

THE HIGH COURT

[2021] IEHC 581
[2021 No. 046 EXT]

BETWEEN

MINISTER FOR JUSTICE

APPLICANT

AND

MARICELA PAUN

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 5th day of August, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to Italy pursuant to a European arrest warrant dated 19th June, 2020 ("the EAW"). The EAW was issued by Mr. Antonino Patti, Deputy Prosecutor General of the Prosecutor General's Office at Caltanissetta Court of Appeal, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to enforce a sentence of four years and eight months' imprisonment, of which four years and fourteen days remains to be served.
3. The EAW was endorsed by the High Court on 1st March, 2021 and the respondent was arrested and brought before the High Court on 17th March, 2021 on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.
5. I am satisfied that surrender of the respondent is not precluded for any of the reasons set forth in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003").
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.
7. I am satisfied that correspondence can be established between the offence to which the EAW relates and an offence under the law of this State, viz. sexual exploitation of a child contrary to s. 3 of the Child Trafficking and Pornography Act, 1998, as amended.
8. At part D of the EAW, it is indicated that the respondent did not appear in person at the hearing leading to the decision. It is further indicated:-

"3.1.b. The person concerned has not been summoned in person, but she was de facto officially informed by other means of the date and place of the hearing that led to the decision. Therefore, it was without any doubt informed of the fixed hearing and of the fact that a decision might be taken in absentia. We wish to add for completeness that on 15 July 2016, during the hearing of the first instance trial, the defendant made a request for abbreviated trial through her own lawyer endowed with special powers of attorney."

The issuing judicial authority has also indicated at part D:-

"4. *During two degrees of judgment on the merits, the defendant was summoned to trial by the serving the documents on the domicile she had once chosen, meaning her defence counsel's office. Later on, the defendant appealed through her own defence counsels.*"

9. The respondent objects to surrender on the following grounds:-
- (i) it is not clear who issued the EAW and so it is not possible to say if same had been issued by an issuing judicial authority;
 - (ii) surrender is precluded as the EAW lacks sufficient clarity as required by s. 11 of the Act of 2003;
 - (iii) surrender is precluded by reason of s. 38 of the Act of 2003 (this was not pursued at hearing);
 - (iv) surrender is precluded by reason of s. 45 of the Act of 2003;
 - (v) surrender is precluded by reason of failure to comply with Article 10(4) of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 ("Directive 2013/48/EU") (this was not pursued at hearing); and
 - (vi) surrender is precluded by reason of s. 37 of the Act of 2003 due to prison conditions in the issuing state.
10. The respondent swore an affidavit dated 28th April, 2021 in which she avers that her daughter made an allegation to the police that someone on the farm had kept her locked up. She avers that she was living in an old abandoned house on a farm and worked for the man who owned the farm. She avers that she was brought to a police station in Serradifalco and afterwards to the police station in Caltanissetta. She avers that the owner of the farm and her daughter were brought in and that she was not at any point represented by a lawyer and did not have an interpreter. She avers that she was placed under house arrest and, three months later, a young man called to the house and introduced himself as a lawyer and spoke to her for two to three minutes in general terms. She avers that after six months, she was allowed to leave the house for one and a half hours a day to go grocery shopping. She avers that after eight months under house arrest, she was brought before the Magistrate in Caltanissetta and there was a lawyer there. She avers that later that evening, the police called to her home with documents and stated that the matter was over and that she was free to go. She avers that her understanding was that the allegation had been proven to be untrue. She avers that she stayed in Serradifalco for about six/seven months thereafter but then moved. She avers that she does not know if the young man who came to her home was endowed with a special power of attorney. She avers that she did not accept any wrongdoing. She avers that she was not notified of the dates of the proceedings by any lawyer.

11. In a supplemental affidavit dated 19th May, 2021, the respondent avers that she did not apply or instruct anyone to seek an abbreviated trial. She avers that she did not accept guilt and believes that the allegations were found to be untrue by the investigating magistrate. She avers that she does not know what a special power of attorney means. She denies giving a mandate to any lawyer to represent her. She denies changing lawyers.

