



THE COURT OF APPEAL

Neutral Citation Number [2020] IECA 159

Record No.: 2020/61

**Birmingham P.
Edwards J.
Donnelly J.**

BETWEEN/

MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

-AND-

EAMONN HARRISON

APPELLANT

JUDGMENT of Ms. Justice Donnelly delivered this 12th day of June, 2020

1. The appellant's contention in this appeal is that the High Court, for the purpose of the execution of a European Arrest Warrant (hereinafter, "EAW"), is not entitled to rely upon additional information provided by a prosecuting authority rather than by the issuing judicial authority. The appellant's submissions were premised on the basis that the additional information provided by the prosecuting authority was information required to be contained in the EAW pursuant to the provisions of the Council Framework Decision of the 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States (hereinafter, "the Framework Decision") and the European Arrest Warrant Act, 2003 as amended (hereinafter, "the Act of 2003").
2. In a judgment delivered on the 24th January, 2020, the High Court (Binchy J.) ordered the surrender of the appellant to the United Kingdom in respect of the 41 separate offences. There were 39 offences of manslaughter, an offence of conspiracy to facilitate illegal immigration and an offence of conspiracy to engage in human trafficking. The EAW was issued in respect of the alleged participation by the appellant in the deaths of 39 people who were found dead in the back of a trailer which had entered the United Kingdom of Great Britain and Northern Ireland (hereinafter, "the UK") from the port of Zeebrugge, Belgium.
3. The facts of the case are fully set out in the judgment of Binchy J. found at [2020] IEHC 29 and it is unnecessary to repeat them in detail here. Since that judgment, the UK authorities have indicated that they are not pursuing the offence of conspiracy to commit an offence of human trafficking contrary s. 2 of the UK Modern Slavery Act, 2015 and to the relevant conspiracy provisions. The issue of whether that offence was sufficiently delineated in the EAW and the separate additional information together with related

issues of the requirement (or otherwise) to establish double criminality, had occupied a great deal of the time in the High Court and in written submissions to this Court.

4. While it is no longer necessary to consider whether surrender on that particular offence should be ordered, the fact that the EAW contained only "a ticked box" pursuant to Article 2(2) of the Framework Decision in respect of the offence of human trafficking is relevant to the submissions made on this appeal. If Article 2(2) is invoked by an issuing judicial authority, there is no requirement for double criminality (or correspondence) with an offence in the executing State to be established. The UK Crown Prosecution Service (hereinafter, "the CPS") had provided, via the UK central authority, additional information requested by the High Court. In that additional information, the CPS "confirm[ed]" "on behalf of the relevant issuing judicial authority" that all three types of offences were covered by the "invocation of Article 2(2)" in the warrant. The respondent, as applicant in the High Court, did not seek to rely upon Article 2(2) in respect of the manslaughter or illegal trafficking offences and instead proffered corresponding offences. The High Court accepted that the acts alleged in respect of those offences corresponded with offences in this jurisdiction.

The Content of the EAW and the Additional Information

5. It is appropriate to repeat in full the description of the offence set out in the EAW at part (e): "The case against Eamon (*sic*) Harrison relates to the trafficking and subsequent deaths of 39 people within an artic trailer unit GTR1 28D. At 01:38 on Wednesday 23 October 2019 Essex Police received a call from the East of England Ambulance Service stating that they were getting reports of 25 illegal immigrants not breathing within a lorry in the area of Eastern Avenue, Waterglade Industrial, West Thurrock, Essex. Police attended the scene. The driver of the lorry was standing at the back of the trailer. He was later identified as Maurice Robinson. Inside the trailer was a total of 39 people, 8 females and 31 males who were all deceased. Enquiries revealed that the trailer unit GTR1 28D had been delivered by a lorry BB221 3BP to Zeebrugge, Belgium before being transported to the UK where it was collected by Maurice Robinson from the Port of Purfleet, Essex.

On 22 October 2019 Eamon (*sic*) Harrison has been identified as the driver of the lorry BB221 3BP which was used to deliver the trailer unit, GTR1 28D to the port in Zeebrugge. CCTV, taken several hours before at a truck shop in Veurne, Belgium shows Eamon (*sic*) Harrison to be the driver of BB221 3BP. That lorry deposited the trailer unit, GTR1 28D at Zeebrugge for its onward transmission to Purfleet, Essex. A shipping notice provided at Zeebrugge when the tractor unit arrived at the gate was signed in the name 'Eamonn HARRISON.' Eamon (*sic*) Harrison travelled back to Ireland in the lorry BB221 3BP via a ferry from Cherbourg, France.

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

"1) Manslaughter – contrary to common law

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

2) Conspiracy to commit a human trafficking offence under section 2 of the Modern Slavery Act 2015, contrary to section 1(1) of the Criminal Law Act 1971

A person commits an offence if the person arranges or facilitates the travel of another with a view to them being exploited;

3) Conspiracy to assist unlawful immigration under section 25 of the Immigration Act 1971, contrary to section 1(1) of the Criminal Law Act 1971

A person commits an offence if he does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union.

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

6. The additional information was requested by Binchy J. on the 21st November, 2019. It appears that the necessity for this request was raised by the respondent (the applicant in the High Court). The respondent raised the issue having received the points of objection, but it appears that this was not necessarily a concession that this EAW was defective. The order of the High Court records that the letter was to be sent to the issuing judicial authority requesting a direct reply from the issuing judicial authority, and the contents of the letter are in a schedule to the High Court order. The request for information was transmitted by the central authority of this State to the UK central authority. The request did not contain within it a specific request that the information should come from the issuing judicial authority.
7. The UK central authority transmitted two separate documents. The first was a letter signed by a Ms. Iguyovwe of the Crown Prosecution Service. She attached another document to that letter entitled "Response to Request for Additional Information". In the letter with respect to two matters, Ms. Iguyovwe stated that she was confirming those matters on behalf of the issuing judicial authority. One matter was that she confirmed that the issuing judicial authority sought to invoke Article 2(2) in respect of all three types of offences and apologised that it was not contained in the warrant. Another was some very slight further information specifying that the 39 deaths related to the migrants who died in the articulated lorry and that the conspiracy charge was in respect of an agreement to facilitate the unlawful entrant of migrants into the United Kingdom. Later in the response, there is far greater detail on the circumstances leading to the deaths of those in the trailer, but it was stated that the investigation was ongoing.

The Provisions of the European Arrest Warrant Act, 2003 (as amended)

8. Section 20(1) of the Act of 2003 provides:

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

9. The phrase “or the issuing state, as may be appropriate” was added after “issuing judicial authority” by virtue of the provisions of Criminal Justice (Terrorist Offences) Act, 2005. The word “shall” after “High Court”, was substituted for the word “may” by the Criminal Justice (International Co-operation) Act, 2019 with effect from the 4th September, 2019, thus predating the issuance of this EAW. Subsection (2) of s.20 of the Act of 2003 made similar provision for the central authority to seek additional information. This subsection was deleted by s. 4 of the Criminal Justice (International Co-Operation) Act, 2019, also with effect from the 4th September, 2019.

10. Section 11 of the Act of 2003, in so far as relevant, provides:

“(1) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision [...]

(1A) Subject to subsection (2A), a European arrest warrant shall specify –
[...]

(b) the name of the judicial authority that issued the European arrest warrant, and the address of its principal office, [...]

(d) the offence to which the European arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned, [...]

(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence [...]

(2) Where it is not practicable for the European arrest warrant to be in the form referred to in subsection (1), it shall include such information, additional to the information specified in subsection (1A), as would be required to be provided were it in that form.

