[2020] IEHC 29

THE HIGH COURT

[2019 No. 355 EXT]

BETWEEN

MINISTER FOR JUSTICE & EQUALITY

APPLICANT

AND

EAMONN RONALD HARRISON

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 24th day of January, 2020

1. By this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom pursuant to a European Arrest Warrant dated 30th October, 2019 ("*the EAW*"). The EAW was issued by District Judge Michael Snow, a District Judge of the Magistrates' Court sitting at Westminster Magistrates' Court as issuing judicial authority.

2. The EAW was endorsed by the High Court on 31st October, 2019, and the respondent was arrested and brought before this Court on 1st November, 2019.

3. This application was first opened in this Court on 21st November, 2019, on which date this Court made an order pursuant to s. 20 of the European Arrest Warrant Act 2003 (as amended) ("*the Act of 2003")* requiring the provision of additional information. The letter requesting this information was sent to the Central Authority in the United Kingdom on 26th November, 2019. A reply was sent not by that authority, but by the Crown Prosecution Service, Organised Crime Division, London ("*CPS*") on 4th December, 2019. The reply comprises a letter of that date and a 36 page document entitled "Response to request for additional Information". The hearing of this application then proceeded before this Court and was heard over the 12th and 13th December, 2019.

4. At the hearing of the application, I was satisfied that the person before the Court is the person in respect of whom the EAW was issued and in any case this was not denied by the respondent.

5. I was further satisfied that none of the matters referred to in ss. 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for any of the reasons set forth in any of those sections. An objection was raised, however, on behalf of the respondent, that his surrender is prohibited by s. 21A of the Act of 2003, and I address that later in this judgment.

6. The EAW states at para. (b) that the decision on which the EAW is based is an arrest warrant dated 29th October, 2019, issued at Chelmsford Magistrates' Court by Justice of the Peace, Mr. C. Stokes and describes the type of warrant as being: "Accused".

7. At para. (c) of the warrant it is stated that the maximum length of the custodial sentences or detention orders which may be imposed upon the respondent, if convicted of the offences referred to in the EAW are:

   (1) Manslaughter – life imprisonment;

(2) Conspiracy to commit a human trafficking offence under s. 2 of the Modern Slavery Act, contrary to s. 1(1) of the Criminal Law Act 1977, Immigration Act 1971 – life imprisonment and

(3) Conspiracy to assist unlawful immigration under s. 25 of the Immigration Act 1971, contrary to s. 1(1) of the Criminal Law Act 1977 – 14 years' imprisonment.

(Later in the EAW, at para.s (e)(2) and (e)(3), the reference to the Criminal Law Act 1977 is mistakenly stated as the Criminal Law Act 1971. However, in the further information of 4th December, 2019, reference to the Criminal Law Act of 1971 is corrected to the Criminal Law Act of 1977.)

8. It is apparent from the above that the requirements as to minimum gravity of each of the offences referred to in the EAW are met.

9. At para. (e) of the EAW it is stated that the warrant relates to a total of 41 offences. Particulars of the offences are briefly stated and since this is an issue of some significance in this application, I will set out the same exactly as stated in the EAW, as follows:

"The case against Eamon Harrison relates to the trafficking and subsequent deaths of 39 people within an artic trailer unit GTR1 28D. At 01:38 on Wednesday 23 October 2019 Essex Police received a call from the East of England Ambulance Service stating that they were getting reports of 25 illegal immigrants not breathing within a lorry in the area of Eastern Avenue, Waterglade Industrial, West Thurrock, Essex. Police attended the scene. The driver of the lorry was standing at the back of the trailer. He was later identified as Maurice Robinson. Inside the trailer was a total of 39 people, 8 females and 31 males who were all deceased. Enquires revealed that the trailer unit GTR1 28D had been delivered by a lorry BB221 3BP to Zeebrugge, Belgium before being transported to the UK where it was collected by Maurice Robinson from the Port of Purfleet, Essex. On 22 October 2019 Eamon Harrison has been identified as the driver of the lorry BB221 3BP which was used to deliver the trailer unit GTR1 28D to the port in Zeebrugge. CCTV, taken several hours before at a truck stop in Veurne, Belgium shows Eamon Harrison to be the driver of BB221 3BP. That lorry deposited the trailer unit, GTR1 28D at Zeebrugge for its onward transmission to Purfleet, Essex. A shipping notice provided at Zeebrugge when the tractor unit arrived at the gate was signed in the name 'Eamonn Harrison'. Eamon Harrison travelled back to Ireland in the lorry BB221 3BP via a ferry from Cherbourg, France."

10. Particulars of the offences alleged against the respondent are set out immediately after the narrative above, as follows:

"(1) Manslaughter – contrary to common law

The offence is made out if it is proved that the accused intentionally did an unlawful and dangerous act from which death inadvertently resulted.

(2) *Conspiracy to commit a human trafficking offence under section 2 of the Modern Slavery Act 2015, contrary to section 1(1) of the Criminal Law Act 1971 (sic). A person commits an offence if the person arranges or facilitates the travel of another with a view to them being exploited;*

(3) *Conspiracy to assist unlawful immigration under section 25 of the Immigration Act 1971, contrary to section 1(1) of the Criminal Law Act 1971 (sic). A person commits an offence if he does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union.*

The offence of conspiracy is made out if a person agrees with any other person or persons that a course of conduct shall be pursued which will necessarily amount to or involve the commission of any offence or offences."

11. Two paragraphs on from the particulars of the offences set out above, it is stated by the issuing judicial authority that:

> *"I am satisfied that a Crown Prosecutor in the Crown Prosecution Service, whose function is to decide whether or not to prosecute an individual for the alleged commission of criminal offences, has decided to charge the person named herein and to try him for the offences specified above and for which this warrant is issued."*

12. Thereafter, at para. (e) I, the issuing judicial authority has ticked the box referable to "*trafficking in human beings*", leaving un-ticked the remaining boxes in this part of the EAW. At para. (e) II, under the heading "*full description of offences not covered by section I above*:" it is stated:

> *"Manslaughter, contrary to common law*
>
> *Conspiracy to assist unlawful immigration under section 25 of the Immigration Act 1971, contrary to section 1(1) of the Criminal Law Act 1971* (sic)."

13. Undated points of objection were initially delivered in response to the EAW. Thereafter, amended points of objection were delivered in response to both the EAW, and the additional information furnished by the CPS on 4th December, 2019. For the purpose of this judgment, reference hereafter to the points of objection is to the amended points of objection. Before addressing the same however, it is necessary to summarise the additional information submitted by the CPS by letter dated 4th December, 2019. As mentioned above, this information was provided in response to a letter sent by the Central Authority in this jurisdiction, at the direction of this Court, pursuant to s. 20 of the Act of 2003. That letter requested, *inter alia,* the following:

    1. Clarification as to which of the offences the issuing judicial authority claims fall within Article 2.2 of the Framework Directive (sic). This clarification was sought in light of contradictory statements in the EAW.

In its reply to this enquiry, the CPS stated that it is invoking Article 2.2 of the Framework Decision in respect of all of the offences described in the EAW.

2. Detailed particulars were requested in relation to each of the 41 offences referred to in the EAW, but on the basis that all of the manslaughter offences could be grouped together on the assumption that the circumstances alleged to have caused death in each case are identical. In reply, the names of all of the deceased are provided. It is stated that the charges of manslaughter are "at present" put on an alternative basis:

(i.) The unlawful act of manslaughter on or before 24th October, 2019, carried out through assisting the unlawful immigration of 39 persons into the UK with a view to them being exploited before, during or after the journey or

(ii.) Gross negligence manslaughter on or before 24th October, 2019, on the basis that the respondent owed a duty of care to the deceased persons, which he breached by transporting them in the trailer unit GTR1 128D, attached to tractor lorry B221 3BP, and by delivering the trailer unit containing those persons to Zeebrugge Port in Belgium on 22nd October, 2019, and causing them to travel unaccompanied inside the trailer unit on a ferry crossing journey of nine hours and that the said breach of duty caused the death of the deceased during this journey.

14. It is alleged that the respondent drove the trailer unit in which the deceased were being transported to Zeebrugge on 22nd October, 2019. Prior to that, it travelled around Belgium and France, arriving in Zeebrugge at 13:54 hours. The cargo is recorded as biscuits. CCTV footage from Zeebrugge Port at the time identifies the respondent as the driver who delivered the trailer in which the deceased were transported. The trailer was loaded on to the MV Clementine one hour later at 14:55 hours, and that vessel set sail just five minutes later, at 15:00 hours. No request was made to connect the trailer to an electricity supply for refrigeration, and port officials confirmed that the refrigeration unit was not turned on. The journey to Purfleet Port usually takes around nine hours.

15. The MV Clementine arrived Purfleet Port at 00:30 hours on 23rd October, 2019, and the trailer unit was unloaded at 00:56 hours and was collected by a lorry cab number B3901BH which left the port with the trailer at 01:08 hours on 23rd October, 2019. At 01:38 hours on that date, the driver of that vehicle, Mr. Maurice Robinson telephoned the emergency authorities informing them that there were immigrants in the trailer and that they were not breathing. When paramedics arrived at the scene, they found 39 bodies in the back of the trailer and all were dead. Mr. Robinson was arrested on suspicion of murder. After Mr. Robinson's arrest, on the same day, a Mr. Ronan Hughes made a number of phone calls to the respondent. It is stated in the additional information that Mr. Hughes recruited Mr. Robinson and the respondent in his haulage business.

16. While the results of post-mortem examinations are awaited, early indications are that all of the deceased died from hypoxia (starvation of oxygen). Hyperthermia may also have been a factor in their deaths. The refrigeration unit in the trailer was not switched on. The temperature records in the trailer indicate that from 10:35 hours on Tuesday 22nd

October the temperature in the unit rose consistently until 22:55 hours on that day when it reached its highest level of 38.5 degrees. Thereafter it steadily reduced. Bloody hand prints were observed on the inside of the lorry door.

17. It is stated that the exact time and place of death is not known. Coast guard data indicates that the MV Clementine entered UK territorial waters at 19:43 hours on 23rd October, 2019 (this would appear to be an error and should instead state 22nd October, 2019).

18. Mobile telephones of the deceased were examined and it is stated that analysis of the material downloaded from those phones demonstrates that some of the victims died in UK territorial waters. Audio recordings on the devices after the vessel entered UK territorial waters record multiple voices, and persons struggling to breathe.

