THE HIGH COURT

[2024] IEHC 219

Record No: 2022/264, 2022/265 & 2022/266

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003 (AS AMENDED)

BETWEEN:

MINISTER FOR JUSTICE & EQUALITY

Applicant

-and-

PATRICK SPARLING, DANIEL O'BRIEN, & JAMES COFFEY

Respondents

Decision of Ms. Justice Melanie Greally delivered on the 08th of April 2024.

Background

1. This decision concerns three related Trade and Co-operation Arrest Warrants dated 6th of December 2022 (hereinafter referred to as 'TCAW') issued by District Judge Anthony Callaway sitting at Portsmouth Magistrates Court in the United Kingdom seeking the surrender of the three Respondents. The offences for which they are sought are alleged to have been committed by them in their capacity as joint owners and directors of Stanton Roofing and Building Limited.

2. The Issuing Judicial Authority (hereinafter referred to as the 'IJA') intends to prosecute each of the respondents for thirty-nine offences. Aside from information relating to identity, each of the three TCAWS is identical and the objection to surrender in each case is based on the same grounds which were the subject of joint submissions adopted by all three respondents.

The proceedings

3. The TCAWs were endorsed for execution by the High Court on the 16th of January 2023.

4. Mr Sparling was arrested on the 20th of March 2023 and evidence of execution was given before the High Court on the 21st of March 2023. Mr O'Brien and Mr Coffey

were both arrested by arrangement on the 19th of April 2023 and evidence of execution was given on the same date.

5. On the foregoing dates the High Court was satisfied that the persons named in the respective warrants was the persons in respect of whom the TCAW issued and no issue has been raised regarding the information pertaining to identity in Part A of each TCAW.

6. Part B in each case sets out the decisions on which the warrant is based: The first decision is a first instance warrant issued by Reading Magistrates Court on the 23rd of July 2021 for failing to attend Court for three offences contained in a summons dated 25th of April 2021. The second is a first instance warrant issued by Reading Magistrates Court on the 3rd of September 2021 for failing to attend Court for thirty-six offences contained in a summons dated 13th of July 2021.

7. Part C sets out the maximum sentences of two and ten years upon conviction for each of the offence types involved. Minimum gravity is therefore established.

8. Part D has no application.

9. Part E sets out the details of the thirty-nine offences in respect of which the warrants from Reading Magistrates Court issued. The box for "fraud" has been ticked in accordance with the ticked box procedure adopted under the Trade and Co-operation Agreement. However, for the elimination of doubt, the applicant has established dual criminality in respect of each of the thirty-nine offences. The circumstances underlying the offences are set out in the TCAW, however, as dual criminality is not disputed it is unnecessary to replicate the level of detail in Part E of the TCAW.

10. The offences are subdivided by reference to the alleged victims of the fraudulent conduct alleged: In every case, the Respondents, as directors of Stanton Building and Roofing limited are alleged to have falsely misrepresented property owners about the condition of their roof or chimney or walls and the extent to which repairs or replacement was required. In each case they are alleged to have carried out unnecessary work for which they substantially overcharged the individuals or couples concerned.

11. Offences 1 to 3 concern an elderly couple JD and SD who were misled regarding the condition of their roof in two separate transactions in August 2020, and were excessively overcharged for unnecessary repairs. The conduct described, if committed in this state would constitute two offences of fraudulent trading contrary to Section 722 of the Companies Act 2014 (1) & (2) and one offence of making a gain or causing a loss by deception contrary to Section 6 of the Criminal Justice (Theft and Fraud) Offences Act 2001 (3).

Offences 4 to 11 concern a couple SG and SS who are alleged to have been falsely misled by the Respondents regarding the need to replace their roof to avoid collapse and in separate transactions, they were misled concerning the necessity to carry out remedial work to the garage, to insert a steel beam, and to treat the back of the house for rising damp. In addition, they are alleged to have been subjected to aggressive demands for payment. The conduct alleged, if committed in this State, would amount to two offences of fraudulent trading (4 & 5), four offences of making a gain or causing a loss by deception contrary to Section 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001(6,7,10 & 11), one offence of engaging in a misleading commercial practice contrary to Section 47 of the Consumer Protection Act 2007 (8), and one offence of engaging in aggressive commercial practices contrary to Section 54 of the Consumer Protection Act 2007 (9).

