THE HIGH COURT

[2023] IEHC 469

[2022 No. 170 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

Applicant

And

DEREK WADE

Respondent

Judgment of Mr. Justice Kerida Naidoo delivered on the 23rd day of June, 2023.

1. By this application, the applicant seeks an order for the surrender of the respondent to The Republic of Portugal pursuant to a European Arrest Warrant dated 25th August 2022 ("the EAW"). The EAW was issued by a named individual as the Issuing Judicial Authority ("the IJA"). No issue is raised in that regard.

2. The EAW seeks the surrender of the respondent to enforce a sentence of 2 years and 4 months' imprisonment imposed upon him on 16th June 2009 that became final on 6th November 2009, of which the entirety remains to be served.

3. The IJA has certified that the offences to which the EAW relates are contrary to the following provisions of Portuguese law, namely:

a. Aggravated theft contrary to Article 204, paragraph 2, sub-paragraph e) with reference to Article 202, sub-paragraph f) II) of the Penal Code.
b. Petty theft contrary to Article 203 of the Penal Code.

4. The respondent was arrested on 24th August 2022, on foot of a Schengen Information System II alert and brought before the High Court on the same day. The EAW was produced to the High Court on 6th September 2022.

5. 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.

6. I am satisfied that none of the matters referred to in section 21A, 22, 23 and 24 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), arise for consideration in the application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.

Section 11 and minimum gravity

Format of the 'Warrant'

7. In his notice of objection the respondent objects to surrender under section 11(1) of the Act of 2003 on the basis that the warrant is described as a "*European Detention Warrant*".

8. By letter dated 5th December 2022, in reply to a request for additional information, the IJA confirmed that the warrant is a European arrest warrant for executing a custodial sentence. The point was not pursued at the hearing. For the avoidance of doubt, based

on the totality of the information, I am satisfied that the warrant before me is a European arrest warrant.

Lack of Clarity – Composite sentence

9. In his notice of objection the respondent raised an objection to surrender under section 11(1A)(g) of the Act of 2003 on the basis that the description of the outstanding sentence is one of 2 years and 4 months' imprisonment for two offences. The respondent says it is therefore unclear if it is a composite sentence and there is uncertainty as to whether the minimum gravity requirement has been satisfied in respect of each offence.

10. I understand the respondent is no longer relying on that point. For the avoidance of doubt, in the additional information the IJA explained that there are two offences which were tried together and therefore one sentence for both was imposed. The respondent was sentenced to 2 years and 2 months' imprisonment in respect of the aggravated theft offence and 6 months' imprisonment in respect of the petty theft offence. A single penalty of 2 years and 4 months' imprisonment was then imposed.

11. I am satisfied that no issue arises under section 11 of the Act of 2003.

12. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met in respect of each offence.

13. I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of the State, namely, theft contrary to section 4

of the Criminal Justice (Theft and Fraud Offences) Act 2001 and/or burglary contrary to section 12 of the Criminal Justice (Theft and Fraud Offences) Act 2001.

Section 45

14. The respondent objects to surrender on the basis that it is prohibited by section 45 of the Act of 2003 because notification of the date and place of trial was served on him at a time when he was a prisoner serving a sentence of imprisonment in Ireland. The respondent was still serving that sentence when the trial took place in Portugal for the offences to which the warrant relates. He says he could not meaningfully have attended the trial.

15. The judicial decision on which the warrant is based is the decision of 16th June 2009. On that date the respondent was convicted and sentenced. That decision became final on 6th November 2009.

16. At Part D of the warrant, it is indicated that the respondent did not appear in person at the hearing that resulted in the decision which is sought to be enforced. The Issuing Judicial Authority relies on Part D.3.1.b of the EAW to satisfy the requirements of Section 45 of the Act of 2003, which states:

"The person was not notified personally, but received through other means an official information of the date and place for the trial that led to the decision, in a manner that made it unequivocally established that he was aware of the intended trial, and was informed that a decision could be made even if he was not present at the trial."

17. The IJA provided additional details at Part D.4.1 which says:

"The person was notified of the day and time of trial on 21.04.2009 at Mountjoy prison by [a named Constable] *in person, by way of a rogatory letter sent to the Irish authorities, the defendant was defended by a Court appointed Defender Officious."*

18. Additional information was provided by letter dated 5th December 2022. The decision of the court in Portimão of 16th June 2009 was attached, which includes the following statement:

"*The defendant was not heard due to not being present, having authorised the trial in his absence*."