19. Other information regarding the activities of the respondent is also provided. It is stated that the respondent is believed to have been involved in the transportation of illegal migrants from Zeebrugge Port to Purfleet Port on 10th/11th October, 2019, and again on 17th/18th October, 2019. On the latter occasion, the same trailer as that used to transport the deceased migrants on 22nd/23rd October, 2019 was used. The respondent was identified as being the driver.

20. It is stated that on 9th May, 2018, the respondent was stopped at Coquelles, France, driving a trailer unit in which 18 Vietnamese migrants were discovered. Ronan Hughes was named as the haulier. Mr. Robinson has admitted, at interview, to smuggling migrants into the UK on several occasions and having been paid, by Ronan Hughes, £1,500 per person smuggled. Mr. Robinson has pleaded guilty to conspiracy to assist unlawful immigration and to one count of money laundering. Charges of manslaughter against him are ongoing.

21. A Mr. Christopher Kennedy was arrested on 22nd November, 2019, and has admitted to being the driver of the lorry used in the operations of 11th October, 2019, and 18th October, 2019. He has been charged with two offences of conspiracy, one in respect of human trafficking and the other in relation to assisting unlawful immigration.

22. It is stated that there is "*a wealth of circumstantial evidence*" namely CCTV evidence, ANPR data evidence, telephone evidence and cell site analysis relating to Harrison, Hughes, Robinson, Kennedy and others on relevant dates from the UK, CCTV, ANPR data, surveillance and other evidence from other countries (Belgium, Bulgaria, France and the Netherlands) from which reasonable inferences may be drawn.

23. It is stated that mobile telephone data and other evidence indicate that Ronan Hughes was in contact with Mr. Robinson and the respondent throughout October, and that it is believed that the respondent discarded his mobile telephone after 23rd October. However, a study of his telephone records indicate that it was used on dates between 21st October and 25th October, 2019.

24. Although the fate of the deceased migrants received extensive publicity, the respondent made no effort to contact police in the UK or other law enforcement authorities, in spite of his role in delivering the trailer in which they were transported to Zeebrugge Port. Instead, he discarded his mobile telephone, thereby obstructing the course of any investigation of his communications using that device.

25. Returning to the letter seeking further information, the issuing judicial authority was asked to provide detailed information of the acts of the respondent relied upon for the purposes of charging him with each individual offence, and in particular where each and every constituent element of each offence is alleged to have taken place. The letter also requested full and detailed particulars in respect of the conspiracy in which it is alleged the respondent was involved.

26. Two offences of conspiracy are alleged against the respondent, a conspiracy to assist unlawful immigration contrary to s. 1(1) of the Criminal Law Act 1977 and the offence of conspiracy to commit a human trafficking offence under s. 2 of the Modern Slavery Act 2015 (the "*Act of 2015*"), contrary to s. 1(1) of the Criminal Law Act 1977.

27. For the purposes of each of these offences, under s. 1(1) of the Criminal Law Act 1977 (in the United Kingdom) if a person agrees with any other person to pursue a course of conduct which, if carried out in accordance with their intentions, will either involve the commission of an offence or offences by any one or more of the parties involved, or would do so but for the existence of facts which render the commission of the offence or offences impossible, he is guilty of conspiracy to commit the offences or offences in question.

28. In addition to the information provided above in relation to each of the conspiracies in which the respondent is alleged to have been involved, further information is provided in relation to the incidents of 10th/11th October, 2019, and 17th/18th October, 2019. In relation to the incident of 10th/11th October, 2019, it is stated that the respondent dropped a trailer off at Zeebrugge Port. That trailer was picked up by Mr. Kennedy at Purfleet Port. He drove to Orsett Golf Course where he dropped off 15-20 people who were collected by waiting cars. Mr. Kennedy admitted being the driver of the vehicle that picked up the trailer but denied any knowledge of involvement in people smuggling.

29. In relation to the incident of 17th/18th October, the respondent has been identified as the person who collected a cargo of biscuits from a biscuit factory using tractor unit B221 3BP, which was carrying trailer GTR1 28D. He was later identified as the driver who dropped that trailer at Zeebrugge Port where it is recorded as having a cargo of one tonne of biscuits. However, it is believed that people were also smuggled in the trailer containing the biscuit load. The trailer was collected at Purfleet Port by Mr. Kennedy and again travelled to Orsett Golf Course, where it was met by three vehicles.

30. The cargo of biscuits was delivered to the intended customer, who refused to accept delivery on the grounds that the cargo had been damaged. Details of the activities of Mr. Kennedy and Mr. Hughes in this operation are provided. Mr. Kennedy is stated to have

acknowledged his role in collecting the trailers, and also acknowledged the interference with the cargo. It is stated that he has said, presumably in a statement, that somebody must have been in the trailer in view of the damage to the cargo.

31. It is claimed that the available evidence for all of the operations of 10th/11th October, 17th/18th October and 22nd/23rd October, 2019, indicate that the illegal migrants were not free to walk away on their arrival into the UK; that they were collected by cars on their arrival, suggesting an intention to exploit those persons, contrary to s. 2(1) of the Act of 2015.

32. The issuing judicial authority was also asked to clarify whether or not any of the offences are alleged to have been committed outside the territory of the United Kingdom. In response to this, it is stated that both conspiracies were made inside the UK, it being the prosecution's case that the agreement to commit the offences in each case was made in the UK. In relation to the manslaughter offences, it is stated that there is credible evidence that the deceased died in UK territorial waters. However, in the event that any of the victims died abroad, it is stated that jurisdiction is established to prosecute the respondent pursuant to s. 9 of the Offences Against the Persons Act 1861.

33. The issuing judicial authority was invited to comment on an assertion of the respondent that he is an Irish citizen travelling, at the time of the alleged offences, on an Irish passport. At the hearing of the application, it was accepted that the latter was an error i.e. that the respondent was in fact travelling on a British passport. The CPS confirmed that the respondent is a British citizen and is the holder of a British passport. However, the respondent has also deposed that he is an Irish citizen and holds an Irish passport. The error in his affidavit of 27th November, 2019, was to the effect that he was travelling on an Irish passport at the time of his arrest, whereas he accepts that he was travelling on a British passport at the time.

Points of objection

34. The amended points of objection filed on behalf of the respondent run to almost six pages. However, they may be summarised as follows.

35. The additional information provided by the CPS by letter of 4th December, 2019, is inadmissible because it is not information within the meaning of s. 20 of the Act of 2003, as it does not emanate from a judicial authority. Further, the information is not admissible without formal proof as it is not a document within the meaning of s. 11(2A) of the Act of 2003 and nor is it admissible pursuant to s. 12(8) of the Act of 2003.

36. The additional information purports to expand to an impermissible degree the facts and matters relied upon by the applicant, as well as his reliance on Article 2.2 of the Framework Decision and extraterritorial jurisdiction, all of which go beyond the legitimate role and purpose of additional information within the meaning of s. 20 of the Act of 2003 or an additional document within the meaning of s. 11(2A) of the Act of 2003.This objection and the preceding objection were referred to by counsel for the respondent as being a "preliminary issue", and I will adopt that description of them hereafter.

37. The surrender of the respondent is prohibited by s. 44 of the Act of the 2003 because the allegations against the respondent indicate that the actions which he is alleged to have carried out, were carried out by him outside the territory of the United Kingdom, and no information has been provided to demonstrate how those actions would, if committed outside of the territory of the State, constitute criminal offences within the State.

38. There are set out six different reasons as to why the surrender of the respondent is prohibited by s. 44 in relation to the 39 offences of manslaughter, as follows:

    1. The EAW does not state where the deceased persons died. Further, any acts of the respondent which are alleged to amount to the offence of manslaughter are alleged to have been done in Belgium.

    2. The respondent is a British citizen and an Irish citizen, and has not been at any time ordinarily resident in the State within the period of 12 months preceding the date of commission of the alleged offences.

    3. No information is provided in the EAW as to the basis on which the United Kingdom asserts extraterritorial jurisdiction.

    4. The English statutory provisions relied upon in the additional information are out of date and/or inapplicable and do not provide a basis for extraterritorial jurisdiction.

    5. The English statutory provisions relied upon in the additional information received have no equivalent in Irish law.

    6. The additional information contradicts the statement in the EAW that extraterritorial concerns do not arise.

39. It is separately pleaded that the surrender of the respondent is prohibited by s. 44 of the Act of 2003 in relation to the alleged offences of conspiracy to commit human trafficking and conspiracy to assist unlawful immigration. The first three reasons given are in each case the same as the first three reasons addressing the same issue as regards the offences of manslaughter. In relation to the offence of conspiracy to commit human trafficking, the following additional pleas are advanced:

    1. There is no offence in this State corresponding to the offence contrary to s. 2 of the Modern Slavery Act 2015;

    2. The acts of the respondent referred to in the additional information do not demonstrate the commission of any offence contrary to the Act of 2015;

    3. In the circumstances the offence does not constitute an offence under the law of the State, having been committed in a place other than the State.

40. The EAW does not comply with s. 11(1A)(f) of the Act of 2003 because the description of the circumstances in which the offences in respect of which surrender is sought is void for

uncertainty and inadequate particulars of the actions of the respondent in relation to the alleged offences have been provided. Moreover, there is insufficient information setting out the degree of involvement of the respondent in respect of the offences, and the EAW fails to identify the places where the offences occurred and therefore fails to demonstrate the jurisdiction of this Court to order surrender, having regard to s. 44 of the Act of 2003.

41. The acts of the respondent as set out on the face of the EAW do not constitute the offence of manslaughter or any other offence contrary to Irish law. As a consequence, surrender in respect of the 39 offences of manslaughter is prohibited by s. 38(1) of the Act of 2003. Similarly, the acts of the respondent as set out in the EAW do not constitute an offence under Irish law which would correspond to an offence contrary to s. 25 of the Immigration Act 1971.

42. The applicant is not entitled to rely on s. 38(1)(B) of the Act of 2003 and/or the provisions of Article 2(2) of the Framework Decision to disengage the requirement to prove correspondence of the offences described in the EAW, with offences in this jurisdiction. Seven separate reasons are provided in support of this plea:

    1. The facts of the offences are not set out with sufficient particularity.

    2. It is unclear which of the offences, if any, are "*ticked box*" offences.

    3. The offences of conspiracy to commit the offence of human trafficking, as an inchoate offence is not an offence within Article 2.2 of the Framework Decision.

    4. The information received from the CPS contains no description of acts by the respondent which would comprise the offence of conspiracy to commit the offence of human trafficking under the law of the United Kingdom, and therefore the ticking of the box in respect of the offence, for the purposes of Article 2.2 of the Framework Decision is a "*manifest error*".