12. Offences 12 to 14 concern an elderly widow HD who in August 2020 is alleged to have been misled regarding the need to replace her roof and to have been subjected to aggressive demands for a deposit. The same conduct would, if committed in this State, amount to one offence of fraudulent trading (12), one offence of making a gain by deception (13) and one offence of engaging in a misleading commercial practice (14).

13. Offences 15 to 17 concern SG, a single female who in June 2020 is alleged to have been misled regarding the condition of her roof and the need to have it replaced. The same conduct would, if committed in this State, constitute offences of engaging in misleading commercial practices (15), fraudulent trading (16), and making a gain by deception (17).

14. Offences 18 to 22 concern KH the owner of two properties who is alleged to have been misled about the need to replace a roof, defects to walls and the need to lower the height of a chimney stack. He is also alleged to have been subjected to aggressive demands for money. If committed in this State, the conduct in question would amount to two offences of fraudulent trading (18 & 19), two offences of making a gain by deception (21 & 22), and one offence of engaging in aggressive commercial practices (20).

15. Offence 23 to 25 concern AA, a 75-year-old male, who in June 2020 was living alone. The Respondents are alleged to have misled him regarding the need to replace his entire roof and for falsely representing £276K as a reasonable price. If committed in this State, the conduct in question would amount to one offence of fraudulent trading, two offences of making a gain by deception (23 & 25), and one offence of engaging in misleading commercial practice (24).

16. Offences 26 to 30 concern LL, the owner of two properties, who in May 2020 is alleged to have been misled regarding the need to replace sections of the roof on her property at Dunchurch Road to avoid structural collapse in 2 to 3 years and in respect of a second property at a Lilleshall Road she is alleged to have been misled regarding the need for cement to be fitted to the roof and additional unnecessary works to the property. If

committed in this State, the conduct in question would amount to offences of fraudulent trading (26), three offences of making a gain by deception (27, 28, & 29), and one offence of engaging in misleading commercial practices (30).

17. Offences 31 to 34 concern MM who was eighty-one and living with his wife aged eighty. It is alleged that in July 2020, the Respondents misled MM regarding the need to replace his entire roof and the value of the works required. If committed in this State, the conduct in question would amount to offences of fraudulent trading (31), two offences of making a gain by deception (32 & 33) and engaging in misleading commercial practices (34).

18. Offences 35 to 37 concern OB the owner of a family home who in May 2020 is alleged to have been misled regarding the extent of repairs required to remediate his roof and as to the cost of the remedial works. If committed in this State, the conduct in question would amount to fraudulent trading (35), making a gain by deception (36), and engaging in misleading commercial practices.

19. Offences 38 and 39 concern PW who was a homeowner for whom the Respondent's commenced work. It is alleged that the Respondents misled her regarding the nature of remedial works which were required and of the need to replace fasciae and guttering. If committed in this State, the conduct in question would amount to one offence of making a gain by deception (38) and one offence of engaging in misleading commercial practices (39).

20. Section F of the TCAW, to which I will revert, discloses that the three Respondents were bound by the terms of restraining orders issued by Judge Burgess sitting at Reading Magistrates Court on the 9th and 10th of March 2021. On the 5th of August 2021, Judge Burgess determined that each of the three defendants had breached the restraining order and issued bench warrants. On the 12th of August 2021, Judge Burgess found the defendants were in contempt of court and sentenced each of the three respondents to 6 months imprisonment.

21. The TCAW specifically states that the breach of a restraint order is not a criminal offence and consequently, the requesting judicial authority did not include it in the list of offences in Part E of the TCAW.

Prelude to the Section 16 hearing.

22. By letter dated the 26th of June 2023 the Central Authority issued a Section 20 request seeking copies of the restraint orders and a copy of the transcript of the proceedings before Reading Crown Court. The request also sought information concerning the means by which the Respondents were notified about the hearing on the 5th of August

2021. In addition, there was a request for information relating to the sentence which was imposed on the 12th of August 2021.

23. The information was duly furnished and provided all the necessary detail concerning the content of the restraint orders and the statutory provisions under which the respondents were sentenced for contempt. The content of the transcript and order provide necessary context to the objections to surrender which have been advanced.

24. It is apparent from the transcript of proceedings before the Reading Crown Court brought under the Proceeds of Crime Act 2002 that restraint orders were made against the three Respondents to ensure that their assets and those of Stanton Roofing and Building Limited would be available as compensation for the alleged injured parties in the event of convictions being returned.

