

THE HIGH COURT

[2022] IEHC 676

[2018 No. 34 EXT.]

[2021 No. 184 EXT.]

BETWEEN

MINSTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

IMRE ARAKAS

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 7th day of November, 2022

1. There are two separate European arrest warrants to be dealt with in the course of this judgment.

EAW 1 - 2018 No. 34 EXT.

2. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Lithuania ("Lithuania") pursuant to a European arrest warrant dated 18th January, 2018 ("the EAW"). The EAW was issued by Mr. Tomas Krusna, of the Prosecutor General's Office of the Republic of Lithuania, as the issuing judicial authority.

3. The EAW seeks the surrender of the respondent in order to prosecute him in respect of three offences.

4. The EAW was endorsed by the High Court on 29th January, 2018 and the respondent was arrested and brought before the High Court on 19th February, 2018 on foot of same.

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 ss. 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections. As regards s. 21A of the Act of 2003, this is dealt with subsequently in this judgment and I find that surrender is not precluded by that provision.

7. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences in respect of which surrender of the respondent is sought carry a maximum penalty in excess of 12 months' imprisonment.

8. At part E of the EAW, a description of the circumstances in which the offences are alleged to have been committed including the time, place and the degree of participation in the offence by the respondent is set out. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between the offences to which the EAW relates and offences under the law of the State, where the offences referred to in the European arrest warrant are offences to which Article 2.2. of the European Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedure Between Member States, as amended ("the Framework Decision"), applies and carry a maximum penalty in the issuing state of at least three years' imprisonment. In this instance, the issuing judicial authority has certified that offence

1 as set out in the EAW is an offence to which Article 2.2. of the Framework Decision applies, that same is punishable by a maximum penalty of at least three years' imprisonment and has indicated the appropriate box for "murder". There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court looking beyond same. As regards the other two offences referred to in the EAW, I am satisfied that correspondence can be established between same and offences under the law of the State, namely, as regards offence 2 in the EAW, the corresponding offence in this State is that of unlawful possession of firearms contrary to s. 2 of the Firearms Act, 1925, as amended, and, as regards offence 3 in the EAW, the corresponding offence under the law of this State is criminal damage contrary to s. 2 of the Criminal Damage Act, 1991. No issue was taken in respect of correspondence.

9. While initially the respondent put forward a number of grounds of opposition to surrender, over the passage of time many of those points of opposition were not pursued or abandoned. When the matter last came before the Court on 10th October 2022, the Court was informed that, in relation to EAW 1, the respondent essentially had two inter-related points of objection:-

- (i) That no decision had been made to charge the person with and try him for the offence in respect of which surrender is sought, as required by s. 21A of the Act of 2003; and
- (ii) Adequate or accurate particulars of the circumstances in which the offence was alleged to have been committed had not been furnished by the executing state, as required by s. 11 of the Act of 2003.

10. It was initially submitted on behalf of the respondent that, on examination of the procedures adopted in the issuing state, no decision had been made to charge and try the respondent as required by s. 21A of the Act of 2003. Various affidavits from a Lithuanian lawyer were relied upon in that regard.

11. The Court sought and received additional information from the issuing judicial authority and, by reply dated 2nd July, 2021, the issuing judicial authority responded indicating as follows:-

- (i) That at the time the EAW issued, it was the intention of the competent prosecuting authorities, subject to any additional information which may come to light and any additional formal steps to be taken, to put the respondent on trial for the offences the subject matter of the EAW. It further indicated that the European arrest warrant procedure is not initiated only for the purpose of performing procedural actions against the suspect or other parties to the proceedings:-

"The recognition of a fugitive as a suspect and the initiation of the issuance and execution of a European Arrest Warrant are determined by the purpose of prosecuting the person concerned for the offenses (sic.) incriminated to him, with a view to convicting him or her with the judgement of conviction or acquitting him or her from criminal liability";

- (ii) It is confirmed that it is the intention of the competent prosecuting authorities, subject to any additional information which may come to light and any additional formal steps to be taken, to put the respondent on trial for the offences the subject matter of the EAW;

(iii) It is confirmed that in the opinion of the competent prosecuting authorities, there currently exists sufficient evidence upon which to put the respondent on trial for the offences the subject matter of the EAW;