(2A) If any of the information to which subsection (1A) [...] refers is not specified in the European arrest warrant, it may be specified in a separate document.”

The Provisions of the Framework Decision

11. Article 8 of the Framework Decision, in so far as relevant, provides:

“Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex: [...]

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;”

12. Article 15 of the Framework Decision provides:

“Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency [...]

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.”

13. The definition of an EAW as set out in Article 1, reflecting Recital 5, as “a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person...” has been considered.

14. The principle of mutual recognition in Recitals 2 and 6 of the Framework Decision is also relevant together with Recital 10 which provides that the mechanism of the EAW is based upon a high level of confidence between Member States.

The High Court Judgment

15. Having recited the arguments of the appellant and the respondent, the trial judge commenced at para. 68 to address the issues relevant to this appeal. He did so by adopting the analysis of the issue by the High Court in the case of *Minister for Justice & Equality v. A.W.* [2019] IEHC 251 (hereinafter, “A.W.”) and he distinguished the decision of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Sliczynski* [2008] IESC 73. The A.W. decision will be discussed further in this judgment.

16. Binchy J. held that in accordance with the decision of the CJEU in *M.L.* (*Generalstaatsanwaltschaft Bremen*) [2018] C-220/18 PPU (hereinafter, “M.L.”) and the

decision in *A.W.*, it was necessary to have regard to all of the information provided by the competent authorities in the issuing State. The trial judge said he was satisfied that the additional information was conveyed by the UK central authority, but also that the senior specialist prosecutor in the CPS was providing the information on behalf of the issuing judicial authority. At para. 69, Binchy J. stated as follows:

"In the context of this application, the starting point of that analysis must be that in providing the additional information, the senior prosecutor of the CPS has twice stated in her letter enclosing the additional information (which letter also addresses specific queries) that she is writing 'on behalf of the relevant judicial authority'. While this is stated in response to specific information furnished, and not in relation to the entire letter, it is clear that that information at least is being provided on behalf of the issuing judicial authority. However, even though the letter does not say so expressly, I think it is a reasonable inference to draw that the entire contents of the letter are being provided on behalf of the relevant judicial authority."

17. Binchy J. went on to refer to the practice of the UK authorities to send additional information from specialist agencies of the State rather than from the judiciary. He stated at para. 70: -

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

18. Binchy J. noted that the information came from the CPS and neither its integrity nor competence was impugned in any way. He held that accordingly there was no reason to doubt the authenticity of the information or the *bona fides* of the Crown Prosecution Service. In accordance with the principles set out in *Minister for Justice, Equality and Law Reform v. Stapleton* [2008] 1 I.R. 669, he was obliged to treat the information in accordance with the principles of mutual confidence.
19. The trial judge also noted that the information in the EAW, albeit scant, had been issued by a judge and was therefore subject to judicial scrutiny. There had been nothing inconsistent or contradictory in the additional information with that contained in the EAW. There was nothing that altered the characteristic of what was alleged against the appellant. There was nothing that gave him cause for concern that a judge might not have issued the EAW. He was of the view that the information should be admitted.

20. Having admitted the information, Binchy J. held that there was no issue but that the information was sufficient to establish correspondence and that the issue of extra-territoriality (s. 44 of the Act of 2003) could be resolved. Indeed, in the present appeal, it seems that in light of the withdrawal of the request for surrender on the human trafficking charge, and if the additional information is taken into account, the appellant takes no issue on the sufficiency of the information provided, correspondence of offences or the issue of extra-territoriality. On this basis, the present appeal is focused on the admissibility of the additional information and a related issue of how necessary this information was for the purpose of considering whether the conditions for surrender had been met.

The Decision of the CJEU in *M.L.*

21. The case of *M.L.* dealt with how the concerns of the executing judicial authority over prison conditions in the issuing Member State could or should be satisfied prior to ordering surrender. The executing judicial authority in Germany referred a number of questions to the CJEU about the extent of the enquiry it must make into those conditions. One of the questions raised an issue of the consequences which flow from the provision of additional information where the executing judicial authority is unable to ascertain if said information came from an authority within the issuing State other than from the issuing judicial authority itself.
22. The CJEU found as follows:

“108. It should be recalled that Article 15(2) of the Framework Decision explicitly enables the executing judicial authority, if it finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, to request that the necessary supplementary information be furnished as a matter of urgency. In addition, under Article 15(3) of the Framework Decision, the issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

109. Moreover, in accordance with the principle of sincere cooperation set out in the first subparagraph of Article 4(3) TEU, the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties (judgment of 6 September 2016, Petruhhin, C 182/15, EU:C:2016:630, paragraph 42).

110. In accordance with those provisions, the executing judicial authority and the issuing judicial authority may, respectively, request information or give assurances concerning the actual and precise conditions in which the person concerned will be detained in the issuing Member State.

111. The assurance provided by the competent authorities of the issuing Member State that the person concerned, irrespective of the prison he is detained in in the issuing Member State, will not suffer inhuman or degrading treatment on account of the actual and precise conditions of his detention is a factor which the executing

judicial authority cannot disregard. As the Advocate General has noted in point 64 of his Opinion, a failure to give effect to such an assurance, in so far as it may bind the entity that has given it, may be relied on as against that entity before the courts of the issuing Member State.

112. When that assurance has been given, or at least endorsed, by the issuing judicial authority, it need be after requesting the assistance of the central authority, or one of the central authorities, of the issuing Member State, as referred to in Article 7 of the Framework Decision, the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the Member States and on which the European arrest warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of Article 4 of the Charter.

[...]

114. As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority."

Ultimately, the CJEU answered the relevant question as follows:

"117. [...] [T]he executing judicial authority may take into account information provided by authorities of the issuing Member State other than the issuing judicial authority, such as, in particular, an assurance that the individual concerned will not be subject to inhuman or degrading treatment within the meaning of Article 4 of the Charter."

The Decision in *Minister for Justice and Equality v. A.W.*

23. In *A.W.*, the applicant was sought for surrender by the United Kingdom. The applicant challenged the provision of additional information by the CPS rather than the issuing judicial authority. The High Court (Donnelly J.), relying on the decision in *M.L.*, ruled that the information was admissible.

24. In analysing the issue, the High Court stated:

"73. Article 15 of the Framework Decision provides for the situation where an executing judicial authority may find that the information provided to it by the issuing member state is insufficient to allow it to decide on surrender. It cannot be considered merely accidental that Article 15(2) and Article 15(3) use different language to describe the manner in which additional useful information may be either requested by or forwarded to the executing judicial authority. Article 15(2) permits the executing judicial authority to seek further information. It does not however require that the additional information be furnished by the issuing judicial authority. Furthermore, Article 15(2) refers to a situation where information communicated by the issuing member state is insufficient. Article 15(3) on the

other hand allows the issuing judicial authority at any time to forward additional useful information.

74. In the view of this Court, the case of ML puts beyond doubt any question of whether information may only be received from an issuing judicial authority. At para. 108, having referred to Article 15(2) which permits an executing judicial authority to request that the necessary supplementary information be furnished as a matter of urgency, the CJEU went on to state:-

'In addition, under Article 15(3) of the Framework Decision, the issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

In the view of this Court, that is an indication that the sub paragraphs of Article 15 are to be considered separately. That indication of the CJEU is further emphasised by the reference in para. 109 to the principle of sincere cooperation set out in the first sub-paragraph of Article 4(3) Treaty on European Union ('TEU') in which it is said that the 'European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.'