25. The prohibition on disposing of assets related to the assets of Stanton Roofing and Building Company Limited, the content of the Respondent's bank accounts, and motor vehicles. In addition, each of the three Respondents was required to make disclosure of all his assets in or outside England and Wales and provide a schedule giving the necessary details regarding value and location.

26. The restraint orders were made on the 9th of March 2021 (O'Brien) and 10th of March 2021 (Coffey & Sparling) and were served on the 16th of March 2021. By the 28th of April 2021, it was apparent from the vehicle licensing authority that Daniel O'Brien had sold a Mercedes vehicle with a cash valued of £36,000. Mr Coffey held money in an Irish Bank account and failed to comply with a requirement to bring the monies back to the United Kingdom. Mr Sparling departed the United Kingdom with a Mercedes vehicle valued at £40,000.

27. Summonses issued on the 29th of April 2021 for the Respondents to attend Reading Magistrates Court on the 23rd of July 2021 for three of the offences in the TCAW. On the 23rd of July, the Respondents failed to attend court and first instance warrants issued.

28. On the 2nd of August 2021 HHJ Burgess KC determined that the restraint orders had been breached and the Respondents were in contempt of court. Bench warrants issued due to their failure to attend the hearing. All three had been personally served. Two of the Respondents instructed solicitors and Mr Coffey was represented in Court by Mr Smart who appeared without instructions and who had last been in contact with Mr Coffey at the end of June/July 2021. On the 12th of August 2021 HHJ Burgess sentenced all three respondents to six months imprisonment. On that occasion Mr O'Brien and Mr Coffey were legally represented but had no instructions.

29. On the 14th of September 2021 Stanton Roofing and Building Limited was compulsorily struck off the companies register. By the 13th of December 2021 it was apparent that a Renault Master Panel van registered to Stanton Roofing had been sold for €1,400.

30. On the 9th of March 2022, an Order was made varying the terms of the Restraint Order removing Stanton Roofing and Building Limited (due to its dissolution) and replacing the Mercedes vehicle which had been sold with its cash value. Similarly, the Renault van was removed and replaced with its cash value.

Objection to Surrender.

31. The principal objection to surrender centres on the content of Part F of the TCAW and the transcript of the hearings before Reading Magistrates on the 5th and 12th of August 2021. The Respondents argue that their surrender to serve the six-month sentence of detention imposed by Reading Crown Court would breach the rule of speciality and is prohibited by Section 22 (2) of the European Arrest Warrant Act 2003.

32. They argue that if the Court is persuaded that the misconduct for which each of the Respondents were sentenced by the Reading Crown Court were "an offence", surrender must be refused. It is argued that Section 22 does not offer a complete definition of "an offence" and while the starting point may be whether the issuing state regards the misconduct as criminal in nature, the actual penalty imposed is of crucial significance in adjudicating whether the misconduct which was penalised is "an offence".

33. Mr Lynn SC for Mr Sparling suggests the wording of the sub-heading of Section 22 of the Act which states "*Rule of Speciality disapplied*" is consistent with the section setting out circumstances in which the rule does not apply and maintains that sub-section (1) is key to the respondent's argument. Section 22(1): "*In this section, except where the context otherwise requires, offence means, in relation to a person to whom are relevant arrest warrant applies, an offence other than an offence specified in the relevant arrest warrant in respect of which the person's surrender is ordered under this Act under the law of the issuing state, committed before the person's surrender".*

    Mr Lynn SC accepts that the requirement for "*an offence other than offence specified in the relevant arrest warrant*" to be an offence under the law of the issuing State, does not, on the face of it, assist his case but argues that "offence" does not necessarily mean a criminal offence and could, for example, be a regulatory offence. He maintains that if the Court accepts a broader, all-embracing definition of "offence", surrender must be refused because each of the three respondents will, if surrendered, be "*detained for the purpose of executing a sentence of detention order or will be otherwise restricted in his liberty*" within the terms of sub-section (2) as they will be required to serve the six-month sentence imposed by Reading Crown Court

    Sub-section (2) states: *"Subject to this Section, the High Court shall refuse to surrender a person under this Act if it is satisfied that the law of the issuing State does not provide that the person who is surrendered to it, pursuant to a relevant arrest warrant shall not be proceeded against, sentenced or detained for the purposes of executing a sentence*

of detention order, or otherwise restricted in his or her personal liberty in respect of an offence".

