent fled from the issuing state – information originally missing from warrant was in fact provided by issuing State after correspondence from this jurisdiction – whether applicant exceeded his statutory authority in the course of his correspondence with the issuing judicial authority and specifically that he acted ultra vires his powers in requesting the issuing judicial authority to amend or vary an incoming warrant – to offer advice is not in any sense to seek to usurp the function of either the issuing judicial authority – applicant has not acted inappropriately, but even if he had done so it would not justify me in refusing surrender where what was done was done in good faith and absent any evidence of an attempt to abuse this Court's process – s. 6 of Criminal Justice (Miscellaneous Provisions) Act 2009 – s.71 of Criminal Justice (Terrorist Offences) Act 2005 – Court is satisfied he knew that he was required to serve the sentence the subject matter of the warrant – no point of objection succeeds – respondent surrendered.

Man surrendered to Netherlands to face allegation of murder involvement

By: Ciaran Joyce BL, on March 24, 2014

Minister for Justice v. Burnell [2014] IEHC 131 (High Court, Edwards J, 21 February 2014)

High Court surrenders respondent to the Netherlands to face allegation of involvement in a murder on the grounds that it had not been established to the Court's satisfaction that at the time at which the European arrest warrant was issued, a decision had not been made to charge the respondent with, and try him in the issuing state for, the offence to which the warrant relates.

European arrest warrant – Netherlands – s.13 of the European Arrest Warrant Act 2003 – offence relating to murder, grievous bodily injury – objection under Section 21A of the Act of 2003 – whether respondent wanted for questioning or prosecution – onus of proving that decisions to both charge and try the respondent had not been taken rests on the respondent, mere suspicion not enough – alleged abuse of the process – nothing to establish mala fides on the prosecutor's part – whether the European Arrest Warrant was a judicial decision within the meaning of Article 1 and Article 6 of the Framework Decision – whether the process antecedent to the issue of the EAW was devoid of independent or judicial scrutiny – s. 33 of the Act of 2003 – it shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown – s.4A presumption not rebutted – respondent surrendered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In conclusion on this issue, the Court considers that it has not been established to its satisfaction that at the time at which the European arrest warrant was issued in this case a decision had not been made to charge the respondent with, and try him in the issuing state for, the offence to which the warrant relates. In the circumstances the Court is not obliged by the terms of s. 21A of the Act of 2003 to refuse to surrender the respondent.

Man surrendered to Netherlands to face charge of involvement in murder

By: Ciaran Joyce BL, on March 26, 2014

Minister for Justice v. McArdle [2014] IEHC 132 (High Court, Clarke J (Frank), 21 February 2014)

High Court surrenders man to the Netherlands to face an allegation of involvement in a murder despite objections that no decision to charge him had been made in the issuing State, that there was an abuse of the court process and that the warrant process was devoid of judicial scrutiny.

European arrest warrant – Netherlands – s.13 of the European Arrest Warrant Act 2003 – offence relating to murder, grievous bodily injury – whether court should dismiss proceedings in limine – whether surrendering the respondent to the Netherlands without having obtained the prior consent of the UK to his onward rendition would breach the Rule of Specialty – European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 – Articles 27 and 28 of Framework Decision – Section 21A of the Act of 2003 – whether issuing state had decided to charge the respondent – alleged abuse of process – nothing to establish mala fides on the prosecutor's part – whether the European Arrest Warrant was a judicial decision within the meaning of Article 1 and Article 6 of the Framework Decision – whether the process antecedent to the issue of the EAW was devoid of independent or judicial scrutiny – s. 33 of the Act of 2003 – it shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown – s.4A presumption not rebutted – respondent surrendered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In conclusion on this issue, in circumstances where the evidence does not establish that the prosecutor was untruthful in suggesting to this Court that he has at all material times had an intention to charge and try the respondent and his co-accused, there is nothing to establish mala fides on the prosecutor's part in having summonsed those parties when he did, or that he has attempted to abuse this Court's process in any way.

Man surrendered to UK despite possibility of Travel Restriction Order

By: Ciaran Joyce BL, on March 27, 2014

Minister for Justice v. O'Donnell [2014] IEHC 138 (High Court, Edwards J, 11 March 2014)

High Court surrenders man to the UK to face allegations of importation and possession of controlled drugs despite the possibility that he would be sentenced to a Travel Restriction Order, holding that he had not demonstrated that such an order, if imposed, would be arbitrary and unjustified.

European arrest warrant – UK – s.13 of the European Arrest Warrant Act 2003 – objection pursuant to s. 37 of the Act of 2003 – travel restriction order – whether a travel restriction order would breach the respondent's constitutional right to personal liberty as guaranteed under Article 40.4.1 of the Constitution of Ireland – unenumerated constitutional right to travel – travel restriction orders differ materially from indeterminate sentences for public protection – insufficient proximity between surrender and harm apprehended preventative detention – respondent has not demonstrated that a TRO, if imposed, would be arbitrary and unjustified in pursuit of a legitimate aim – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

There is no reason to believe that the respondent would not be entitled to be heard on this issue, either personally or through counsel. Moreover, before imposing a TRO the judge would have to be in fact satisfied that it was appropriate to do so. It is therefore by no means certain that the respondent will be subjected to a TRO. It is no more than a possibility, and one that is dependent on several contingencies coming to pass.Furthermore, there is no evidence to suggest that, if a TRO were in fact to be imposed, the respondent could not seek to have the appropriateness of its continuation reviewed, or to have it lifted, in the event of a material change in his circumstances. Taking all of this into consideration it is this Court's view that the respondent has not demonstrated that the harm that he apprehends will arise at all, but even if it is accepted to be a possibility that he has also failed to demonstrate sufficient proximity between his proposed surrender and the harm that he apprehends may arise.