75. Paragraph 110 of the decision in ML refers to the executing judicial authority and the issuing judicial authority being permitted respectively to request information or give assurances concerning the actual and precise conditions in which the person concerned will be detained in the issuing member state. Paragraph 112 refers to an assurance that is being given or at least endorsed by the issuing judicial authority. In ML it was noted that the assurance was given by the Hungarian Ministry of Justice. It was not endorsed or provided by the issuing judicial authority. At para.114, the CJEU stated:-

'As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.'

76. The other cases referred to by the respondent above, did not preclude information being obtained from other sources. Indeed, cases such as Aronyosi and Caldararu and Tupikas expressly considered that that might be the position. In the case of Bob Dogi, the reference to the obtaining of the information from the judicial authority of the issuing member state pursuant to Article 15(2) be read in the context of what was being argued in that particular case.

77. Even if the request is made of the issuing judicial authority, the decision in ML clearly envisages the reply being provided by a competent authority of the member state. That reply must be assessed by the executing judicial authority. The principle of judicial supervision is one which in accordance with recital 8 is one which is primarily to be carried out by the executing judicial authority. The process is commenced by an EAW issued by a competent judicial authority in the issuing

state. Without such a judicial decision, there is no request for surrender within the meaning of the Framework Decision or the Act of 2003. However, in the context of taking a decision on the execution of that judicial decision in this member state, the High Court as executing judicial authority, must take into account all of the information provided to it by the issuing state. The fact that information is not provided by the issuing judicial authority, is a factor that the executing judicial authority must take into account when making a decision to surrender in reliance on that information.

78. This Court must also have regard to s.20 of the Act of 2003. Section 20 provides express authority for both the Central Authority and the High Court to seek information from either the issuing judicial authority or the issuing state. The purpose of this information can only be to assist in the carrying out of the functions under the Act of 2003. In light of the specific provisions of s.20, this Court must be entitled to rely upon the receipt of that information in making its determination as otherwise the enabling provision would be otiose. The Oireachtas cannot be considered to have legislated in vain. In those circumstances, the Act of 2003 must be interpreted as permitting the High Court to rely upon the information obtained from a competent authority within the issuing state. That provision would apply even if the Framework Decision did not permit the obtaining of such information. To hold otherwise would be to act contra legem to the provisions of the Act of 2003. On the basis of the decision in ML and the express provisions of Article 15 of the Framework Decision, it is however clear that the provisions in s.20 are not in any way in opposition to the provisions of the Framework Decision. I am therefore satisfied that, the information provided by the CPS in the UK is information to which I may have regard.

79. The information provided by the CPS, is information that is provided by a competent authority of the United Kingdom; the public prosecution service. It has not been suggested, by way of evidence or by way of submission, that the CPS is an institution inherently unreliable or is specifically unreliable in the present case. At most what the respondent submitted was that within the context of the UK legal system, they are an adversary to the respondent in the present case. While the CPS may be the moving party in relation to the criminal proceedings in the UK, for the present purposes, as a prosecution authority of a member state, they are informing this Court that the respondent will be prosecuted in respect of certain matters."

25. Having dealt with facts specific to the A.W. case, the High Court stated:

"82. The EAW in the present case sets out twelve offences in respect of which the respondent's surrender is sought for prosecution. The information provided by the CPS provides further clarification in respect of each of those offences certain matters. The provision of such information as the location of the conspiracies as being in Liverpool, the nature of the firearms and ammunition, the identity of the

co-conspirators and the role of this respondent as a controlling mind, cannot be described as anything other than information which clarifies the details of the offences alleged against him (where such information may be necessary). This has been provided by the CPS, the public prosecution service in England and Wales, and therefore a prosecuting authority within the United Kingdom. There is no reason whatsoever to doubt the authenticity of the information and the bona fides of the public prosecution service.

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

The Submissions of the Parties on this Appeal

26. The appellant and respondent greatly assisted with the disposal of this appeal with cogent and clear written and oral submissions.
27. In written submissions filed on behalf of the appellant, it was indicated that what was at issue in this appeal was the correctness of the decision in *A.W.* and the applicability of it to the facts of the present case. In particular, the appellant submitted:
 - a) the High Court in *A.W.* misconstrued the reference to "the issuing State" which should have been interpreted in light of the Framework Decision.
 - b) the High Court in *A.W.* misconstrued Article 15 of the Framework Decision by failing to give it a harmonious interpretation. It cannot be inferred from the specific reference in Article 15(3) to the "*issuing judicial authority*" that the reference to "*the issuing State*" in Article 15(2) implies that additional information which is required by Article 8 can be sent by any public body in the issuing State.
 - c) the High Court in *A.W.* misconstrued the effect of *M.L.* in two ways: first, the principle of mutual trust and recognition was not applied by the CJEU in that case to information which emanated from the executive branch of the State; secondly, the decision does not extend to mandatory information which is required to be in the warrant itself, as opposed to information which is extraneous to the warrant and related to prison conditions, a matter which was peculiarly within the knowledge of the executive branch.
 - d) the High Court in *A.W.* took into account the power of the Minister, as central authority, to seek information under s. 20(2), which was then contained in the Act of 2003. However, s. 20(2) has since been deleted and it is submitted that this was done because it was realised that the central authority was clearly not the appropriate body to seek additional information having regard to Articles 7 and 15(2) of the Framework Decision.

- e) The facts in *A.W.* were entirely different to the present case as the additional information did not constitute virtually all of the information which should have been included in the warrant in the first place and did not contradict the substantial information contained in the warrant.
28. In the course of the oral submissions, counsel for the appellant clarified that she was not making the case that "issuing State" in s. 20 could only mean the issuing judicial authority. Instead, she relied upon the requirement of the High Court to seek additional information from "the issuing judicial authority or the issuing state, as may be appropriate." In her submission, the issue turns on whether it was "appropriate" for the CPS to reply on issues which were fundamental, such as matters pertaining to Article 2(2) and other matters which ought to have been contained in the EAW in compliance with Article 8. Therefore, in her submission, for matters outside the core requirements of the EAW such as prison conditions or system of trial, information could be received from the issuing State.
29. A fair synopsis of the appellant's main contention in this appeal is that information, which is specifically required by Article 8 of the Framework Decision to be stated in the EAW, can only be provided by a judicial authority. Counsel submitted that where this information was not provided, surrender should be refused. The grounds for refusing to surrender went further than those grounds set out in Article 3 to 5 of the Framework Decision and incorporated a requirement that the legality of the process must be satisfied. She relied upon the decision of the CJEU in the case of *Parchetul de pe lângă Curtea de Apel Cluj v. Niculaie Aurel Bob-Dogi* (Case C-241/15) (hereinafter, "*Bob Dogi*") to support her contention. In *Bob Dogi*, the Hungarian system permitted the domestic warrant to also constitute the EAW. The CJEU held: -

"Article 8(1)(c) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, is to be interpreted as meaning that the term 'arrest warrant', as used in that provision, must be understood as referring to a national arrest warrant that is distinct from the European arrest warrant.

Article 8(1)(c) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, is to be interpreted as meaning that, where a European arrest warrant based on the existence of an 'arrest warrant' within the meaning of that provision does not contain any reference to the existence of a national arrest warrant, the executing judicial authority must refuse to give effect to it if, in the light of the information provided pursuant to Article 15(2) of Framework Decision 2002/584, as amended, and any other information available to it, that authority concludes that the European arrest warrant is not valid because it was in fact issued in the absence of any national warrant separate from the European arrest warrant."