19. In the reply of 22nd December 2022, the IJA says the respondent was served with the verdict on 7th October 2009, which was not appealed.

20. It is also apparent from the additional information that the respondent will not have an entitlement to an appeal or retrial in the event he is surrendered.

21. The applicant swore an affidavit dated 5th February 2023. In it he avers as follows:
    a. He says he is a prisoner serving a sentence of life imprisonment for murder imposed on 27th March 2007. He says the murder was committed on 29th June 2005. He does not say when he left Portugal or whether he was then aware of the circumstances giving rise to the offences to which the warrant relates.
    b. He says he became aware of the Portuguese matters in or around 2022. I understand that to be when he was arrested in relation to the extradition

proceedings. He says he was serving a life sentence in Mountjoy prison at that time. He says a police officer gave him a letter but that a number of years passed between that notification and when he was arrested on foot of the EAW. He says he received something in Portuguese and that he never heard anything further. That appears to be a reference to the letter served on him in 2009.

c. He avers that he did not give instructions to anyone to represent him at the Portuguese trial or have any communication with any Portuguese solicitor or barrister.

d. He says he would have pleaded not guilty to the offence concerning the camera. I understand that to be the offence of aggravated theft. Implicitly, the respondent appears to be accepting his guilt in respect of the petty theft offence.

22. At the hearing before me it was accepted that the respondent had received the letter notifying him of the hearing date. No complaint is made that the letter is in the language of the requesting State and that the letter was personally served on him by a Garda, so it was obviously an official document. That being so arrangements could have been made for it to have been translated. Furthermore, the norm for any non-national residing in a requesting State who comes to the attention of the police is that documents served on them will be in the language of that country. Having been served, the respondent did not attempt to engage with the authorities in the requesting State.

23. The IJA provided a copy of the hearing in Portugal from which it appears that the respondent was found in possession of the items that were the subject of the offences. The contents of his affidavit also suggest that he has some memory of the underlying facts.

24. Trials *in absentia* are not prohibited under the EAW regime. However, before ordering surrender, the executing State must be satisfied that the issuing State has fulfilled at least one of a number of preconditions provided for by the Framework Decision and encapsulated by the standard format EAW. In the instant case, the requesting State relies on Part D.3.1.b, that the respondent was notified in person of the day and date of the trial and that a decision could be made even if he was not present at the trial. On the face of the warrant, the requesting State has therefore satisfied one of the preconditions under section 45 the Act of 2003. The respondent was also represented at the hearing by court appointed counsel.

25. The respondent's argument is to the effect that formal notification is not, in the circumstances, sufficient protection of his fair trial rights because he was in custody when notice was served on him and could not have attended the trial. His submission is therefore that for the requesting State to have proceeded to conduct a trial, convict, and sentence him in his absence amounts to a breach of section 45 of the Act of 2003, or is so fundamentally unfair that surrender should be refused.

26. In support of his section 45 argument the respondent relies on a number of authorities. *Sejdovic v. Italy* App No 56581/00 (ECHR, 1 March 2006), *Minister for Justice and Equality v. Sipka* [2021] IEHC 587, *Minister for Justice and Equality v. Torac* [2021] IEHC 671, *Minister for Justice and Equality v. Zarnescu* [2020] IESC 59, Case C-399/11 *Stefano Melloni v. Ministerio Fiscal* [2013] ECLI:EU:C:2013:107 and Case C-569/20 *IR* [2022] ECLI:EU:C:2022:401.

27. The approach to be taken in cases where a person has been convicted *in absentia* was addressed by the Supreme Court in *Zarnescu*, which addresses the case law of the

European Court of Justice and the ECtHR. It considered *Sejdovic v. Italy* and the *Melloni* case before summarising the relevant principles, including the requirement for a court to be satisfied there was an unequivocal waiver by the accused of their right to appear in person at their trial. However, *Zarnescu* concerns the correct approach in the case of a person who has been convicted *in absentia,* "*when service has not been effected by one of the means expressly envisaged in the saver provisions in the Table to s. 45 of the Act*." In the instant case, the IJA does rely on one of the provisions in that table.