Czech national surrendered as there is no bar to further prosecution in issuing State

By: Ciaran Joyce BL, on June 3, 2014

Minister for Justice v. Herman [2014] IEHC 251 (High Court, Edwards J, 28 March 2014)

High Court orders surrender of Czech national on foot of racketeering and extortion charges, finding that the objection of double jeopardy does not apply as any judgment which does not definitively bar further prosecution does not constitute a ground for mandatory non-execution of a European arrest warrant.

European Arrest Warrant – Czech Republic – racketeering and extortion – principle of double jeopardy (nemo debet bis vexari) – s. 41 of the European Arrest Warrant Act 2003 – Framework Decision is Article 3.2 – existing conviction and sentence can be re-opened to take account of further partial acts that were not taken into consideration by the court of first instance – respondent surrendered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

I am satisfied that by virtue of the process by means of which under Czech Law the existing conviction and sentence can be re-opened to take account of further partial acts that were not taken into consideration by the court of first instance, the existing conviction or convictions do not represent a final judgment within the autonomous meaning of that expression as it is used in the Framework Decision.

De facto abuse of process insufficient to justify refusing surrender of man to UK

By: Ciaran Joyce BL, on June 27, 2014

Minister for Justice v. JAT [2014] IEHC 320 (High Court, Edwards J, 9 May 2014)

High Court orders surrender of man to the UK, finding that, notwithstanding that the manner in which the respondent's rendition has been pursued constitutes a de facto abusive of the process, there is no justification in refusing his surrender in the interests of justice.

Criminal law – European Arrest Warrant – UK – s.13 of the European Arrest Warrant Act 2003 – three offences allegedly involving a conspiracy – alleged abuse of this Court's process by the domestic prosecuting authority of the issuing state and/or the applicant in seeking to "come again" in circumstances where they failed or neglected or misused the ticked box procedure available to them pursuant to article 2.2 of the Framework Decision – insufficient particularisation of the alleged offences contrary to s. 11(1A)(f) of the Act of 2003, and in particular failure to adequately specify the place in which the offences are said to have been committed – alleged breaches/apprehended breaches of various rights guaranteed to the respondent and members of his immediate family either under the European Convention on Human Rights – no evidence of any deliberate misuse by the applicant or the United Kingdom authorities – abuse of process – unique role of the Central Authority – s.11(1A)(f) of the European Arrest Warrant Act, 2003 – whether there is insufficient particularisation on the face of the warrant – whether offences for which the respondent is wanted would be prima facie unconstitutional in this jurisdiction – objections based on prejudice to family and other personal rights – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In this Court's view the abuse of process that has occurred in this case can be appropriately addressed by admonishment of the parties responsible for it, and particularly of the applicant who had carriage of the proceedings in this jurisdiction at all stages. The Court wishes to deprecate in strong terms the fact that the respondent has been unjustly harassed and oppressed and unnecessarily twice vexed with litigation. That having been recorded, I consider that the abuse that has occurred has not been so egregious that the mere fact of going forward in the light of it would be offensive. On balance, taking into account all of the circumstances of the case, I believe that it should still be allowed to proceed in the overall interests of justice.

Invalid purpose for seeking surrender of convict to Northern Ireland

By: Ciaran Joyce BL, on June 3, 2014

Minister for Justice v. EGC [2014] IEHC 250 (High Court, Edwards J, 14 March 2014)

High Court refuses to order the surrender of a man to Northern Ireland on the basis that the purpose for which he is wanted by the issuing State (re-sentencing someone who has already been sentenced) is not one contemplated in the legislation governing such surrenders.

European Arrest Warrant – United Kingdom of Great Britain and Northern Ireland – central issue in this case concerns the purpose for which surrender is sought, and whether the ostensible purpose is one that is accommodated within the legislative provisions of the European Arrest Warrant Act 2003 – s.13 of the 2003 Act – E.G.C. failed to comply with the requirements of the Probation Service in terms of where he stayed and is now sought – Section 10 Objection – Section 11 Objection – Section 41 Objection (Ne bis in idem) – Section 38 Objections (Correspondence and Minimum Gravity) – whether conviction and sentence can be regarded as "final judgement" – Schedule 2 of the Criminal Justice (Northern Ireland) Order, 1996 – respondent is not in fact being sought exclusively and definitely for the purposes of re-sentencing him – purpose for which the respondent is wanted by the issuing state is not a purpose contemplated by any of the three alternatives contemplated by s. 10 of the Act of 2003 – surrender refused.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In counsel for the respondent's submission, the purpose for which the respondent is wanted by the issuing state is not a purpose contemplated by any of the three alternatives contemplated by s. 10 of the Act of 2003. Those purposes are correctly reflected in the boilerplate text that appears at the commencement of the form of the warrant as specified in the annex to the Framework Decision. What is contemplated is surrender for one of three purposes, i.e., for the purpose of conducting a criminal prosecution; alternatively, sentencing following conviction, alternatively, executing a custodial sentence or detention. Neither s.10 of the Act of 2003, nor the Articles 1 and 2 of the underlying Framework decision to which regard may be had for the purposes of giving s. 10 of the Act of 2003 a conforming interpretation, contemplates surrender for the purpose of re-sentencing someone who has already been sentenced.