    5. The purported indication on the part of the issuing judicial authority/CPS that manslaughter falls within the ticked box relating to "*murder, grievous bodily injury*" is a manifest error;

    6. The purported reliance on Article 2.2 in relation to the offence of conspiracy to assist illegal immigration contrary to s. 25 of the Immigration Act 1971 is also a manifest error.

    7. Accordingly, there is confusion on the face of the warrant (and the additional information) in relation to this issue, such that it is unlawful for this Court to order the surrender of the respondent in relation to all or any of the offences described in the EAW.

43. The offence provided for in s. 2 of the Act of 2015, does not correspond to any offence under Irish law, and nor do any of the acts of the respondent as described in the EAW,

which might amount to an offence under that provision, amount to an offence under Irish law.

44. Similarly, none of the actions of the respondent as described in the EAW as being contrary to s. 25 of the Immigration Act 1971, correspond to any offence under Irish law.

45. The surrender of the respondent is prohibited because the EAW does not identify the name of the representative District Judge of the Magistrates' Court in para. (i) of the warrant.

46. Surrender of the respondent is prohibited by s. 37 of the Act of 2003 because it would breach his constitutional right to fair procedures and to a fair trial in circumstances where the facts comprising the offences are not set out with sufficient detail or particularity so that the protection for speciality purposes in s. 22 of the Act is provided.

47. The surrender of the respondent is prohibited by s. 21 of the Act of 2003, because the additional information received from the CPS discloses that the prosecutor has not yet determined the cause or place of death or the basis on which it might be alleged that the respondent has committed manslaughter. Accordingly, there has been no decision to charge and try the respondent for these offences, and the presumption set forth in s. 21A of the Act of 2003 is rebutted.

48. I turn now to address the arguments raised on behalf of the parties in relation to each of the points of objection.

The preliminary issue

49. By way of preliminary issue, the respondent claims that the additional information supplied by the CPS by letter on 4th December, 2019, and accompanying documentation is not admissible having been provided by the CPS, and not by the issuing judicial authority. Moreover, the extent of the information provided by way of the additional information is so voluminous as to effectively amount to a rewriting of the EAW as to be impermissible, even if the information was provided by the issuing judicial authority. In support of these arguments, the respondent relies upon the decisions of the Supreme Court in the cases of *Minister for Justice, Equality & Law Reform v. Sliczynski* [2008] IESC 73 and *Rimsa v. Governor of Cloverhill Prison* [2010] IESC.

50. In *Sliczynski* one of the issues which the Supreme Court was required to consider was the admissibility of documents which had been received by the Central Authority here from the Polish court, which documents had been signed in each case by a District Court Judge. The High Court in its decision had ruled the documents admissible and had relied upon the same in its decision. In his appeal, the respondent contended that the High Court Judge erred in law because the documentation concerned offended the rule on hearsay in the absence of direct proof as to its contents. At p. 6 of his decision Fennelly J., having referred to Articles 7 and 15 of the Framework Decision stated:

> *"It is clear from the foregoing provisions that the Framework Decision intends that the executing Judicial Authority may both seek and receive further information*

related to a warrant from the issuing Judicial Authority and take into account that information for the purpose of deciding whether an order for surrender should be made on foot of the warrant. It is important to note that such information emanates from a Judicial Authority, one of the characteristics of which is its independence in the exercise of its functions. Given that the simplified system of surrender of which the Framework Decision speaks is based, inter alia, on mutual respect between Judicial Authorities it is quite logical that the Decision would make a provision for one Judicial Authority, the executing one, to rely on information provided to it by the other Judicial Authority, the issuing one. In all events that is what the Decision provides for."

51. On p. 7, Fennelly J. continued:

> *"If further information is transmitted by the requesting Judicial Authority either on its own initiative or following a request it is the function of the Central Authority to transmit it to the Executing Judicial Authority, in this country, the High Court. Section 20 must be interpreted in the light of the objectives of the Framework Decision and its provisions. In my view it specifically gives effect to Article 15(2) and (3) of the Directive. In so providing I am satisfied that the Oireachtas intended, consistent with the obligations of the State pursuant to the Framework Decision, that the High Court would have available to it the information provided by the issuing Judicial Authority and would have full regard to that information, in addition to information provided in the European Arrest Warrant itself, for the purpose of deciding whether a person should be surrendered on foot of a European Arrest Warrant. Moreover to interpret the provisions of the Act otherwise would render them meaningless since if direct evidence had to be given of the information concerned every Judge or member of the issuing Judicial Authority providing information would either have to give evidence personally or swear an Affidavit of matters within their own knowledge. If that were the case the provisions referred to would serve no purpose. Clearly in my view they were intended to ensure that the High Court would have, where required, information from the Judicial Authority concerned in addition to that already contained in the arrest warrant itself.*
>
> *Before the High Court can receive and take into account such information it must be established that the information communicated emanates from the Judicial Authority of the requesting State. In this case that has been established by the express averments in the Affidavits lodged on behalf of the applicant in the High Court. In any event the source of the information has not been put in issue."*

52. This latter point is of some significance and in sharp distinction to this case, where the source of the information is the CPS. Accordingly, the respondent argues, this information should not be received and considered by the Court.

53. The respondent also places heavy reliance on the decision of the Supreme Court in the case of *Rimsa v. Govenor of Cloverhill Prison and Minister for Justice, Equality & Law Reform* [2010] IESC 47. In that case, the applicant sought an order for his release from

custody pursuant to Article 40.4.2 of the Constitution in circumstances where he remained detained following the expiration of the period prescribed for surrender by s. 16(5) of the Act of 2003. The date for his surrender had been extended pursuant to an agreement made between the Central Authority in this State, and the issuing state, which in that case was the Central Authority of the Republic of Latvia. The case revolved around the interpretation of s. 16(5)(B) of the Act of 2003 (in its form at that time – it was amended as a result of the decision in *Rimsa*) which provided:

"(5) Subject to subsection (6) and section 18, a person to whom an order for the time being in force under this section applies shall be surrendered to the issuing state not later than 10 days after –

(a) the order takes effect in accordance with subsection (3)...or

(b) such date (being a date that falls after the expiration of that period) as may be agreed by the Central Authority in the State and the issuing state."

54. The central argument as regards the interpretation of the latter provision revolved around Article 23(3) of the Framework Decision which provides:

"3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event the surrender shall take place within 10 days of the new date thus agreed.".

55. It was argued on behalf of the applicant in that case that s. 16(5)(B) of the Act of 2003 had to be interpreted in the light of Article 23(3) of the Framework Decision, which required any extension of the period within which a person may be surrendered to be agreed as between judicial authorities, and not Central Authorities. The State (the respondent in that case) acknowledged that the Act of 2003 may be interpreted in the light of the Framework Decision but argued that it cannot be given a meaning that is *contra legem.* Since that section of the Act of 2003 expressly permitted the Central Authority in this State to enter into an agreement with the issuing state, then it was entitled to do so even if Article 23(3) provides such an agreement must be entered into as between judicial authorities.

56. The Supreme Court held that there was an ambiguity in s. 16(5)(B) of the Act of 2003 insofar as it did not provide that such an agreement could be entered in to with any particular person or body in the issuing state. As such, that ambiguity had to be resolved by reference to the Framework Decision, which requires such agreements to be entered into as between judicial authorities. On the basis of this authority, it is submitted on behalf of the respondent in this case that the reference in s. 20(1) of the Act of 2003 to the "*issuing state*" should be interpreted in light of the Framework Decision, especially in relation to fundamental matters such as the content of that European Arrest Warrant as

prescribed by Article 8 of the Framework Decision. Information of this kind, it is submitted, must be provided by the issuing judicial authority.

57. To understand this point fully, it is necessary to set out s. 20 of the Act of 2003. It provides:

> *"In proceedings to which this Act applies the High Court shall, if of the opinion that the documentation or information provided to it is not sufficient to enable it to perform its functions under this Act, require the issuing judicial authority or the issuing state, as may be appropriate, to provide it with such additional documentation or information as it may specify, within such period as it may specify."*

Accordingly, having regard to the decision of the Supreme Court in *Rimsa*, the respondent submits that the words "issuing state" as appearing in s. 20 of the Act of 2003, should be interpreted as referring to the issuing judicial authority.

58. In response to this argument, the applicant relies upon the decision of this Court (Donnelly J.) in the case of *Minister for Justice & Equality v. AW* [2019] IEHC 251. In that case, precisely the same issue as that arising in this case was dealt with by Donnelly J. i.e. could a Court accept information provided by the CPS pursuant to a request made by the Court under s. 20 of the Act of 2003? Donnelly J. held that it was open to the Court to accept such information. She addresses the issue comprehensively in her decision at paras. 67 – 83. She noted that s. 20 of the Act of 2003 provides express authority for this Court to seek information from either the issuing judicial authority or the issuing state. If the Court was confined to obtaining such information from the issuing judicial authority only, the reference to the issuing state would be otiose.

59. As regards the meaning of *"the issuing state"* Donnelly J. referred to Article 15 of the Framework Decision which deals with the provision of additional information. Article 15(2) specifically empowers an executing judicial authority to request supplementary information, but does not require that request to be addressed to the issuing judicial authority, or that the issuing judicial authority should provide the response. In contrast, Donnelly J. noted, Article 15(3) provides for the voluntary furnishing of additional information by the issuing judicial authority to the executing judicial authority.

60. Donnelly J. relied heavily upon the decision of the Court of Justice of the European Union ("*CJEU*") in the case of *ML (Generalstaatsanwaltschaft Bremen*) [2018] C-220/18 PPU, in which case the CJEU ruled on an assurance (as regards the prison conditions in which the person whose surrender was sought in that case would, if surrendered, be detained) that was provided not by the issuing judicial authority, but by the Ministry for Justice of Hungary. The CJEU held that the executing judicial authority was not precluded from accepting such an assurance, but that it must evaluate the same by carrying out an overall assessment of the information available.