Essentially, the Respondents claim that surrender would contravene Section 22(2) because the breaches of the restraint orders for which they were sentenced come within the broader definition of "offence" and the sentence imposed for the offences in each case have not been included in the TCAW.

34. The Respondents claim the wording of Article 625 of the Trade and Co-operation Agreement supports a broad definition of "offence" as it replicates the wording of Article 27 the Framework Decision, and the Respondents observe that Article 625 Paragraph (2) makes no reference to "*criminal offence*".

    Article 625: "*Except in the cases referred to paragraphs 1 and 3, a person surrendered, may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to that person's surrender, other than that for which the person was surrendered".*

35. The Respondents claim there is support for a broad definition of "offence" to be found in the language used by Judge Burgess in his sentencing remarks at Reading Crown Court. The extract from the proceedings at Reading Crown Court states the following: "*This court has to deal with the restraint orders which are, if proven, tantamount to contempt of court. The specific breaches are that none of the three has provided details of their assets as required, and in relation to each of them there are additional breaches. James Coffey has failed to bring into the jurisdiction of this country funds held in an Irish bank account, as required by paragraph 15 of his restraint order. In contravention of paragraph 5(d) of his restraint order, DOB has sold a Mercedes E220d motorcar, registration LB 20 PR Z. The restraint order was served upon the DVLA on 11 March, despite which the vehicle was sold, and registration transferred after receipt of the restraint order. And that was notified to the prosecuting authority on 30 April. In relation to Patrick Sparling, there was a prohibition on his removing his Mercedes motor car from the jurisdiction at paragraph 5(d) of his restraint order. He is in breach of that. On 8 April of this year that vehicle was driven onto the Liverpool to Belfast Ferry, the booking was made in a name other than that of Patrick Sparling, but neither he nor the vehicle have been seen in England and Wales since that date. And I am, therefore in no doubt whatsoever that these defendants are each in breach of the restraint order. I must then decide how to treat. The maximum sentence is one of two years imprisonment. I regarded in each case as effectively as single, ongoing contempt of court, rather than separate offences."*

    The Respondents argue that the Crown Courts Judge's reference to "*separate offences*" was used advisedly and brings the "offence" for which the Respondents were sentenced within the caveat contained within Section 22 (1) as a consequence of which the context does not require that the "offence" (not included in the TCAW) be an offence under the law of the issuing state.

36. The Respondents argue for a purposive approach to be taken to the interpretation of Section 22(1) in accordance with the Supreme Court decision in ***Minister for Justice, Equality and Law Reform v Gotszlik [2009] IR 390.*** The decision in *Gotszlik* advocates taking a purposive approach to the interpretation of the Framework Decision, meaning if the literal and ordinary meaning of the words of a statutory provision is not completely clear, the court can have regard to the purpose and context of the provision and if necessary, interpret it in a way that is consistent with the underpinning Framework Decision, provided it is not *contra legem.*

37. The Respondents draw from the jurisprudence of the European Court of Human Rights in a series of cases which addressed acts or omission which were not classified by the domestic jurisdiction as criminal offences, but which were regarded by the European Court as criminal for the purpose of engaging Article 6 fair trial rights. It is acknowledged that the European Court of Human Rights approaches the meaning of "offence" in the context of convention rights and the Court itself says its interpretation of "offence" is autonomous, and it is not being suggested that this court is bound by its interpretation. However, the Respondents suggest that the reasoning of the ECHR should inform the courts approach to interpreting "offence" for the purpose of the EAW and TCAW systems.

38. The earliest and enduring authority on the classification of breaches of regulations is ***Engels and others V the Netherlands ECHR 8th June 1976.***
Engels involved breaches of military regulations by conscript soldiers in the Netherlands who had penalties imposed on them ranging in severity from light arrest to committal to a disciplinary unit. All the applicants who brought claims to the Commission in Strasbourg claimed their personal liberty had been deprived to a greater or lesser extent and that they had been denied their fair trial rights under Article 6 of the ECHR and were treated in a discriminatory manner contrary to Article 14. It is apparent in *Engels* that in the Netherlands military criminal law operates separately to military disciplinary law. The case was concerned with military disciplinary law.