30. Counsel also submitted that s. 20 had to be interpreted in light of the Supreme Court decision in *Rimsa v. Governor of Cloverhill Prison and Anor.* [2010] IESC 47 which interpreted s. 16 of the Act of 2003 in line with the Framework Decision so as to restrict the meaning of the phrase “issuing State” to mean “issuing judicial authority”.
31. It was also submitted that the decision in *M.L.* was not authority for the proposition that a body other than the issuing judicial authority may provide information required under the Framework Decision. Counsel referred to para. 53 of the judgment and to para. 104 which refers to a dialogue between the issuing and executing judicial authorities. The general position is that requests for information should come from the issuing judicial authority. In *M.L.*, prison conditions were at issue and that, she submitted, was quite different from information required to be in the EAW from the outset.
32. Counsel submitted that there was also no consideration by the CJEU of the proposition that a prosecutor who was neither an issuing judicial authority nor even a central authority may provide information that should have been in the EAW. Counsel relied on the recent set of cases: *P.F. (Case C-509/18)*; *J.R.*; *Y.C. (Joined Cases C-566/19 and C-626/19 PPU)*; *Openbaar Ministerie (Swedish Public Prosecutor’s Office) (Case C-625/19 PPU)*; and *Openbaar Ministerie (Public Prosecutor, Brussels) (Case C-627/19 PPU)* in which the designation of prosecutors as issuing judicial authorities was subject to a proportionality check. This was the essence of effective judicial protection. Counsel submitted that this case was stronger as the CPS was not an issuing judicial authority under UK law. Counsel submitted that it had no status therefore, under English law.
33. Since the oral hearing, this Court and the appellant were informed by the Chief State Solicitor that a question has been referred to the CJEU by a Slovakian executing judicial authority in *M.B. and Generálna prokuratúra Slovenskej republiky (Case C-78/20)*. The question is as follows: “*Must the requirements which a European Arrest Warrant must satisfy as a judicial decision under Articles 1(1) and 6(1) of the Framework Decision 2002/584 be applied also to supplementary information provided pursuant to Article 15(2) thereof, where, for the purposes of the decision of the executing judicial authority, it substantially supplements or changes the content of the arrest warrant originally issued?*” The appellant sought leave to address this Court as to the desirability of making a reference in the present case. Apart from submitting that the reference concerned the same issue as raised in this case, the appellant submitted that as he was in custody, it would guarantee an expedited hearing before the CJEU in contradistinction to the Slovakian reference. I will address the issue of a reference later in this judgment.
34. Counsel relied upon the case law of the CJEU which, she submitted, highlighted the importance of the fundamental rights provision in the Charter of Fundamental Rights of the European Union (hereinafter, “the EU Charter”). In particular, counsel relied upon the right to liberty and security under Article 6 of the EU Charter and the corresponding provision of Article 5(2) ECHR which provides for the right, on arrest, to “be informed promptly [...] of the reasons for his arrest and of any charge against him.” It was submitted that the rights provided for in Article 8 were not trivial but important matters

which allow the requested person to understand the basis for the EAW, the offences with which he is charged and to permit him to challenge his surrender. In this latter respect, counsel relied upon the matters identified by the High Court in *Minister for Justice and Equality v. Cahill* [2012] IEHC 315.

35. The appellant took serious issue with the reliance on the phrase used by the CPS that the response was made on behalf of the issuing judicial authority. Counsel for the appellant pointed to an absence of any indication that this was in fact permitted under English law. In any event, if English law did allow “the CPS to conduct the role of the issuing judicial authority” this should be stated in the EAW in accordance with the legal principles emanating from the CJEU decision in *Piotrowski* (Case C-367/16). There was no statement of delegation to the CPS by the issuing judicial authority. The appellant submitted however that the issuing State was not at liberty within the EAW system to decide themselves who may be designated as an issuing judicial authority. The appellant also submitted that the principle of mutual trust and confidence does not apply to assertions which run contrary to the information in the EAW, which did not identify the CPS as having any role at all.
36. In light of Article 8, which is in mandatory terms, the information required therein could only be given by the issuing judicial authority. It was submitted that Article 15 was a mechanism for the issuing judicial authority to supplement information in the European arrest warrant. It was submitted that Article 15(3), which referred to the volunteering of information by the issuing judicial authority, made clear that the supplementary information in Article 15(2) should be sought from the issuing judicial authority.
37. In the appellant’s submission, the above interpretation of Article 15 was required by the Framework Decision (Recital 5 and Article 1(1)) as the EAW was a “judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person.” By extension, s. 20 had to be given the same interpretation.
38. The appellant relied upon the *Sliczynski* in that regard, although counsel acknowledged that *Sliczynski* centred around whether the additional information had to be provided on affidavit. The appellant submitted that there was no Supreme Court or CJEU case which does anything other than state that the issuing judicial authority must provide the information.
39. The appellant submitted that it was necessary to recall that mutual recognition and mutual trust and confidence were two different things, relying on a number of cases such as *Minister for Justice v. Stapleton* [2008] 1 I.R. 669; *Piotrowski*; *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU); and *P.F.* For mutual recognition to operate there must be compliance with the Framework Decision, which requires judicial production of the information required to be in the European arrest warrant.
40. Counsel submitted that the type of additional information that could be provided under Article 15 did not apply to the mandatory information required to be in the EAW itself.

Counsel for the appellant submitted that if the additional information could be given by a person or body who was not the “*issuing judicial authority*” and could amount to the provision of virtually all of the information required by Article 8, the system of judicial co-operation established by the Framework Decision would be completely set at naught. This would undermine the clearly stated position of the CJEU as set out in *P.F.*, para. 25:

“However, the principle of mutual recognition proceeds from the assumption that only European arrest warrants, within the meaning of Article 1(1) of Framework Decision 2002/584, must be executed in accordance with the provisions of that decision. It follows from that article that such an arrest warrant is a ‘judicial decision’, which requires that it be issued by a ‘judicial authority’ within the meaning of Article 6(1) of the framework decision.”

41. The appellant submitted therefore, that the principle of mutual recognition does not extend to *ad hoc* arrangements by which a body in the issuing State, without any information as to its legal authority to do so, purports to fulfil the duties of the issuing judicial authority lawfully designated in that State. On the contrary, the executing judicial authority should require compliance with the Framework Decision.
42. The respondent relied on the statement of the legal principles set out in *A.W.* and submitted that they applied with equal force to these proceedings. The respondent took issue with each of the points made by the appellant as to why the above principles were incorrect. Moreover, the respondent focused upon the information in the EAW and pointed to the two judicial processes it had been subjected to prior to the arrest of the respondent in this jurisdiction. The issuing judicial authority had issued the EAW and was thus satisfied that there was compliance with the Framework Decision as set out in the law of the UK. As the EAW indicated, a domestic warrant had been issued for the arrest of the appellant for the offences set out in the European arrest warrant. The EAW had also been subjected to a process of endorsement by the High Court in this jurisdiction, prior to the arrest of the appellant.

Analysis and Determination

43. In my view, the issues raised in this appeal require the Court to address three matters. The first is the nature and extent of the information in the EAW and the endorsement process in the High Court. The second is the correct interpretation of s. 20 and the third concerns the approach of the CJEU to the requirements of the Framework Decision and in particular, its decision in *M.L.* Naturally these matters will overlap but I consider it helpful to start with that general outline.
44. This Court, at the hearing of the appeal, raised the issue of whether there was sufficient information in the original EAW for the purpose of resolving the issue of whether the provisions for surrender have been met. Submissions were made by both parties on this point. The appellant submitted there was no sufficient information for the reasons set out herein. The appellant also pointed to the manner in which the proceedings had progressed in the High Court, in particular where the respondent had at the very least encouraged the High Court to seek further information pursuant to s. 20 of the Act of

2003. The respondent submitted that there had be no formal concession that there was inadequate information but accepted that certain areas for further enquiry had been raised by the respondent before the High Court. This was in circumstances where the absence of certain information may have caused the High Court (or an appellate court) to refuse surrender, where such risk could have been averted by seeking the information.