Polish national surrendered on prostitution charges

By: Ciaran Joyce BL, on June 10, 2014

Minister for Justice v. Kiernowicz [2014] IEHC 270 (High Court, Murphy J, 27 May 2014)

High Court orders surrender of a man to Poland to face charges of financially profiting from prostitution, on the grounds that correspondence with Irish offences had been established.

European arrest warrant – Republic of Poland – s. 16 of the European Arrest Warrant Act 2003 – alleged offence of financially profiting from prostitution – whether Article 2.2 of the Framework Decision has been properly invoked to exempt the Applicant from establishing correspondence – whether there is a correspondence between the offences delineated in the warrant and additional information supplied – organisation of prostitution contrary to s. 9 of the Criminal Law (Sexual Offences) Act 1993, and/or living on earnings of prostitution contrary to s. 10 of the Criminal Law (Sexual Offences) Act 1993, and/or brothel keeping contrary to s. 11 of the Criminal Law (Sexual Offences) Act 1993 – strict compliance with the terms of Article 2.2 is necessary in order to properly invoke its provisions – clear error on the face of the warrant – Applicant is not entitled to rely on the exemption provided by Article 2.2 from the need to prove dual criminality or correspondence – court is satisfied that correspondence is established in fact – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The facts alleged in this case as established by the warrant and the additional information contained in the "indictment" are that the Respondent was the owner of an escort agency, that the police authorities in Poznan had conducted an investigation of escort agencies in Poznan through interviewing persons engaged in prostitution and by conducting searches of the premises of various escort agencies located in the City of Poznan and as a consequence of those interviews and searches, concluded that the Respondent together with two other named men were profiting financially from prostitution. The additional information that the Respondent was allegedly the owner of an escort agency and that investigations of that escort agency indicated that escorts were engaged in prostitution is sufficient to establish the additional element of aiding and abetting prostitution which is required for correspondence with an offence in this State. When interviewed as a suspect, the Respondent allegedly did not deny that he was the owner of an escort agency but is alleged to have stated that the women employed in his club did not render any sexual services.

Man surrendered to UK despite claims he would potentially be exposed to unfair procedures

By: Ciaran Joyce BL, on June 27, 2014

Minister for Justice v. Buckley [2014] IEHC 321 (High Court, Edwards J, 28 May 2014)

High Court orders surrender of man to UK to face a charge of conspiracy to cause explosions, on the grounds that he has not established real risk that he will be subjected to a flagrant denial of justice or exposed to practices or procedures which, if exercised within this State, would amount to infringements of his constitutional right to fair and just procedures.

Criminal law – European Arrest Warrant – UK – offence of Conspiracy to Cause Explosions – s.13 of the European Arrest Warrant Act 2003 – whether surrender of respondent to the issuing State would expose him to practices or procedures which, if exercised within this State, would amount to infringements of his constitutional right to fair and just procedures – ss. 74 and 75 of the United Kingdom's Police and Criminal Evidence Act 1984 (PACE) – s. 37(1)(a) and (b) of the Act of 2003 – Article 6 of the European Convention on Human Rights – no substantial grounds for believing that there is a real risk that the respondent will be subjected to a flagrant denial of justice at his trial – respondent surrendered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In the Court's view, the evidence that has been adduced does not begin to approach what would be required to establish that the apprehended adduction of evidence of a co-conspirator's convictions at the respondent's trial, in the event that he is surrendered, would be so egregious, unfair and unjust that it would never be allowed in this jurisdiction. Nor is the suggestion tenable that were the Oireachtas to enact legislation equivalent to ss. 74 and 75 of the Act of 1984 it would inevitably be struck down as unconstitutional. That simply cannot be said. It might or it might not, depending on the scheme of the legislation as a whole and the availability of safeguards and counterbalancing measures. The respondent has not adduced evidence concerning the place of ss. 74 and 75 within the scheme of the Act of 1984 as a whole, or concerning safeguards, counterbalancing measures or remedies available to an affected person under that legislation, or more widely under United Kingdom law. Thus, it is impossible to assess how a constitutional challenge in this jurisdiction to hypothetical equivalent legislation and laws might be resolved even as a matter of likelihood.

