

**THE HIGH COURT**

[2022] IEHC 191  
[2021 No. 238 EXT.]

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**JÁNOS JUHÁSZ**

**RESPONDENT**

**JUDGMENT of Ms. Justice Caroline Biggs delivered on the 24th day of February, 2022**

1. By this application, the applicant seeks an order for the surrender of the respondent to Hungary pursuant to a European Arrest Warrant dated 24th of October 2017 ("the EAW"). The EAW was issued by Dr. Tünde Huszti, Judge of the Budapest Central District Court, as the issuing judicial authority.
2. The EAW seeks the surrender of the respondent in order to prosecute him in respect of alleged fraud-type offences.
3. The EAW was endorsed by the High Court on the 20th day of August 2021 and the respondent was arrested and brought before the High Court on the 10th of September 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 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.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The offences are punishable by imprisonment or detention for a maximum period of not less than 12 months.
7. 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 EAW are offences to which Article 2.2 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) amended by the Council Framework Decision 2009/299/JHA of 26 February 2009 ("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 the offences referred to in the EAW are offences to which Article 2.2 of the Framework Decision applies, that same are punishable by a maximum penalty of at least three years imprisonment and has indicated the appropriate box for "swindling".

**Is surrender prohibited by Section 11 of the 2003 Act**

8. The respondent submitted that it was unclear from the warrant how many charges he was facing and whether some, or all of them, had become statute-barred. In that regard, the warrant stated that the respondent faced one offence, yet referred to acts of a fraudulent nature on three separate dates, the 7th of July 2005, the 7th of March 2006 and the 9th of March 2006. Further, the warrant indicated as follows:

“If proven, the above act committed by János Júhasz gives rise to establishing fraud involving a substantial value, a felony contrary to Section 318 (1) and qualified subject to Subsection (5) (a) of the Act IV of 1978 on the Criminal Code and forgery of administrative documents a felony contrary to Criminal Code Section 274 (1) (c).

The punishability of the felony of forgery of administrative documents expired – with respect to the suspension of the investigations on 27 August, 2007 – on 27 August, 2010, so the investigation was terminated with regard to this offence.”

9. The Court took the view, that in light of the foregoing it was not possible to determine from the EAW which offences were statute-barred and, therefore, it was not possible to determine what offences the respondent faced.

10. Section 11(d) of the Act of 2003 states:

“11.— (1) A relevant arrest warrant shall, in so far as is practicable -

- (a) in the case of a European arrest warrant, be in the form set out in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA,
- (b) in the case of a Trade and Cooperation Agreement arrest warrant, be in the form set out in Annex Law-5 to the Trade and Cooperation Agreement, and
- (c) in the case of an arrest warrant within the meaning of the EU-Iceland Norway Agreement, be in the form set out in the Annex to the EU-Iceland Norway Agreement. (1A) Subject to subsection (2A) , a relevant arrest warrant shall specify–
- (d) the offence to which the relevant arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned.”

11. The following Section 20 requests were made as a consequence of the lack of clarity in the EAW:

- In a request for additional information dated the 4th of November 2021, the issuing judicial authority was asked to respond to the following:

“Please confirm that the offences recited at part (e) of the European Arrest Warrant relate to the offence of ‘fraud involving a substantial value’ contrary to Section

318(1) and qualified subject to Subsection (5)(a) of Act IV of 1978 on the Criminal Code. If any such offence relates only to the offence of 'forgery of administrative documents' contrary to Criminal Code Section 274(1)(c) please provide details of same."

- An answer was furnished by way of email dated the 4th of November 2021 which stated:

"The offence 'forgery of administrative documents' expired before the issuance of the European arrest warrant, the investigation was terminated concerning this offence, therefore the surrender of János Juhász is only requested for the offence of 'fraud involving a substantial value.'"
  - A further letter of request was sent on the 15th of November 2021 which stated:

"Please expressly confirm that the offence of 'fraud involving a substantial value' contrary to Section 318(1) and qualified subject to Subsection (5)(a) of Act IV of 1978 on the Criminal Code, as set out at part (e) of the European Arrest Warrant, relates to the combined acts as particularised of 07 July 2005, 07 March 2006 and 09 March 2006 or is confined to the events of 07 July 2005."
  - A response was received on the 17th of November 2021 stating the following:
    - "(i) With his act against property committed on 07 July 2005, János Juhász Jr. caused aggrieved party Porsche Bank Zrt. a damage of HUF 2,190,000.
    - (ii) With his act against property committed on 09 March 2006, János Juhász Jr. caused aggrieved party Pesti Hitel Zrt. a damage of HUF 13,300,000.
    - (iii) With his act against public confidence committed on 07 March 2006, which has already become statute-barred, the commission of his act against property committed on 09 March 2006 was made easier."
12. In light of this information, this Court can determine that the respondent is to face charges relating to his alleged activities on the 7th of July 2005 and on the 9th of March 2006.
13. The issuing judicial authority confirmed that the acts involved allegations of fraud of a substantial value, contravening Section 318 (1) and qualified pursuant to Section 318(5)(a) of the Act IV of 1978, one count of felony of fraud causing larger damage contravening Section 373 (1) and qualified pursuant to Section 373(3) a of Act C of 2012, one count of felony of fraud causing significant damage contravening Section 373(1) and qualified pursuant to Section 373 (4) (a) of Act C of 2012.
14. In the Court's view there is no longer any ambiguity about the nature and number of the offences in the EAW. This ground of objection is dismissed.
15. Are the offences statute-barred?

In relation to the fraud of a substantial value offence contrary to Section 318(1) and qualified subject to Subsection (5)(a) of the Act IV of 1978 on the Criminal Code an explanation was sought from the issuing state as to how the limitation period had not already expired prior to the issuance of the European arrest warrant on the 24th of October 2017, in circumstances where the incidents occurred in 2005/2006 and the limitation was stated to be a period of 5 years.

16. In responding to the Section 20 requests on this issue, the issuing judicial authority indicated in a letter dated the 4th of November 2021:

“The statute of limitations was interrupted by the issuance of the European arrest warrant on 24 October, 2017, therefore the period of limitation started against that day, and the punishability of the offence expires on 23 October, 2022. This is also explained in point f) of the European arrest warrant.

However, since according to Hungarian law, any measures taken by Hungarian or foreign authorities based upon the extradition request or the European arrest warrant interrupt the period of limitation, in this case the arrest of the person and the hearing held by the Irish authority based upon the European arrest warrant also interrupted the period of limitation according to Hungarian law.”