28. Section 45 of the Act of 2003 is satisfied if, as in this case, the requested person has been personally served with notice of the date and place of the trial. There is nothing in the Framework Decision or the Act of 2003 which, in principle, precludes a Member State proceeding with a trial *in absentia* because a requested person is in custody serving a sentence in another Member State. Nonetheless, service of notice of a trial on a person in custody could, in my view, amount to a breach of a person's fair trial rights, depending on circumstances of the particular case. Particular caution must therefore be exercised where a respondent was in custody when the relevant hearing took place.

29. The respondent was served with notice approximately six weeks before the trial date. He was obviously legally represented at his murder trial in Ireland. Six weeks was, in my view, sufficient time for him to have asked his legal team in Ireland to contact the authorities in the requesting State. I appreciate that in 2009 he was at the early stages of a life sentence and the events to which the Portuguese EAW related may not have been uppermost in his mind, nonetheless he chose not to engage with them.

30. The requesting State obviously knew the respondent was in custody in Ireland when notice was served on him in 2009. Personal service notifying the respondent of the date

and place of trial and that a decision could be made if he was not present, means the authorities in the requesting State had done what was required of them to comply with their obligation under section 45 of the Act of 2003. It was then for the respondent to inform the authorities in the requesting State whether he wanted to participate in the trial. Were it otherwise it would mean that trials *in absentia* could not be held in any case where the requested person was in custody in the executing State, which is not provided for by the Act of 2003 or the Framework Decision.

31. Had the respondent contacted the authorities in the requesting State and alerted them to the fact that he did want to participate in the trial, their response might or might not have resulted in any subsequent trial *in absentia* being unfair. They may have responded by telling him that they could arrange for the trial to be conducted by remote video link without the necessity for him to be physically present. They could also have agreed to provide or otherwise arrange legal representation and afforded him the time and facilities to have consultations with the legal representatives provided. A trial conducted in that way could, in principle, be fair. Alternatively, the authorities in the requesting State may have adjourned the trial.

32. At the other end of the spectrum, the requesting State might have declined to facilitate the respondent participating in the hearing and proceeded with the trial knowing that, because he was in custody, he would be unable to attend. If an EAW had subsequently been issued, the respondent could then have had an argument that his surrender would be in breach of the principles upon which section 45 of the Act of 2003 is premised because his fair trial rights were not adequately protected.

33. However, what the requesting State might have done exists only in the realm of speculation because the respondent essentially ignored the notification served on him.

In my view, following service on him of the letter from the requesting State by a member of the Gardaí, the respondent's decision not to take steps to engage with the authorities in the requesting State means the IJA is entitled to rely on Part D.3.1b of the warrant to satisfy section 45 of the Act of 2003.

34. I am therefore satisfied that no issue arises under section 45 of the Act of 2003.

Section 37 - Delay, consequences of being remanded in custody in EAW proceedings and proportionality

35. The respondent makes a number of arguments under different headings which amounts to a submission that surrender should be refused because of the effects that the request for surrender by the issuing State have on him as a consequence of him serving a life sentence in Ireland.

36. The respondent objects to surrender under section 37 of the Act of 2003 on the basis that his surrender would be in breach of his constitutional and Convention rights to fair procedures. In support of that argument, he relies on the delay of approximately 13 years between the trial on 21st April 2009 and the date of issue of the EAW. The respondent also says that the delay issuing the warrant has caused him prejudice because it has impacted on his ability to be granted parole or moved to an open prison. He further submits that his surrender would be disproportionate on the basis that he has served, to quote his written submissions, "*a great portion of his sentence of life imprisonment and is approaching his third parole hearing, with an open prison and temporary release on the horizon*."

Delay

37. The respondent says that the delay between the conviction in 2009 and the issuing of the EAW on 25th August 2022 is both egregious and unexplained. In the additional information provided by letter dated 5th December 2022, the IJA says they had been informed that the respondent was in prison for life but did not know when he would be released. They did not say when they first discovered that fact, but obviously knew he was in custody in 2009 when notice of the trial was served on him in prison.

38. By letter seeking additional information of 8th December 2022, the IJA was asked to account for the passage of time between the trial and the date of the EAW. In the additional information provided by letter dated 22nd December 2022, the IJA said: "*In this case, we know that at the time the sentence became final, the defendant Derek Wade was in prison in Ireland serving a life sentence. Therefore, while he was in prison, the statute of limitation for the sentence in Portugal was suspended…We do not know when the defendant was released. We do not have that information*."