Surrender of Polish woman refused as it would be injurious and harmful

By: Ciaran Joyce BL, on September 18, 2014

Minister for Justice v. ES [2014] IEHC 376 (High Court, Edwards J, 19 June 2014)

High Court refuses to surrender Polish woman who put down roots in Ireland and was not aware that she was the subject of any criminal investigation at the time at which she left Poland, finding it would represent a disproportionate measure to surrender her in light of her mental health issues and young daughter.

European arrest warrant – Poland – s.13 of the European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – s. 37 objection – whether surrender would breach the rights of the respondent and her daughter to respect for family life as guaranteed under Article 8 of the European Convention on Human Rights – degree to which the proposed extradition measure will interfere with, and operate to the prejudice of, the family life of the respondent and her child – whether there was culpable delay in issuing warrants – this is not a case where the respondent relies upon roots put down in circumstances where she knew that she was being pursued by the issuing State, and in the knowledge that she was in peril of facing a rendition request at any time – respondent's surrender will be injurious and harmful – surrender refused.

Quotation from judgment (courtesy of the Courts Service of Ireland):

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

Surrender of woman to Romania refused where there is real risk that flagrant denial of justice took place

By: Ciaran Joyce BL, on September 25, 2014

Minister for Justice v. Rostaş [2014] EHC 391 (High Court, Edwards J, 1 July 2014)

High Court refuses to surrender Romanian woman on the basis that to do so would be incompatible with the State's obligations under the European Convention on Human Rights, in circumstances where the Court considers that there are substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice with respect to her trial in Romania.

European arrest warrant – Romania – s.13 of the European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – Section 37(1) of the European Arrest Warrant Act 2003 – Strasbourg Jurisprudence concerning discrimination against the Roma in Romania – substantial grounds for believing that there is a risk that her imprisonment in Romania on foot of the EAW will amount to a "flagrant denial of justice" – disproportionate interference with the right of family unity – Article 8 ECHR – delay – alleged unfair trial – surrender would be incompatible with this State's obligations under the European Convention on Human Rights – substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice with respect to her trial in Romania.

Quotation from judgment (courtesy of the Courts Service of Ireland):

It bears remarking upon that the present case is highly exceptional in its facts and circumstances, not least in terms of the passage of time since the offence itself and the trial, conviction and sentencing of the respondent, and also the geopolitical context in which those key events occurred. As such it represents a rare case in which the Court considers that it has a duty to intervene as executing judicial authority to prevent surrender on the grounds of the respondent possibly having been subjected to an unfair trial. Moreover, the mere fact that the Court considers that, on the evidence before it, there are substantial grounds for believing that there is a real risk that the respondent suffered a flagrant denial of justice with respect to a trial that took place in a very different Romania from today's Romania, can have no implications beyond the case presently before the Court. It represents a decision on the facts of the particular case before the Court which facts are unlikely to be exactly replicated. In so far as future cases are concerned, whether an objection to a respondent's surrender based upon the unfairness of an underlying conviction could similarly succeed would depend on the nature and strength of the evidence adduced in the particular case.

European arrest warrant to proceed after fitness to plead issue resolved by medical evidence

By: Ciaran Joyce BL, on September 25, 2014

Minister for Justice v. BH [2014] IEHC 403 (High Court, Edwards J, 30 July 2014)

High Court rules that European arrest warrant case must proceed after hearing medical testimony regarding the mental capacity of the Polish respondent and his fitness to plead.

European arrest warrant – Poland – s.13 of the European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – fitness to plead – assessment of medical evidence – respondent is capable of receiving and comprehending advice, and is able to give appropriate instructions – case must proceed.

Quotation from judgment (courtesy of the Courts Service of Ireland):

While the evidence does not go far enough to establish that the respondent is deliberately feigning, the Court has had to approach this claim of incapacity raised late in the day, and against the background that I have described, with a healthy degree of scepticism. I have done so, but have at all stages been open to persuasion as to the respondent's alleged incapacity by the medical evidence adduced in support of it. At the end of the day, however, I have not found that medical evidence to be persuasive, preferring as I do the testimony of Professor Kennedy.

Man who escaped from open prison while serving sentence for murder surrendered to UK

By: Ciaran Joyce BL, on October 29, 2014

Minister for Justice v. Craig [2014] IEHC 460 (High Court, Edwards J, 31 July 2014)

High Court surrenders man who escaped from open prison to UK to serve remainder of his sentence, finding that this would not result in the respondent being subjected to "preventative detention" and would not be disproportionate to the legitimate aim being pursued by the issuing State.