17. In a further letter dated the 17th of November 2021, under heading “What measures interrupting the limitation took place between the commission of the criminal offence and the issuance of the European arrest warrant”, the issuing judicial authority stated:

- “Ordering the investigation on 06 July 2007
- Interrogating János Juhász (born in 1954) as a witness on 26 July 2007, in the scope of which he made a detailed declaration on the activity of János Juhász Jr. regarding the free-use CHF loan contract, equal with HUF 13,300,000, taken out from Pesti Hitel Zrt. For the property at Budapest, District VI, Eötvös utca 9. I/6.
- Ordering the domestic arrest on 27 August 2007.
- Data acquisition on 24 July 2008 from the TAKARNET of the Institute of Geodesy, Cartography and Remote Sensing regarding the property at Budapest, District VI, Eötvös utca 9. I/6. (topographical lot No. 29453/0/A/15) (who owns the property, has János Juhász Jr. partial ownership of this property, as well as obtaining the title deed of the said property, and the copies of the documents containing any changes recorded after 01 January 2007.
- Data acquisition on 27 February and 07 November 2012 from the Pesti Hitel Zrt.: Where the loan contract was concluded, what information János Juhász Jr. gave about his income-wealth situation and workplace, from when until when the debtor paid the instalments of the loan, how much money he fulfilled, what measures the institute took after terminating the loan contract for the purpose of collecting their claim, what the result of these measures was, what the reason was for not being

able to put the property on auction, as well as obtaining all the documents arising in connection with loan contract No. PH-2563/1C.

- Data acquisition on 27 February 2021 from the Porsche Lízing és Szolgáltató Kft.: Where the loan contract was concluded, what information János Juhász Jr. gave about his income-wealth situation and workplace, how often he paid the instalments, until when he paid the loan, how money he fulfilled, what measures the institute took after terminating the loan contract for the purpose of collecting their claim, what result of these measures was, the giving back of the vehicle took place, if yes, the vehicle was sold later, as well as obtaining all the documents arising in connection with the loan contract.
- Issuing a police national arrest warrant on 10 May 2013.
- Issuing a prosecutor's national arrest warrant on 10 October 2017."

18. This accords with paragraph (f) of the EAW which states:

*"Under Section 33(1)(b) of Act IV of 1978 on the Criminal Code, prosecution shall be barred upon the lapse of time equal to the maximum penalty prescribed, or after not less than three years.*

*In the case at hand, the statute of limitations period for the punishability of the criminal offence, which is the subject of the proceedings, is five years.*

*Pursuant to Section 34(a) of Act IV of 1978 on the Criminal Code, the start date of the statute of limitations period shall, in the case of a completed criminal act, be the date on which the criminal act is committed.*

*Pursuant to Section 35(1) of Act IV of 1978 on the Criminal Code, the statute of limitation period shall be interrupted by the criminal procedural acts enforced by the authority's proceedings in criminal matters against the perpetrator for the commission of a criminal offence. On the day of such interruption, the statute of limitation period shall start over."*

19. It would seem therefore, that the issuing judicial authority could point to a number of procedural acts in criminal matters, and each of those acts required the statute of limitations period to start over. The Court was satisfied therefore, that there was clear evidence to confirm that the offences were not statute-barred considering the 5-year period provided for in the Act IV of 1978 of the Criminal Code. However, that was not the end of the matter, as the letter from the issuing judicial authority dated the 17th of November 2021 stated:

*"Pursuant to Section 459(6)b) of Act C of 2012 on the Criminal Code being currently in force, damage shall be considered larger if its amount ranges from five hundred thousand and one to five million forints, and pursuant to Section 459(6)c),*

damage shall be considered significant if its amount ranges from five million and one to fifty million forints.

Accordingly, if proven and if applying Act C of 2012, the acts of János Juhász Jr. committed on 07 July 2005 and 09 March 2006 give ground for establishing 1 count of the felony of fraud causing larger damage, contravening Section 373(1) and qualified pursuant to Section 373(3)a) of Act C of 2012, which can be punished by an imprisonment for up to 3 years; and 1 count of the felony of fraud causing significant damage, contravening Section 373(1) and qualified pursuant to Section 373(4)a) of Act C of 2012, which can be punished by an imprisonment for 1 to 5 years; the liability to punishment of both acts shall become statute-barred after 5 years.

Pursuant to Sections 2(1) and (2) of Act 2012 the Criminal Code of 2012, a criminal offence shall be adjudicated under the criminal law in force at the time of commission. In case the act shall not be considered as a criminal offence pursuant to the new Criminal Code being in force when adjudicating the act, or it shall be adjudicated in a more lenient way, the new Act shall be applied.”

20. The Court determined from this information, that if the respondent is charged under the 1978 regime, the maximum sentence is one of five years and the matter is not statute-barred. On the other hand, the 2012 regime confers a benefit on the respondent in that he would face a sentence of only 3 years and in so far as the 2012 Act confers a benefit on the respondent it would seem therefore to have retrospective effect. That being the case, the limitation period is also three years, yet the issuing judicial authority certified in the EAW that the statute of limitations period for the punishability of the criminal offences is 5 years, and that the time will expire on the 23rd of October 2022, taking into account the fact that the issuing of the EAW on the 24th of October 2017 restarted the clock. Further, the Section 20 response indicated that for offences under Section 373(3)(a) and 373(1) the relevant period was five years for both. As a result of this additional information, a further Section 20 request was raised to clarify and ensure that any offences that would be prosecuted under the 2012 Act would not be statute-barred. This request was raised by way of letter dated the 24th of November 2021 wherein the following questions were asked:

“In circumstances where it appears, from your latest reply, that János Juhász may be entitled to the retrospective application of Section 459(6)(b) of Act C of 2012 on the Criminal Code in circumstances where it would inure to him the benefit of a three-year custodial sentence in respect of 1 count of felony of fraud causing larger damage, contravening Section 373(1) and qualified pursuant to Section 373(3)(a) of Act C of 2012, the High Court of Ireland kindly requests the following further information:

1. Please confirm whether János Juhász will be prosecuted pursuant to Act C of the 2012 regime on the Criminal Code or Act IV of 1978 on the Criminal Code.

2. If Mr. Júhasz is to be prosecuted under Act C of 2012 on the Criminal Code, please confirm that the offences of felony of fraud causing larger damage, contravening Section 373(1) and qualified pursuant to Section 373(3)(a) of Act C of 2012 and felony of fraud causing significant damage, contravening Section 373(1) and qualified pursuant to Section 373(4)(a) of Act C of 2012, are not statute-barred.”
21. The issuing judicial authority replied by way of a letter dated the 26th November 2021 as follows:

“If Act C of 2021 shall be applied, has the felony of fraud, qualified pursuant to Sections 373(1), 373(3)a) and 373(4)a), become statute-barred yet?