Issuing Judicial Authority

12. The respondent takes issue with the fact that, at part J of the EAW, the judicial authority which issued the EAW is stated to be "*Prosecutor General's Office at Caltanissetta Court of Appeal*" and the name of its representative is given as "*Lia Sava*" with the post held described as "*Prosecutor General*". While at the latter part of part J of the EAW, the signature of the issuing judicial authority and/or its representative is that of "*Mr. Antonino Patti*" with the description of title given as "*Deputy Prosecutor General*".
13. The respondent's issue is not that the Prosecutor General's Office is not a competent issuing judicial authority for the purposes of the European arrest warrant system but, rather, that there is a lack of clarity concerning who issued the EAW.
14. By additional information dated 26th April, 2021 from the Office of the Prosecutor General attached to the Court of Appeal of Caltanissetta, it is explained that under Italian law, the European arrest warrant is issued, when it refers to final judgments, by the public prosecutor attached to the court in charge of the execution. It is further explained that the EAW in this instance was signed by the Deputy of the Prosecutor General, Antonino Patti, authorised by the Prosecutor General according to the organisation of the office to deal with the case at issue. Thus, the representative of the office is the Prosecutor General, Lia Sava, but the judge in charge of the case and who signed the EAW is the Deputy Prosecutor General, Antonino Patti. The additional information enclosed a copy of the EAW signed by both Lia Sava and Antonino Patti.
15. I am not satisfied that there is much substance to the respondent's objection in this regard. I am satisfied that the EAW was issued by a competent issuing judicial authority, being the Office of the Prosecutor General attached to the Court of Appeal of Caltanissetta, and that Antonino Patti, being authorised by the Prosecutor General to deal with this case, was competent to issue and sign the EAW herein. I am not satisfied that the EAW ever required the signature of Lia Sava although I note that a copy of the EAW signed by that individual has been furnished, presumably by way of confirming that the warrant was issued under the authority of that person.

Lack of Clarity

16. The respondent submitted that there was an unacceptable level of uncertainty concerning the dates of the offence in respect of which the EAW was issued. The EAW states at part E that it relates to one offence as follows:-

"With a view to execute the same criminal plan, she encouraged and organised the meetings between her daughter [P.G.F.] (born on 20 April 1999), who was under eighteen years old, and [C.C.] (who was separately tried), hence she induced,

encouraged and exploited the above mentioned as a prostitute, or otherwise she took advantage of her. With the aggravating circumstance that the act was committed by an ascending family member and to the detriment of a young person under sixteen years old. In Serradifalco, from November 2013 to January 2014."

17. However, in additional information dated 21st April, 2021 at point 4 thereof, reference is made to the offence having been committed several times from the month of November 2012 to the month of January 2013. This is clarified by further additional information dated 29th June, 2021 which confirms that the actual time period in which the offence was committed is "from November 2013 to January 2014" as set forth in the judgment of conviction and the EAW and that the indication in the previous additional information was a mistake. I am satisfied that there is no lack of clarity as to the dates in which the offence, the subject matter of the EAW, was committed.
18. Counsel for the respondent also objected on the basis that there was a lack of clarity concerning the actual penalty which had been imposed. At part C.1. of the EAW, it is indicated that the maximum penalty for the offence was a term of imprisonment from six to 12 years and a fine from €15,000 to €150,000. At part C.2. under the heading "*Length of the custodial sentence or detention order which may be provided for the offence(s)*", it is indicated "*4 years and 8 months; a fine of €16,000.00*" and, under the heading "*Remaining sentence to be served*", it is indicated "*a term of imprisonment of 4 years and 14 days*".
19. It should be noted that in the standard form in the annex to the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States, as amended ("the Framework Decision"), part C.2. should be translated as "*Length of the custodial sentence or detention order imposed*". In this instance, it seems apparent that there has been some error in translation. It is clear that the answer provided refers to the penalty imposed as the maximum penalty has already been set out at part C.1 of the EAW.
20. Counsel on behalf of the respondent also took issue with the fact that part F of the EAW has been completed, indicating that the issuing Member State provides for a review of custodial life sentences. He submitted there was some ambiguity that a life sentence had possibly been imposed in this matter.
21. By additional information dated 29th June, 2021, it is indicated that the actual sentence imposed was four years and eight months' imprisonment and a fine of €16,000 and that the remaining sentence to be served is four years and 14 days' imprisonment and a fine of €16,000. An explanation is provided that the residual sentence has been calculated by subtracting from the imposed sentence the time which the respondent was deprived of her personal liberty from 14th March, 2014 to 29th October, 2014 when she was under house arrest. The said additional information also confirmed that there was no custodial life sentence imposed in this matter and that the completion of part F of the EAW was a mistake. I am satisfied that there is no lack of clarity concerning the sentence imposed upon the respondent or the amount of same remaining to be served.