39. The respondent argues that ordering his surrender would be in breach of his constitutional and Convention rights because the delay means that he has reached the stage in his murder sentence whereby he may be eligible for parole or transfer to an open prison, but neither of those things can happen as long as he is remanded in custody in the EAW proceedings. He also says he is prejudiced by the delay in that regard.

40. In his affidavit the respondent makes the following averments in support of the delay and prejudice argument:

a. At paragraph 5 he says: "*There has been a long delay between the date of the Portuguese trial in 2009 and being taken to Court in relation to the European Arrest Warrant in 2022. During this period of 13 years I have remained a prisoner, serving my sentence of life imprisonment. In October 2019, I was to go to Castlerea Prison for 12 months then to progress on to an open prison. Owing to the Covid-19 pandemic this did not occur. Following the pandemic, a new parole board was up and running and all services took some time*."

b. At paragraph 6 he says: "*I have had a number of Parole Board Hearings, most recently on 9th June 2022. I was refused parole on this occasion. A plan has been put in place to eventually move me to an open prison. My next parole hearing is in September 2024*."

c. At paragraph 7 he says: "*I cannot be moved to an open prison at the moment because I am in custody on the European Arrest Warrant matter. The longer this case goes on, the longer it will take my plan to progress and for me to move to an open prison. It is my understanding that if the European Arrest Warrant had not cropped up I would now be in an open prison such as Shelton Abbey*."

41. The principle is well established that even a very long delay between when an offence was, or is alleged to have been, committed and when the EAW is issued is not a bar to surrender otherwise than in the most exceptional of circumstances, although exceptionality itself is not the test. Extradition is frequently ordered following significant delay during which time the subject of the EAW had established a life and family in the State. The impact on such a person and their family might be very significant, but unless their personal circumstances fall very far outside the norm,

surrender cannot be refused on delay grounds. I am satisfied that the delay in this case does not amount to a bar to surrender.

42. Furthermore, based on his own evidence, it is apparent the earliest that consideration was being given to moving the respondent to an open prison was 2020. The reason that did not happen was, he says, the COVID pandemic. He also says he was refused parole on several occasions and there is nothing to suggest that had anything to do with the EAW proceedings. The most recent refusal of parole was June 2022. The EAW is dated 25th August 2022. His next parole hearing is in 2024. On the basis of the evidence before me I am not satisfied the contended for delay in issuing the EAW had any impact on the respondent's parole applications. I am therefore not persuaded the respondent's chances of being admitted to parole or moved to an open prison were significantly prejudiced as a result of the delay itself.

43. In the context of the submission that the EAW proceedings mean the respondent cannot get parole or be transferred to an open prison, the respondent also says that both of those facilities are unavailable to him because he is remanded in custody in the EAW proceedings. That submission relates to the provisions of section 27(2) of the Act of 2003, which provides as follows:

"*27. (2) A person shall not be remanded on bail or otherwise released from custody under this Act if –*

> *(a) (i) the person has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State,*

(ii) on the date of his or her being remanded or in which he or she would, but for this paragraph, be entitled to be released, all or part of the term of imprisonment remains unexpired, and

(iii) the person is required to serve all or part of the remainder of that term of imprisonment."

44. In his affidavit, the respondent does not say what the basis is for his understanding that he would have been moved to an open prison, or granted parole, were it not for the order remanding him in custody in the EAW proceedings. It is not clear from his evidence whether a decision was made to transfer him to an open prison, which could not be given effect to, or whether the EAW remand means the authorities are prevented from considering the issue of transfer at all. That evidence therefore falls short of establishing that the respondent is presently being prevented from being moved to an open prison because he is on remand on foot of the EAW.

45. The evidential issue addressed above is not intended as a criticism of the respondent. I have no reason to believe the best evidence available has not been put before the court. The state of the evidence is not, in any event, necessarily determinative of how the respondent's argument about parole and transfer to an open prison should be resolved.

46. Because the respondent has been convicted of murder and sentenced to a term of imprisonment for life, section 27(2) of the Act means that he cannot be granted bail by this court. However, giving the language of section 27(2)(ii) its ordinary and natural meaning, if a decision was made to grant him parole, he would no longer be "*required to serve all or part of the remainder of that term of imprisonment*". There would then be no impediment to him being admitted to bail by the High Court by virtue of section

27 of the Act, subject of course to any objection that might be raised as part of any bail application.