According to the rule set forth in Section 33(1)b) of Act IV of 1978, the statute of limitation shall expire upon the lapse of time equal to the highest sentence prescribed, or not less than three years. As the sentence to be imposed on the perpetrator committing 2 counts of the felony of fraud causing significant damage, contravening Section 318(1) and qualified pursuant to Section 318(5)a) of Act IV of 1978, is an imprisonment for 1 to 5 years for both counts, the limitation period shall be 5 years as well.

According to the rule set forth in Section 26(1) of Act C of 2012, liability to punishment shall become statute-barred after a period corresponding to the maximum of the penalty range, but at least after five years. As the sentence to be imposed on the perpetrator committing 1 count of the felony of fraud causing larger damage, contravening Section 373(1) and qualified pursuant to Section 373(3)a) of Act C of 2021, shall be an imprisonment for up to 3 years; and qualified pursuant to Section 373(4)a) of Act C of 2021, shall be an imprisonment for up to 5 years, the limitation period shall be 5 years as well.

The limitation period of the acts committed on 07 July 2005 and 09 March 2006 was interrupted by the following procedural acts before issuing the European arrest warrant:

- I. Ordering the investigation on 06 July 2007.
- II. Interrogating János Júhasz (born in 1954) as a witness on 26 July 2007, in the scope of which he made a detailed declaration on the activity of János Júhasz Jr. regarding the free-use CHF loan contract, equal with HUF 13,300,000, taken out from Pesti Hitel Zrt. for the property at at Budapest, District VI, Eötvös utca 9. I/6.
- III. Interrogating Gabor Júhasz as a witness on 06 August 2007, in the scope of which he made a detailed declaration on the activity of his own and János Júhasz Jr. regarding the loan of HUF 2,190,000 taken out from Porsche Bank Zrt. for Audi type vehicle of registration place No. IWH-296, and the free-use CHF loan contract, equal with HUF 13,300,000, taken out from Pesti Hitel Zrt. for the property at at Budapest, District VI, Eötvös utca 9. I/6.
- IV. Ordering the domestic arrest on 27 August 2007.

- V. Data acquisition on 24 July 2008 from the TAKARNET of the Institute of Geodesy, Cartography and Remote Sensing regarding the property at Budapest, District VI, Eötvös utca 9. I/6. (topographical lot No. 29453/0/A/150 (who owns the property, has János Júhasz Jr. partial ownership of this property, as well as obtaining the title deed of the said property, and the copies of the documents containing any changes recorded after 01 January 2007.
- VI. Data acquisition on 27 February and 07 November 2012 from the Pesti Hitel Zrt.: Where the loan contract was concluded, what information János Júhasz Jr. gave about his income-wealth situation and workplace, from when until when the debtor paid the instalments of the loan, how much money he fulfilled, what measures the institute took after terminating the loan contract for the purpose of collecting their claim, what the result of these measures was, what he reason for not being able to put the property on auction, as well as obtaining all the documents arising in connection with loan contract No. PH-2563/1C.
- VII. Data acquisition on 27 February 2021 from the Porsche Lízing és Szolgáltató Kft.: Where the loan contract was concluded, what information János Júhasz Jr. gave about his income-wealth situation and workplace, how often he paid the instalments, until when he paid the loan, how much money he fulfilled, what measures the institute took after terminating the loan contract for the purpose of collecting their claim, what the result of these measures was, the giving back of the vehicle took place, if yes, the vehicle was sold later, as well as obtaining all the documents arising in connection with the loan contract.
- VIII. Issuing a police national arrest warrant on 10 May 2013.
- IX. Issuing a prosecutor's national arrest warrant on 10 October 2017.

Therefore, the liability to punishment regarding the acts committed on 7 July 2005 and 09 March 2006 has not become statute-barred yet."

- 22. In light of this additional information the Court is satisfied that the offences whether punishable under the 1978 regime or the 2012 regime are not statute-barred. This point of objection is dismissed.

**Is surrender prohibited by section 21A of the Act of 2003?**

- 23. The respondent contends that his proposed surrender constitutes a breach of Section 21A of the Act of 2003. He submits that no decision has been made, either expressly or impliedly, to charge and/or to try him in respect of the offence for which his surrender is being sought.
- 24. In this regard the respondent engaged a Hungarian lawyer, Dr. Palosi Laszlo, who stated in a document dated 5th of November 2005 as follows:

"To the best of my knowledge Mr Júhasz is being sought to be returned to Hungary for investigative purposes only. I have no access to the files of the case; however



the abovementioned European Arrest Warrant is based on the domestic (Hungarian) arrest warrant nr. 5655/2012/7-III issued by the prosecutor's office. Had there been a letter of indictment issued, the [sic] domestic (Hungarian) arrest warrant would have been issued by the Court that deals with the case based on that a letter of indictment.

Arrest warrants issued for the enforcement of a sentence are disclosed on the homepage of the Hungarian police...

<http://www.police.hu/hu/koral/elfogatoparancs-alapjan-korozottszemelyek>), however no such arrest warrant (or indeed any other) is to be found on the abovementioned homepage, and the European Arrest Warrant issued by the Central District Court of Buda (Budai Központi Kerületi Bíróság) 4th of October 2017 only refers to the ongoing investigation (case nr. 01030-2674/2012 bü)."

25. The relevant legislative provisions on this issue are as follows:

I. Section 10 of the 2003 Act provides:

"Where a judicial authority in an issuing state duly issues a s European arrest warrant in respect of a person –

- (a) Against whom that state intends to bring proceedings for the offence to which the European arrest warrant relates, or
- (b) On whom a sentence of imprisonment or detention has been imposed and who fled from the issuing state before he or she-
  - (i) Commenced serving that sentence, or
  - (ii) Completed serving that sentence,

That person shall, subject to and in accordance with the provisions of this Act and the Framework Decision be arrested and surrendered to the issuing state."

II. Section 21A of the 2003 Act provides:

"(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.

(2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved."

26. The Court notes that the first page of the EAW does contain the specific request by the issuing judicial authority that the respondent be arrested and surrendered for the

purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. In light of the contents of the EAW, the Court can be satisfied that surrender is sought in relation to the former.

27. Notwithstanding the above, the Court sought further information from the issuing state by way of a request for additional information dated the 23rd of November 2021 and asked the following question by way of Section 20 request:

“In addition to the above, János Juhász contests his surrender to Hungary on the basis that no decision has been made to prosecute him for the offence(s) set out in the European Arrest Warrant. Rather, he asserts that his surrender is sought for the sole purpose of conducting an investigation only. In this regard he relies on a document from Dr. Palosi Laszlo. We submit a copy of same to you for your comment. You might please confirm that a decision has been made to charge and try János Juhász for the offence.”