European arrest warrant – UK – s.13 of the European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – European Arrest Warrant Act 2003 (Designated Member States) Order 2004 (S.I. No. 4 of 2004) – correspondence and minimum gravity requirements met – escaped from lawful custody by walking out of an open prison – life sentence imposed upon the respondent in this case is a fundamentally different form of sentence to the I.P.P. sentence – whether surrender would constitute a contravention of Article 40.4 of the Constitution therefore be prohibited by Section 37(1) of the European Arrest Warrant Act 2003 – Sentencing Law and Practice, 2nd Ed, by Thomas O'Malley (Thompson Round Hall, 2006) – Life Sentences in Ireland and the European Convention on Human Rights, by Prof J. Paul McCutcheon and Dr Gerard Coffey – The Life Sentence and Parole, by Mr Diarmuid Griffin – preventative detention issue – even if the respondent in this case is surrendered to resume serving his mandatory life sentence, he might still be afforded clemency at some point in the future providing that his release on licence represents an acceptable level of risk in terms of his dangerousness or risk of re-offending – substantial public interest in the respondent's extradition – proposed rendition measure would not be disproportionate to the legitimate aim being pursued by the issuing state – respondent surrendered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The Court has taken full account of the personal circumstances of the respondent as disclosed in his affidavit, and also the affidavit of his wife. However, in the Court's view the matters put forward are insufficient to outweigh the substantial public interest in the respondent's rendition. It will be difficult and distressing for both the respondent and his wife to be separated, particularly having regard to their advanced ages, and the roots put down by the respondent in Leitrim where he has lived quietly and without causing trouble for the last eight years or so. Moreover, his wife may indeed have difficulties in coping on her own as identified by the respondent in his affidavit. However, it is commonplace for elderly people to be suddenly deprived of a life partner for one reason or another, illness and death being the most common. It is something that just has to be faced. Moreover, the respondent's position is not hopeless. The Court has already made the point that, although the respondent clearly has not helped his cause, it remains possible that he could still secure eventual release on licence, in the event that he is surrendered. Notwithstanding the various matters put forward in affidavits filed on behalf of the respondent, there is no reason to believe that his rendition would have profoundly injurious or extraordinary consequences for him, or for his wife.

Man surrendered to UK to face allegation he breached condition of his release on licence

By: Ciaran Joyce BL, on November 11, 2014

Minister for Justice v. Balmer [2014] IEHC 459 (High Court, Edwards J, 10 September 2014)

High Court orders surrender of respondent to the UK after allegedly breaching the terms of his release (having been released on licence after being sentence to life imprisonment for murder), finding that his surrender would not result in the respondent being subjected to "preventative detention" and that the presumption that the issuing State will respect the respondent's rights has not been displaced since the Parole Board and/or the courts in the issuing State are far better equipped to make the necessary judgment.

European arrest warrant – UK – s.13 of the European Arrest Warrant Act 2003 – s.16 of the Act of 2003 – sentencing – sentenced to life imprisonment for murder and released on licence but breached conditions of licence – Article 5 of the European Convention on Human Rights – section 37 of the Act of 2003 – Sentencing Law and Practice, 2nd Ed, by Thomas O'Malley (Thompson Round Hall, 2006) – Life Sentences in Ireland and the European Convention on Human Rights, by Prof J. Paul McCutcheon and Dr Gerard Coffey, both of the School of Law at the University of Limerick – The Life Sentence and Parole, by Mr Diarmuid Griffin of the School of Law at NUIG and Prof Ian O'Donnell of the Centre for Crime and Justice Studies at UCD – temporary release is a privilege – not reasonable for the respondent to expect that this Court, as the executing judicial authority, should embark on some form of judicial review of the decision to revoke his licence to determine whether or not there was sufficient causal connection between the reasons for revocation of his licence and his original murder conviction – surrender to UK ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In circumstances where the respondent has adduced no cogent evidence to rebut the presumption that his rights will be respected; where he has already received short form reasons for his recall; where he has received an assurance that he will receive more detailed reasons in a short timeframe following his return to custody, including the information on which the decision to recall him was based, and where he has the possibility of having the decision to recall him independently reviewed, the Court is satisfied that an order for his surrender would not be contrary to this State's obligations under the European Convention on Human Rights.

Surrender refused where respondent wanted for investigation only of alleged crime

By: Ciaran Joyce BL, on December 23, 2014

Minister for Justice v. Leskiewicz [2014] IEHC 584 (High Court, Murphy J, 7 October 2014)

High Court refuses surrender of respondent to Poland to face charges of cultivating drugs, on the basis that he is sought for the purposes of investigation only – if a person is stated to be wanted in connection with a crime, that normally denotes that he is sought for the purposes of the investigation of that crime.

Criminal law – European arrest warrant – Poland – s. 13 of the European Arrest Warrant Act 2003 – objection based on s. 37(1) of the Act of 2003 – disproportionate interference with his right to respect for family life under Article 8 of the European Convention on Human Rights – s. 21A objection – no decision has been made in the issuing State to charge and try the respondent in respect of the offence for which his surrender is sought – whether this warrant is in fact a warrant issued for the purposes of the investigation of an offence alone, in circumstances where that investigation might or might not result in a prosecution – surrender refused.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The Court is therefore compelled by the evidence to the conclusion that the respondent is sought for the purposes of investigation only and that is not permissible. The Court has been assisted in arriving at this conclusion by having had an opportunity of considering the same argument in respect of another Polish warrant in which the evidence clearly indicated an intention to charge. Despite two clear opportunities to answer the question raised by the central authority and later by the court that question has not been answered affirmatively. The evidence in this case does not indicate an intention to charge, let alone to try the respondent for the offence contained in the European arrest warrant. In the particular circumstances of this case, I am satisfied to hold that a decision has not been made to try the respondent for the offence in the warrant in the issuing State. In the circumstances I am obliged in accordance with s. 21A(1) to refuse to surrender the respondent.