(iv) In order to prosecute the respondent it is necessary to submit a new notification of suspicion to him, to interrogate him, and, if necessary, to perform the verification of data already collected during the pre-trial investigation, to notify him about the end of the pre-trial investigation, to allow access to all data collected during the pre-trial investigation and serve him in the indictment. It is stated:-

"The abundance of the listed procedural actions confirms that the expeditious performance of the pre-trial investigation has been carried out since 2015 and its completion is possible only if the suspect I. Arakas is surrendered to the Republic of Lithuania"; and

(v) In relation to the trial of other accused relating to the same murder, it is confirmed that pursuant to the judgment of Kaunas Regional Court of 30th June, 2021, [H.E.E.], [A.G.] and [R.B.], acting together with the respondent, in the form of an organised group, were convicted of criminal offences provided for in Articles 25(3), 129(2), 129(6) and 129(7) of the Lithuanian Criminal Code and sentenced with terms of imprisonment of 16 years, 16 years and 13 years, respectively.

12. In light of the Supreme Court decision in *Minister for Justice v. Campbell* [2022] IESC 21, the respondent no longer pursues the original point of objection but, rather, adopts a different position in relation to s. 21A of the Act of 2003. It is now submitted on behalf of the respondent that s. 21A refers to the offence in respect of which the EAW was issued and that, in this instance, the European arrest warrant was issued in respect of an offence, the particulars of which included that the respondent not only engaged with others in preparatory acts in order to bring about the murder of the victim, but that he was actually at the scene when the victim was shot. By way of additional information from the issuing judicial authority, the case being made against the respondent is that he engaged with others in various preparatory acts with a view to bringing about the murder of the victim but that he was not physically present at the location when the victim was shot. It is, in effect, submitted that the EAW should be viewed in isolation of the additional information provided and that the additional information in fact discloses a different offence from that referred to in the EAW.

13. In the EAW, at part E the following particulars are set out:-

"1. Imre Arakas while acting in an organized group with [A.A.], [H.E.E.] and other persons (subjects of pre-trial investigation) for mercenary reasons, i. e. aiming to obtain money for the murder of [D.B.], prepared the plan and made preliminary arrangements for establishing [D.B.]'s residence address, day schedule, routes, vehicles, looking for the suitable site for the murder. For that purpose, between September 2015 and 7 November 2015, I. Arakas with [H.E.E.] and [A.A.] would come to the Republic of Lithuania by plane, bus or cars, and in conspiracy would do the surveillance of [D.B.]. Continuing their preparations for the murder, I. Arakas, [H.E.E.], and [A.A.] have procured the necessary tools and means, i.e. unlawfully acquired the firearms (under the circumstances - subject of pre-trial investigation), namely: pistols of 9 mm calibre, ammunition - not less than 12 LUGER bullets of 9 mm calibre, vehicle 'Renault Megane' with plate No. CZ 143 RK (which was stolen in the

Republic of France between 7:00 p.m. 22/08/2015 and 1:15 p.m. 23/08/2015), and they also acquired some items in the territory of the Republic of Estonia, as well as the Kingdom of Spain, namely an optic sight, clothes and chemical substances for eliminating the traces. After having established the schedule, routes, vehicle and suitable place for the murder, and acting according to their pre-meditated plan, I Arakas, [H.E.E.] and [A.A.] in the evening of 06/11/2015 arrived by vehicle 'Renault Megane' (plate No. CZ 143 RK) to Kaunas, where they waited near the yard entrance of house No. 5 Šėtos str. in Kaunas for [D.B.]. At about 11:55 p.m. [D.B.] together with [V.J.] arrived by car 'Mercedes Benz S320: (plate No. HUG 881) and pulled up near the gate to the yard of house No.5 Šėtos str. in Kaunas, where I Arakas, [H.E.E.] and [A.A.] made not less than 12 shots targeting into [D.B.] (who was sitting in the driver's seat of the a/m Mercedes Benz) by using pistols of 9 mm calibre in the manner endangering [V.J.]'s life, as well as the life of the possible passers-by or people in the neighbourhood; the shots have caused multiple injuries that resulted in the death of the victim. After the murder, I . Arakas, [H.E.E.] and [A.A.] by car 'Renault Megane' (plate No. CZ 143 RK) drove up to the house at Vėtrungė str. 3 in Kaunas, and there in the yard of the house they set the above-mentioned Renault Megane on fire trying to hide the traces. Thus, Imre Arakas is suspected of having committed an offence under Article 25 (3), Article 129 Paragraph 2 (clauses 7 and 9) of the Criminal Code of the Republic of Lithuania."

