THE HIGH COURT

Record No. 2025 259 EXT

[2026] IEHC 481

BETWEEN

MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

APPLICANT

AND

COSTICA BOLMADIR

RESPONDENT

JUDGMENT delivered by Mr. Justice Sean Gillane on 15 July 2026

Introduction

1. This is an application for the surrender of the respondent to the Republic of Bulgaria ("the issuing state"), pursuant to section 16 of the European Arrest Warrant Act 2003, as amended ("the 2003 Act"), on foot of a European Arrest Warrant issued by the Deputy District Prosecutor of the District Prosecutor's Office in Russe, Republic of Bulgaria on the 21st of May 2025 ("the warrant").

2. The warrant was issued by a competent judicial authority in the issuing state ("the IJA").

3. The respondent was arrested on foot of an SIS alert on the 16th of October 2025 and brought before this Court. The warrant was duly produced before this Court on the 22nd of October 2025.

4. No issue has been raised by the respondent in relation to his identity, and I am satisfied that the respondent is the person identified in the warrant.

5. The warrant is a prosecution/accusation-type warrant and relates to a single offence. It is alleged that on the 30th of October 2018, in the city of Russe, without the consent of the holders of exclusive rights to a variety of trade marks for class 03 of the International Classification of Goods and Services, the respondent used those trade marks in his commercial activity without a legal basis contrary to the Criminal Code of the Republic of Bulgaria. I will return to the significance of the way in which the charge is framed below.

6. The respondent is a Romanian national and objects to his surrender. A notice of objection was filed on his behalf pursuant to Order 98, Rule 5 of the Rules of the Superior Courts 1986, as amended.

<u>Background</u>

7. Part B of the warrant indicates that the decision on which the warrant is based is a decree to bring the respondent into custody and a decree for detention pursuant to Article 64(2) of Bulgaria Criminal Procedure Code in respect of the above-described offence. Part B goes on to list a range of trade marked products (well-known perfumes) in respect of which it is said that there has been a breach of the rights of parties who

have registered those trade marks. The value given in respect of these products is BGN 143,139.

8. Part C of the warrant indicates that the maximum length of custodial sentence or detention order that may be imposed for the alleged offence is one of a penalty of "*deprivation of liberty*" for a term of up to five years. It seems, therefore, that the requirements of minimum gravity are met.

9. Part E of the warrant is clear that the warrant relates to "*ONE OFFENCE*" under Article 172b(1) in conjunction with Article 2(1) of the Criminal Code of the Republic of Bulgaria. A detailed description of the circumstances in which the alleged offence was committed is set out over the course of five pages.

10. According to the warrant, the respondent travelled by car to the premises of a forwarding company named "*'Speedy' AD*" in the city of Russe and began unloading boxes that were intended to be sent abroad. During the course of unloading, officers from the border police checked the respondent and his car. The car contained fifteen boxes of perfume products.

11. Part E contains a list of all of the recovered products.

12. Following an expert examination, the listed products were found to be identical to goods for which a number of listed trade marks were registered. The products were found to bear signs that were identical or highly similar to registered trade marks protecting genuine perfume goods.

13. The expert also concluded that this similarity may lead to consumer confusion, including the possibility of associating the signs depicted with the registered trade marks listed in the warrant.

14. A forensic economic appraisal was also prepared and concluded that the total value of the items in question was BGN 143,139.

15. It is, therefore, alleged that the respondent infringed the rights of the relevant trade mark holders and that he was involved in the commercial handling and intended distribution of those goods.

16. Several requests for further information were made pursuant to section 20 of the 2003 Act on the 12th of November 2025, the 17th of December 2025 and the 5th of February 2026 and supplemental submissions were filed by both parties arising out of the information received. I propose to refer to this information in more detail in the context of the arguments discussed below.

Discussion

17. The respondent's objections to surrender were advanced under five headings:

- Abuse of process
- Prior determination
- Failure to comply with section 11 of the 2003 Act
- Correspondence
- Conditions of detention

18. It was confirmed during the course of the hearing that an objection in relation to a potential breach of the respondent's rights under Article 8 of the European Convention on Human Rights ("the ECHR") was not being pursued.