The commission states at page 30 Paragraph 81 of the judgement: *"The Convention without doubt allows the States, in the performance of their function as guardians of the public interest, to maintain or establish a distinction between criminal law and disciplinary law, and to draw the dividing line, but only subject to certain conditions. The Convention leaves their States free to designate as a criminal offence and act or omission not constituting the normal exercise of one of the rights that it protects. This is made especially clear by article 7 such a choice which has the effect of rendering applicable articles 6 and 7, in principle escapes supervision by the court. The converse choice, for its part is subject to stricter rules. If the contracting states were able at their discretion to classify an offence as disciplinary instead of criminal, or to protect the author of a "mixed" offence on the disciplinary rather than on the criminal plane, the operation of the fundamental clauses of articles 6 and 7 would be subordinated to their sovereign will. A latitude extending thus far might lead to results incompatible with the*

purpose and object of the Convention. The Court therefore has jurisdiction and even without reference to articles 17 and 18, to satisfy itself that the disciplinary does not improperly encroach upon the criminal. In short, the autonomy of the concept of criminal operates, as it were one way only. Hence the court must specify, limiting itself to the sphere of military service, how it will determine whether a given charge vested by the state in question, as in the present case, with a disciplinary character nonetheless counts as criminal within the meaning of article 6."

39. What follows is what are known as the three *Engel* criteria:

    1. *It is first necessary to know whether the provisions defining the offence charged belong, according to the legal system of the respondent state, to criminal law, disciplinary law or both concurrently. This however provides no more than a starting point.*

    2. *The very nature of the offence is a factor of greater import*.

    3. *However, supervision by the Court does not stop there. Such supervision would generally prove to be illusory if it did not also take into consideration the degree of severity of the penalty that the person concerned risks incurring*.

40. In that context the Respondents argue that the sentence imposed on the three Respondents derives from criminal procedure rules and has been imposed in the context of a criminal prosecution and that the purpose of the sentence is deterrence and punishment.

41. A subsequent decision in ***Jonsson v Iceland 2020 App 68273/14 and 68271/14*** the Grand Chamber applied the *Engel* criteria and addressed the applicability of the criminal limb to the contempt of court proceedings or proceedings concerning legal professionals' misconduct. The Court in *Jonsson* attached weight to the three different criteria according to the facts of each case. At Paragraph 80 the judgement states: "*In some of these cases, the court has found under its criminal limb on the grounds that the Engel criteria were not met. In particular when considering the first Engel criterion, the court has for instance attached weight to the fact that penalty imposed was set out in certain provisions of the national code of criminal procedure or the courts act, taken together with the code of civil procedure, rather than any provisions of the criminal code; and in cases classified as criminal under the criminal code, the code of criminal procedure provided for a separate procedure: and that the penalty in question had not been entered in the criminal record. Another example is where the pecuniary penalty imposed was based on a domestic law conferring on administrative and judicial authorities the power to maintain discipline in the proceedings before them. 81: In finding that the second criterion not been fulfilled, the court has given particular weight to its finding that the offence was of a disciplinary nature falling within the indispensable power of a court to ensure the proper and orderly functioning of its own*

proceedings. 82: In considering that the third criterion did not bring the matter into the criminal sphere, the Court has had regard to factors such as the following: that the amount imposed as a fine had not been substantial".

42. The Respondents referred to several other decisions of the ECHR where the Court concluded that Article 6 applied under its criminal limb on being satisfied that all three *Engel* criteria were satisfied. In a number of those decisions the fact that the penalty involved a deprivation of liberty was of considerable significance in the Court's concluding that Article 6 rights had been engaged.[1] [2] [3]

43. Mr Munro SC for Mr O'Brien and Mr Coffey made a submission on behalf of the Respondents which focused on the rule of specialty from the perspective of the human rights which the rule is designed to protect. He traced the origins of the modern rule of specialty and explained how it has come to occupy its position within the panoply of fundamental rights.
    Mr Munro argues that even if the breach of the restraint orders is a civil contempt and the wording of Section 22 of the European Arrest Act is not amenable to the definition of "offence" advanced by the Respondents, surrender must nevertheless pursuant to Section 37 of the European Arrest Warrant Act 2003 on the basis that the Respondent's right to liberty and to an effective remedy under the EU Charter of Fundamental rights and freedoms and ECHR are engaged. He argues that due to the exit of the UK from the EU, it is no longer subject to the jurisdiction of the CJEU, and the respondents have no effective remedy in the event of their surrender. The Respondents rely on principles established in the cases *of* ***United States V Rauscher 199 US 407 1886*** and ***Saxena v Canada CCPR/C/11/D/2118/2011*** in support of their argument.