Hearsay evidence concerning fingerprint documentation admitted at interlocutory stage of European arrest warrant application

By: Ciaran Joyce BL, on December 23, 2014

Minister for Justice v. Olatunde [2014] IEHC 576 (High Court, Edwards J, 28 October 2014)

High Court, by way of challenge to identity at the arrest hearing relating to a European arrest warrant, satisfies itself that the person before the Court is one and the same as the person to whom the European arrest warrant relates (without prejudice to the respondent's right to revisit the issue, if he wished, at any full surrender hearing) and finds that it is appropriate to admit hearsay evidence concerning whether the fingerprint evidence that accompanied an "Interpol Diffusion" was material transmitted "on behalf of" the issuing judicial authority.

Criminal law – European arrest warrant – Italy – s. 13(5) of the European Arrest Warrant Act, 2003 – respondent challenges that he is the person to whom the warrant in question relates – admissibility of certain documentary evidence in the nature of e-mails and fingerprint impressions – s. 45A(1) of the Act of 2003, as amended by s.20 of the Criminal Justice (Miscellaneous Provisions) Act 2009 – proof of identity to the satisfaction of the Court is a precondition to anything further happening in the proceedings – s. 16(1)(a) of the Act of 2003 – fingerprint impressions taken from the arrested man in Tallaght Garda station had been compared with the fingerprint impressions that the witness had received from Interpol and were found to be a complete match – whether Interpol Diffusion document was inadmissible hearsay – whether the dactyloscopic evidence attached to the Interpol Diffusion transmitted by Interpol NCB Rome to Interpol NCB Dublin was so transmitted "on behalf of" the issuing judicial authority – s.11 (1A) of the Act of 2003 – s. 12(1) of the Act of 2003 – Articles 9 and 10 of the Framework Decision – Schengen Convention (otherwise the Schengen Agreement Application Convention or SAAC) – Court can exercise its discretion to receive secondary hearsay evidence on behalf of the party concerned – appropriate to admit the hearsay evidence – Court is satisfied that the person before the Court is one and the same person as the person to whom the European arrest warrant relates.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In circumstances where the Court is satisfied to admit the said hearsay evidence, and in circumstances where no good reason has been advanced for not attaching probative weight to it (the respondent can point to no cogent evidence tending in any way to contradict the hearsay assertion that the material was transmitted on behalf of both the Italian Central Authority and the State Prosecutor at the Court of Naples, the latter being the issuing judicial authority), this Court is satisfied that the fingerprints accompanying the Interpol Diffusion and referable to the European arrest warrant with which the Court is presently concerned were indeed transmitted on behalf of the issuing judicial authority. That being the case s.45A(11) of the Act of 2003 as amended applies to such fingerprint evidence and it may be received in evidence without further proof.

Issuing judicial authority not obliged to provide amplifying information in European arrest warrant

By: Ciaran Joyce BL, on November 26, 2014

Minister for Justice v. Palonka [2014] IEHC 515 (High Court, Edwards J, 4 November 2014)

High Court orders surrender of respondent to Poland, on the grounds that having interpreted the relevant legislation, the Court is not precluded by the terms of applicable legislation from surrendering the respondent in the circumstances of the case, and supplementary information is not required to be included in the documentation to ground an order of surrender.

European arrest warrant – Poland – s.16 of the European Arrest Warrant Act 2003 – correct interpretation of s. 16(1)(c) and s. 45 of 2003 Act, as amended by the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 – the issuing judicial authority, having opted to rely on the condition set out at what should be paragraph 3.1b of the Table, failed to provide any supplementary information, at what should be paragraph 4 of the Table, concerning how the relevant condition had been met – whether supplementary information is required to be provided in Part (d) – technical and non-substantial defect – amplifying information not required – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

This Court agrees with the submissions made by counsel for the applicant. In circumstances where two interpretations of the relevant provisions are open, it is necessary to consider not just the narrow wording of the two provisions themselves, but also to consider their place within the scheme of the legislation viewed as a whole.

Respondent surrendered to Poland where there was evidence of intention to try him for offences clearly set out on warrant

By: Ciaran Joyce BL, on February 16, 2015

Minister for Justice v. Czajkowski [2014] IEHC 649 (High Court, Ireland - High Court, Murphy J, 17 November 2014)

High Court orders surrender of respondent to Poland, finding: 1) an objection was unsustainable where there has been an intention to try the respondent, charges were presented against him and an order was made that he be detained on remand; 2) the surrender of the respondent would not amount to a disproportionate interference with his right to respect for his family life and private life; and 3) the four offences for which the respondent's return is sought are clearly set out, as is their nature and legal classification.