14. In the course of the proceedings the respondent adduced evidence indicating that he was in Spain on the day of the killing. Additional information was sought from the issuing judicial authority. By additional information dated 15th April, 2020 the issuing judicial authority stated:-

"1. In pre-trial investigation of criminal case No. 01-1-61585-15 suspect Imre Arakas is suspected of all criminal offences under the Criminal Code of the Republic of Lithuania which are indicated in the European arrest warrant on this suspect.

2. If after completion of pre-trial investigation in the abovementioned criminal case there is sufficient data collected allowing to draw up an indictment, Imre Arakas will be presented to the court as a defendant. With regards to his accomplices, the criminal case concerning the murder of [D.B.], unlawful handling of firearms and destruction of property while acting in an organised group has been handed over to the court and is currently in examination stage.

3. During pre-trial investigation (as well as after the issue of European arrest warrant on Imre Arakas) it was found out that perpetrators of the murder of [D.B.], i.e. the persons who were shooting at [D.B.], were [H.E.E.] and [A.G.]. According to the available data of investigation, in this count (organisation of murder of [D.B.]) Imre Arakas as well as his accomplices ([R.B.] and [T.B.]) are suspected of having performed organisational-preparatory actions, i.e. they found the perpetrators, helped to trace and follow the victim, assisted in provision of weapons etc. Meanwhile, Imre Arakas was not directly involved in the commission of the crime, shooting at the victim. However, this does not affect qualification of his actions, because in this particular count he is suspected of having been acting in an organised group."

15. Upon a further request for additional information, the issuing judicial authority by letter dated 21st July, 2022 provided up-to-date details of the respondent's role in the offence alleged against him:-

"Section (e) of EAW issued on 18 January 2018 states that Imre Arakas, while acting within an organised group together with [H.E.E.], [A.A.] and other persons who are still being identified during the pre-trial investigation, for mercenary reasons, that is, aiming to obtain monetary payment in (sic.) exchange for the murder of [D.B.], drafted the crime scheme and carried out preparatory actions in order to determine the place of residence of [D.B.], his daily agenda, movement routes, vehicles used, and to select the place suitable for the latter's murder. Among other data, it has also been stated that having determined, by means of covert surveillance, daily agenda, movement routes, vehicles used by [D.B.] and selected the place suitable for the murder of the victim, in the evening of 6 November 2015 I. Arakas, [H.E.E.], [A.A.] arrived, by Renault Megane (number plate CZ 143 RK), near the entrance to the yard of the house No. 5 in Šėtos St., Kaunas City, where they, by using firearms, namely, 9 mm calibre handguns, in the manner endangering the lives of [V.J.] as well as any possible passers-by and residents of neighbouring houses, fired at least 12 shots at [D.B.] sitting in the driver's seat of the vehicle Mercedes Benz S320 (number plate HUG 881) thus causing him multiple gunshot injuries which resulted in the victim's death. After the murder of [D.B.] I. Arakas, [H.E.E.], [A.A.] left the crime scene by Renault Megane (number plate CZ 143 RK) and drove to the house at 3 Vėtrungė St., Kaunas City and in the yard of this house they, trying to conceal the traces of the crime, set the aforementioned vehicle on fire.

Such actions by I. Arakas have been legally defined under the provisions of Article 25 (3), Article 129 (2)(Sub-sections 7 and 9) of the Criminal Code of the Republic of Lithuania respectively. Thus, EAW states that I. Arakas has been directly involved in shooting at [D.B.].

After the issue of EAW further pre-trial investigation measures have been carried out which led to determination of additional circumstances of commission of the said criminal offence as well as identification of persons who allegedly participated in the commission of this crime. On these grounds we were able to accordingly adjust the initial Notice of Suspicion which was actually done in respect of all the suspects known to the law enforcement officers of the Republic of Lithuania. This data which was determined later on was included in the letter-response submitted on 15 April 2020. Therefore, accordingly to the most recent data available to us, the leaders of the criminal association armed with firearms and ammunition (hereinafter referred to as ACA (armed criminal association)) [S.B.] and [R.K.], having obtained data in 2015 about the fact that [D.B.] and [G.Z.] were posing threat to the criminal business of ACA led by [R.K.] and [S.B.], namely, unlawful possession of particularly large quantities of narcotic substance and monetary funds gained from this criminal business, arranged, for mercenary reasons, the murder of [D.B.] by addressing [J.T.] and referring to him the order to kill [D.B.]. [J.T.], carrying out the order of [S.B.] and [R.K.], addressed I. Arakas and referred to him the order to murder [D.B.] and [G.Z.]. I. Arakas, taking advantage of his connections, involved the following