Abuse of Process and Prior Determination

19. It seems to me to be appropriate to deal with the first two objections together.

20. The argument under this heading is advanced on the basis that the surrender of the respondent on the warrant was already refused by the Romanian authorities on the 7th of July 2025.

21. The respondent swore an affidavit on the 8th of December 2025 in which he averred that he was arrested in Romania on foot of a European Arrest Warrant dated the 21st of May 2025. He said that on the 7th of July 2025, the Galaţi Court of Appeal in Romania refused to make an order for his surrender to the issuing state.

22. The respondent averred that the European Arrest Warrant on which his surrender was refused by the Galaţi Court of Appeal is the same warrant currently before this Court. He exhibited the decision of the Galaţi Court of Appeal. It seems apparent from that decision that his surrender was refused on the optional ground for refusal provided for under Article 99(2) of Law No. 302 of 28 June 2004 on international judicial co-operation in criminal matters (republished), i.e., that criminal liability for the offence on which the warrant was based had become statute barred in Romania.

23. It is submitted that this fact was "*not made known to this Court*" and counsel for the respondent further submitted that the IJA was in effect "*hiding it*" as it only came to light on the basis of instructions given by the respondent. It was argued that this is inconsistent with the principle of mutual trust underpinning the European Council Framework Decision dated the 13th of June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States ("the Framework Decision").

24. The respondent submitted, rightly it seems to me, that there is well-established authority for the proposition that this Court has an inherent jurisdiction to protect its own processes in the context of an application for surrender pursuant to the 2003 Act. See *Minister for Justice and Equality v. Brunell* [2014] IEHC 131 and *Minister for Justice and Equality v. McArdle* [2014] IEHC 132.

25. The respondent referred to the decision of Edwards J. in *Minister for Justice and Equality v. Stalkowski* [2014] IEHC 647. In that case, it was argued that a Polish court had attempted to have more serious charges preferred by the prosecutor in order to circumvent the statute of limitations. In reviewing the law generally in relation to abuse of process, Edwards J. recognised the "*many and diverse situations in which a Court may, in the exercise of its inherent jurisdiction, act with a view to seeking to protect its own process from being abused.*"

26. In the specific context of an application for surrender under the 2003 Act, Edwards J. went on to say that he agreed with the submission that:

> "*... the starting point in this, and in every European arrest warrant case, is that there is a rebuttable non-statutory presumption that an issuing state and its*

authorities, including the issuing judicial authority, have acted in good faith in issuing and transmitting to the authorities in an executing state, including an executing judicial authority, a European arrest warrant seeking the rendition of the person who is the subject of that warrant for a legitimate purpose contemplated by Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (hereinafter 'the Framework Decision')."

27. Edwards J. found that this non-statutory presumption is complimented by the rebuttable statutory presumption created by section 4A of the 2003 Act, as amended by section 69 of the Criminal Justice (Terrorist Offences) Act 2005, which is prospective only in effect. Edwards J. held that both presumptions were capable of being rebutted by evidence of bad faith.

28. However, on the facts of the case, he found that there was no cogent evidence of anything having been done in bad faith and that the conduct identified as constituting the alleged abuse of process was not capable of amounting to an abuse of the processes of this Court. The communication in question between the Polish court and the prosecutor was found to be no more than a feature of the domestic inquisitorial system, not an attempt at undue or improper influence.

29. It is not an essential element of an abuse of process argument that bad faith or *mala fides* be established by a respondent. In *Minister for Justice and Equality v. Bailey* [2017] IEHC 482, Hunt J. said at paragraph 58:

"*I believe that it is also necessary to emphasise that a finding of abuse of process does not express or imply that the Minister acted with mala fides or bad faith, which may be a factor in analysing circumstances to determine whether or not there has been an abuse of process. It is not a factor in this case. Abuse of process can arise without any institution acting in bad faith. It may be caused, as it was in this case, by the cumulative effect of the circumstances of the case rendering an abuse of process on the individual concerned. These principles are all expressed in the judgment of Denham C.J. in Tobin (No.2). 'Abuse of process' is described in the same case by Hardiman J. in characteristically vivid and eloquent terms. I can do no better than borrow his words. He described it at para.[313] as:-*