22. I am satisfied that, taking the EAW and the additional information provided as a whole, there is no significant error, ambiguity or lack of clarity so as might give rise to any prejudice on the part of the respondent such as might cause an injustice.

Section 45 of the Act of 2003

23. Section 45 of the Act of 2003 transposes into Irish law Article 4A of the Framework Decision and provides as follows:-

"45. – A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant... was issued, unless... the warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA ... as set out in the table to this section." [Table set out thereafter]

24. Counsel for the respondent submits that, in this instance, the sentence was imposed on the respondent *in absentia* and the requirements of s. 45 of the Act of 2003 have not been met. He relies upon the affidavits of the respondent, the contents of which are already referred to earlier herein.
25. By additional information dated 21st April, 2021, it is indicated that the respondent mandated a lawyer to act on her behalf by giving him a special power of attorney and that she was represented by that attorney both at first instance and second instance. Her attorney had sought an abbreviated trial process on her behalf which took place. An appeal had been brought by the attorney on her behalf. After the unsuccessful appeal, the respondent changed counsel. It is emphasised that the respondent:-

"was fully aware that she was being prosecuted for the offence of exploitation of the prostitution of her minor daughter and that during the entire proceeding (investigations, first instance trial, appeal trial, proceeding on legitimacy before the Court of Cassation) has always been assisted by defence counsels of her choosing who were paid by the State since Ms. Paun had applied for legal aid for underprivileged in that she had no financial resources to pay her defence counsel."

It is indicated that an order was personally served on the respondent on 14th March, 2014, indicating the offence she was charged with and the sources of evidence against her. On 17th March, 2014, a judge for preliminary investigations had examined the respondent in the presence of her defence counsel and, at that time:-

"in order to reply to a specific question by the Judge, Ms. Paun declared under Article 161 of the Code of Criminal Procedure, her domicile for the service of documents by the judicial authority at her address in Serradifalco, via G. Lombardo N. 40. During that phase she appointed as defence counsel of her choosing Salvatore Sollami, practicing in Caltanissetta, and applied for legal aid as said before."

26. The additional information indicates that the respondent was not found at the address she had declared and, therefore, service of documents was made upon her lawyer. Her lawyer requested an abbreviated trial as per the special power of attorney signed by the respondent and judgment was given at first instance on 14th October, 2016. That judgment was challenged by the respondent's lawyer who participated in the appeal trial. Notice of the appeal hearing was served on the defence counsel. The hearing was held on 26th October, 2017 with the respondent's lawyer being present. After the conviction in the appeal trial, the respondent changed her defence counsel and, in writing, appointed a new defence counsel, Mr. Calogero Montante, practising in Caltanissetta, as new defence counsel. An application was brought by that lawyer to the Court of Cassation. That court appears to deal with matters of a technical nature. The proceedings before the Court of Cassation were attended by the respondent's lawyer who had been served with notice.

27. According to the additional information:-

"Based on the facts described so far, the absence of the defendant at the various stages of the proceedings is to be considered as the result of a free choice.

It must also be pointed out, to conclude, that the defence counsels of her choosing have never submitted requests to adjourn the hearings due to any impediment of the defendant to participate during the various stages of the proceeding, nor have they raised any objection with regard to the full legitimacy of the service of documents procedure on the defendant."