61. In *AW*, the Court carried out such an assessment and noted that the CPS was an emanation of the State of the United Kingdom and there was no reason to doubt either the *bona fides* of the CPS or the authenticity of the information it provided in response to the request. Donnelly J. referred to the decision of the Supreme Court (Fennelly J.) in *Minister for Justice, Equality & Law Reform v. Stapleton* [2007] IESC 30 wherein he stated:

> *"The principle of mutual recognition applies to the judicial decision of the judicial authority of the issuing Member State in issuing the Arrest Warrant. The principle of mutual confidence is broader. It encompasses the system of trial in the issuing Member State."*

62. Referring to the principle of judicial supervision which lies at the core of the Framework Decision, Donnelly J. stated, at para. 77 of her decision:

> *"The principle of judicial supervision is one which in accordance with recital 8 is one which is primarily to be carried out by the executing judicial authority. The process is commenced by an EAW issued by a competent judicial authority in the issuing state. Without such a judicial decision, there is no request for surrender within the meaning of the Framework Decision or the Act of 2003. However, in the context of taking a decision on the execution of that judicial decision in this member state, the High Court as executing judicial authority, must take into account all of the information provided to it by the issuing state. The fact that information is not provided by the issuing judicial authority, is a factor that the executing judicial authority must take into account when making a decision to surrender in reliance on that information."*

63. Donnelly J. concluded on this point in her judgment at para. 83 in the following terms:

> *"This Court must apply mutual trust and confidence to the information that has been received by (sic) the public prosecution of another Member State. In the absence of any real or substantive objection to the bona fides of that response, it may provide the basis for the consideration of whether clarity in respect of the nature and number of the offences has been obtained and whether there is in fact correspondence of offences."*

64. It was acknowledged on behalf of the respondent that in general terms this Court is bound by decisions made by another judge of this Court. However, it is submitted that the decision of Donnelly J. in *AW* does not confer a *"carte blanche"* on the authorities of the issuing state. While it is accepted that certain things may be supplemented whether by way of a request made pursuant s. 20 of the Act of 2003 or pursuant to s. 11(2)(A) of the Act of 2003, these sections must be read harmoniously with the Framework Decision and it is not open to the authorities of the issuing state to put all of the information in documentation that is separate to the EAW, and nor is *AW* authority for such a proposition. It is submitted that when Donnelly J. gave judgment in *AW*, she did so at a time when s. 20 included s. 20(2) which conferred power on the Central Authority to

make requests for additional information, but that power has since been removed by way of amendment to s. 20. It is submitted that Donnelly J. relied quite heavily on s. 20 in the form that it was when she made her decision, the implication being that she might have made a different decision if she was dealing with the amended s. 20, such as in this case.

65. It was further submitted that this case may be distinguished from *AW* in that in this case it is arguable that the warrant as originally issued did not comply with s. 11 of the Act of 2003, and that compliance with that section in this case is dependent, to an excessive extent, upon information delivered some five or six weeks after the arrest of the respondent which was delivered not by the issuing judicial authority, but by the CPS.

66. It was also submitted on behalf of the respondent that even if this Court rejects the argument on this preliminary point, a separate issue arises out of *AW* and that is that the decision in that case clearly indicates that it is not open to the CPS to apply to amend the EAW to correct an error. In that case, there was an error in the EAW (according to the CPS) insofar as it did not indicate an intention to rely on Article 2(2) of the Framework Decision in respect of certain offences. However, the CPS did not ask the Court to amend the warrant, but simply explained why the error occurred.

67. In this case, just one box has been ticked for the purposes of Article 2(2) of the Framework Decision i.e. that relating to trafficking human beings. Accordingly, it is not now open to the CPS to seek to invoke Article 2(2) in relation to any of the other offences.

Decision on the preliminary issue

68. While the decision of the Supreme Court in *Sliczynski* would suggest that additional information provided pursuant to s. 20 of the Act of 2003 must emanate from the issuing judicial authority, the statement to that effect in *Sliczynski* was made in the context of a different factual matrix and, more importantly, where that Court was not asked to address the question now under consideration. In contrast, the decision of Donnelly J. in *AW* not only addressed this same question, but did so in the context of the same Central Authority i.e. the CPS. Moreover, the decision of Donnelly J. placed some significant reliance on the decision of the CJEU in *ML*, a decision which was handed down in 2018, 10 years after the decision of the Supreme Court in *Sliczynski*. I agree with and adopt the analysis of the issue by Donnelly J. in AW.

69. In accordance with *ML*, and as Donnelly J. did in *AW*, in circumstances where additional information has not been provided by the issuing judicial authority, it is necessary to consider that information by reference to all of the information placed before the Court by the competent authorities, including the issuing judicial authority, of the requesting state, in this case the United Kingdom. In the context of this application, the starting point of that analysis must be that in providing the additional information, the senior prosecutor of the CPS has twice stated in her letter enclosing the additional information (which letter also addresses specific queries) that she is writing "*on behalf of the relevant judicial authority*". While this is stated in response to specific information furnished, and not in

relation to the entire letter, it is clear that that information at least is being provided on behalf of the issuing judicial authority. However, even though the letter does not say so expressly, I think it is a reasonable inference to draw that the entire contents of the letter are being provided on behalf of the relevant judicial authority.

70. Secondly, the additional information has been provided by the CPS. As was made clear in the decision of Donnelly J. in *AW*, and as indeed counsel for the applicant in this case submitted to the Court, this is the practice of the United Kingdom. Once the EAW has been issued by an issuing judicial authority, that authority is not usually involved in providing information in response to queries received from the executing state. Neither the integrity nor competence of the CPS is impugned in any way. Accordingly, there is no reason to doubt the authenticity of the information or the *bona fides* of the CPS. The Court is obliged to receive and treat the information provided in accordance with the principle of mutual confidence referred to by Fennelly J. in *Stapleton*, which in turn reflects Article 10 of the Framework Decision.

71. While it is true that the information provided in the EAW as regards the circumstances of the offences alleged against the respondent was somewhat scant, nonetheless the EAW itself was issued by a District Judge and was, therefore, subject to the judicial scrutiny and supervision envisaged by the Framework Decision. The additional information, while providing considerably more detail than the EAW, is in no way inconsistent with or contradictory of the information provided in the EAW. Moreover, there is nothing in the additional information provided that would cause this Court to have any concern that the issuing judicial authority might not have issued the warrant if this information was contained in it in the first place; on the contrary, the additional information is supportive of the information set forth in the EAW. Although the additional information is very voluminous, in contrast to that given in the EAW, it does not in any way alter the character of the allegations being made against the respondent, the charges that it is intended to bring against him (save that, as regards the manslaughter charges it is stated these may be brought on an alternative basis, details of which are provided) or the penalties that he will face if convicted of the offences set forth in the EAW. All of this being the case, it is my view that the additional information should be admitted for the purpose of the Court's consideration of this application. The preliminary objection must therefore be rejected.

Section 44 Objection

72. Section 44 of the Act of 2003 provides:

> *"44. A person shall not be surrendered under this act if the offence specified in the European 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."*

73. The respondent contends that the alleged offences were not committed in the issuing state i.e. the United Kingdom. The respondent further contends that any acts on the part of the respondent which are alleged to amount to the offence of manslaughter are alleged to have been done in Belgium. The respondent relies on the statement at paragraph 3.22 of the additional information in which it is stated that the exact time and place of death is not known, and submits that, while at a later stage in the additional information, from paragraphs 3.24 onwards the CPS surmises that at least some of the victims were alive when the MV Clementine entered UK territorial waters, it is clear that the CPS does not assert that all of the victims died inside UK territorial waters. Accordingly, it is submitted, this engages s. 44 of the Act of 2003 in relation to the manslaughter charges.

74. The question that then arises is whether or not offences of manslaughter that may have occurred outside of the jurisdiction of the United Kingdom, the issuing state, constitute offences under the law of the State. If so, a further question that arises, by reason of the decision of the Supreme Court in the *Minister for Justice, Equality & Law Reform v. Bailey* [2012] 4 IR 1, is whether or not the authorities in the United Kingdom would be entitled to prosecute for an offence of manslaughter if the situation were reversed i.e. if this State was the requesting state, the United Kingdom the requested state and the offences were alleged to have been committed outside of the jurisdiction of this State.

75. Both of these questions are answered through the provisions of s. 9 of the Offences Against the Person Act, 1861. In the United Kingdom, this section provides:

> *"9. Where any murder or manslaughter shall be committed on land out of the United Kingdom, whether within the Queen's dominions or without and whether the person killed were the subject of Her Majesty or not, every offence committed by any subject of Her Majesty in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being an accessory to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in any county or place in England or Ireland in which such person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that county or place: provided, that nothing herein contained shall prevent any person from being tried in any place out of England or Ireland for any murder or manslaughter committed out of England or Ireland, in the same manner as such person might have been tried before the passing of this Act."*

76. The references to Ireland remain in this section of the Act as it applies in the United Kingdom. However, this section has been amended in this country and in its present form now states:

> *"9. Where any murder or manslaughter shall be committed on land out of [area of application of laws of the State], and whether the person killed were [an Irish citizen] or not, every offence committed by [any citizen of Ireland] in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, may be dealt with, enquired of, tried, determined, and punished in any county or place the [area of application of the laws of the State] in which such*

person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that county or place; provided, that nothing herein contained shall prevent any person from being tried in any place out of [the area of application of the laws of the State] for any murder or manslaughter committed out of [the area of application of the laws of the State], in the same manner as such person might have been tried before the passing of this Act."

Conclusion on s. 44 Objection - Manslaughter Charges

77. The respondent acknowledges that he is a citizen of both Ireland and of the United Kingdom. The parties are in agreement as to the legal effect of s. 9 of the Offences Against the Person Act, 1861, in its form in each jurisdiction. That is the parties agree that where an Irish citizen commits manslaughter outside the jurisdiction of the State, that act constitutes an offence under the laws of the State, and may be prosecuted in the State, regardless as to where the offence occurred and as to the nationality of the victim. The provision has precisely the same effect in the United Kingdom. This means that there is reciprocity as required by the Supreme Court in Bailey. It is clear therefore that even if some of the victims died outside of the territorial waters of the United Kingdom, their deaths constitute an offence under the laws of the State (assuming of course that the offences are otherwise proven). The objection advanced under s. 44 of the Act of 2003 insofar as it relates to the manslaughter charges must therefore be rejected.

S.44 Objection - Conspiracy to commit a human trafficking offence

78. However, this objection is also raised in relation to the offence of conspiracy to commit a human trafficking offence, though not in relation to the offence of conspiracy to assist unlawful immigration. As regards the latter, it is accepted that the corresponding offence in this jurisdiction is s. 2 of the Illegal Immigrants (Trafficking) Act 2000 and that that offence may be prosecuted by the authorities in this state on a extraterritorial basis, and that the equivalent provision in United Kingdom law similarly confers jurisdiction to prosecute on an extraterritorial basis. However, in relation to the offence of conspiracy to commit a human trafficking offence, it is submitted firstly that there are no acts on the part of the respondent set out in the EAW which could amount to such an offence and therefore the United Kingdom has no jurisdiction to try the respondent for the same. For the same reason, the respondent could not be prosecuted in this state for such an offence in circumstances where the actions of the respondent constituting the offence have not been set out. Accordingly, s. 44 of the Act of 2003 prohibits surrender in respect of this offence.