> *'a many headed concept whose manifestations range from the deliberate maintenance of legal proceeding without probable cause….to a ham fisted or unthought out conduct of litigation, particularly by making two or more actions where one would do, which tends to oppress the other party and to cause him expense and/or distress.'*"

30. The Supreme Court has given general guidance in this area in *Minister for Justice and Equality v. J.A.T. No. 2* [2016] 2 I.L.R.M. 262. At paragraphs 72-76 of her judgment, Denham C.J. stated that:

"*In general, if there is an abuse of process by authorities they should not benefit. The rule of law, and the right to fair procedures, requires that such a general principle be applied.*

Of course, there may be circumstances where a court considers that there has been an abuse of process, but to a limited degree, and applying the principle of proportionality, a surrender procedure could proceed. However, such a finding would arise only in a situation where a process was found to be an abuse, but in a limited manner, and with limited effect.

In this case there is an accumulation of factors.

It is clear, and remains the law, that simply because a second European arrest warrant is issued that does not of itself indicate any abuse of process. See Bolger v. O'Toole, unreported, Supreme Court, 2nd December, 2002, and Gibson v. Gibson, ex tempore, Supreme Court, 10th June, 2004, Keane C.J.

In analysing a case where there has been a finding of an abuse of process, the circumstances of each case are relevant and critical to the ultimate decision."

31. Having then reviewed the specific factors in *J.A.T. No. 2*, Denham C.J. upheld the High Court's finding that there had been an abuse of process.

32. These principles were considered by Donnelly J. in *Minister for Justice and Equality v. Campbell* [2020] IEHC 344 and further considered by Burns J. in the well-known decision of *Minister for Justice and Equality v. Angel* [2020] IEHC 699.

33. At paragraph 31 of *Angel*, by reference in particular to the decision in *Campbell*, Burns J. summarised the principles in the following way:

"*(a) there is no bar to bringing a fresh application to the Court for surrender;*

(b) there can be circumstances which justify or require the High Court refusing an application for surrender on the basis of abuse of process;

(c) a finding of an abuse of process should not be made lightly;

(d) it is only where the case has exceptional circumstances that an abuse of process will be found (although exceptionality is not the test) and that the abuse of process is that of the High Court in this jurisdiction rather than a concern about an abuse of process to put the requested person on trial;

(e) there is a broad public interest in bringing things to finality in one set of proceedings;

(f) there is a strong public interest in Ireland complying with its international obligations and surrendering individuals in accordance with the relevant extradition provisions;

(g) a repeat application for surrender is not per se abusive of process. It would only be abusive of the process where to do so is unconscionable in all the circumstances;

(h) mala fides or an improper motive is not a necessary precondition for an abuse of process; and

(i) the Court should look to the cumulative factors which may make the application for surrender oppressive or unconscionable."

34. The law on abuse of process in the context of delay in an application for surrender was also the subject of a recent comprehensive review by the Court of Appeal in *Minister for Justice, Home Affairs and Migration v. O'Kane/McNicholl* [2026] IECA 53.

35. At paragraph 19, Owens J. stated that:

> "*Abuse of process involves misuse by an issuing state of the process of the executing judicial authority. This takes place where, by happenstance or design, an issuing state engages in conduct which undermines the integrity of the surrender process. Executing judicial authorities are obliged to uphold the integrity of this process. Examples of abuse of process are refusals to cooperate with the executing judicial authority, or provision of false or misleading information to that authority, or use of the process for improper purposes.*"

36. At paragraph 145, Owens J. said that:

> "*The purpose of the power of an executing judicial authority to refuse surrender on grounds of abuse of process is to protect the integrity of the process mandated by the 2003 Act and the rights of the person whose surrender is sought to due process in the surrender procedure.*"

37. Owens J. also commented that the term "*abuse of process*" is capable of being used imprecisely and is a term best avoided by a court when it is, in truth, assessing complaints by reference to the criteria set out in the 2003 Act.

38. At paragraph 249, Owens J. identified a clear test:

> "*… Abuse of process may only be relied on as a ground for refusal of a surrender sought under the 2003 Act where it is clearly demonstrated that the purpose or effect of the asserted abuse is such as is to undermine the enquiry which the executing judicial authority is obliged to conduct before making a decision on surrender.*"

39. In my view, the position becomes clear when what actually transpired in this case is examined in light of the authorities.