28. The answer provided to the Court from the Hungarian authorities dated the 26th of November 2021 stated:

“no indictment has been filed yet, so the appointment of a Court trial could not take place either”.

29. Dr Lazlo swore an affidavit dated the 7th of December 2021 and stated as follows:

“To the best of my knowledge, no charges have been filed against Juhász János in the case in which the Central District Court of Buda issued an arrest warrant for him under the number 18.Bny.4007/2017/2. Pursuant to Section 100(1) (a) of Act XC of 2017 on Criminal Procedure, I, as the defence counsel, only have the right to see the documents of the proceedings after the interrogation of János Juhász as a criminal suspect.

However, it is clear from the European Arrest Warrant itself that no charges have been brought and the case is still under investigation. This is evident from the fact that point (b) of the European Arrest Warrant refers back to the domestic arrest warrant B.111.5655/2012/7-III of the Budapest II and III District Prosecutor’s Office dated 10th October 2017.

Pursuant to Article 119 of Act XC of 2017 on Criminal Procedure, domestic arrest warrants shall be issued by the investigating authority, prosecutor’s office or Court before which the proceedings are in progress.

If, in the course of the proceeding, the Court, prosecutor’s office or investigating authority in charge of the case changes this must be recorded in the wanted persons register. In case the Budapest II and III District Prosecutor’s Office had also brought charges, the Budapest II and III District Court would have been competent to act on the basis of those charges, and the domestic arrest warrant would have been issued by this Court, or it would have been recorded in the

wanted persons register system that the case was now being handled by this Court and not by the prosecutor's office.

Clearly, the case number of the European Arrest Warrant also refers to the pre-charge procedure of the prosecution: the case number 18.Bny.4007/2017/2 is a case number of an investigating judge. Pursuant to Article 463 of Act XC of 2017 on Criminal Procedure, "The functions of the Court before indictment shall be performed in the first instance by the judge of the district Court appointed by the president of the Court as an investigating judge.

I swear to that to the best of my knowledge and belief, the above statement is the truth and nothing but the truth."

30. A further Section 20 request was sent in light of the above on the 10th of December 2021 in the following terms:

- "1) Can you please confirm that there is an intention on the part of the prosecutor to charge and try János Júhasz for the offences contained in the European Arrest Warrant; and
- 2) Can you please confirm that there is sufficient evidence to enable János Júhasz to be charged and put on trial for the offences contained in the European Arrest Warrant and that this is the present intention of the relevant prosecuting authority in Hungary.
- 3) Can you please confirm that the decision / intention to prosecute is not dependent on further investigation producing sufficient evidence to justify putting János Júhasz on trial."

31. The reply from the issuing judicial authority dated the 17th of December 2021 read as follows:

"The competent prosecutor intends to charge János Juhász for the offences contained in the European arrest warrant.

There is sufficient evidence to enable János Juhász to be charged and put on trial for the offences contained in the European arrest warrant, and that is the present intention of the Hungarian prosecuting authority.

The decision / intention to prosecute János Juhász is not dependent on further investigation."

32. Dr Laszlo however provided a further affidavit dated the 28th of January 2022, wherein she states:

1. "As stated in my affidavit of 17th December 2021, no charges have been brought in the present case; as a result, the investigation has not been completed and the

case is at the investigation stage. The investigation is conducted by the Budapest Police Headquarters (BRFK) III. District Police Headquarters, case number 01030/2674/2012. bü.

2. Pursuant to Sections 348 (2)-(4), an investigation consists of fact finding and the examination of the facts. Detection shall include the investigation of the offence and the identity of the perpetrator to the extent necessary to establish reasonable grounds for suspicion, and evidences shall be sought and presented. During the investigation, the prosecutor's office will decide whether to close the investigation against the suspect, if necessary by obtaining and examining evidence.
3. In the present case, it seems that the police and the prosecutor's office believe that evidence has already been collected and provided to the extent necessary to establish reasonable suspicion. This conclusion may be drawn from the fact that pursuant to Section 119(1) of the Criminal Code, an arrest warrant may only be issued against a person who is reasonably suspected of having committed a criminal offence. Since an arrest warrant has been issued for János Juhász, the police and the prosecutor's office consider him to be a person who is reasonably suspected of having committed the offences.
4. However, this is the first phase of the investigation, which has not been completed yet. The detailed rules for the investigation are set out in Chapter LX. Within this, Section 385(1) provides, that if, on the basis of the available data or means of evidence, a person is suspected on reasonable grounds of having committed a criminal offence, the investigating authority shall interview him or her as a suspect under Chapter XXX. The detailed rules of the investigation are set out in Chapter LXI. Within this, Section 391 (1) (f) states that the prosecutor's office shall determine whether there is a case for prosecution after interviewing the suspect.
5. As a conclusion, as a general rule, interviewing of the suspect is a mandatory and indispensable element of the investigation, especially the fact-finding. This also applies to this case, i.e. the prosecutor's office is only entitled to decide whether to charge János Juhász after he has been interviewed as a suspect. On the other hand, the Hungarian Central Authority replied on 14th December 2021 that the evidence necessary for the indictment was available and that the competent prosecutor's office wished to charge János Juhász with the offences covered by the European Arrest Warrant.
6. There is no legal possibility to do so under the general rules described so far, but only under the special rules set out in the Chapter CI. CI. ("Proceedings against a charged person who is away") and Chapter CII ("Proceedings against a charged person who is abroad").
7. The present case is governed by Chapter CII on the basis of János Juhász known residence in Ireland. Within this, Section 755 (2) (b) states that in the absence of a person who is abroad and who is reasonably suspected of having committed the

offence, the proceedings may be conducted only if other statutory conditions are fulfilled and if the participation of this person in the proceedings cannot be ensured by submitting a request for international mutual legal assistance or by using a telecommunication device, or the use of these [that is, international mutual legal assistance or telecommunications device] is not justified by the gravity of the offence or the assessment of the case.