79. Secondly, it is submitted that the actions of the respondent as described are said to have taken place in Belgium. While it is accepted that the Act of 2015 in the United Kingdom and the Criminal Law (Human Trafficking) Act 2008 in this jurisdiction permit each state to prosecute for offences under these Acts regardless of where they are committed, it is submitted that these acts have no application for the reasons given in the preceding paragraph, and so therefore the extraterritorial jurisdiction conferred by these Acts are of no assistance to the applicant.

80. In response to all of this the applicant argues that the charges of conspiracy are in no way affected by s. 44 of the Act of 2003 because it is clear from the additional information that it is claimed that the conspiracy took place within the United Kingdom, and it is on that basis that jurisdiction is asserted. The applicant relies, *inter alia*, upon the following paragraphs of the additional information:

> *"3.71. However, as set out, above, it is the prosecution's case that the agreement (conspiracy) was made within the UK.*
>
> *3.81 The prosecution's case is that HARRISON has been involved in arranging or facilitating the travel of the 39 deceased persons. There were meetings and telephone conversations which took place between co-conspirators in the UK.*
>
> *3.82 CCTV evidence, ANPR data and cell-site analysis also place HARRISON and his co-conspirators in the UK at relevant times and on relevant dates. However, HARRISON is a UK national so the relevant section that applies for jurisdiction in his case is section 2(6) of the 2015 Act. He commits the offence regardless of where the arranging or facilitating takes place or where the travel takes place.*
>
> *3.84 There is ample evidence to show in this case that part of the arranging and facilitation took place in the UK and the travel consisted in the arrival in or entry into or travel within the UK.*
>
> *4.7 Conspiracy to commit human trafficking offence - The essence of the conspiracy is the agreement. The Prosecution submits the agreement was made in the United Kingdom. To prove the existence of the agreement, the Prosecution seeks to rely on the acts done in furtherance of the agreement. There is evidence of telephone calls and meetings between HARRISON and the other co-conspirators which took place in the UK as set out in the particulars above."*

Conclusion on s. 44 Objection as regards conspiracy to commit human trafficking offence

81. As stated at para. 4.3 of the additional information, the essence of the conspiracy is the agreement. It is stated repeatedly in the additional information that there is evidence of activities in which the respondent was involved in which he and his co-conspirators, who are named, arranged for the travel and entry into the UK of the deceased migrants. While it is true to say that there is very little information in relation to activities that would constitute human trafficking, the issuing judicial authority has ticked the box associated with this offence, and it follows therefore that in considering the s. 44 objection to this offence, I am not required to consider the quality of the evidence for the offence but only where it occurred. It is clearly asserted that the agreement constituting the conspiracy was made in the United Kingdom and that being the case surrender in respect of this offence is not prohibited by s. 44 of the Act of 2003.

Failure to comply with s. 11(1A) of the Act of 2003

82. It is claimed that there has been a failure on the part of the issuing judicial authority to comply with s. 11(1A) of the Act of 2003 and furthermore that the additional information

received from the CPS is not a document within the meaning of s. 11(2A) of the Act of 2003 (and accordingly is not admissible pursuant to that section), and nor is it admissible pursuant to s. 12(8) of the Act of 2003.

83. There have been numerous decisions over the years which have addressed the importance of the EAW containing the required information, so that the party whose surrender is requested will have clarity as to, *inter alia*, the offences for which surrender is sought, and the penalties that those offences attract. In *Minister for Justice, Equality & Law Reform v. Connolly* [2014] 1 IR 720, Hardiman J. stated, at para. 31:

> *"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."*

84. While accepting that the issuing judicial authority is not under an obligation to prove the case against the respondent, it is submitted on behalf of the respondent that issues relating to s. 38 and s. 44 of the Act of 2003 cannot be resolved because of the deficit of information in the EAW.

85. In relation to the manslaughter offences, it is claimed that there is little information as to the degree of participation of the respondent in relation to these charges. It is claimed on behalf of the respondent that having put forward one basis for manslaughter in the EAW i.e. that the respondent intentionally did an unlawful and dangerous act from which death inadvertently resulted, in the additional information the CPS has stated that it may rely on gross negligence as an alternative basis to establish manslaughter. It is submitted that it is not open to the prosecutors to put forward alternative options, and furthermore in neither case, is there sufficient information set forth in the EAW or the additional information.

86. It is also submitted that large portions of the information supplied by the CPS relate to third parties and not the respondent, and that this suggests that the respondent is being treated as guilty by association with others. It is not stated that the respondent knew that there were persons in the trailer which it is alleged he deposited at the port in Zeebrugge. Nor is there any information as to when or where the persons entered the trailer. Since s. 11(1A)(f) requires that the EAW specify the degree of involvement or alleged degree of involvement of the respondent, this is wholly inadequate.

87. In substance, it is submitted that the EAW, and the additional information, say very little more about the conduct of the respondent other than that he delivered the trailer to Zeebrugge at 13:54 hours on 22nd October, 2019, and that the trailer in question was loaded on the MV Clementine in Zeebrugge at 14:55 hours. There is then a reference to phone calls being made by Mr. Ronan Hughes to the respondent on 23rd October, 2019, after the arrest of Mr. Robinson, and it is also stated that the respondent discarded his mobile phone which was used by him for contacting Mr. Hughes.

88. It is submitted that such information as has been provided in relation to the conduct of the respondent does not form a basis for a charge of manslaughter and, in circumstances where the cause of death (as at the date of the hearing of this application) remains unknown, there must be a question as to whether or not the EAW is being used in order to hold the respondent pending consideration of whether and on what basis manslaughter charges may be brought against him.

89. Moreover, as regards the contact between Mr. Hughes and the respondent, it is stated that the respondent was recruited as a lorry driver by Mr. Hughes, and contact between employer and employee is to be expected. Since no allegation is made in relation to Mr. Hughes, inferences should not be drawn from that contact.

90. Finally, in relation to the charge of manslaughter, it is submitted that it is difficult to avoid the conclusion that the respondent in being sought for prosecution of the manslaughter charges on the basis that he was the driver of the truck which deposited the trailer in Zeebrugge, with nothing more to support that allegation. It is submitted that this is not sufficient to meet the requirements of s. 11(1A)(f) of the Act of 2003. Similar arguments are made on behalf of the respondent in the context of arguing that the acts of the respondent could not constitute the offence of manslaughter in this jurisdiction, and I will address those arguments in that context later.

91. It is also submitted that the particulars of the conspiracy charges both in relation to unlawful immigration and human trafficking are set out in general terms, and are no more than to the effect that the respondent conspired with others (who are named) between the specified dates to commit the offences. Reliance is also placed (by the applicant) upon events that occurred in May 2018, 10th/11th October, 2019, and 17th/18th October, 2019 (see para. 19 above), but it is submitted that these are entirely separate incidents and do not assist the Court in relation to the events that occurred on 22nd October, 2019.

92. In response to this, it is submitted on behalf of the applicant that the allegations against the respondent as set forth both in the EAW and in the additional information are adequate for the purposes of s. 11(1A)(f) of the Act of 2003. The respondent refers to several authorities in which this issue was considered, including the cases of *Minister for Justice, Equality & Law Reform v. Desjatnikovs* [2009] 1 IR 618, *Minister for Justice, Equality & Law Reform v. Stafford* [2009] IESC, *Minister for Justice, Equality & Law Reform v. Jarzebak* [2010] IEHC 472, and *Minister for Justice, Equality & Law Reform v. Cahill* [2012] IEHC 315. In this latter case, in a passage upon which the applicant relies, Edwards J. stated, as regards the requirements of s. 11(1A)(f):

> *"The...objective... 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."

93. It is submitted that it is well established that there is no requirement for the issuing state to establish a *prima facie* case in the European Arrest Warrant. Indeed, Counsel for the respondent accepts that this is so. In the case of *Minister for Justice, Equality & Law Reform v. Phillip Baron* [2012] IEHC 180, Edwards J., in addressing the issue, stated:

> *"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."*

94. It is necessary to bear in mind that at this juncture that I am dealing only with the objection that the particulars of the offences given in the EAW do not comply with s. 11(1A)(f) of the Act of 2003. It is agreed that the particulars given need not amount to even a *prima facie* case in relation to the offences alleged. The purpose of the section has been interpreted as meaning that the person whose surrender is sought should know from the warrant the purpose for which his/her surrender is required. The person concerned is entitled to sufficient particulars for two reasons, firstly in order to be able to raise any of the objections permitted by the Act of 2003, and secondly so that if his or her surrender is ordered, the purpose for the surrender is clear. It is well established in order to meet these requirements, clarity in the warrant is required.

Conclusion on s. 11(1A) Objection

95. Firstly, I have already ruled above that the additional information provided by the CPS, on behalf of the issuing judicial authority, may be admitted for the purposes of the consideration of this application. Although that information was provided pursuant to a request made under s. 20 of the Act of 2003, in my opinion it may also be considered information provided for the purposes of s. 11(2A) of the Act of 2003 which provides:

> *"(2A) If any information to which subs. (1A) (inserted by s. 72(a) of the Criminal Justice (Terrorist Offences) Act 2005) refers is not specified in the European Arrest Warrant, it may be specified in a separate document."*

96. The central objection raised on behalf of the respondent as to non-compliance with s. 11(1) of the Act of 2003 is that particulars of the circumstances in which the offences were committed are not sufficiently clear, and nor is the degree of alleged involvement of the respondent in the commission of those offences.

97. I will first address the objection that the description of the circumstances in which the offences were committed is deficient. The respondent is to be charged with 41 offences, made up of 39 offences of manslaughter, and two offences of conspiracy, the first being a conspiracy to commit a human trafficking offence under s. 2 of the Modern Slavery Act 2015 in the United Kingdom, and the second being a conspiracy to assist unlawful immigration contrary to s. 25 of the Immigration Act 1971 of the United Kingdom.

98. It is clear from the information provided that each of the 39 manslaughter charges arises from the same set of circumstances i.e. all of the deceased persons were transported in a trailer unit the Port of Zeebrugge in Belgium and from there to the Port of Purfleet in the United Kingdom, and thereafter towards their destination in the United Kingdom. The ferry crossing alone took nine hours. The refrigeration unit in the trailer was turned off and there was no cooling of any kind, causing the temperature in the trailer unit to reach a high of 38.5 degrees during the journey. Although at the time of this hearing the precise cause of death was uncertain, it is likely that all of the deceased died of hypoxia, or oxygen starvation.