28. By further additional information dated 7th June, 2021, the contents of the respondent's affidavits are addressed. The content of the previous additional information is confirmed and the additional information goes on to state:-

"Precisely because of this, we do not hesitate to define Ms. Paun's statements as false, tendentious and even libellous against the lawyers who defended her. She seems to implicitly accuse these lawyers of serious and shameful offences such as falsity in public documents, and that they allegedly took procedural initiatives without her knowledge and even without considering at all that they could damage her."

29. It is pointed out that the abbreviated trial does not require a confession but, rather, is a strategic choice which a defendant makes, as a rule on the advice of his or her lawyer, to be tried on the basis of the investigation's findings that have already been included in the case file. Under the abbreviated procedure, a defendant receives a reduction of one-third of the sentence in case of conviction. That is what happened in this case. The abbreviated trial had been requested on the respondent's behalf by her defence lawyer who had been authorised by her to do so by virtue of a special power of attorney. It is indicated that before the pre-trial investigation judge, the respondent and her defence lawyer were present when her daughter gave evidence as a witness. At the end of the pre-trial activity, the measure of house arrest against the respondent was revoked upon her lawyer's request to do so, not because the matter was over, as she claims, but because

her daughter's accusations had definitively crystallised having been reiterated before the judge and, therefore, there was no risk of tampering with evidence and the precautionary measure of house arrest did not need to be maintained.

30. By additional information dated 29th June, 2021, the power of attorney granted by the respondent to the first lawyer is enclosed, as also is the documentation relating to the respondent's appointment of a different lawyer after the appeal court. That additional information also indicates that a bailiff had been tasked to serve notice of the first instance hearing upon the respondent at the domicile which she had indicated by her own free choice as the address where she wanted all notices by the judicial authority to be served. She was not found at that address. The bailiff had delegated service of the notice by certified mail with proof of receipt but the letter could not be delivered as she was nowhere to be found at the address as confirmed in a receipt card completed by the person in charge of delivering the notice who had personally gone to the address. It was also indicated that during the trial the judicial police had made further efforts to locate the respondent but had been unsuccessful. Not only was the respondent not at the address she herself had indicated, but she was not residing in the town of Serradifalco and had left for an unknown location. Similarly, in respect of the second instance trial, the bailiff was not able to effect personal service on the respondent. A certified letter to the address was returned because the addressee was untraceable as indicated by the person who had been tasked to deliver the letter personally. It is pointed out that, under Italian law, once a defendant out of their own free choice, renders a statement to the judicial authority saying that it wants to receive notices at the given address, the authority has to abide by the decision of the defendant. But when a defendant, later, freely leaves that address and becomes untraceable, it is the law of criminal procedure that regulates how the process of serving notices is continued.
31. It should be noted that the respondent, in her affidavits, indicates that she did indeed leave the address in Serradifalco.
32. Taking into consideration all of the information before the Court, I am satisfied that throughout the proceedings, the respondent had mandated lawyers to act on her behalf and was in fact defended by those lawyers. In effect, this meets the requirements of point 3.2. of the table set out at s. 45 of the Act of 2003.
33. Further, insofar as it was not possible to personally serve notice of hearing dates upon the respondent, this was brought about entirely by the respondent herself who, in full knowledge of the proceedings pending against her, left her normal residence and the address she had provided for service of documents, and moved to another location without informing the prosecution or judicial authorities of her new address.
34. I find the respondent to be unreliable and lacking in credibility in her account of many aspects of this matter. Her denials of mandating a lawyer are contradicted by the documentation. Where there is a conflict between the respondent and the issuing judicial authority I prefer and accept the account provided by the issuing judicial authority.

35. In *Minister for Justice and Equality v. Zarnescu* [2020] IESC 59, the Supreme Court held that a purposive interpretation is to be adopted in respect of s. 45 of the Act of 2003. Baker J. analysed the relevant authorities as regards surrender of persons convicted or sentenced *in absentia* and the proper application of s. 45 of the Act of 2003 and held, *inter alia*, at para. 90:-