8. In the present case, the European Arrest Warrant indicates that the offences were committed in 2005 and 2006. Even if the offences were proven and the offender was found guilty, a lapse period of more than 15 years - which is the case on this day - is a mitigating circumstances of such great importance that it excludes application of an executable sentence in practice.
  9. On this basis alone, the suspension of the execution of the prison sentence is justified. This also possible under Section 85(1) of Act C of 2012, currently in force, and Section 89(1) of Act IV of 1978, which was in force at the time of the European Arrest Warrant.
  10. On that basis, I am of the firm professional opinion that the material gravity of the offence and the assessment of the case do not justify the transfer of János Juhász on the basis of a European Arrest Warrant, but that the investigating authority should interview him by means of telecommunication devices.
  11. This is possible pursuant to Section 120 (1) of the Act XC of 2017 on Criminal Procedure, which states that the presence of a person required to be present at a procedural act under this Act (in the present case János Juhász) may be ensured by means of telecommunications devices. In accordance with the commentary to the Act, the use of telecommunication equipment is not limited to specific procedural stages (investigations, Court proceedings), to specific bodies responsible for the proceedings or to specific procedural acts. Thus, the presence of the person concerned can be granted for either during the investigation or throughout the trial by using a telecommunication device.
  12. In my own law practice, there have been cases where the investigating authority issued an arrest warrant and the investigating judge issued a European Arrest Warrant based on the arrest warrant, but then the location of a suspect abroad became known and the suspect was interviewed via telecommunication devices. The European Arrest Warrant was subsequently withdrawn by the Court on the prosecutor's motion. The decision on this is attached. To protect the suspect's privacy, the suspect's personal data will be redacted, and the content of the decision can be verified by the Court case number."
33. A further Section 20 request dated the 4th February 2022 was sent to the issuing judicial authority requesting further clarification in respect of the following:

"1. Please confirm if, under the relevant legislation governing criminal procedure in Hungary, Janos Juhasz must be questioned before the decision is made to charge him with the offences contained in the European Arrest Warrant; and,

[...]

3. Is it the case that Janos Juhasz can be charged and put on trial regardless of the outcome of any questioning which may take place after his surrender for the offences set out in the European Arrest Warrant?"

34. A Section 20 reply, dated 7th February 2022, was received in respect of these inquiries, as follows:

(i) "Pursuant to the laws in force, shall the Hungarian authorities interrogate János Juhász, or not, shall the Hungarian authorities interrogate János Juhász, or not, before they decide whether to file an indictment?

János Juhász Jr. is currently residing in Ireland; his interrogation as a suspect has not taken place yet, so he shall be considered to be a person residing at a known place abroad who may be reasonably suspected of committing a criminal offence.

Pursuant to Section 755(1) of Act XC of 2017 on the Code of Criminal Procedures, conducting the proceedings against a person residing at a known place abroad who may be reasonably suspected of committing a criminal offence shall take place if:

- 1) Issuing a European or international arrest is not possible, or it has not taken place as the prosecution office did not move in the indictment for the imposition of an imprisonment to be carried out or the application of education in a correctional facility, and the person who may be reasonably suspected of committing a criminal offence did not appear despite being duly summoned or is being kept in prison abroad,
- 2) A European or international arrest warrant has been issued but the person who may be reasonably suspected of committing a criminal offence was not surrendered or extradited within twelve months after the arrest, and the criminal proceedings has not been transferred either,
- 3) A European or international arrest warrant has been issued but the surrender or extradition of the person who may be reasonably suspected of committing a criminal offence was rejected, and the criminal proceedings has not been transferred either,
- 4) A European or international arrest warrant has been issued and the delayed surrender or extradition of the person who may be reasonably suspected of committing a criminal offence was ordered.

Based on the available information, János Juhász Jr. was arrested as a result of a European arrest warrant. Thus, the criminal proceedings may be conducted in his absence if the surrender did not take place within twelve months, his surrender was rejected or a delayed surrender was ordered. In

case of the existence of one of these alternative conditions, the Hungarian authorities do not have to interrogate János Juhász Jr. for the purpose of filing an indictment.

- (ii) Does the declaration filed by attorney-at-law Dr. László Pálosi and attached to this transcription change anything in the answers included in the transcription of the Honourable Prosecution Office dated 11th December 2021?

The declaration filed by attorney-at-law Dr. László Pálosi and dated 5th November 2021 does not change anything in the answers included in transcription No. B.5655/2012/5, dated 11th December 2021; I maintain everything included in the transcription without and changes.

- (iii) Apart from the result of the defendant's interrogation if it took place after his surrender, can the Hungarian authorities file an indictment and can the Court conduct the criminal proceedings against János Juhász?

The evident obtained during the investigation is sufficient for filing an indictment against János Juhász Jr. may tell some data, which has been unknown so far, which may assessed as mitigating or aggravating circumstances regarding the manner and degree of the sentence – in the case of a judgment establishing guilt.”

35. It is of importance at this juncture to set out what O'Donnell J had to say in *Minister for Justice -v- Olsson* [2011] IESC 1 concerning what he viewed as the correct approach to the interpretation of Section 21A. He said [at paras 26 to 32 inclusive]:

*"[26] The issue here, however, is not merely one of the evidence before the court. As is apparent, s. 21A (2) of the Act of 2003, as inserted by s. 25 of the Act of 2005, contains a presumption that a decision has been made to charge the person and try him or her for the offence. Furthermore, the opening lines of the European arrest warrant itself, request that the person mentioned below 'be arrested and surrendered for the purposes of conducting a criminal prosecution ...' That statement, and the further statements made in Ms. Maderud's affidavit in relation to the practice of the Kingdom of Sweden, must also be read in the light of recital 10 of the Framework Decision which describes '[t]he mechanism of the European arrest warrant [as being] based on a high level of confidence between Member States'. It is clear, therefore, that cogent evidence is required to raise a genuine issue as to the purpose for which a warrant has been issued and surrender sought. This was emphasised in the judgment of Murray C.J. in *Minister for Justice v. McArdle* [2005] IESC 76, [2005] 4 I.R. 260 at p. 268: - '[24] The European Arrest Warrant Act 2003 gives effect in this jurisdiction to the European Council Framework Decision of the 13th June, 2002, on the European arrest warrant and the surrender procedures between member states. The recitals to that decision make reference to the implementation of "the principle of mutual recognition of criminal proceedings" and in particular recital number 6 which states "the European arrest warrant provided for in this Framework Decision is the first concrete measure*

*in the field of criminal law implementing the principle of mutual recognition which the European Council refer to as the 'cornerstone' of judicial cooperation". Accordingly, it seems to me that where a judicial authority of a member state issues a European arrest warrant and that is accompanied by a certificate referred to in s.11(3) of the Act of 2003, both of which state and certify respectively, that the surrender of the person named in the warrant is sought for the purpose of prosecution and trial, that must be acknowledged as at least prima facie evidence of the purpose for which the request is made. It would, in my view, normally require cogent evidence to the contrary to raise a genuine issue as to the purpose for which the warrant in question has been issued and the surrender sought.'*