99. The circumstances in which the misfortunate migrants died could hardly be more clear. The only details of any significance that are missing are the circumstances in which they came to be on board the trailer unit in the first place. But those details are not necessary for the purposes of this application. The circumstances in which the victims died are clearly set out and in sufficient detail for the purposes of this application.

100. As to the degree of involvement of the respondent, it is true that neither the EAW nor the additional information allege that the respondent was responsible for placing the victims in the trailer, or that he had any knowledge of their presence therein. This issue requires further exploration in the context of another objection raised on behalf of the respondent i.e. that the acts alleged against the respondent do not correspond to the offence of manslaughter in this jurisdiction, which I address below. But for the purpose of the objection grounded upon non-compliance with s. 11(1A)(f) I believe that when the EAW and the additional information are read as a whole, this Court is entitled to draw an inference that it is alleged that the respondent, at a minimum, knew that the migrants were in the trailer at the time that he transported them to Zeebrugge and left there for onward transportation to Purfleet. Such an inference is entirely logical because it is also alleged that the respondent was involved in a conspiracy to assist in unlawful immigration, and a separate conspiracy to commit a human trafficking offence.

101. As to the conspiracy charges, in the context of an allegation, what more could be said? The respondent and others are alleged to have been involved in a conspiracy to bring immigrants into the United Kingdom illegally. It is further alleged that these activities were not confined to assisting illegal immigration, but also involved exploitation of those brought into the United Kingdom, such as to constitute exploitation of those persons, contrary to the Act of 2015. Information regarding the involvement of the respondent and his co-conspirators in such activities on previous occasions is provided. The extent of the respondent's involvement in these activities is, at a minimum, alleged to have been

the transportation of the migrants to the Port of Zeebrugge. For the purposes of s. 11(1A)(f) of the Act of 2003, I consider that there is sufficient information regarding the degree of involvement of the respondent in the alleged offences of manslaughter and conspiracy to assist in unlawful immigration.

102. As regards the offence of conspiracy to commit a human trafficking offence, very limited information is provided. Reliance appears to be placed on two matters, the first being the exploitation of the migrants on the journey itself (related to the cost and conditions of the journey) and the second, which is based on observation of previous activities in which the respondent and his co-conspirators were allegedly involved, is that it is unlikely that the victims would have been free to do as they pleased had they arrived safely. To the extent that this constitutes an offence, the degree of involvement of the respondent appears to be that this was all part of the same conspiracy that involved assisting illegal immigration into the United Kingdom, in respect of which for this purpose I have already decided that there is sufficient information in the EAW and the additional information. Since the two conspiracies are inextricably linked, I believe that there is sufficient information in the EAW and in the additional information provided in relation to this offence also. As the authorities make abundantly clear, there does not even have to be sufficient information in the EAW or the additional information to establish a prima facie case; applying the test set out by Edwards J. in *Minister for Equality & Justice v. Phillip Baron* referred to above, the information provided both specifically asserts a link between the respondent and the alleged offences, 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. As the Court further observed in that case, it is not necessary that every detail of the proposed evidence by means of which the circumstances in question might be established in Court should be provided.

Objection to invocation of Article 2(2) of the Framework Decision - Manifest Error

103. In the EAW, the issuing judicial authority ticked the box for just one of the offences prescribed by Article 2(2) of the Framework Decision, that relating to trafficking in human beings. In the additional information, the CPS stated that it was intended to invoke Article 2(2) in relation to all offences. However, at the hearing of this application, counsel for the applicant informed the Court that he was seeking to rely on Article 2(2) in respect of the trafficking offence only, and accordingly he accepts that it is necessary to demonstrate correspondence in relation to the manslaughter offences and the offence of conspiracy to assist unlawful immigration. I address this below, but first it is necessary to address the argument advanced on behalf of the respondent that the invocation of Article 2(2) in relation to the conspiracy to commit a human trafficking offence is a "manifest error".

104. The respondent contends that the invocation of Article 2(2) in respect of the offence of conspiracy to commit a human trafficking offence is a manifest error on the part of the issuing judicial authority such that it should not be entitled to rely on Article 2(2), and should instead be required to demonstrate correspondence between the acts relied upon in relation to this offence with an offence under the law of the State, as required by s. 38 of the Act of 2003. It is submitted that there is no information at all in the EAW or in the

additional information that would suggest that the respondent engaged in the trafficking of any person.

105. Under s. 2(1) of the Act of 2015, in the United Kingdom, a person commits an offence if he arranges or facilitates the travel of another person with a view to that person been exploited. It is clear from this section and also s. 2(4) of the same act that under UK law the offence of trafficking in human beings involves an element of exploitation and control and not just the simple facilitation of illegal immigration. The absence in the EAW of any intention to exploit the migrants upon their arrival in the UK demonstrates that there is no evidence at all such as to indicate the commission of an offence under the Act of 2015.

106. The offence of trafficking of persons under Irish law is provided for in s. 4 of the Criminal Law (Human Trafficking) Act 2008. The various ingredients of the offence in this section include coercion, threats, deception, abuse and use of force. There is no indication in the EAW or in the additional information as to the presence of any of these factors or any of the other factors set out in that section in the treatment of those who died while being transported to the United Kingdom.

107. Accordingly, it is submitted, it follows that the applicant should not be entitled to rely on the invocation of Article 2(2) in relation to this offence, as it is a manifest error. It is submitted that in the case of *Minister for Justice v Devlin* [2010] 1 IR 97, Peart J. acknowledged that the court could disregard the fact that an offence had been ticked and require proof of correspondence between the alleged acts and the offence in Irish law in circumstances where there is a manifest error on the face of the warrant.

108. In response to this, it is submitted on behalf of the applicant, firstly, that the statement in the EAW that "*the case against Eamon Harrison relates to the trafficking and subsequent death of 39 people within an artic trailer unit*" in itself is enough to disprove any suggestion of a manifest error.

109. It is further submitted that the Supreme Court has made it clear in its decision in the case of the *Minister for Justice, Equality and Law Reform v. Ferenca* [2008] 4 IR 480 that it is entirely a matter for the requesting state to invoke Article 2(2). In para. 22 of his decision, Murray C.J. stated "*Article 2 only applies to the specified offences in Article 2.2 and it is for the issuing states to identify any offence in relation to which surrender is sought, as defined by its own law, as being one of the offences listed in Article 2.2".* In para. 114 of the same judgement, Macken J. stated: "*Article 2.2 of the Framework Decision gives no right to an executing Member State to go behind the listed offences, once ticked, to require correspondence…"*

110. The applicant also relies upon the case of Minister for Justice, Equality and Law Reform v. Ciupe, a decision of Edwards J. in this Court delivered on 13th September, 2013, having quoted extensively from Ferenca, stated:

> *"where a box is ticked and the basis for the issuing state having done so is not obvious, giving rise to a suggested manifest error, a court might proceed in a*

number of ways. In some cases the raising of a query using the procedure under section 20 of the Act of 2003 and aimed at clarifying the intention of the issuing judicial authority would be the most appropriate way of proceeding. However, in other cases the court might consider it appropriate to proceed to make a specific finding of manifest error and disregard the ticking of the box. In yet other cases the appropriate thing to do might be to make no specific finding of error but rather for the court to proceed of its own motion to consider the issue of correspondence notwithstanding that box is ticked e.g., in a case where it appears that correspondence will be demonstrable in any event, in which case the respondent's objection would be otiose in practical terms, and the raising of a query using the section 20 procedure could serve only to delay an inevitable outcome.

The point that requires to be stressed here is that the existence of an error would have to be truly "manifest" and the only reasonable conclusion, before an executing court would be justified in disregarding the ticking of a box on the grounds of error. Having regard to the Supreme Court's clear and unequivocal statement in Ferenca that it is for the issuing state to decide whether or not its national law defines the particular conduct which it alleges against the person whose surrender is sought, as one of the offences listed in Article 2.2, it follows that it will only be in the rarest of cases that an error would be truly manifest, as opposed to being suspected at the level of possibility. Accordingly, it seems to me that an executing court should exhibit considerable reticence about engaging positively with an objection to reliance by an issuing judicial authority upon Article 2.2 of the framework decision on the grounds of alleged manifest error, and that it should only do so in circumstances where it can be totally satisfied from what is contained in the face of the warrant that there has indeed been an unintended but significant drafting error involving the inappropriate ticking of a particular box in the Article 2.2 list"

111. Counsel for the applicant also relied upon the later decision of Donnelly J. in the *Minister for Justice, Equality and Law Reform v. Fassih,* 2nd February, 2017, in which the Court reiterated the principles set forth in *Ferenca* and *Ciupe*. Counsel further submitted that this line of authority would apply with equal force to the inchoate offence of conspiracy to commit a tick box offence, and relies upon the decision of Peart J. in the case of *Minister for Justice, Equality and Law Reform v. O'Sullivan* [2011] IEHC 230, in which case Peart J. ordered the surrender of the respondent in respect of the offences of conspiracy to commit fraud. Similarly, in the case of *Minister for Justice, Equality and Law Reform v. McGowan*, Donnelly J. rejected an argument that she should look behind the invocation of Article 2(2) in respect of an inchoate offence.

Conclusion on "Manifest Error" objection

112. The authorities on this issue are very clear. It is entirely a matter for the requesting state whether or not to invoke Article 2(2) of the Framework Decision in respect of an offence. The requested state is not entitled to go behind this invocation save in cases of manifest error. In Ciupe, Edwards J. suggested that the error must be in the nature of a drafting error. In Devlin, Peart J. gave an example of another kind of error which is so glaring as

to be manifest, where the box for fraud was ticked, but the surrender of the respondent was sought for a very different kind of offence, such as murder. Neither of these examples apply in this case. There is no manifest error. It is not at all difficult to see how the facts alleged against the respondent could include a human trafficking offence, including conspiracy to commit such an offence. This Court is not concerned with the strength of the evidence indicated in the EAW or in the additional information, when considering whether or not there has been a manifest error. I am satisfied beyond any doubt that this is not one of those very rare cases in which the Court can or should disregard or override the choice of the issuing judicial authority to invoke Article 2(2) of the Framework Decision for an offence.