persons for the commission of the crime: [H.E.E.] and [A.G.]. Meanwhile, [S.B.], [R.K.] instructed [R.B.] and [T.B.] to provide all the necessary assistance to the perpetrators of the crime - I. Arakas, [H.E.E.] and [A.G.], namely, meet them and accommodate them in the Republic of Lithuania and in Kaunas City, aid them in carrying out the covert surveillance of the victim, select the place suitable for the crime, and providing them with tools and instruments of the crime.

[R.B.], having involved [T.B.], acting together with Imre Arakas, [H.E.E.], [A.G.] who used to regularly come to the Republic of Lithuania and Kaunas City, carried out preparatory works in order to determine the place of residence of [D.B.], his daily agenda, movement routes, vehicles used, and to select the place suitable for murder. They also found the vehicles needed for the commission of the crime and provided the necessary assistance to the perpetrators of the crime.

While continuing preparations for the murder of [D.B.], [R.B.], [T.B.], [H.E.E.], I. Arakas and [A.G.] as well as persons still being identified during the investigation acquired the necessary tools and instruments, that is, vehicle Renault Megane, number plate. CZ 143 RK; firearms, that is, at least two 9-mm calibre handguns; they also acquired, within the territory of the Republic of Estonia and the Kingdom of Spain, optical sight, clothes, chemical substances for eliminating any traces of the crime.

By means of covert surveillance, [R.B.], [T.B.], [H.E.E.] and [A.G.] determined daily agenda, movement routes, vehicles used by [D.B.], and then, in the evening of 6 November 2015 [H.E.E.] and [A.G.] arrived, by Renault Megane (number plate CZ 143 RK), near the entrance to the yard of the house No. 5 in Šėtos St., Kaunas City, where [A.G.] got out of Renault Megane and, by using firearms, namely, two 9 mm calibre handguns, in the manner endangering the lives of [V.J.] as well as any possible passers-by and residents of neighbouring houses, fired at least 12 shots at [D.B.] sitting in the driver's seat of the vehicle Mercedes Benz S320 (number plate HUG 881) thus causing him multiple gunshot injuries which resulted in the victim;s (sic.) death.

The legal definition of the actions described above has not been modified with regard to I. Arakas, his actions are legally defined (qualified) under the provisions of Article 25 (3), Article 129 (2)(Sub-sections 7 and 9) of the Criminal Code of the Republic of Lithuania.

To sum up, it is noted that the actions of the suspect I. Arakas when aiming to murder [D.B.] are to be legally defined, in this stage of pre-trial investigation, as being of organisational-preparatory nature, that is, those specified in the letter of 15 April 2020. Legal definition of criminal offence of I. Arakas is analogous to the one specified in the EAW issued on 18 January 2018. Therefore, it is requested to rely upon the actual clarification submitted in the present letter and in the one of 15 April 2020. It is also worth noting that further to its judgment dd. 30 June 2021 Kaunas Regional Court recognised the accomplices of I. Arakas, that is, [R.B.], [H.E.E.], and [A.G.] guilty and convicted them for the criminal offences described above."

- 16.** The respondent submits that the use of the phrase "analogous" in the reply of 21st July, 2022 indicates that it is not the identical offence to that set out in the EAW. The respondent placed reliance upon the decision in *Minister for Justice, Equality and Law Reform v. Ostrowski* [2010] IEHC

200, where the European arrest warrant in question had cited the wrong domestic warrant and this was held to be a fatal flaw. Further and stronger reliance was placed upon *Minister for Justice and Equality v. A.B.* [2015] IEHC 338, in which the European arrest warrant as endorsed had been a conviction warrant but it subsequently transpired that a retrial had been ordered with the consequence that the respondent was then sought for prosecution. The High Court considered that the EAW in such circumstances was not capable of being executed. Donnelly J. stated at para. 18 of her judgment:-

"18. While a new warrant may of course be issued to reflect a new legal reality, the opposite is not the law. A warrant cannot be re-interpreted, re-invented or re-applied to cover a new legal reality which is the exact opposite to the purpose for which the warrant was originally issued or endorsed for execution. Such an approach would be an affront to the requirement for legal certainty and due process. In all the circumstances, I therefore reject the Minister's view that this is an appropriate case to apply the provisions of s. 45C."