47. How the prison authorities approach the question of parole, and whether they can make a decision granting parole subject to the respondent being admitted to bail, is an issue to be resolved, in the first instance, by the prison authorities. Any such issue does not, in my view, fall within the parameters of the Framework Decision and would not, therefore, be a basis for refusing surrender.

48. Likewise, if the interaction between section 27 of the Act of 2003 and the prison rules and procedures concerning transfer of prisoners to open prisons has resulted in the respondent suffering fundamental unfairness because it is inhibiting his rehabilitation, and I am not making any finding in that regard, the remedy cannot, in my view, be to refuse surrender on foot of a valid EAW.

49. The State is bound to honour its obligations under the Framework Decision and other Member States are entitled to expect that properly formulated European arrest warrants seeking the surrender of a suspect or convicted person will be given effect to by the executing State.

50. The situation in this case is different to, for instance, a case in which a judge in this State has a well-founded fear that surrender would expose the respondent to a real risk of a breach of their ECHR rights and other fundamental rights because of the prison conditions in the requesting State. In that instance, the only remedy available to the court would be to refuse surrender pursuant to section 37 of the Act of 2003, because the Irish authorities are not able to address the conditions giving rise to the potential breach of the respondent’s rights.

51. Unfairness resulting from domestic arrangements that frustrate a convicted person's rehabilitation or reintegration into the general population by imposing restrictions on their progress through the prison system should be remedied, if required, by addressing the contended for iniquity in domestic law. If the respondent is entitled to redress of that kind, in my view it falls outside the scope of the Act of 2003.

52. That being so, I am of the view that surrender should not be refused on the basis of the contended for inability of the respondent to be moved to an open prison or granted parole. However, because I cannot be satisfied that the respondent would, but for the fact he is on remand in respect of the EAW proceedings, be moved to an open prison, that issue is one I do not have to determine.

Proportionality

53. In the context of delay the respondent also raises the issue of proportionality. He does not explicitly make a submission that surrender should be refused on proportionality grounds, but proportionality is referred to in his written submission as part of his section 37 argument. In that respect he directs the court to paragraph 5.7 of the Handbook on European Arrest Warrants published in the Official Journal of the European Union on 6th October 2017 to the effect that the Framework Decision and EAW "*does not provide for the possibility of evaluation of the proportionality of an EAW by the executing Member State. This is in line with the principle of mutual recognition. Should serious concerns on the proportionality of the received EAW arise in the executing Member State, the issuing and executing judicial authorities are encouraged to enter into direct communication. It is anticipated that such cases would arise only in exceptional circumstances*."

54. The governing principle is that the issue of proportionality is for the issuing State to address. In the instant case surrender is sought in respect of two offences to serve a single sentence of 2 years 4 months' imprisonment. The offences in respect of which surrender is sought are not trivial. The sentence that remains to be served is well above the minimum gravity requirements under the Act of 2003 and the Framework Decision. It is not clear to me what legal standing the above extract from the Handbook has, but it reaffirms the principle that proportionality is not a matter for the executing State to consider. The Handbook contemplates that exceptional circumstances could arise that would call for issuing and executing States to communicate with each other, but the issue of proportionality remains one for the issuing State to address. In my view this is not a case in which any concerns arise on the proportionality of the request for surrender.

55. However, given that the IJA says it did not know when the respondent would be released from prison, I did consider it appropriate to make a request for additional information to ensure that the IJA was able to make an informed decision about whether it wanted to maintain its request for surrender once fully in possession of the facts about the respondent's sentence. By letter dated 27th March 2023, the requesting State was told about the position of the respondent and invited to reply.

56. The reply of 11th April 2023 included the following: "*I hereby declare that now that we have been informed that Mr. Wade has been imprisoned to this day (remains in prison serving the life sentence), we accept to wait for the eventual surrender, if and when the Irish Court decides that Mr Wade is no longer required to serve his sentence in [prison], after [being] subject, if that's the case, to a Parole Order*." The IJA goes on to explain that in Portugal they do not have life sentences or limitation periods to

execute sentences. The IJA then says that in their view "*it is only fair to establish a deadline of the execution*" of the Portuguese sentence and, therefore, the sentence will no longer be executed after 6th November 2035.