"[90] *From this analysis the following emerges:*

- (a) *The return of a person tried in absentia is permitted;*
- (b) *Article 4(6) of the 2002 Framework Decision permits the refusal to return where the requested state has a legitimate reason to refuse the EAW;*
- (c) *A person tried in absentia will not be returned if that person's rights of defence were breached:*
- (d) *Section 45 of the Act expressly identifies circumstances in which a person tried in absentia may be returned, primarily where there is evidence of service or where the person was legally represented or where it is shown that a right of retrial in the requesting state is available as of right;*
- (e) *The examples outlined in section 45 as forming the basis of the analysis are not exhaustive, and the requested authority may look to the circumstances giving rise to the non-attendance of the accused person at the hearing;*
- (f) *The requested state has a margin of discretion in how it approaches the facts, and whether to refuse return;*
- (g) *In so doing the requested authority must be satisfied that it has been established unequivocally that the accused person was aware of the date and place of trial and of the consequences of not attending;*
- (h) *Actual proof of service is not always required, and an assessment may be made from extrinsic evidence that the requested person was aware but nonetheless chose not to attend;*
- (i) *Proof of service on a family member is not sufficient extrinsic evidence of that knowledge;*
- (j) *The assessment is made on the individual facts but there must be actual knowledge by the requested person;*
- (k) *Whether actual knowledge existed is a matter of fact and can be shown from extrinsic evidence;*
- (l) *The purpose of the exercise is to ascertain whether the requested person who did not attend at trial has waived his or her right of defence;*

- (m) *A waiver may be express or implicit from the circumstances, but an implication that a requested person has waived his or her rights to be present at trial is not to be lightly made and will not be made if it has not been unequivocally established that the person was aware of the date and place of trial;*
- (n) *The degree of diligence exercised by a requested person in receiving notification of the date and place of trial may be a factor in the assessment of his or her knowledge of the date of trial:*
- (o) *In a suitable case a manifest absence of diligence may lead a requested authority to the view that the accused person made an informed decision not to be present at trial, or where it can be shown that there was an informed choice made by the person to avoid service;*
- (p) *The mere absence of enquiry as to the date or place of hearing in itself may not be sufficient, as it must be unequivocally shown that the requested person made an informed decision and, so informed, either expressly or by conduct waived a right to be present;*
- (q) *It may in a suitable case be appropriate to weigh the degree of responsibility of the requesting state to notify an accused person of the date of trial against the accused's responsibility for the receipt of his or her mail;*
- (r) *The enquiry has as its aim the assessment of whether rights of defence have been breached. It is not therefore a wide ranging or free-standing enquiry into the behaviour or lack of diligence of the requested person, and the purpose is to ascertain if rights of defence were adequately protected."*

36. At first glance, it may seem difficult to reconcile the seemingly absolute requirement of actual knowledge for a waiver to be found as set out at sub-para. (m) with the enquiry as to diligence referred to in the later sub-paragraphs, as clearly any lack of diligence is only relevant where actual knowledge cannot be established. On closer perusal, while the lack of diligence issue may feed into an assessment of knowledge, it may also be relevant as to whether the requested person has brought about a situation of deliberate or wilful ignorance of the date and place of trial. However, even where the Court finds such deliberate or wilful ignorance has been brought about by the requested person, it should not simply find a waiver of the right to be present, but should still consider whether the rights of defence were adequately protected or breached.
37. It is necessary in conducting an enquiry into the alleged lack of diligence on the part of a requested person to always bear in mind that the aim is to assess whether rights of defence have been breached or were adequately protected, as opposed to a general enquiry into the behaviour of the requested person, as per sub-para. (r) of the judgment.

38. Having carefully considered all the materials before the Court and bearing in mind the Supreme Court decision in *Zarnescu* and the authorities referred to therein, I am satisfied that this case falls within the category of cases set out at sub-para. (o) of para. 90 of Baker J.'s judgment in *Zarnescu*:-

"(o) In a suitable case a manifest absence of diligence may lead a requested authority to the view that the accused person made an informed decision not to be present at trial, or where it can be shown that there was an informed choice made by the person to avoid service."