17. In reply, it is submitted on behalf of the applicant that, at part E of the EAW, the offences for which surrender of the respondent is sought are summarised as follows:-

"Imre Arakas is suspected of: while acting in an organized group with [A.A.], [H.E.E.] and other persons – subject of pre-trial investigation, for mercenary reasons and in a manner endangering other persons' lives, I. Arakas has murdered [D.B.], unlawfully possessed firearms and ammunition, and in a generally dangerous manner has damaged other persons' property, namely: [the EAW goes on to set out the circumstances of each of the alleged offences]."

18. It is submitted on behalf of the applicant that the EAW makes it clear that surrender of the respondent is sought in order to prosecute him, *inter alia*, for the murder of [D.B.], in respect of which he acted in an organised group with others. It is submitted that there has been no change in respect of the offence for which the respondent's surrender is sought, insofar as he is still sought for that murder carried out by him in an organised group with others. It is submitted that all that has occurred is that clarification has been received in relation to the detailed particulars of that offence as alleged against the respondent due to the evolving criminal process in Lithuania.

19. It is submitted on behalf of the applicant that in *Leyman and Pustrov* (Case C-388/08 PPU), the Court of Justice of the European Union considered the issue of specialty as provided for in Article 27 of the Framework Decision and held there was no breach of the rule of specialty where the respondent had been surrendered in respect of drugs offences referring to a particular type of drug and was subsequently prosecuted for the same offence but where the particulars of the offence indicated a different type of drug.

20. Both *Ostrowski* and *A.B.* can be distinguished from the present case. In *Ostrowski*, the wrong domestic warrant was cited, that is not the case here. In *A.B.*, the warrant was issued in order to enforce a sentence which was subsequently set aside so that surrender was in fact sought for prosecution. Donnelly J. characterised the change in circumstances at para. 18 in *A.B.* as "a new legal reality which is the exact opposite to the purpose for which the warrant was originally issued or endorsed for execution". In this case, surrender is not sought for any purpose which comes close to being described as "the exact opposite to the purpose for which the warrant was originally issued or endorsed for execution". Indeed, surrender is still sought for the same offence involving the same

victim, the same time and place of occurrence and all that has occurred is clarification of the respondent's alleged role in the conspiracy to bring that murder about.

21. As an aside, if the respondent had been surrendered on foot of the EAW and the case made out against him was as per the further information provided as opposed to the original information in the EAW, I do not think that the rule of specialty as provided for in the Framework Decision or the Act of 2003 would have precluded such prosecution or required the issuing state to satisfy any of the conditions as set out in s. 22 of the Act of 2003 or Article 27 of the Framework Decision.

22. Section 21A(2) of the Act of 2003 contains a presumption that a decision has been made to charge the person with and try them for the offence in respect of which the European arrest warrant has been issued, unless the contrary is proved. I am not satisfied that, on the materials before me, the presumption has been rebutted. Indeed, I am satisfied that a decision has been made to charge the respondent and try him for the offence as set out in the EAW.

23. In relation to the requirements of s. 11 of the Act of 2003, the respondent effectively makes the same argument as that in relation to s. 21A of the Act of 2003, namely that, given the additional information concerning the role in committing the murder allegedly played by the respondent, the requirements of s. 11 have not been met.

24. I am satisfied that it is permissible for the issuing judicial authority to furnish additional information to the executing authority by way of clarifying or updating information regarding the precise involvement of the respondent in the commission of the offence. Indeed, s. 11(2A) of the Act of 2003 specifically provides that if any of the information to which subs. 11(1A) refers is not specified in the European arrest warrant, it may be specified in a separate document. Furthermore, I am satisfied that no injustice will be caused to the respondent as a result of the variance between the particulars set out as regards his role in the murder in the EAW and those set out in the additional information provided, either as regards contesting surrender or in dealing with the case to be made against him subsequent to surrender.

25. I dismiss the objections to surrender brought in relation to s. 11 of the Act 2003.

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

27. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order for the surrender of the respondent to Lithuania.

EAW 2 – 2021 No. 184 EXT.