45. I am satisfied that regardless of how the further request for information arose in the High Court, this Court is entitled to consider whether the information in the original EAW was sufficient for surrender. The issue of the sufficiency of information and whether Article 8 and s. 11(1A) has been complied with formed a central aspect of the appeal. The final determination of this Court is whether the order to surrender the appellant was validly made based upon the sufficiency of the information. In those circumstances, it is of necessity that the Court would examined the nature of the information in the original EAW as well as in the additional information. Ultimately, this Court must decide whether the High Court decision to surrender was validly made. It is also of particular note that the Court invited the parties to address this aspect of the case.

Was sufficient information provided in the EAW?

46. The most relevant provisions of s.11(1A) have been set out above. The provisions of s. 11(1A) generally mirror the requirement of Article 8 of the Framework Decision. Despite the contention of the appellant that “virtually the entire of the information required to be in the European arrest warrant is contained in a letter from the CPS” this is patently not the case. There was no dispute about the fact that the EAW had identified the appellant as the requested person, that it identified the issuing judicial authority together with its contact details and the EAW stated and identified that a domestic warrant was in existence for his arrest. Moreover, while the appellant submitted that there was no compliance with sub-section (d), in that it did not state the offences to which the EAW relates or their nature and classification, I am satisfied that this submission is untenable. The EAW clearly identifies the 41 offences (the only reasonable and indeed possible inference is that 39 of those were manslaughter offences in relation to each of the 39 persons found dead inside the trailer), it identifies the statement of offence as per UK law and it identifies the particular statutory code in relation to the trafficking offences (both the underlying substantive offence and the provisions relating to the conspiracy offences). In respect of the manslaughter offences, the EAW identifies that manslaughter is an offence contrary to common law. It furthermore identifies that this offence is proved if the appellant intentionally did an unlawful and dangerous act from which death inadvertently resulted. The EAW also identifies the maximum penalties in respect of each offence.
47. The appellant’s case, therefore, was addressed primarily to the failure to comply with s. 11(1A)(e) of the Act of 2003 *i.e.* to a purported failure to provide details of the circumstances in which the offence was committed and in particular, the degree of involvement of the person in the commission of the offence. This latter requirement reflects the phrase “degree of participation” set out by Article 8 of the Framework

Decision. Degree of participation is the wording used in the form of the EAW annexed to the Framework Decision.

48. Subsection 11(1A)(e) of the Act of 2003 has been the subject of repeated pronouncements by the Supreme Court and High Court. It was quite correctly not questioned at this appeal that the subsection did not require a statement of the evidence in relation to the offences. It was accepted, in accordance with the decision of the Supreme Court in *Minister for Justice and Equality v. Stafford* [2009] IESC 83, that the EAW does not have to establish a strong case or even a prima facie case. In *Stafford*, the case against the requested person was a circumstantial one and the Supreme Court accepted that nonetheless, the requirements under the Act of 2003 and Framework Decision were satisfied.

49. In *Minister for Justice v. Dolny* [2009] IESC 48, the Supreme Court stated:-

"In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole."

Although this *dicta* relates to the issue of correspondence of offences, I am satisfied that it is also applicable to all matters that require to be determined prior to surrender.

50. There is extensive case law on the purpose for which the information required in s.11(1A) must be given. In *Cahill* it was stated:-

"The fact that there is a precise description of the facts of the case is important, even though the issue of double criminality is not required to be considered. It is important that there be a good description of the facts. An arrested person is entitled to be informed of the reasons for his arrest and of any charge against him in plain language which he can understand. Also, in view of the specialty rule, the facts upon which a warrant is based should be clearly stated."

51. The appellant took the view that this information includes information relevant to the issue of extra-territoriality. That information is not specifically required under the provisions of the Framework Decision. I say this because the issue of extra-territoriality is not a mandatory ground of refusal in the Framework Decision and the form of the EAW set out in the annex specifically states at (f) "Other circumstances relevant to the case: (optional information): *NB This could cover remarks on extraterritoriality....*"

52. This appeal raised the issue of whether there was insufficient information in relation to the degree of participation. The appellant submitted that there was no indication of the unlawful and dangerous act that underlay the offences of manslaughter. In my view, that is not a sustainable argument; the only possible inference from the EAW as a whole in this regard, is that the unlawful and dangerous act is the facilitation of the breach of immigration law by means of the use of the trailer to bring the unfortunate victims into

the UK unknown to immigration officials. It is noted that the appellant never contested that the High Court was entitled to draw a reasonable inference from the information in the warrant.

53. It is worth noting at this point that as part of his complaint about the information from the CPS, the appellant referred to the fact that the CPS gave a second basis for the proffering of the manslaughter charge *i.e.* it would be prosecuted also as gross negligence. This intended basis has now been withdrawn in the more recent letter from the Crown Prosecution Service. The relevance of this point can be quickly dispensed with. In the first place, the present issue is about the information in the EAW and thus only the information found in the EAW need be taken into account. Thus, the focus must be on whether the information in the EAW was sufficient to establish correspondence and to provide the relevant degree of participation in that regard. Secondly, as the CJEU has accepted, there is nothing unlawful or improper in an issuing State changing aspects of the charge against a person who is surrendered provided the general charge remains the same. In *Leymann and Pustovarov (Case C-388/08 PPU)*, the CJEU was asked to consider the provisions of Article 27(2) of the Framework Decision relating to the rule of speciality. The CJEU held that:-

"it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision."

54. In *Leymann and Pustovarov*, even though the individuals were convicted in respect of a different narcotic than that recited in the details of the offence for which they were surrendered, there was no breach of the speciality provisions of the Framework Decision. By analogy, I am quite satisfied that where there is information in the EAW sufficient to establish correspondence, it is immaterial to the issue of whether the person should be surrendered on that offence if the issuing judicial authority (or prosecution authority) indicate that there may be an additional legal basis upon which the person can be prosecuted for the same offence.
55. I will return to the key issue of whether there is sufficient evidence in this particular warrant. Given the information that was subsequently provided, it might have been preferable if some of that information had been provided in the original warrant. Whether an ideal amount of information is contained in the EAW is not the test, it is one of sufficiency. The experience of these courts when dealing with EAW's from across the other 27 Member States has been that the amount of information provided varies enormously, not just from Member State to Member State but from one judicial authority

to another in a Member State. Sometimes much more information than necessary is provided. This makes the EAW more time consuming to read, particularly where there are pages and pages of extraneous information provided in a translation that is less than flowing. Occasionally when the information provided is insufficient to ensure that the requested person knows the reason why he is being sought and that the executing judicial authority can make a decision as to whether the legal requirements have been met for surrender, the executing judicial authority is required to seek further information.