Replying Submissions

44. It is the Minister's position that the six-month sentence imposed in Reading Crown Court is for a civil contempt and as such the rule of specialty has no application. It is argued that the distinction between civil and criminal contempt is well-established and points to the 2016 Law Reform Commission issue paper as a source of guidance in respect of what misconduct amounts to criminal contempt as distinct from civil contempt.

45. Mr Clarke SC points to the decision of the English Supreme Court in ***R V O'Brien [2014] UKSC 23*** as a persuasive authority supporting the argument that breaches of restraint orders, even those related to orders made under the Proceeds of Crime Act 2014 and associated with criminal proceedings, are civil contempt and do not amount

[1] Jusilla v Finland [GC], 2006
[2] Bendenoun v. France 1994 ECHR App 12547
[3] Benham v. United Kingdom 1996 ECHR App 19380/92

to criminal contempt and consequently, it is outside the ambit of the Trade and Co-operation Agreement.

Mr Clarke SC argues the requirement to serve a six-month sentence for civil contempt does not breach the rule of specialty and is not a bar to surrender.

Decision

46. To refuse surrender, the court must be persuaded that the word "offence" in Section 22 of the EAW Act 2003 should be interpreted autonomously and in a sense that it embraces acts or omissions which are punishable by the deprivation of liberty, but which do not result in a criminal conviction.

    In assessing the merit of the submission, it is instructive to look to the language and stated objectives of the Framework Decision. As a starting point the preamble to the Framework Decision speaks of "*the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures"*.

47. The language used in the preamble makes it clear that European Arrest Warrant procedure is concerned with the conduct of prosecutions and the execution of sentences for criminal offences.

    Article 1.1 provides: "*The European Arrest Warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order".* It follows that under the Framework Decision it is a prerequisite of a valid arrest warrant that the conduct of which the person is accused or has been convicted constitutes a criminal offence under the law of the requesting state. References to "offences" throughout the Framework Decision and European Arrest Warrant Act 2003 are references to criminal offences.

48. The United Kingdom decision in *R v O'Brien* addresses a factual situation which is very similar to that which presents in this case and examined the distinction between civil and criminal contempt. Lord Justice Toulson made a number of observations which might equally apply to the facts of present case and can be summarised as follows:

    (a) A restraint order is an interim remedy whose aim is to prevent the disposal of realisable assets during a criminal investigation or criminal proceedings.

    (b) There is a distinction between "civil contempt", conduct which is not in itself a crime but which is punishable by the court to ensure that its orders are observed, and "criminal contempt.

(c) Breach of an order made (or undertaking obtained) in the course of legal proceedings may result in punishment of the person against whom the order was made (or from whom the undertaking was obtained) as a form of contempt.

(d) Contempt of that kind does not constitute a criminal offence. Although the penalty contains a punitive element, its primary purpose is to make the order of the court effective. A person who commits this type of contempt does not acquire a criminal record.

(e) A criminal contempt is conduct which goes beyond mere non-compliance with a court order or undertaking and involves a serious interference with the administration of justice.

(f) It is necessary to look at the nature and purpose of the order. It is fallacious to argue that because the order was made by a criminal court, rather than a civil court, disobedience to the order amounts to a crime, whereas it would not have been a crime to disobey a similar order imposed by a civil court. The question whether a contempt is a criminal contempt does not depend on the nature of the court to which the contempt was displayed; it depends on nature of the conduct.

49. The approach taken by the English Supreme Court is compatible with decisions in this jurisdiction which have addressed the distinction between civil and criminal contempt. The distinction between criminal and civil contempt was addressed by O'Dalaigh CJ in ***Keegan v De Burca 1973 IR 223*** who stated at page 227: *"Civil contempt on the other hand is not punitive in its object but coercive in its purpose of compelling the party committed to comply with the order of the court, and the period of committal would be until such time as the order is complied with or until it is waived by the party for whose benefit the order was made".*

The 2002 decision of ***Flood v Lawlor 2002 3 IR 67*** introduced the possibility that in certain instances a sentence imposed for civil contempt may not be exclusively coercive and Fennelly J. expressed the following opinion: *"There may be some room for a difference of view as to whether a sentence imposed in respect of civil contempt is exclusively - as distinct from primarily - coercive in its nature in civil proceedings generally…".*

In ***Shell EP Ltd v McGrath and Others*** **[2007] 1 IR 671**, the following passage from the judgment of Finnegan P. identified the circumstances in which civil contempt could be purely punitive as follows: "*Committal by way of punishment likewise should be the last resort. It should only be engaged where there has been serious misconduct. In such circumstances it can be engaged in order to vindicate the authority of the Court".*

The same passage was adopted with approval by Fennelly J *In* ***Irish Bank Resolution Corp Limited V Quinn and Others [2014] 3 IR 143*** who also expressed a view of that the distinction made by O'Dalaigh J in Keegan "may present an over-simplification".