40. The warrant issued on the 21st of May 2025, and it is correct to say that there is no reference to an application for the respondent's surrender having been made to and subsequently refused by the Galaţi Court of Appeal. However, it is manifest that the refusal of this application for surrender postdated the issuance of the warrant.

41. After the respondent's affidavit was filed, a further request for information was made to the IJA on the 17th of December 2025.

42. In the response received on the 20th of January 2026, the IJA confirmed that the neither the applicant nor this Court had been informed of the Galaţi Court of Appeal's refusal to surrender the respondent when the warrant issued or thereafter. The IJA also confirmed the legal basis on which surrender was refused and attached a copy of the record of the Romanian proceedings.

43. The response also confirmed that, following this refusal, the prosecutor supervising the case in the issuing state considered it proportionate to maintain the European Arrest Warrant issued against the respondent.

44. I cannot see anything in that series of events that would justify a refusal to surrender the respondent on the grounds of an abuse of process.

45. There is nothing in what transpired that has the intention, or the effect, of undermining the enquiry that I must carry out under the 2003 Act. The refusal postdated the issuance of the warrant by two months and, upon enquiry being made of the IJA after the respondent had been arrested in October 2025, full details were provided. I cannot see any basis for concluding that anything was hidden in the sense contended for.

46. It is also submitted by the respondent that the effect of this "*prior determination*" mandates a level of vigilance by this Court to the application such as would justify a refusal to surrender. Due consideration must also be given to the reasons for prior refusal.

47. It is of course trite law to say that a refusal of an application for surrender does not preclude a subsequent application. See, for example, *Angel*.

48. The effect of a prior determination and the question of issue estoppel was addressed by McGrath J. in *Minister for Justice v. Cup* [2025] IEHC 753.

49. In that case, the respondent's surrender to Poland for the enforcement of a sentence had been refused and thereafter a second application for surrender was made. The second warrant was, in substance, the same as the first warrant save for a modification concerning an extension of the statute of limitations in respect of the enforcement of sentence. (It seems that the first warrant contained an error in relation to the applicable date for the operation of the statute.)

50. The respondent in *Cup* argued that, in the particular circumstances of that case, his surrender was precluded on the second warrant either because of issue estoppel/*res judicata* or the acquisition by the respondent of a vested right as a result of the decision of this court in relation to the first warrant.

51. At paragraph 37, McGrath J. summarised the relevant principles as follows:

> "*(i) The principle of res judicata does not apply in the context of EAW proceedings, in the sense that a refusal to surrender on an earlier warrant does not preclude consideration by the Court of a subsequent application(s) on later warrants;*
>
> *(ii) As a matter of EU law several EAWs may be issued in relation to the same matters against the same person and each must be separately considered by the executing authority;*
>
> *(iii) A national court should, when considering a matter that is related to previous proceedings but requires a separate decision, apply the correct law as found by the CJEU rather than continuing with the mistaken view, even if national procedural rules would favour the latter.*
>
> *(iv) Issue estoppel may however arise in the context of EAW proceedings in the absence of a change in the legal or factual circumstances that were considered in previous EAW proceedings seeking surrender of the same person for the same offence(s);*
>
> *(v) A conclusive ruling on a legal issue that is not specific to the terms of the individual warrant before the court may in principle be binding on the parties to the litigation in which the ruling was given, in the absence of any material change to the law;*

(vi) A refusal to surrender based on a factual finding that will not change (for example, in relation to the age of criminal responsibility) could be binding when considering a subsequent application for surrender;

(vii) Whilst the issuance of several EAWs seeking the surrender of the same individual in relation to the same matter is permitted, it may in exceptional circumstances amount to an abuse of the process of this Court."

52. McGrath J. concluded that the respondent was trying to benefit from the error in the first warrant in respect of the applicable period, that there was nothing to stop the court from considering the second warrant with the correct date and that surrender was not prohibited by virtue of an issue estoppel or the acquisition of a vested right.