*[27] Murray C.J. also observed, at pp. 266 to 267:- '[19] ... The surrender of a person for purpose of prosecution and trying him or her on a criminal offence means that the decision taken by the relevant authority to prosecute and try that person is not contingent on the outcome of further factual investigation. That requirement does not of course preclude the pursuit of any continuing or parallel investigation into the circumstances of the offence. It means that the decision to prosecute is not dependant on such further investigation producing sufficient evidence to justify putting a person on trial.'*

*[28] In approaching the question of the interpretation of the Act of 2003, it is necessary to keep both the nature of the Act and its origins in view. One thing which can be said with assurance is that the Act of 2003 does not intend that words such as 'charge' and 'prosecution' should only be understood as meaning a charge or prosecution as in the Irish criminal justice system. The Act establishes a procedure for the reciprocal execution of warrants with legal systems, almost all of which differ in some ways, even at times significantly, from that of this jurisdiction. If the Act of 2003 intended that only warrants emanating from a criminal justice procedure which was identical to that of Ireland would be executed here, then the Act would manifestly fail to achieve its object, and indeed that of the Framework Decision. A similar point was made in a slightly different context by Lord Steyn in the United Kingdom House of Lords case of *In re Ismail* [1999] 1 A.C. 320 at pp. 326 to 327:- 'Given the divergent systems of law involved, and notably the differences between criminal procedures in the United Kingdom and in civil law jurisdictions, it is not surprising that the legislature has not attempted a definition [of the word "accused"] ... It is, however, possible to state in outline the approach to be adopted. The starting point is that "accused" in s. 1 of the Act of 1989 is not a term of art. It is a question of fact in each case whether the person passes the threshold test of being an "accused" person. Next there is the reality that one is concerned with the contextual meaning of 'accused' in a statute intended to serve the purpose of bringing to justice those accused of serious crimes. There is a transnational interest in the achievement of this aim. Extradition treaties, and extradition statutes, ought, therefore, to be accorded a broad and generous construction so far as the texts permits it in order to facilitate extradition: *Reg. v. Governor of Ashford Remand Centre, Ex parte Postlethwaite* [1988] A.C. 924, 946-*



947. *That approach has been applied by the Privy Council to the meaning of "accused" in an extradition treaty: Rey v Government of Switzerland [1999] A.C. 54, 62G. It follows that it would be wrong to approach the problem of construction solely from the perspective of English criminal procedure, and in particular from the point of view of the formal acts of the laying of an information or the preferring of an indictment ... It is not always easy for an English court to decide when in a civil law jurisdiction a suspect becomes an "accused" person. All one can say with confidence is that a purposive interpretation of "accused" ought to be adopted in order to accommodate the differences between legal systems. In other words, it is necessary for our courts to adopt a cosmopolitan approach to the question whether as a matter of substance rather than form the requirement of there being an "accused" person is satisfied.'*

*[29] The origins of the Act of 2003 are also important. The Act is the mechanism by which this State performs its obligation to ensure that the objectives of the Framework Decision, are achieved. As was pointed out by Fennelly J. in Dundon v. Governor of Cloverhill Prison [2005] IESC 83, [2006] 1 I.R. 518, at p. 544: - '[62] ... [t]he Act of 2003 as a whole ... should be interpreted "as far as possible in the light of the wording of the purpose of the framework decision in order to attain the result which it pursues".'*

*[30] Taking this approach to the interpretation of s. 21(A) of the Act of 2003, as amended by the Act of 2005, the relevant provision of the Framework Decision is that contained in the opening words of article 1(1). This provides that a European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender to another member state of: - '... a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.'* (emphasis added).

*[31] It is also noteworthy that s.10 of the Act of 2003 (as substituted by s. 71 of the Act of 2005 and as amended by s. 6 of the Criminal Justice (Miscellaneous Provisions) Act 2009), provides that where a judicial authority in an issuing state issues a European Arrest Warrant in respect of a person 'against whom that state intends to bring proceedings for an offence to which the European arrest warrant relates ... that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state' (emphasis added).*

*[32] Thus, the concept of the "decision" in s. 21A should be understood in the light of the "intention" referred to in s. 10 of the Act of 2003 and the "purpose" referred to in art. 1 of the Framework Decision.*

*[33] When s. 21A speaks of "a decision" it does not describe such decision as final or irrevocable, nor can it be so interpreted in the light of the Framework Decision. The fact that a further decision might be made eventually not to proceed, would not therefore mean that the statute had not been complied with, once the relevant*

*intention to do so existed at the time the warrant was issued. The Act of 2003 does not require any particular formality as to the decision; in fact, s. 21 focuses on (and requires proof of) the absence of one. The issuing state does not have to demonstrate a decision. A court is only to refuse to surrender a requested person when it is satisfied that no decision has been made to charge or try that person. This would be so where there is no intention to try the requested person on the charges at the time the warrant is issued. In such circumstances, the warrant could not be for the purposes of conducting a criminal prosecution.*

*[34] The requirement of the relevant decision, intention or purpose can best be understood by identifying what is intended to be insufficient for the issuance and execution of a European arrest warrant. A warrant issued for the purposes of investigation of an offence alone, in circumstances where that investigation might or might not result in a prosecution, would be insufficient. Here it is clear that the requested person is required for the purposes of conducting a criminal prosecution (in the words of the Framework Decision) and that the Kingdom of Sweden intends to bring proceedings against him, (in the words of s. 10 of the Act of 2003) Consequently it follows that the existence of any such intention is virtually coterminous with a decision to bring proceedings sufficient for the purposes of s. 21A. As Murray C.J. pointed out in *Minister for Justice v. McArdle* [2005] IESC 76, [2005] 4 I.R. 260, that result is not altered by the fact that there may be a continuing investigation, or indeed that such investigation will be assisted by the return of the requested person.*

*[35] It would be entirely within the Framework Decision and the Act of 2003 if, after further investigation, the prosecution authorities decided not to prosecute because, for example, they had become convinced of the requested person's innocence. There would still have been an "intention" to prosecute, and a decision to do so at the time the warrant was issued and executed. Accordingly, the warrant would have been issued for the purposes of conducting a criminal prosecution. What is impermissible is that a decision to prosecute should be dependent on such further investigation producing sufficient evidence to put a person on trial. In such a situation there is in truth no present "decision" to prosecute, and no present "intention" to bring proceedings. Such a decision and intention would only crystallise if the investigation reached a certain point in the future. In such a case any warrant could not be said to be for the purposes of conducting a criminal prosecution: instead it could only properly be described as a warrant for the purposes of conducting a criminal investigation. In such circumstances, a court would be satisfied under s. 21A of the Act of 2003, as amended that no decision had been made to charge or try the requested person.*