50. The foregoing decisions recognise that the imposition of punitive custodial sentences for civil contempt is exceptional but permissible. The current position appears to be that imprisonment for civil contempt may be used to compel compliance with court orders, but a punitive sentence may be necessary and appropriate when there is blatant disregard for Court orders. By contrast, the law in England, Wales, and Australia unequivocally permits punitive sentences to be imposed for civil contempt.

51. In the United Kingdom the power to impose fines or imprisonment for civil contempt was introduced by Section 14(1) of the Contempt of Court Act 1981 which states: "*In any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed terms, and that term shall not on any occasion exceed two years in the case of a committal by a superior court, or one month in the case of committal by an inferior court"* It is, however, worth noting that the breach of a court order under the United Kingdom Proceeds of Crime Act 2002 does not lead to a criminal conviction.

52. Despite division in this jurisdiction as to whether the use of incarceration for civil contempt should ever be purely punitive, there is now a degree of consensus that the imposition of a finite custodial sentence is permissible as a measure of last resort. Historically, there has been much confusion regarding what misconduct constitutes criminal contempt. This is not the case in relation to civil contempt which is universally understood to be constituted by disobedience to the order of a civil court. Fair trial rights may apply in proceedings against persons which lead to punitive sentences being imposed for civil contempt, however, the fact that in certain circumstances Article 6 convention rights may be engaged does not transform the underlying misconduct into criminal conduct.

53. While recognising that the UK legislation has led to a divergence in the way civil contempt is addressed by the English Courts and the Irish Courts, the same misconduct is targeted by the civil contempt jurisprudence in both jurisdictions and the jurisdiction of the Irish courts to punish civil contempt with a finite custodial sentence when all other means of coercion have been exhaustively attempted is now established.
    The Respondents having initially instructed solicitors to represent them in the Proceeds of Crime Act proceedings, disengaged and were uncontactable by the hearing date on the 2nd of August 2021. The sentence imposed was primarily punitive due to the serious nature of the breaches and absence of engagement, explanation, or mitigation on the part of any of the three Respondents.

54. Following the sentence hearing on the 12th of August 2021 and the dissolution of Stanton, an application to vary the restraint orders was granted on the 9th of March 2022. This step emphasises that the sentence, while punitive, continued to have a coercive function to deter further or future breaches.

Section 22 of the European Arrest Warrant Act 2003 transposed the Article 27 Framework Decision into Irish law. Article 27 is replicated by Article 625 the Trade and Co-operation Agreement following the withdrawal of the UK from the EU.
The literal meaning of the wording in Section 22 (2) clearly and unambiguously gives effect to Articles 27 and 625 above. Its clear intention is to give effect to the rule of specialty in so far as it relates to "offences".

55. I see no basis for a purposive interpretation of Section 22 which would extend the range of the Framework Decision or Trade and Co-operation Agreement beyond the sphere of criminal misconduct.

56. I am wholly satisfied that the conduct for which the respondents were sentenced is civil contempt in the United Kingdom and that similar breaches in this jurisdiction would amount to civil contempt.

57. As such, the sentences for civil contempt do not come within the ambit of the rule of specialty expressed in Article 625 of Trade and Co-operation Agreement and Section 22(2) of the European Arrest Warrant Act 2003.

Objection to surrender based on breaches of the Charter of Fundamental Freedoms and ECHR.

58. The *Rauscher* and *Saxena* decisions which featured prominently in Mr Munro's submission illustrate that the principle underlying the rule of speciality is fairness. The rule seeks to prevent issuing states from exploiting the opportunity afforded by surrender to prosecute or sentence the person surrendered for criminal conduct beyond that for which the surrender request was granted. Although neither of the cases relied on by Mr Munro is directly on point, in both cases the Issuing State either did not honour the terms of the extradition treaty (*Rauscher*) or the terms upon which the surrender was made (*Saxena*). The two cases highlight that principles of fairness and honour by contracting states are central to the operation of the rule of specialty.