56. I will now consider if there was sufficient information in the EAW to demonstrate correspondence (or double criminality) in respect of each of the offences alleged against the appellant with an offence in this jurisdiction. In relation to the conspiracy charge, the appellant submits that there is no statement of fact in respect to an agreement which is the essence of a conspiracy charge. As set out above, the EAW stated that a conspiracy is committed if a person agrees with one or more persons to a course of conduct that will necessarily amount to the commission of a criminal offence. The EAW set out that a person commits the offence of assisting unlawful immigration where they do an act which facilitates the breach of immigration law by an individual who is not a citizen of the European Union. Although the EAW does not specifically address the fact that the persons in the trailer were not EU citizens, that is the only reasonable inference one can draw from the charges proffered. Importantly, part (e) of the EAW opens with the statement: "The case against Eamon (*sic*) Harrison relates to the trafficking and subsequent deaths of 39 people within an artic trailer unit GTR1 28D". The EAW goes on to describe the appellant's role in delivering the trailer to the port in Zeebrugge from where it was transported to the UK and collected by another lorry driver. In the context of a description of acts in an EAW or any extradition document, the words must be given their ordinary meaning (See *Attorney General v. Dyer* [2004] 1 I.R. 40).
57. In my view, taking the EAW as a whole and drawing reasonable inferences, it is clearly being alleged that the appellant was in an agreement to commit an act which facilitated a breach of immigration law. His agreement was to the facilitation of that breach by delivering the trailer to the port of Zeebrugge for onward transport to the UK, with its tragic cargo of 39 would-be immigrants by unlawful means into that country. The trailer containing the 39 people was to be collected by another. The manner in which this would be proved i.e. the evidence upon which he will be tried if surrendered, is unnecessary to include in the European arrest warrant.
58. In relation to the manslaughter charges, as I have already stated, the unlawful and dangerous act is clearly the act of facilitating a breach of immigration law by bringing the immigrants into the United Kingdom in the back of an articulated trailer. No other inference is reasonable or even possible. His degree of participation was to deliver the trailer with the 39 people seeking to illegally enter the UK to the port of Zeebrugge from whence they would be transported to the UK. Those circumstances are set out in the warrant. In my view, the portrayal of his role in the EAW is sufficient to comply with the requirement of the Act of 2003 and the Framework Decision. By playing this role he has personally facilitated an act of illegal immigration and the dangerous element was the fact

that the transportation was over a significant period in the rear of an artic trailer unit. That is sufficient to establish manslaughter in this jurisdiction, there being a corresponding offence of illegal immigration and the act being objectively dangerous.

59. In light of the above finding, there is no longer any necessity to go further with the issue raised on this appeal. For that reason, the issue referred to the CJEU by the Slovakian judicial authority has no bearing on this Court's decision which has the result of upholding the order of surrender made by the High Court in respect of this appellant. Article 267 preliminary references are only to be made in respect of relevant questions where the decision is necessary to give judgment. I have carefully considered the appellant's request for a further hearing. I am satisfied however that the issue (or question) raised is not necessary for the purpose of giving judgment, it is also unnecessary to accede to the request for a further hearing on whether this court should make a similar reference. To hold such a hearing in these circumstances would serve no purpose and amount to a waste of valuable judicial resources and unnecessarily increase legal costs.
60. I have considered however whether this Court should give its views on the issue raised by the appellant in these proceedings as to the identity of the entity providing additional information. As the issue has been fully ventilated before this Court and may be relevant for further consideration in the Supreme Court in the event of leave to appeal being granted, I am of the view that it is appropriate to address the issue within this judgment. I will also address whether a further hearing on the issue of this Court making its own reference would have been required.

Did the Act of 2003 and the Framework Decision require the additional information to be furnished by the issuing judicial authority?

61. Prior to addressing the issue of the interpretation of s. 20 of the Act of 2003 and Article 15 of the Framework Decision, it is instructive to consider the judicial processes that have been undertaken in respect of this particular European arrest warrant. The appellant's primary contention is that mutual recognition is reserved for judicial decisions. In the UK, there has been an initial judicial consideration in the domestic context resulting in the issue of a warrant for his arrest. A separate consideration took place by a different judicial authority as to whether an EAW should issue. On the basis of the facts set out in the EAW and in accordance with the principles of mutual recognition of judicial decisions and mutual trust in those decisions, the executing judicial authority in this jurisdiction was bound to accept that it was considered lawful and proportionate to issue the warrant. Thus, there was a decision by a judicial authority that sufficient facts had been set out in the EAW to indicate the circumstances of the offences and the degree of the appellant's involvement. It was then a matter for the executing judicial authority in this jurisdiction to assess if that was in fact correct for the purpose of the execution of the EAW and the order of surrender.
62. In this jurisdiction, an EAW cannot be executed by a member of An Garda Síochána until the High Court has endorsed it for such execution under the provisions of s. 13 of the Act of 2003. The High Court may only endorse the EAW where it is satisfied that there has been compliance with the Act of 2003. At the point when the EAW is presented to the

High Court for execution, the High Court may refuse to endorse, may request further information or it may endorse. It appears that in the present case, the possibility of further information being requested may have been raised at that stage. It was only after the points of objection were served, that the request was made.

63. The endorsement stage is carried out *ex parte*. The decision that there is compliance with the Act of 2003 is inherently a provisional one, subject to argument and reconsideration. It is a "vetting" process, where EAW's which patently do not comply with the Act of 2003 are either refused endorsement, or further information is sought to permit possible endorsement. As to why an EAW may be refused, an example may be where surrender is sought for conduct which does not correspond to any offence in this jurisdiction. Rather than permit a situation to arise where a person who could not possibly be surrendered on the EAW would be arrested, the EAW is refused at an early point. In every case, the High Court will be alert to the possibility of whether there is correspondence of offences, but the High Court may decide that if one offence corresponds, that is sufficient until further information arrives. No such information was sought at the correspondence stage here. There is weight, albeit limited weight, to be given to the fact that there was at least a provisional conclusion by the High Court that correspondence was made out in respect of each offence in the warrant. That fortifies me in the view I held above, namely that the EAW contained sufficient information to assess compliance with the Act of 2003.
64. The fact that there has been judicial consideration of the matters in the EAW by the issuing judicial authority is relevant to the appellant's submission that all of the information required to be in the EAW must come from an issuing judicial authority. It is now established by the CJEU that while an issuing judicial authority may be a public prosecutor, there must be some type of judicial oversight of the process as well as a guarantee of independence of the prosecutor. The CPS is not the issuing judicial authority and, in any event, the appellant submitted that there was no oversight in respect of the information provided by the issuing judicial authority. Moreover, counsel submitted that as the information is required by virtue of the provisions of s. 11 to be treated as part of the EAW, it is clear that the Act of 2003 requires it to be provided by an issuing judicial authority as designated by the issuing member state (and in compliance with the Framework Decision).
65. The appellant's argument set out in para. 34 above, that the information required must comply with the provisions of Article 5(2) ECHR but did not do so, is not, to my mind, a convincing one. The EAW contained a clear indication of the nature of the charges the appellant would be facing on surrender to the UK and also a great deal of information about his role in it. In the context of an Irish charge sheet, an accused might simply be told that he was being arrested and charged with for example, an offence of unlawful killing of a person, identified in some manner, on a given date. Further information would be given prior to the trial for the purpose of a defence. Indeed, in the present case there was no application for his release on the basis of inadequate information. On the contrary, the issue was reserved to the question of whether he could be surrendered on this particular EAW.