Section 38 Objection

113. The respondent further objects to his surrender on the grounds that the offences described in the EAW do not correspond to offences under the law of the State, having regard to the requirement set forth in s. 5 of the Act of 2003 which provides:

> *"5- For the purposes of this act, an offence specified in a European Arrest Warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European Arrest Warrant is issued, constitute an offence under the law of the State."*

114. Having found, as I have, that this Court is bound by the ticking of the box that refers to trafficking in human beings, it is of course not necessary for the applicant to demonstrate correspondence as regards the offence of conspiracy to commit a human trafficking offence. The applicant accepts, however, that it is necessary to demonstrate correspondence in relation to the manslaughter offences and the offence of conspiracy to assist unlawful immigration.

115. Dealing with the latter offence first, the applicant argues that the acts of the respondent as described in both the EAW and the additional information, viewed as a whole, would, if committed in the State, constitute the offence of conspiracy contrary to s. 71(1) of the Criminal Justice Act 2006, because the conspiracy relates to the carrying out of an act that would constitute a serious offence (as defined in s. 70 of that Act), that offence being an offence contrary to s. 2(1) of the Illegal Immigrants (Trafficking) Act 2000. That section provides:

> *"2(1) A person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum shall be guilty of an offence and shall be liable –*
>
> *(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both,*

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both."

116. The definition of "serious offence" in s. 70 of the Criminal Justice Act 2006 is an offence for which a person may be punished by imprisonment for a term of four years or more. The respondent did not dispute that these are the relevant statutory provisions in the State for the purposes of establishing correspondence of the offence of conspiracy to assist unlawful immigration. However, the respondent contends that there is no factual basis of any kind set forth in the EAW or the additional information which indicates that the respondent organised entry of illegal immigrants into the United Kingdom or that he was involved in a conspiracy to do so. No information is provided as to when the victims entered the trailer or in what circumstances, or that the respondent knew of their presence in the trailer. Nor is there any information provided as regards meetings or phone calls in which the respondent was involved whereby he was a party to a plan to facilitate the entry into the United Kingdom of the deceased migrants. Accordingly, it is submitted, the applicant has failed to establish correspondence in relation to this offence.

117. The applicant contends that looking at the information as a whole, the following facts are relevant:-

(1) Firstly, it is stated that the respondent is involved in a conspiracy to traffic illegal immigrants into the United Kingdom.

(2) Secondly, it is stated that he and another named individual were recruited to activity this by a third named individual.

(3) It is stated that another driver was paid £1,500 per person for these activities, and on one occasion was paid a total of £25,000.

(4) It is stated that on 9th May, 2018, the respondent was stopped with a trailer unit containing eighteen Vietnamese migrants.

(5) It is stated that on 10th/11th October, 2019, the respondent is believed to have been the driver of a truck that delivered a trailer of illegal immigrants to the same port, crossing the same channel.

(6) It is stated that on 17th/18th October, 2019, the respondent delivered more illegal immigrants to the same port. Further information is provided as to what happened when these immigrants arrived in the United Kingdom.

(7) It is stated that there is evidence of mobile phone contacts between the co-conspirators, including the respondent, and a wealth of other circumstantial evidence in this regard.

(8) It is stated that the respondent was responsible for depositing the trailer in which the misfortunate deceased migrants were transported, at Zeebrugge Port.

(9) Shortly after one of the co-conspirators was arrested, it is stated there was phone contact between the respondent and another co-conspirator, and, thereafter, the respondent disposed of his phone.

(10) Finally, is also stated that the respondent did not contact law enforcement agencies, despite the fact that he was the person who transported the trailer, when the deaths of the migrants became known and received widespread publicity.

118. It is submitted on behalf of the applicant that the Court is entitled to have regard to all of the facts as stated, including those that would amount to circumstantial evidence, and that the court is entitled to draw inferences from those facts. All of that being the case, if the acts described in the EAW and the additional information were committed in the State, those acts would constitute an offence contrary to s. 71(1) of the Criminal Justice Act 2006.

Conclusion on s.38 Objection in relation to offence of conspiracy to assist unlawful immigration

119. The test for establishing correspondence with in offence in this jurisdiction is set out in the decision of *Minister for Justice and Law Reform v. Dolny* [2009] IESC 48. In that case, Denham J. (as she then was) stated:

> *"In addressing the issue of correspondence, it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue, it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."*

120. In the additional information, there is detailed information provided in respect of the activities the respondent and other named persons in relation to three previous incidents involving transportation of illegal migrants. The role of the respondent in these events is described. Names of the others involved in the events are also provided. It is stated that there is evidence of communications between the respondents and his co-conspirators. One of those co-conspirators, Mr. Robinson, was the driver of the lorry that collected the trailer from Purfleet Port. He has pleaded guilty to the offence of conspiracy to assist unlawful immigration. Finally, the respondent is said to be the person who drove the trailer to Zeebrugge Port, with the migrants on board.

121. In my view, if all of these acts were committed in the State, it would surely be the case that they would constitute an offence under the law of the State, contrary to s. 71 of the Criminal Justice Act 2006. I therefore dismiss the respondent's objection under this heading

Section 38 Objection - Manslaughter Charges

122. Counsel for the applicant submits that the facts alleged against the respondent in the EAW and the additional information fall well short of the criteria required to establish either manslaughter by criminal negligence or manslaughter by a criminal and dangerous act. In order to establish the offence of manslaughter by criminal negligence, it is not enough to establish ordinary negligence; there is a requirement for negligence in a very high degree. Counsel referred the Court to the authority of *The People (AG) v. Dunleavy* [1948] IR 95. In that case, Davitt J. set out at p. 102, the instructions that should be included in a charge to a jury in respect of the charge of manslaughter by criminal negligence. These include:

(a) [not relevant]

(b) That they [the jury] must be satisfied that negligence upon the part of the accused was responsible for the death in question.

(c) That there are different degrees of negligence, fraught with different legal consequences; that ordinary carelessness while sufficient to justify a verdict for a plaintiff in an action for damages for personal injuries, or a conviction on prosecution in the District Court for careless or inconsiderate driving, falls far short of what is required in a case of manslaughter; and that the higher degree of negligence which would justify a conviction on prosecution in the District Court for dangerous driving is not necessarily sufficient.

(d) That before they could convict of manslaughter, which is a felony and a very serious crime, they must be satisfied that the fatal negligence was of a very high degree; and was such as to involve, in a high degree, the risk or likelihood of substantial personal injury to others.

123. It is submitted that on the facts as alleged, there is no evidence of gross negligence on the part of the respondent. There are no facts alleged that are sufficient to establish that he breached any duty of care, because there is no allegation that he was in any way involved in the entry of the migrants into the trailer, or even that he knew they were there.

124. As regards manslaughter by a criminal and dangerous act, the respondent relies on the decision of the Supreme Court in *The People (AG) v. Crosbie* [1966] IR 490. In that case, Kenny J. stated:-

> *"When a killing resulted from an unlawful act, the old law was that the unlawful quality of the act was sufficient to constitute the offence of manslaughter. The correct view, however, is that the act causing death must be unlawful and dangerous to constitute the offence of manslaughter. The dangerous quality of the act must, however, be judged by objective standards and it is irrelevant that the accused person did not think that the act was dangerous."*

125. It is submitted that none of the information provided gives any indication of what the respondent did that was objectively dangerous. Moreover, here again it is not alleged anywhere in the information provided that the respondent put the migrants in the trailer, that he knew they were in the trailer or that he knew how many people were in the trailer. The latter, it is submitted, is a highly material consideration in circumstances where the cause of death, assuming that it was caused by suffocation, may well have been influenced by the number of people in the trailer. It is submitted that the Court is being invited to infer too much and the Court should not do so. There are facts that are essential to establishing correspondence with the offence of manslaughter in this jurisdiction (whether by criminal negligence or by a criminal and dangerous act) that are not stated in the EAW, and which could very readily have been stated. It is submitted that they are not stated because that information is not available. All of that being the case, correspondence with the offence of manslaughter in this jurisdiction, on the basis of the factual information provided, is not established.

126. The applicant does not dispute the criteria for establishing the offence of manslaughter. The principal difference between the applicant and the respondent in relation to this aspect of the matter is the extent to which the Court is entitled to draw inferences. Counsel for the applicant submits that what the Court must do is look at the acts stated in the information provided in the round and as a whole, and submits that it is manifest from the additional information that what is being alleged is that the respondent and his co-conspirators knew that the migrants were in the trailer because he and his co-conspirators were involved in a conspiracy to facilitate the entry of people, illegally, into the United Kingdom from as far back as May, 2018.

127. The applicant relies, *inter alia,* on all of the information summarised in para. 117 above. On the basis of this information, it is submitted that it is clearly being alleged that since he was a conspirator in the enterprise, the respondent not only knew that all of those people were in the trailer, but he facilitated their presence there. The act of transporting people in this manner, in a sealed container for onward transportation in a ferry to the United Kingdom, in a journey lasting nine hours, is manifestly dangerous. So, therefore, it is clear that the acts concerned were not just unlawful, but sufficiently dangerous as to meet the criteria for the offence of manslaughter by a criminal and dangerous act in this jurisdiction.

Conclusion on s. 38 Objection - Manslaughter Offences

128. Central to the decision of the Court on this issue is whether the Court may draw inferences from the information provided, and, if so, to what extent. It is well settled that the Court is obliged to consider the information provided in the EAW and in the additional information as a whole, and this is not disputed. No authority has been cited to me that declares that the Court may not draw such inferences as are reasonable from the information provided. In my opinion, having regard to the duty the Court has to give effect to the Framework Decision, that it has been held that refusal to surrender should only arise in exceptional cases, and that this is an administrative and not a substantive

proceeding, the Court is entitled to draw such inferences as are reasonable to draw from the information provided, and I will proceed accordingly.

129. While it is true that the information provided does not state that the respondent himself was responsible for placing the migrants in the trailer or even that he knew they were there, or, that if he did, how many of them were there, nonetheless I think it is a reasonable inference to draw that this is what is alleged as against the respondent. This is apparent, in my view, from the conspiracy charges. It is clearly not being alleged that the respondent was merely the driver; it is alleged that he was a party to an agreement to facilitate the commission of a breach of immigration law and, separately, an agreement to commit a human trafficking offence. Necessarily this means that it is alleged that he was involved, at least to some degree, in the planning of the enterprise, as well as being a party to its execution. It follows from this, that, although not stated, the case against the respondent must include an allegation that, at a minimum, he was aware of the presence of the migrants in the trailer, if not that he actually led them there himself. Moreover, additional information indicates that those involved were being paid per migrant, and so it is highly unlikely that a person involved carrying out these actions would not, in his own self-interest, be aware of the number of people being transported.