59. The decision of the Canadian Courts in *Saxena* concerned a surrender of the "author" to Thailand after which Canada consented to a waiver of the rule of specialty in respect of two fraud offences which had not formed part of the extradition request. The complaint made by the "author" was that his rights under Article 13 of the International Covenant on Civil and Political Rights had not been respected because he had not been afforded the opportunity "*to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".* Saxena was vindicated in his claim that his right to liberty under Section 9 of the Covenant had been breached.

The third case cited by Mr Munro is ***Woolley v the United Kingdom ECHR App 28019/10*** which he relies on to highlight that "*it was for the domestic courts in the first*

instance to interpret and apply the relevant provisions of domestic and international law, including the requirements of the rule of specialty".

It is suggested that the unfairness to which the Respondents are exposed arises because the breaches do not fall neatly within the category of "extradition offence", and a deprivation of liberty which would otherwise be prohibited will necessarily result from surrender. The fact that surrender results in the deprivation of liberty does not, of itself, imply unfairness or bring the Respondents within the ambit of Section 37 and engage convention rights.

The right to liberty is not an unqualified right.
Article 5.1.b of the ECHR states*: "Everyone has the right to liberty and security of person. No one shall be deprived of her/his liberty save in the following cases and in accordance with a procedure prescribed by law.*
a…
b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law".
Deprivation of liberty is a common consequence of surrender. Usually, it takes the form of pre-trial incarceration if bail is refused pending trial.

60. The case of *Woolle*y centred on a complaint of unfairness arising from the enforcement by the United Kingdom of a default sentence of imprisonment which did not form part of the extradition request, but which was associated with a confiscation order which did relate to the sentence for which surrender was sought. The ECHR decided, in those circumstances, the rule of specialty had not been breached. The European Court in its judgement attached significance to the fact that the United Kingdom "had not deliberately misled the Swiss authorities, that it had always made its intentions clear and there had been no improper or unfair manipulation of the processes of extradition". The same can be said of this TCAW. There has been no opacity or opportunism on the part of the IJA in framing its requests. It is clear from the transcript from Reading Crown Court that fair procedures were observed throughout the proceedings under the Proceeds of Crime Act 2014. The three Respondents were afforded every opportunity to offer a defence to the breaches and to argue against the imposition of custodial sanctions. At some point, all three Respondents had access to legal advice and Mr O'Brien and Coffey were legally represented in Court on the 12th of August 2021 when the sentences were imposed. Notwithstanding the centrality of Article 6 to Mr Lynn's submission, the Respondents do not maintain that their Article 6 rights were not respected by the Crown Court.

61. The detention orders of Reading Crown Court fall squarely within the terms of Article 5.1.b. of the ECHR. Consequently, I can find no unfairness associated with the imposition of the sentences which infringes Article 5.
The Respondents have not substantiated an argument that they do not have an effective remedy arising from the fact that the United Kingdom are no longer bound by the EU

Charter of Fundamental Rights or subject to the jurisdiction of the Court of Justice of the EU. The right to liberty and the right to an effective remedy are the subject of Article 5 and Article 13 of the European Convention on Human Rights. The EU Charter of Fundamental Rights and Freedoms affords no additional protection insofar as these rights are concerned. The United Kingdom has comprehensively given effect to the right to an effective remedy by incorporating the ECHR into domestic law by enacting the Human Rights Act in 1998. Section 7 of the Human Rights Act 1998 entitles a person who claims that a public authority has acted or proposes to act in a way which is incompatible with a convention right to bring proceedings in the appropriate court or tribunal or to rely on convention rights in any other legal proceedings.

Accordingly, I am dismissing the Respondent's objection to surrender based on a breach of Convention rights or rights under the EU Charter.

62. I am satisfied that none of the matters referred to in ss. 21 A, 22, 23 and 24 of the Act of 2003 arise, and that the surrender of the respondent is not prohibited for any of the reasons set forth in the aforementioned sections.

I am further satisfied that surrender is not prohibited by Part 3 of the Act of 2003 or any other provision of the Act.

63. Accordingly, I am making an order for surrender in respect of each of the three Respondents pursuant to Section 16(1) of the European Arrest Warrant Act 2003.

JUDGE MELANIE GREALLY