*[36] It is noteworthy, that on the evidence in this case, the position in relation to the respondent is not by any means unusual in the Swedish system, and indeed represents the norm in a number of European countries. It would be a surprising result if either the Framework Decision or the Act of 2003 were to be interpreted so*

*as to prevent the execution of the European arrest warrant in respect of such countries and where (as here) the requesting authority had in the terms of the warrant, and in sworn evidence in the case, stated that the warrant was issued for the purposes of conducting a criminal prosecution. The High Court was entirely correct to conclude that there was here a clear intention to bring proceedings within the meaning of s. 10, and that the warrant could be said to be for the purposes of conducting a criminal prosecution within the meaning of the Framework Decision and that the only thing which stood in the way of commencement of such prosecution was the requirement of the presence of the respondent and the interview where he could respond to the investigation. In short the intention of the Swedish prosecution authority to bring the respondent before the Swedish Court for the purpose of being charged is but a step in the prosecution process. For the reasons set out above the High Court was correct to conclude that the respondent was not being sought only to be questioned as part of the investigation and that there was a decision to charge the respondent within the meaning of the Act of 2003. Certainly even without the presumption contained in s. 21A(2), the section requires clear proof. Once a court finds the European arrest warrant to be in order (and therefore on its face a request made for the purpose of prosecution or trial), then before a court can refuse to surrender a person requested under such a warrant, it must be satisfied by cogent evidence to the contrary that a decision has not been made to charge the particular person with, and try him or her for, the offence. This has not been established. I would dismiss the appeal.”*

36. In summary, and in deciding this issue this Court must have regard to the following:
- a. Section 21A(2) of the Act of 2003 contains a presumption that a decision has been made to charge the person and try him for the offence.
  - b. The opening lines of the European Arrest Warrant itself, requests that the respondent “be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.” The contents of the warrant make it clear that he is to be surrendered for the purposes of conducting a criminal prosecution.
  - c. Recital 10 of the Framework Decision describes “[t]he mechanism of the European arrest warrant as being based on a high level of confidence between Member States”.
  - d. Part (b) of the warrant makes it clear that the decision on which the warrant is based is an arrest warrant or judicial decision having the same effect, that is decision Nr. B.III.5655/2012/-III. of the Budapest 2nd and 3rd District Prosecutor’s Office on issuing the European Arrest Warrant dated 10th October, 2017 and it is described as a national (domestic) arrest warrant.
  - e. A Court is only to refuse to surrender a requested person when it is satisfied that no decision has been made to charge or try that person. This would be so where

there is no intention to try the requested person on the charges at the time the warrant is issued. In such circumstances, the warrant could not be for the purposes of conducting a criminal prosecution.

- f. It is necessary for this Court to adopt a cosmopolitan approach to the question as to whether as a matter of substance rather than form a decision was made to charge and try the respondent.
  - g. The concept of "decision" in Section 21 (A) of the 2003 Act should be understood in light of the word "intends" referred to in Section 10 of the 2003 Act and the word "purpose" referred to in Article 1 of the Framework Decision.
  - h. When Section 21 (A) of the 2003 Act speaks of a decision it does not describe such a decision as final or irrevocable nor can it be so interpreted in light of the Framework Decision.
  - i. There must be strong and cogent evidence to rebut the presumption in Section 21(A) (2) of the Act of 2003.
37. In this regard, I have carefully considered the report and affidavits of Dr. Laszlo. In summary, Dr. Lazlo indicates as follows:
- (i) That there is no letter of indictment lodged in this case.
  - (ii) That the respondent is being sought for investigative purposes only.
  - (iii) No charges have been filed against the respondent
  - (iv) The matter for which the respondent is sought to be surrendered is at a pre-charge stage and the investigation is not complete.
  - (v) In accordance with Section 119C of the Hungarian Criminal Code, an arrest warrant has issued for the respondent, therefore the police and the prosecutor's office consider him to be a person who is reasonably suspected of having committed the offence.
  - (vi) In accordance with Chapter LX 385 (1) of the Hungarian Criminal Code the respondent must now be interviewed.
  - (vii) After an interview the prosecutor's office shall determine whether there is a case for the prosecution.
  - (viii) This interview is a mandatory requirement unless special rules apply pursuant to Chapter CI and CII of the Hungarian Criminal Code and if certain steps are taken, the respondent's case could be an exception to the general rule.

38. The Court has also carefully considered the European Arrest Warrant and the additional information received from the issuing judicial authority dated the 2nd of December 2021, 14th September 2021 and the 7th of February 2021. In particular the Court notes:
- (i) The unambiguous response from the issuing judicial authority in an email dated the 17th December 2021 wherein it was stated:
1. The competent prosecutor intends to charge János Juhász for the offences contained in the European Arrest Warrant.
  2. There is sufficient evidence to enable János Juhász to be charged and put on trial for the offences contained in the European Arrest Warrant, and that is the present intention of the Hungarian prosecuting authority.
  3. The decision/intention to prosecute János Juhász is not dependent on further investigation.
- (ii) Further in the letter of the 7th of February 2022 it is confirmed that the evidence obtained during investigation is sufficient for filing an indictment and conducting proceedings. If further information is adduced during his interview, that information might be relevant to the sentence proceedings in the event that he is found guilty.
39. Having carefully considered and evaluated all of this information this Court is satisfied that the presumption in s.21(A) of the Act of 2003 has not been rebutted. Counsel for the respondent concedes that there is no difference between this case and Olsson. In this Court's view, the case for the applicant is in fact stronger in this case than it was in Olsson, in light of the information on the 14th of December 2021.
40. In all the circumstances, I am satisfied that surrender is not prohibited by Section 21 (A) of the European Arrest Warrant Act, 2003, as amended. This point of objection is dismissed.

**Whether surrender is prohibited by section 37 of the Act of 2003 ?**

41. The respondent has sworn an affidavit dated the 1st of November 2021 and stated therein:
- That he is a 47-year-old Hungarian national from Budapest in Hungary.
  - That he relocated to Ireland on 6th of June of 2006 and has worked and resided in this jurisdiction since that date.
  - He has lived with his partner Nora Horgonyi in rented accommodation in the Carlow area for the last 3 years and recently moved into 3 Friars Wood, Pollerton, Carlow.
  - He says that his surrender would constitute a breach of his rights both under the European Convention on Human Rights and the Constitution in circumstances where there has been inexcusable delay in the issuing, processing and execution of the warrant herein.