130. So, therefore, for the purposes of the consideration of this issue, I am satisfied that it is reasonable for the Court to draw the inference that the case being made against the respondent is that he knew there were migrants in the trailer, and that he knew the numbers involved. Another inference that I believe it is reasonable to draw is that it is also alleged that the migrants were locked in a sealed container. In the course of submissions, counsel for the applicant referred, on a number of occasions, to the trailer unit being sealed, and no issue was taken with this assertion. In any case, I think this may reasonably be inferred, because the trailer was a refrigerated unit, and such units are automatically sealed once the doors are closed, even if the refrigeration is not turned on. Furthermore, it is reasonable to infer that it is alleged that the migrants were locked in to the trailer, or for whatever reason had no way of escaping from it, because otherwise they would surely have done so. Bloody hand prints were observed on the inside of the doors.

131. In the context of manslaughter by a criminal and dangerous act, the question that then arises is whether or not the acts of the respondent i.e. those expressly stated in the EAW and in the additional information, as well as those facts which I have inferred, are of a character that is sufficiently objectively dangerous so as to constitute the offence of manslaughter in this jurisdiction? It seems to me that it is difficult to form any other conclusion. The acts alleged are clearly unlawful, involving , as they do , assisting unlawful immigration. The migrants were in a container which it may reasonably be inferred is alleged to have been locked and sealed. They were in that container, for a period of unknown duration, before it was deposited in Zeebrugge. The ferry crossing was to last nine hours, and they would remain in the container for a further unstated period after the crossing, pending their delivery to the pre-planned destination.

132. On an objective basis, it is difficult to see how locking so many people in such a small (relative to the numbers involved) sealed space for such a lengthy period could be regarded as other than highly dangerous. It seems very likely that the migrants died of suffocation, but the fact is that on a journey such as this, anything could go wrong and the misfortunate migrants would have no means of escape. The additional information provided included a statement, at para. 3.20, that there were bloody handprints on the inside of the lorry door, suggesting that efforts may have been made to prise the doors open from the inside. All of this being the case, I am satisfied that, while much of the case to be made against the respondent is based on circumstantial evidence, nonetheless, if all of the acts alleged , expressly or by inference, occurred in this jurisdiction, the respondent would be found to have committed an unlawful and dangerous act sufficient to constitute the offence to manslaughter in this jurisdiction Accordingly, I reject the objection that correspondence with the offence of manslaughter has not been established.

Section 21A Objection

133. Section 21A of the Act of 2003 requires the High Court to refuse to surrender a person, who has not been convicted of an offence specified therein, if the Court is satisfied that a decision has not been made to charge the person with, and try him or her for that offence in the issuing state.

134. However, s. 21A(2) provides that where a European Arrest Warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person and try him or her for that offence in the issuing state, unless the contrary is proved.

135. At para. (e) II of the EAW the following is stated by the issuing judicial authority:

> *"I am satisfied that a Crown Prosecutor in the Crown Prosecution Service, whose function it is decide whether or not to prosecute an individual for the alleged commission of criminal offences, has decided to charge the person named herein and to try him for the offences specified above and for which this warrant is issued."*

136. It is submitted on behalf of the respondent that that decision of the CPS must have been made at the time of the issue of the EAW. In that part of the EAW dealing with the nature and legal classification of the offences, the offence of manslaughter contrary to common law is identified. It is then stated that this offence is made out if it is proved that the accused intentionally did an unlawful and dangerous act from which death inadvertently resulted. In the additional information it is stated that, at present, the case against the respondent is put on an alternative basis:

(i.) The unlawful act of manslaughter, the unlawful act being the substantive offence(s) of assisting the unlawful immigration of 39 Vietnamese deceased persons into the UK and/or arranging or facilitating the travel of the 39 persons into and within the UK with a view to them being exploited before, during or after the journey; or in the alternative

(ii.) Gross negligence manslaughter on or before 24th October, 2019, in that he owed a duty of care to the 39 deceased persons, and that he breached this duty by transporting them in a trailer to Zeebrugge Port in Belgium on 22nd October, 2019, and caused the 39 deceased persons to travel unaccompanied inside the trailer unit on the MV Clementine on a ferry crossing journey lasting approximately nine hours from Zeebrugge to Purfleet Port, and the breach caused the deaths of the deceased.

137. It is submitted on behalf of the respondent that the CPS still does not know the cause of death and nor has a decision been made as to the charge to be brought against the respondent i.e. a manslaughter charge based on an unlawful and dangerous act, or a manslaughter charge based on gross negligence.

138. Without post-mortem results identifying the precise cause of death, it is not possible to assert a breach of any alleged duty of care on the part of the respondent so as to establish gross negligence. Furthermore, the prosecutor is not in a position to identify what the respondent did that was dangerous. It is not claimed that the respondent placed the migrants in the trailer or that he knew of their presence, or that if he did, that he was aware of how many people were present or of any consequent danger that might be caused by so many people being in the trailer for nine or more hours.

139. For all of these reasons, it is submitted that it cannot be the case that a decision has been taken to put the respondent on trial for manslaughter, since there is so much uncertainty about the basis on which the charge is going to be alleged. It is further submitted that all of this is sufficient to displace the presumption contained in s. 21A(2) of the Act of 2003.

140. In response to this, it is argued on behalf of the applicant that, as a matter of general principle, in the context of the Framework Decision, Member States are bound to accept the judicial decisions of the judicial authority of the issuing Member State in issuing the arrest warrant, and must also afford trust and confidence in the information provided by the issuing judicial authority and the issuing state. Accordingly, unless there is evidence of *mala fides* this Court is entitled to rely on the representation of the issuing judicial authority that the surrender of the respondent is required for the purpose of conducting a criminal prosecution in respect of the offences described in the EAW including manslaughter offences.

141. It is submitted that it is well established by the authorities that the creation of the presumption in s. 21A(2) of the Act of 2003 places a burden on the person objecting to surrender to rebut that presumption by adducing cogent and concrete evidence that no decision to charge has been taken. The applicant refers to the decision of *Minister for Justice, Equality & Law Reform v. Ostrovskij* [2006] IEHC 242.

142. In relation to the argument that it appears the CPS has not yet decided on the basis upon which to advance the charge of manslaughter, it is submitted that it is not at all uncommon for a prosecutor to advance a manslaughter charge on alternative bases, and that does not in any way undermine the decision to charge and try for the offence. The

applicant relies on the decision of *Minister for Justice, Equality & Law Reform v. Olsson* [2011] 1 IR 384, wherein O'Donnell J. stated, at paras. 33 and 34:

> *"[33] When s. 21A speaks of 'a decision' it does not describe such decision as final or irrevocable, nor can it be so interpreted in the light of the Framework Decision. The fact that a further decision might be made eventually not to proceed, would not therefore mean that the statute had not been complied with, once the relevant intention to do so existed at the time the warrant was issued. The Act of 2003 does not require any particular formality as to the decision; in fact, s. 21 focuses on (and requires proof of) the absence of one. The issuing state does not have to demonstrate a decision. A court is only to refuse to surrender a requested person when it is satisfied that no decision has been made to charge or try that person. This would be so where there is no intention to try the requested person on the charges at the time the warrant is issued. In such circumstances, the warrant could not be for the purposes of conducting a criminal prosecution.*
>
> *[34] The requirement of the relevant decision, intention or purpose can best be understood by identifying what is intended to be insufficient for the issuance and execution of a European arrest warrant. A warrant issued for the purposes of investigation of an offence alone, in circumstances where that investigation might or might not result in a prosecution, would be insufficient..."*

143. The applicant also relies on the decision of Hunt J. in the case of *Minister for Justice & Equality v. Viplentas* [2016] IEHC 46 where, after referring to the decision of the Supreme Court in Olsson and also the decision of the Supreme Court in *Minister for Justice, Equality & Law Reform v. Michael McArdle* [2005] 4 IR 260 he stated:

> *"The presumption in favour of charge and trial is not displaced by the fact that procedures in the requesting state contain an element of further investigation, or require the respondent to be present for the purposes of those procedures."*

144. It is further submitted that the fact that post-mortem results are not currently available is entirely irrelevant to the question of whether or not there is a decision to try and it is simply not correct to suggest that a cause of death is not asserted. Moreover, it is submitted that the Court should also take into account that two of the respondent's alleged co-conspirators, Mr. Robinson and Mr. Kennedy have already been charged with offences arising at these events. Mr. Robinson has already pleaded guilty to conspiracy to assist unlawful immigration and money laundering, and manslaughter charges AGAINST him are pending.

Conclusion on Section 21A Objection

145. The first observation to make is that no evidence of any kind has been adduced to rebut the presumption set forth in s. 21A(2). The Court has been invited to conclude that notwithstanding an express statement in the EAW that a decision to charge and try the respondent for the offences in the EAW has been taken, the Court should conclude, from the fact that the manslaughter charges may be advanced on an alternative basis, and

that post-mortem results were not available at the time of the issue of the EAW, that no decision could have been taken. These facts are also relied upon to displace the statutory presumption in favour of the decision to charge and try the respondent.

146. In my opinion, the arguments advanced on behalf of the respondent in this regard fall very far short of what is required before a Court could either reject the express statement in the EAW or conclude that the statutory presumption has been rebutted. I have no doubt at all that, at the date of the issue of the EAW, the CPS had the intention to charge and try the respondent with the offence of manslaughter. It is open to the CPS to advance the charge of an alternative basis if it chooses to do so. The fact that final post-mortem results were not available to the CPS at the time does not mean that the CPS did not have sufficient information available to it to make the decision to charge and try the respondent. On the contrary it clearly did as demonstrated by the fact that one of his alleged co-conspirators, Mr. Robinson, was on 25th November, 2019, facing manslaughter charges. This is apparent from para. 3.40 of the additional information in which it is stated that:

> *"On 25th November, 2019, Robinson appeared before the Central Criminal Court for a plea and trial preparatory hearing. He pleaded guilty to conspiracy to assist unlawful immigration and one count of money laundering. He requested more time from the Court to consider materials served in respect of the manslaughter charges and another money laundering count before being arraigned on those counts."*

147. In my opinion, for all of these reasons, the objection to surrender based on s. 21A(2) of the Act of 2003 must also be dismissed.

Other Objections

148. Other objections raised on behalf of the respondent as referred to in paras. 45 and 46 above were not argued or pursued at hearing and do not require decision.

149. Having dismissed all of the objections of the respondent to this application, it follows that this Court will make an order, pursuant to s. 16 for the surrender of the respondent to the United Kingdom in connection with the charges set forth in the EAW.