39. I am satisfied that this is such a suitable case in circumstances where I find:-

- (i) the respondent provided her address in Serradifalco for the purpose of service of documents relating to the prosecution;
- (ii) she left that address in the knowledge that the proceedings were pending;
- (iii) she did not provide the relevant authorities with her new address;
- (iv) in such circumstances, it can be and is inferred that the respondent had made an informed decision to bring about a state of affairs in which it was not possible for the prosecution authorities to effect personal service upon her;
- (v) in such circumstances, it can be and is inferred that the respondent had made an informed decision to deliberately and effectively avoid personal service;
- (vi) she mandated lawyers to act on her behalf and was in fact represented by such lawyers;
- (vii) the respondent made an informed decision not to take any further part in person in the process, including attending any hearing in respect thereof; and
- (viii) she unequivocally waived her right to notice of and to attend at the hearings in the matter.

40. I have not come to the above conclusions lightly and I have taken a step back to consider whether, in the circumstances, I can be satisfied that the rights of defence have not been breached and were adequately protected. I am satisfied that the respondent's defence rights were adequately protected and were not breached.

41. I am satisfied that the requirements of Article 4A of the Framework Decision and s. 45 of the Act of 2003 have been met. I am further satisfied that, throughout the legal process in Italy, the defence rights of the respondent were respected and were not breached.

42. I dismiss the respondent's objections based on s. 45 of the Act of 2003.

Section 37 of the Act of 2003 – Prison Conditions

43. Counsel on behalf of the respondent submits that due to prison conditions in Italy, there is a real risk that, if surrendered, of a breach of the respondent's right not to be subjected to inhuman or degrading treatment, which right is protected under Article 3 of the European Convention on Human Rights ("the ECHR"). The Court was referred to a report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, dated 2019, and other reports concerning the Italian prison system. Having considered such reports and heard submissions, the Court sought additional information in relation to the likely conditions the respondent would be held in, if surrendered.

44. By additional information dated 18th May, 2021, it is stated:-

"Please be assured that if Ms Paun is surrendered, he (sic.) will not risk being exposed to any inhuman or degrading treatment pursuant to Article 3 of the Charter of Fundamental Rights of the European Union, and that the prison where she is going to serve his sentence will be specified as soon as a decision is made on the procedure for his surrender to Italy.

It is worth pointing out that at all times during her detention, Ms Paun will be afforded a minimum of 3 square metres of personal space, including furniture but excluding sanitary facilities. If surrendered, Ms Paun will

- (a) Be kept in a prison with adequate sanitary conditions,*
- (b) Have access to natural light and artificial lighting and ventilation,*
- (c) Be provided with clean mattresses and bedding,*
- (d) Be provided with adequate and partitioned toilet facilities,*
- (e) Have access to basic hygiene products,*
- (f) Have outdoor exercise,*
- (g) Be provided with satisfactory food,*
- (h) Adequate room temperature,*
- (i) the medical condition of Ms Paun, psychological and physical, will be assessed and adequate treatment will be afforded to her."*

45. The stated additional information is provided by the Ministry of Justice of the Republic of Italy.

46. Counsel on behalf of the respondent submitted that, as the additional information did not come from an issuing judicial authority, less weight was to be attached to same. While I accept that the information furnished does not come directly from the issuing judicial authority, I am nevertheless satisfied to attach significant weight to same coming as it

does from an emanation of the Italian State with responsibility for the criminal justice system in that jurisdiction. I am satisfied that there is no basis for doubting the knowledge, competence or *bona fides* of the Italian authorities in providing the said information.

47. Having considered all of the information before the Court, I am not satisfied that there are substantial reasons for believing that, if surrendered, the respondent faces a real risk of a breach of his fundamental rights due to prison conditions in the issuing state. Section 4A of the Act of 2003 provides that it shall be presumed that an issuing state will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. I am satisfied that the presumption contained in s. 4A of the Act of 2003 has not been rebutted. Bearing in mind the wording of s. 37 of the Act of 2003, this Court has to determine whether surrender of the respondent would be incompatible with the State's obligations under the ECHR, the protocols thereto, or would contravene a provision of the Constitution. I am satisfied that surrender would not be incompatible with the State's obligations in that regard and nor would it contravene any provision of the Constitution.
48. I dismiss the respondent's objections to surrender based upon s. 37 of the Act of 2003.

Conclusion

49. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision of that Act.
50. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to Italy.