57. Proportionality is a matter for the issuing State. It is apparent from the above that the IJA have considered the question of proportionality in light of the fact the respondent is serving a life sentence and fixed a date beyond which his surrender will no longer be sought. No further issue arises for this court to consider in that regard.

Surrender sought in context of life sentence

58. The respondent objects to surrender on the basis that because he is a person serving a sentence of life imprisonment, there is, he submits, no ground for his surrender because there is no potential date to allow for his surrender. He also says it would, in effect, operate as a consecutive sentence to a life sentence, which is prohibited.

59. In support of that submission, he relies on the case of *People (DPP) v. Whelan* [2003] 4 IR 355 in which the Court of Appeal held that it is undesirable to have a sentence of fixed duration imposed consecutively following a life sentence on the basis that such a sentence may not be a sentence at all because it might not be able to operate until the accused dies.

60. That is a principle of domestic law which has not been transposed into either the Framework Decision or the Act of 2003. I accept the applicant's submission, relying on *Minister for Justice and Equality and Law Reform v. Brennan* [2006] IEHC 94 and *Minister for Justice Equality and Law Reform v. Stapleton* [2007] IESC 30 that

surrender is not to be refused because the legal system of the requesting State differs from that in Ireland.

61. Any sentence in respect of which surrender was ordered may be postponed under section 18 of the Act of 2003 and therefore could not happen until the domestic sentence giving rise to the postponement has been served. In the case of a life sentence that might mean the postponement would be indefinite, but that does not arise here. Firstly, the IJA has fixed a limitation period that will expire in 2035. Secondly, the respondent says that he may be released on parole. If that happens, he could be extradited to serve the remainder of the sentence to which the warrant relates, depending on the terms of his parole. It will be for the Executive to decide whether the terms of the respondent's parole would permit him to be surrendered. If his conditional release does not, then the limitation period fixed by the requesting State will eventually expire.

62. Furthermore, were the respondent's argument to succeed it would mean that surrender would have to be refused in any case where a respondent was serving a sentence of life imprisonment. In my view, such an outcome would not be compatible with Ireland's obligations under the Framework Decision and the provisions of the Act of 2003. Periods of delay of up to 30 years have been held not to be a bar to surrender because it is for issuing State to ensure fairness in respect of the offence for which surrender of the person is sought.

63. I therefore reject this argument as a basis for refusing surrender.

Postponement of surrender

64. In his submissions under the heading "*postponement of surrender*", the respondent asks how postponement would operate in circumstances where the respondent is required to serve a sentence of imprisonment for life within the State and whether that means an indefinite postponement order. This argument overlaps to some degree with the respondent's submission addressed above about surrender being sought in the context of a life sentence and is substantially answered by it.

65. During oral submissions, the Minister confirmed that if the respondent's surrender is ordered, an application for postponement will be made. As pointed out above, what happens thereafter will depend very much on the actual duration of the respondent's life sentence. Depending on the terms of any conditional release granted, an application may be made to lift the section 18 postponement and surrender the respondent. Alternatively, the date when the limitation period expires will be reached. No issue of an indefinite postponement order therefore arises on the fact of this case.

66. There is, therefore, in my view no bar to making a section 18 postponement order in the case.

Conclusion

67. For the reasons set out above, I am satisfied that the contended for delay is not so egregious as to engage section 37 of the Act of 2003. I am also not persuaded that the delay has caused the respondent any prejudice. The passage of time relied upon is not a bar to surrender.

68. I do not understand the respondent to be arguing abuse of process, but he does refer to at least one abuse of process case in his written submissions. For the avoidance of doubt, I am also satisfied that the issuing of the EAW either by itself or in combination with the other factors identified, including delay, does not amount to an abuse of the process of this court.

69. I am not satisfied that the surrender of the respondent would be a breach of, or a disproportionate interference with, his rights pursuant to Article 8 of the European Convention of Human Rights or his and/or his families rights under Article 8 of the European Convention of Human Rights or the Constitution or Article 7 of the Charter of Fundamental Rights of the European Union and as a consequence surrender of the respondent would not be in breach of section 37 of the Act of 2003.

70. I am not satisfied that the surrender of the respondent would contravene his ECHR rights or be in breach of section 37 of the Act of 2003.

71. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.

72. It, therefore, follows that this court will make an order pursuant to section 16 of the Act of 2003 for the surrender of the respondent to The Republic of Portugal.