- The alleged offence(s) which are the subject matter of the European Arrest Warrant date from 7th July 2005 to 7th March 2006, which is a period going back 15-16 years.
42. During the oral hearing the respondent accepted that, individually, the issues raised in his affidavit would not amount to a breach of section 37 of the 2003 Act, but submitted that cumulatively, they would amount to a breach of section 37 of the 2003 Act. Counsel further candidly accepted that the Section 37 argument is not the respondent's strongest point.
43. The Judgment of the Supreme Court in *MJE v. Vestartas* [2020] IESC 12 deals with the issue of delay in the context of EAW's. MacMenamin J. gave the Judgment of the Supreme Court and at paragraph 68 he outlined the correct approach to be taken in conducting an assessment under Section 16 of the Act where Article 8 is raised by the respondent:

*"[68]In carrying out an assessment in our law for the purposes of s.16 of the Act, therefore, it is not accurate to speak of the task as one which is not governed by any predetermined approach, or pre-set formula, balancing competing public and private interests. In fact, the constant and weighty public interest in ordering surrender is not only underlined by Article 8(2) considerations such as necessity under law, freedom and security, but the words of ss.4A and 10 of the Act. The test must be seen in light of the clear exposition in the judgments in Ostrowski. A court may often have to take private and family rights considerations into account. But it can only do so having regard to the limitation contained in Article 8(2) of the ECHR, and the public interest considerations inherent in the Act and the Framework Decision. To surmount these, in any case, would necessitate that the evidence requirement be high. The assessment does not involve a balance between the rights of the public and those of the individual. It is one, rather, where, as the Act provides, a court shall presume that an issuing state will comply with the requirements of the Framework Decision -unless the contrary is shown on the basis of cogent evidence. When faced with an application under the EAW, an Irish court should not carry out a general proportionality test on the merits of the application; but rather, it should apply the specific terms of the Act, albeit subject to a careful consideration of whether, if necessary, applying a proportionality test to an Article 8 Convention right, to order surrender would involve a violation of that ECHR right to the extent of being incompatible with the State's obligations under the Convention".*

44. This Court has also considered the judgment of Ms Justice Donnelly in *Minister for Justice and Equality -v- DE* [2021] IECA 188, where she stated at paragraph 67:

*"[67] The questions certified by the High Court were as follows: "In the context of proceedings under the European Arrest Warrant Act 2003 as amended, where a respondent objects to surrender on the basis that same is precluded by s. 37 of the said Act as it would be in breach of the respondent's rights under art. 8 ECHR and having particular regard to the provisions of art. 8(2) ECHR:*

1. *Can personal or family circumstances, in and of themselves, provide a basis upon which surrender might be precluded by s. 37 of the Act of 2003?*
2. *What is the appropriate test to be applied by the Court in determining whether such an objection is sustained, and that surrender should be refused?*
3. *In so far as exceptionality may be a relevant factor in determining such an objection, what is the appropriate test to be applied by the Court in determining whether the circumstances found to exist are so exceptional as to justify refusal of surrender”*

*For the reasons set out in this judgment, it is appropriate to answer all three questions by repeating the principles set out at para 59 above:*

- (i) *In an application for surrender, the court is not carrying out a general proportionality test on the merits of the application. The court should apply the specific terms of the 2003 Act, albeit subject to a careful consideration of whether, if necessary, applying a proportionality test to Article 8 Convention rights, to order surrender would involve a violation of that ECHR right to the extent of being incompatible with the State’s obligations under the Convention. (Vestartas).*
- (ii) *Surrender (or extradition) presupposes an impact on the personal or family life of a requested person. Having regard to Article 8(2), surrender (or extradition) carried out pursuant to legislation is in principle an acceptable interference with the right to respect for those rights. (Ostrowski, JAT (No. 2), Vestartas).*
- (iii) *When faced with an Article 8 objection to surrender, the function of the Court is to decide if the surrender is incompatible with the State’s obligation under the European Convention on Human Rights. That requires a very high threshold. Any inquiry must bear in mind that s. 10 requires a court to surrender in accordance with the provisions of the 2003 Act and s. 4A of that Act obliges the court to presume that the issuing state has complied and will comply with its fundamental rights obligations. (Vestartas).*
- (iv) *The evidential burden of proving incompatibility lies on the requested person. (Rettinger and Vestartas).*
- (v) *The assessment of the claimed impact of surrender on personal and family rights must be a rigorous one. (Rettinger and JAT (No. 2)).*
- (vi) *The evidence must be cogent and must reach the level of incompatibility (Vestartas).*
- (vii) *Exceptionality is not the test for incompatibility, but it will only be in a truly exceptional case that surrender will be found to be incompatible with the*

*State's obligations under Article 8 of the Convention. (JAT No. 2 and Vestartas).*

- (viii) For an Article 8 objection to succeed, there must be clear cogent evidence sufficient to rebut the presumption in s. 4A of the 2003 Act. (Vestartas).*
- (ix) No elaborate factual analysis or weighing of matters is necessary unless it is clear that the facts come close to a case which would be truly exceptional in nature thereby engaging the possibility that surrender may be incompatible with the State's obligations under the Convention. (JAT (No.2)).*
- (x) The requirement that the circumstances must be shown to render the order for surrender incompatible with the State's obligations under Article 8 necessitates that the incursion into the private and family rights referred to in Article 8(1) is such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself. (Vestartas).*
- (xi) Where the facts, assessed as set out above, come close to being truly exceptional in nature thereby engaging the possibility that surrender might be incompatible with the State's obligations, the Court will engage in a proportionality test of whether the high public interest in the prevention of disorder and crime (and the protection of the rights of others) is overridden by the personal and family circumstances (taken where appropriate with all the cumulative circumstances) of the requested person. That is a case-specific analysis which will be required in very few cases."*

45. The offences in this matter took place in 2005 and 2006. The respondent states he came to this jurisdiction in 2006. The European Arrest Warrant issued in 2017. Ireland was not part of the Schengen Information System II alert until 2021. There is no evidence to suggest, nor is it asserted by the respondent, that the Hungarian authorities knew of the respondent's whereabouts. There is no suggestion in the circumstances of culpable delay on that part of the Hungarian authorities. In relation to the delay in general terms, it cannot reasonably be said to be truly exceptional or egregious, and delay in and of itself will not prohibit surrender. While there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues, in this Court's view, that point has not arisen in this case. In addition when a complaint of delay is linked to an objection under Article 8 of the ECHR, the caselaw confirms that evidence of truly exceptional circumstances must exist before the surrender would be refused.
46. There are no facts beyond the norm in the respondent's case. Therefore this ground of objection is dismissed. Surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.



47. It, therefore, follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Hungary.