European arrest warrant – Poland – European Arrest Warrant Act 2003 – s. 21A objection – whether a decision has been made to charge and try the respondent with the alleged offences – s. 37 objection – delay – surrender of the respondent is not disproportionate to his Article 8 rights to respect his family and private life – s. 11 objection – whether warrants contain enough specificity to alleged offences – four offences for which the respondent's return is sought are clearly set out, as is their nature and legal classification – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

However the Court is satisfied on the information contained in the entirety of the correspondence that there has been an intention to try the respondent since the 15th September 2009 when charges were presented against him at District Court Gdañsk-South and an order was made that he be detained on remand as described in section B.1 of the warrant. On the information presented as a whole, not merely has the presumption of a decision to charge and try not been rebutted, there is positive information of an intention to try subject only to the holding of an interview required by Polish law.

Man surrendered to Poland despite abuse of process claim

By: Ciaran Joyce BL, on February 5, 2015

Minister for Justice v. Stalkowski [2014] IEHC 647 (High Court, Edwards J, 18 November 2014)

High Court orders surrender of respondent to Poland, dismissing objections based on abuse of process (he was originally charged with an offence which is now statute barred), delay and disproportionate interference with his rights to respect for family life and privacy, finding that: 1) the conduct identified as constituting the alleged abuse of process is not capable of amounting to an abuse of this Court's process; and 2) there is insufficient evidence of a cogent nature of anything unlawful or improper having been done by the issuing State.

European arrest warrant – Poland – abuse of process – delay – disproportionate interference with his rights to respect for family life, and privacy – Article 8 of the European Convention on Human Rights – s. 37 (a) (i) and (ii) of the European Arrest Warrant Act 2003 – whether or not an extradition court has an inherent jurisdiction to refuse an extradition order on the ground that the proceedings were an abuse of the process of the court on the part of the prosecutor – original offence statute barred in the issuing state – only where there is a fundamental defect in the justice system in the issuing state that the High Court should intervene and prohibit surrender – rebuttable non-statutory presumption that an issuing state and its authorities, including the issuing judicial authority, have acted in good faith in issuing and transmitting to the authorities in an executing state – Council Framework Decision 2002/584/JHA of 13 June 2002 – Tollman principles – conduct identified as constituting the alleged abuse of process in this case is not capable of amounting to an abuse of this Court's process – insufficient evidence of a cogent nature of anything unlawful or improper having been done – objection based upon delay and Article 8 refused – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

However, while the Tollman principles embrace much more, I do not consider that it is necessary to go beyond approving the passage quoted in the circumstances of the present case. It is unnecessary to do so because the Court is simply not satisfied that the conduct identified as constituting the alleged abuse of process in this case is in fact capable of amounting to an abuse of this Court's process. There is insufficient evidence of a cogent nature of anything unlawful or improper having been done, by either the District Prosecutor or by the District Court of Toruñ - 2nd Criminal Division. Equally, there is no cogent evidence of anything having been done in bad faith. The letter from the Court to the prosecutor dated the 14th June, 2010 merely requests an "opinion" from the prosecutor concerning whether a change of charge was possible. It offers no threat or inducement. It simply points out in a matter of fact way that the substitution of an Article 284 § 2 charge for the existing Article 284 § 1 charge "would result in a significant prolongation of the possible prosecution of the wanted person" and that this would address a "problem" which is "of particular importance for the effectiveness of the international search."

Alleged tax offender surrendered to Poland as he could be in no doubt as to accusation made against him

By: Ciaran Joyce BL, on February 13, 2015

Minister for Justice v. Antkiewicz [2014] IEHC 650 (High Court, Murphy J, 19 December 2014)

High Court orders surrender of respondent to Poland in respect of alleged tax offences, finding that the warrant specified the necessary degree of involvement of the respondent in the offences and that he could not be in doubt as to the nature of the allegation against him.

European arrest warrant – Poland – s. 11(1A)(f) of European Arrest Warrant Act of 2003 – whether warrant fails to specify the individual actions and/or the precise degree of involvement of the respondent in the offences – s. 37 objection – s. 21A presumption not rebutted – tax offences – correspondence – Article 8(1)(e) of the Framework Decision – respondent cannot be in any doubt as to the allegation against him – delay – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In the Court's view, while the language used may appear a little unwieldy, the clear import of the particulars is that the respondent, between January and April 2007, sought to hide the fact that he was dealing in the purchase of scrap metal and wooden palettes by issuing invoices in the name of a company Konglomerat GPP Witold Szymczak. During the period he ordered the issue of 57 such invoices. The company didn't pay the tax liability on those invoices and a tax loss of PLN 136,690.48 resulted. The 57 sales invoices are particularised in the file at pages 1248 and 1249. In the circumstances the respondent cannot be in any doubt as to the allegation against him.

Ad hoc administrative legal aid scheme sufficient to discharge state's European obligation to provide legal assistance

By: Ciaran Joyce BL, on February 6, 2015

Minister for Justice v. O'Connor [2014] IEHC 640 (High Court, Edwards J, 4 December 2014)

High Court orders surrender of respondent to UK and dismisses claim by plenary summons simpliciter, finding that the entitlement to receive legal aid in respect of a European arrest warrant need not be provided for in legislation, and an ad hoc administrative scheme, such as the Legal Aid – Custody Issues Scheme, is sufficient to discharge the obligations of the Irish State under EU law.