Interpreting the provisions of s.20

66. It is trite law to say that s. 20 must be interpreted in light of the objectives of the Framework Decision. Fennelly J. in *Sliczynski* observed that “it specifically gives effect to Article 15(2) and (3) of the Directive (sic).” The appellant submitted that the Supreme Court in *Sliczynski* and *Minister for Justice, Equality and Law Reform v Rodnov* (Unreported, ex tempore, Supreme Court, Murray C.J., 1st June 2006) referred to the information being provided by the issuing judicial authority. I am satisfied that as the precise issue at stake here was not argued in those cases and as they were decided prior to the decision of the CJEU in *M.L.*, the *dicta* from those cases concerning the issuing judicial authority does not amount to binding authority.
67. The Supreme Court in *Rimsa* held that the reference to “issuing state” in s. 16 concerning the rearrangement of the time fixed for surrender had to be interpreted in accordance with Article 23(3) of the Framework Decision. That Article referred to the time being rearranged by the issuing judicial authority and the executing judicial authority. The decision in *Rimsa* was a perfect example of an interpretation in accordance with the objectives of the Framework Decision and using the corresponding Article to interpret the Irish provisions.
68. What is instructive in *Rimsa* is that the Supreme Court could not read the provision in s. 16, which permitted the Irish central authority to arrange the date, in a manner consistent with Article 23(3) so as to be understood as a reference to the executing judicial authority. The Supreme Court held that to do otherwise would be to read the Act of 2003 *contra legem* which of course, is not permitted.
69. By contrast with Article 16 of the Framework Decision, Article 15(2) does not restrict the information to that of the issuing judicial authority. In the absence of that clarity, the appellant submits that a harmonious interpretation of the Framework Decision requires Article 15(2) to be read as requiring the information to be provided by the issuing judicial authority when the additional information relates to essentials which should have been in the European arrest warrant. The detail of that argument will be addressed further below. Suffice to say at this stage, that no clear contraindication is given in Article 15(2) that would demand an interpretation of s. 20 that only the issuing judicial authority may provide information as set out in Article 8.
70. Section 20 refers separately to the issuing State and to the issuing judicial authority. Indeed, the legislative history demonstrates that the reference to the “issuing State” was added into the section by an amendment in 2005. The section permits the request to be made to either the issuing judicial authority or the issuing State as appropriate, to provide the High Court with the information. The appellant confirmed at the oral hearing that the case was being presented on the basis that it was not appropriate that information that was required to be contained in the EAW pursuant to Article 8 could be provided by the issuing State.
71. In my view, the analysis of the High Court in *A.W.* at para. 73 as to the different language between Article 15(2) and (3) is correct. Ultimately, there is no requirement set out in

Article 15(2) that information be provided by or through the issuing judicial authority. Indeed, the Article expressly refers to Article 8 but also to Articles 3-5, which are the grounds for mandatory and optional refusal to surrender and to guarantees that must be given. Moreover, there is reference in Article 15(2), to the information being furnished as a matter of urgency. That indeed may be part of the consideration of the “appropriate” body to send on the information.

The M.L. Decision

72. The *M.L.* case specifically dealt with the provision of information by the executive branch of the Member State as distinct from the issuing judicial authority (or any judicial authority). The relevant portions of the judgment have been set out above. The appellant also relied upon para. 104 to demonstrate that the process of obtaining additional information is a dialogue between the issuing and executing Member States. In my view, the manner in which the CJEU ruled in *M.L.* makes clear that information may be provided by the issuing State and is not required to only be provided by the issuing judicial authority: “*the executing judicial authority may take into account information provided by authorities of the issuing Member State other than the issuing judicial authority, such as, in particular, an assurance that the individual concerned will not be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.*” Thus, the CJEU was satisfied that there was no general restriction on the provision of information by a non-judicial authority of the issuing Member State.

The Bob-Dogi Decision

73. The appellant also referred to the *Bob-Dogi* decision to demonstrate that a refusal to execute an EAW was not confined to the grounds set out in Articles 3 and 4 of the Framework Decision but extended to the legality of the EAW itself. The appellant referred to paras. 63, 64 and 65 of the judgment. In the appellant’s submissions, the *Bob-Dogi* case concerned the essentials to be found in the EAW and by extrapolation, the *M.L.* decision did not affect the requirement for those to be given by the issuing judicial authority.

74. In my view, the *Bob-Dogi* case identifies that there are certain fundamental necessities for the execution of an EAW. Indeed, the seminal decisions of *Aranyosi (Case C-404/15)* and then *M.L.* also indicate that where certain fundamental rights will not be protected (freedom from inhuman and degrading treatment and right to a fair trial) surrender must be refused. The grounds for refusal to execute an EAW in the Framework Decision made no express reference to fundamental rights. In *Bob-Dogi*, at para. 63, the CJEU identified that the grounds for non-execution were premised on the basis that the EAW will satisfy the requirements as to lawfulness of that warrant as laid down by Article 8(1). The CJEU specifically referred to Article 8(1)(c) laying down a requirement of lawfulness which must be observed if the EAW is to be valid. Failure to comply with it must in principle lead to a refusal to surrender. The CJEU did go on to say that the issuing judicial authority must be given an opportunity to provide information in accordance with Article 15(2) to establish whether there was such a domestic warrant. Even with that information, the executing judicial authority may take into account other information in assessing whether to surrender.

75. In my view, the reference in *Bob-Dogi* to Article 15(2) and to the issuing judicial authority being given the opportunity to provide information is not dispositive of the issue of whether information may be provided by an organ of the issuing Member State other than the issuing judicial authority. Even in *Bob-Dogi*, it was clearly acknowledged that other information could be put before the executing judicial authority. While that may have referred to information placed by the requested person, it is an acknowledgement that the executing judicial authority has an obligation to take on board all information before it when assessing legality. I also take the view as found in para. 76 of *A.W.*, that the CJEU in *Bob-Dogi* did not seek to lay down a general requirement as to all information in Article 8 being required to be obtained from the issuing judicial authority. The decision must be read in the context of what was at issue in that case. By contrast, the issue of the provision of information by an authority other than the issuing judicial authority was directly raised in *M.L.*. The CJEU accepted that it could be received and assessed in the manner set out in the judgment as referred to above.

The imperative to surrender in accordance with the Framework Decision

76. What most of the decisions of the CJEU have in common is a strict injunction to executing judicial authorities that the Framework Decision requires that requested persons be surrendered promptly in accordance with its provisions. For example, in *Aranyosi and Căldăraru (Case C-404/15)* the CJEU stated at para 78 and 79:

“Both the principle of mutual trust between the Member States and the principle of mutual recognition are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, Opinion 2/13, EU:C:2014:2454, paragraph 191).

In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital (6) of that Framework Decision, the ‘cornerstone’ of judicial cooperation in criminal matters, is given effect in Article 1(2) of the Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (see, to that effect, judgment in Lanigan, C 237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).”

77. Of course, the seminal nature of the *Aranyosi* decision was that the CJEU held that there could be limitations on the principles of mutual recognition and mutual trust in exceptional circumstances such as those where fundamental rights are at issue. The CJEU in *Minister for Justice and Equality (Deficiencies in the System of Justice)* held that refusal to execute is an exception which must be interpreted strictly.

78. In a more recent case than *Bob Dogi*, which concerned the execution of an additional sentence in the issuing State which had not been mentioned in the EAW, the CJEU gave

its own interpretation of what was held in *Bob-Dogi*. In the case of *I.K. (Case-551/18 PPU)*, at para. 43 the CJEU stated: -

“The Court has also held that those provisions are based on the premiss that the European arrest warrant concerned will satisfy the requirements as to the lawfulness laid down in Article 8(1) of the framework decision and that failure to comply with one of those requirements as to lawfulness, which must be observed if the European arrest warrant is to be valid, must, in principle, result in the executing judicial authority refusing to give effect to that warrant (see, to that effect, judgment of 1 June 2016, *Bob-Dogi*, C 241/15, EU:C:2016:385, paragraphs 63 and 64)”.

79. In *M.L.* the CJEU again stressed that a stringent assessment must be made as to whether there are exceptional circumstances that justify non-surrender. As part of that assessment, the executing judicial authority may consider information supplied by another agency of the Member State. It must also be noted that the decision in *Aranyosi* and *M.L.* both post-date the decision in *Bob-Dogi*. In my view, nothing in those cases nor in *Bob-Dogi* itself, supports the appellant in his argument that only information contained in Article 8 can be supplied by the issuing judicial authority. The executing judicial authority is entitled to consider material provided to it by sources other than the issuing judicial authority.