28. By this application, the applicant seeks an order for the surrender of the respondent to Lithuania pursuant to a European arrest warrant dated 21st June, 2021 ("the EAW"). The EAW was issued by Arunas Meska, Chief Prosecutor of the Prosecutor General's Office of the Republic of Lithuania, as the issuing judicial authority.

29. The EAW seeks the surrender of the respondent in order to prosecute him in respect of two offences.

30. The EAW was endorsed by the High Court on 5th July, 2021 and the respondent was arrested and brought before the High Court on 12th July, 2021 on foot of same.

31. 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.

32. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 preclude surrender of the respondent.

33. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences in respect of which surrender of the respondent is sought carries a maximum penalty in excess of 12 months' imprisonment.

34. At part E of the EAW, a description of the circumstances in which the offences are alleged to have been committed is set out.

35. Section 38(1)(b) of the Act of 2003 provides that it is not necessary for the applicant to establish correspondence between offences to which a European arrest warrant relates and offences under the law of the State, where the offences referred to in the European arrest warrant are offences to which Article 2.2. of the Framework Decision applies and carry a maximum penalty in the issuing state of at least three years' imprisonment. In this instance, the issuing judicial authority has certified that offence 1, as set out in the EAW, is an offence to which Article 2.2. of the Framework Decision applies, that same is punishable by a maximum penalty of at least three years' imprisonment and has indicated the appropriate box for "*murder*". There is no manifest error or ambiguity in respect of the aforesaid certification such as would justify this Court in looking beyond same. As regards the other offence referred to in the EAW, I am satisfied that correspondence can be established between same and an offence under the law of this State, namely unlawful possession of firearms contrary to s. 2 of the Firearms Act, 1925, as amended.

36. This EAW was issued on foot of the same domestic warrant in respect of which EAW 1 was issued, namely a "*Ruling of Vilnius District Court, dated 10 January 2018*" and is expressly stated to be additional to EAW 1.

37. By additional information dated 26th August, 2021, the issuing judicial authority has confirmed that the ruling of Vilnius District Court dated 10th July, 2018 covers the offences the subject matter of the EAW. It states that the detention of the respondent will be applied on the grounds of the ruling of Vilnius City District Court dated 29th March, 2021 and that the content of that ruling covers the criminal offences set forth in the ruling of the Vilnius City District Court dated 10th January, 2018 and also includes the additional offences for which the EAW has been issued:-

"So the detention to Arakas (if it was maintained by the judge by setting the term of the detention) would be applied in respect of all criminal offences incriminated to him, not exceeding the maximum term of 18 months allowed for detention during the pre-trial investigation stage that has been mentioned earlier. The extension of the term of detention shall be dealt with not less than in every three months."

It is further explained:-

"However, as the European arrest warrant No 2 is considered to be the additional request to EAW of 18 January 2018 asking to expand the scope of the criminal prosecution in the same pre-trial investigation No. 01-1-61586-15, the same domestic arrest warrant has been indicated in both EAWs. Please find enclosed the copy of the Ruling of Vilnius City District Court dated 29 March 2021 and its translation into English attached hereto."

38. I am satisfied that the EAW has been issued in respect of the same investigation to which the domestic warrant of 10th January, 2018 related. The EAW is stated to be an addition to EAW 1. I am satisfied that the circumstances of this case can be distinguished from those in *Ostrowski*. In

the present case, the wrong domestic warrant was not cited in the EAW but, rather, as has been explained, the EAW is considered to be an additional request to that of EAW 1 asking to expand the scope of the criminal prosecution on the same pre-trial investigation and, thus, the same domestic warrant was indicated in both EAWs. Counsel for the respondent conceded that in light of the judgment in *The Minister for Justice and Equality v. Fassih* [2021] IECA 159, he would not pursue any objection as regards the same domestic warrant being referred to as in EAW 1.

39. Again, while a number of objections to surrender were initially contemplated, at hearing counsel for the respondent submitted that the status of the EAW 2 was inextricably linked with that of EAW 1 and that, if the Court declined surrender in respect of EAW 1, then EAW 2 should fall accordingly.

40. The Court has upheld the validity of EAW 1.

41. I dismiss the respondent's objections to surrender in respect of the EAW.

42. I am satisfied that surrender the respondent is not precluded by reason of Part 3 of the Act of 2003 or any other provision in that Act.

43. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order for the surrender of the respondent to Lithuania in respect of EAW 2.