European arrest warrant – UK – whether the European Arrest Warrant Act 2003, in failing to make provision for statutory based legal aid for requested persons, disregards Ireland's obligations under EU law, and is repugnant to the Constitution – Council Framework Decision 2002/584/J.H.A of 13 June 2002 – Legal Aid - Custody Issues Scheme – interpretation of Article 11.2 of the Framework Decision – whether the Attorney General's Scheme / the Legal Aid (Custody Issues) Scheme, which is merely an administrative scheme, and not a scheme established by law, represents a sufficient discharge by the Irish state of its obligations – Charter of Fundamental Rights of the European Union – s.10 of the Act of 2003 as amended by s.5 of the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012 – Alleged unconstitutionality of the Act of 2003 – locus standi – alleged non-compliance with E.U. law based on failure to respect the principle of equivalence and/or alleged unconstitutionality based on discrimination – s.26(2)(c) of the Interpretation Act 2005 – section 27(1)(e) of the Interpretation Act 2005 – s.10 objection refused – surrender ordered.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The Court completely accepts that the Attorney General's Scheme / the Legal Aid (Custody Issues) Scheme is not law, that it is non-statutory in origin, and that it has not otherwise been established by law. It is simply an ad hoc administrative scheme. However, in this Court's view there is no requirement for it to be a statutory scheme or otherwise established in law. The important thing is that that for which it provides, which I am satisfied on the evidence before me is effectively available as of right, should not be contrary to law or prohibited by law. The Court is unimpressed with the argument that the phrase "in accordance with national law" must be given the narrow construction contended for on behalf of the respondent / plaintiff. His case was that in order for "the right to be assisted by a legal counsel" to be "in accordance with national law" the entitlement to receive such assistance must be provided for in legislation, as opposed to by means of an ad hoc administrative scheme that is merely lawful in the sense of not contravening, or not being prohibited under, national law. The respondent / plaintiff has produced no authority in point to support his contention that legislation is required.

Bail granted on strict conditions pending European Arrest Warrant appeal

By: Ciaran Joyce BL, on April 7, 2014

Busby v. Minister for Justice [2014] IEHC 149 (High Court, Edwards J, 4 March 2014)

High Court grants bail to man awaiting his appeal to the Supreme Court regarding his surrender to the UK on foot of a European Arrest Warrant subject to strict conditions to allay fears he may commit further offences.

European arrest warrant –surrendered to UK pursuant to s. 16(1) of the European Arrest Warrant Act 2003 – bail application while appeal to Supreme Court pending – concern that the applicant will deliberately commit further offences in pursuit of a specific objective, i.e., to delay his surrender, possibly for a lengthy period, thereby frustrating the surrender process and interfering with justice – applicant has a demonstrated track record of communicating menacing threats – whether the evidence establishes that there is there a real risk that if he is admitted to bail he will deliberately commit further such offences – bail granted subject to conditions.

Quotation from judgment (courtesy of the Courts Service of Ireland):

In the Court's view these questions must be answered in the negative. While the applicant certainly has a demonstrated propensity for communicating menacing threats, there is nothing in his record to suggest that this was ever done to frustrate a Court process or to pervert the course of justice. It is certainly the case that committing further offences of this type could have the effect of frustrating or interfering with a surrender process that may still yet happen if the applicant is unsuccessful in his appeal, but there is simply no cogent evidence that the applicant plans to commit further offences, much less do so to that end. He has never threatened to do so, nor even hinted that he might do so. In the circumstances, the concern expressed is entirely speculative.

No prejudice to Latvian woman the subject of European arrest warrants

By: Ciaran Joyce BL, on June 16, 2014

Cerkovska v. Minister for Justice [2014] IEHC 258 (High Court, Edwards J, 21 May 2014)

High Court refuses judicial review concerning the expenses of pre-sanction expert reports under the legal aid scheme governing European arrest warrants, finding that the applicant – a Latvian woman whose rendition is sought by the Republic of Latvia – has not suffered, nor will as a matter of likelihood suffer, actual prejudice on account of any alleged unlawfulness in either the structure or operation of the scheme.

European arrest warrant – judicial review – legal aid – Republic of Latvia – Attorney General's Ad Hoc Legal Aid Scheme – Legal Aid (Custody Issues) Scheme – expenses flowing from expert reported and whether they are covered by legal aid scheme – Article 13 of the Legal Aid (Custody Issues) Scheme – Legal Aid Board has refused to grant pre-sanction expert reports – applicant has not shown any prejudice –judicial review refused in limine.

Quotation from judgment (courtesy of the Courts Service of Ireland):

The applicant may not like, and may indeed profoundly disagree with, the structure of the Legal Aid (Custody Issues) Scheme and the policy considerations underpinning it, but that is not enough to entitle her to relief. Counsel for the respondent is correct in his submission that she has to establish that she has been, or is being, or will as a matter of probability be (as opposed to possibly may be), actually prejudiced by the matters of which she complains i.e., a fundamental unfairness, to a degree which is unlawful, in the manner in which the scheme is structured and/or operated; alternatively, she must demonstrate that the respondents in making a decision which affects her have fettered their discretion in some unlawful manner that has actually inured to her prejudice.