Mutual recognition and mutual trust

80. The appellant's point that mutual trust and mutual recognition are separate concepts is not contested. The principle of mutual recognition is built on the concept of mutual trust. There is mutual trust between Member States. Moreover, the entire system of extradition (and not just the surrender system of the Framework Decision) was based upon a certain level of trust and confidence between the State parties to the extradition arrangements (for example, see para. 10.3 of *Attorney General v. O'Gara* [2012] IEHC 179). Thus, there is a residual trust between countries in any extradition arrangements though the extent of that trust may vary. Mutual trust within the EU is at a very high level.
81. It is of course the position that the CJEU in *M.L.* specifically referred to mutual trust in the context of information coming from the issuing judicial authority and stated that it must be relied upon. In the context of an assurance coming from another source, the executing judicial authority had to carry out its assessment in light of all the information presented to it. That is not a statement by the CJEU that mutual trust does not apply between Member States. On the contrary, the difference in the approach between the judicial assurance and the assurance by a State organ reflects the uniqueness of the mutual recognition system which operates at a high level of mutual trust between judicial authorities. There is always a level of mutual trust between Member States, but an executing judicial authority is bound to give information provided by a non-judicial authority greater scrutiny than information provided by another judicial authority.
82. In the present case, the EAW contained virtually all of the information required (accepting for the present purposes that some was missing) under Article 8(1) of the Framework

Decision. For the purpose of the present argument, it is considered that what may have been missing was further information on the degree of participation in the alleged offences to the extent necessary for the executing judicial authority to carry out its functions. As stated previously, an issuing judicial authority in the UK issued the EAW in apparent lawful compliance with UK law. This was entirely unlike the situation in *Bob-Dogi* where the EAW did not contain specific information about a domestic warrant which was a clear requirement of Article 8(1)(c) of the Framework Decision. Even then, the executing judicial authority was required to undertake a consideration of all information in its possession prior to making a decision on execution.

The assessment made by the High Court on this EAW

83. The High Court had before it an EAW that was issued by an issuing judicial authority in the UK, which in turn was based upon a domestic warrant issued for this appellant. At the point where objection was made to surrender, the High Court sought further information from the issuing judicial authority. Information was provided through the UK central authority by way of a letter and enclosed a response from a member of the CPS which is the public prosecution authority in England and Wales. Contrary to what was claimed in submissions by the appellant, this was not contradictory or inconsistent with the information in the European arrest warrant. Indeed, that was an express finding of the High Court Judge and that finding was not appealed by the appellant. Moreover, the appellant has not challenged the *bona fides* of the prosecutor or the contents of the information, nor has the appellant put forward any other version of facts or law to contradict a single piece of the information (the appellant has put forward information from news outlets as to the progress of cases against other persons). In short, there is nothing to cast any doubt whatsoever on the accuracy of the information provided by the Crown Prosecution Service.
84. The appellant has taken issue with the reliance by the trial judge on the principle of mutual confidence referred to by Fennelly J. in *Stapleton* which in turn reflects Article 10 of the Framework Decision, citing *M.L.* and the different standard. There is an artificiality about this argument. The High Court was, in accordance with *M.L.* and *Bob-Dogi*, obliged to consider the information before it. In the absence of any challenge whatsoever to its authenticity or the *bona fides* of the CPS, there was simply no reason to reject it. Indeed, the reality is and was that the appellant's objection has been based on a process argument (albeit one made in the context of the protection of fundamental rights) that only an issuing judicial authority could provide the information required by Article 8.
85. The objective behind the Framework Decision is to have a simplified system of surrender and the CJEU has expressly permitted assurances/information (including in particular those relating to the absolute right such as freedom from inhuman and degrading treatment) to be provided by an organ of the issuing State other than the issuing judicial authority. In those circumstances, it is untenable that the executing judicial authority could be prohibited from taking into account information provided by the prosecuting authorities which expanded upon the circumstances of the offences as set out in the European Arrest Warrant. Indeed, it is precisely the type of information that the

prosecuting authorities would have in its possession, rather than the issuing judicial authority.

86. The High Court was entitled to consider the information provided by the Crown Prosecution Service. That additional evidence laid to rest any possible doubts there may have been that the full details referred to in Article 8(1) of the Framework Decision had not been set out in the European arrest warrant.

Conclusion

87. In the course of this judgment, I have concluded that the original EAW, although somewhat terse, had contained the information required for this Court to carry out its functions. In particular, the details in the EAW, when read as a whole, gave sufficient indication of the acts for which the appellant was sought, to permit the Court to conclude that correspondence between offences could be established. Although that was not the precise means by which the High Court came to the conclusion that correspondence had been established, it is nonetheless appropriate for this Court to do so.
88. I have also, for the sake of completeness, and should any application for leave to appeal to the Supreme Court be made, considered the appellant's primary point as to whether the High Court was entitled to consider information furnished to it by the prosecution rather than the issuing judicial authority. I have considered that both s. 20 of the Act of 2003 and Article 15(2) of the Framework Decision permitted the High Court to do so. Having considered the information, the High Court conducted an appropriate assessment of the information and correctly concluded that all the conditions for surrender to the issuing State had been met.
89. In relation to the question referred by the Slovakian judicial authority to the CJEU, in light of my findings in respect of the sufficiency of the information provided in the EAW, a reference is not necessary for the purpose of giving judgment that the order of the High Court to surrender the appellant should be upheld. Although I have been clear in the course of this judgment that the High Court was entitled to consider this information and to conduct the appropriate assessment of that information for the purpose of considering whether the conditions for surrender had been met, but for the fact that this case was decided on the basis set out above, it would have been appropriate for the Court to hold a further hearing as to whether there should have been a referral. I note that the appellant submits that it is significant that the CJEU did not deal with this under Article 99 of the Rules of Procedure of the Courts of Justice (as amended) by way of reasoned order. This permits the CJEU at any time to decide in that fashion where the answer may be deduced from existing case law or where the answer admits of no reasonable doubt. The fact that no such decision has been made up to this point may or may not be relevant to whether the issue can be said to be clear. Certainly, the fact that this appellant is in custody on this matter alone (and thereby likely to be granted an expedited hearing) is a reason to give serious consideration to making a reference rather than awaiting the decision in the Slovakian case. I must repeat however that the necessity for a reference to the CJEU does not arise on the basis of this judgment and therefore there is no need to arrange a further hearing to consider such a reference.

90. For all the foregoing reasons I would dismiss the appeal with the proviso that the Order of the Court should reflect the fact that his surrender is no longer sought for the offence of conspiracy to commit human trafficking.
91. The Order dismissing this appeal (with the above proviso) should not be perfected until 10 days have elapsed since the delivery of this judgment by electronic means. Should the appellant desire a stay on the Order of surrender for the purpose of seeking leave to appeal to the Supreme Court, then he should so notify the Court of Appeal Registrar and the Chief State Solicitor of his intention to do so within 5 days of the date of electronic delivery of this judgment. If required to sit, the Court can reconvene within the 10 day period.
92. As this was a case where the appellant had the benefit of the Legal Aid – Custody Issues Scheme in the High Court, and as he remains in custody and in light of the issues in the case, it is proper in the circumstances to recommend payment by the State of the costs of the appellant of this appeal including solicitor and two counsel in accordance with the said scheme.
93. As this judgment is being delivered electronically, it is appropriate to record the agreement of the other members of the Court.

Birmingham P.: I agree with this judgment and the proposed orders.

Edwards J.: I agree with this judgment and the proposed orders.