53. The respondent submits that the Court of Justice of the European Union ("the CJEU") has made it clear that, in circumstances where a further request for surrender is made, the subsequent executing judicial authority must exercise vigilance and give due consideration to the reasons for the prior refusal by the first executing judicial authority. Further, while the IJA was not precluded from maintaining the warrant, it should assess whether it is proportionate to maintain that warrant. See *KT v. Sofiyska gradska prokuratura* (Case C-71/21, ECLI:EU:C:2023:668) and *Breian* (Case C-318/24 PPU, ECLI:EU:C:2024:658).

54. It seems clear to me that it is common case that the prior refusal in this case was based on an optional ground for refusal where prosecution/enforcement would be statute barred in the *executing* state. This optional ground has not been made part of the law in this jurisdiction.

55. In circumstances where the fundamental basis for prior refusal has no application under the laws of this State, it is entirely appropriate to consider the warrant before this Court and the request for surrender based thereon. It is also clear from the further information provided that the question of proportionality has been specifically addressed by the IJA, who confirmed that it was considered proportionate to maintain the request.

56. I am, therefore, satisfied that these points of objection should be rejected.

Failure to Comply with Section 11 of the 2003 Act

57. The respondent submits that compliance with section 11(1A) of the 2003 Act cannot be shown in circumstances where the warrant states that it relates to one offence, whereas Part E of the warrant lists a number of items as the subject of the charge.

58. There can be no dispute but that clarity is required in respect of the offence(s) for which a respondent's surrender may be sought. It was expressed in the following way by Hardiman J. in *Minister for Justice and Equality v. Connolly* [2014] 1 I.R. 720 at paragraph 30:

> "*... It is a mandatory requirement of the European arrest warrant procedure that there be unambiguous clarity about the number and nature of the offences for which the person sought is so sought.*"

59. Three broad objectives of section 11 were identified by Edwards J. in *Minister for Justice and Equality v. Cahill* [2012] IEHC 315:

"*The first is to enable the High Court, in its capacity as executing judicial authority, to be satisfied that it is appropriate to endorse the warrant for execution in this jurisdiction. […]*

The second objective is to enable the executing judicial authority to be satisfied as to correspondence in cases in which double criminality is required to be demonstrated. [...]

The third objective, and the critical one in the circumstances of the present case, is to enable the respondent to know precisely for what it is that his surrender is sought. A respondent is entitled to challenge his proposed surrender and in order to do so needs to have basic information about the offences to which the warrant relates. Among the issues that might be raised by a respondent are objections based upon the rule of specialty, the ne bis in idem principle and extra-territoriality to name but some. In order to evaluate his position, and determine whether or not he is in a position to put forward an objection that might legitimately be open to him to raise, he (and also his legal advisor in the event he is represented) needs to know, in respect of each offence to which the warrant relates, in what circumstances it is said the offence was committed, including the time, place, and degree of participation in the offence by the requested person."

60. Section 11(1A)(f) of the 2003 Act, which is derived from Article 8(1)(e) of the Framework Decision, states that a relevant arrest warrant shall set out "*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."

61. Part E of the warrant clearly states, in bold capitals, that the surrender of the respondent is sought for "***ONE OFFENCE***." In the event that there was any doubt about this, the IJA was asked the following in the request for further information dated the 12th of November 2025:

> "*The European Arrest Warrant provides that it is issued in respect of one offense. However, there 15* [sic] *boxes which contained numerous different quantities and types of perfume. Can you please confirm that it is intended to prosecute the requested person solely in respect of single offence notwithstanding the number of different items found.*"

62. In the response received on the 24th of November 2025, the IJA (along with providing further information about witnesses, the degree of the respondent's alleged participation and the process behind the application for the issuance of the warrant) confirmed that the respondent was to be prosecuted for a single offence in relation to the numerous items found in the boxes.

63. I cannot see any conflict whatsoever between section 11, the objectives identified by Edwards J. in *Cahill* and the information provided in this application. The respondent cannot sensibly argue that he does not know precisely why his surrender is sought. There is simply no room for doubting that he is to be prosecuted for a single offence

under the Criminal Code of the Republic of Bulgaria, as identified in considerable detail both in the warrant and the supplementary information.

64. I am, therefore, satisfied that this point of objection must be rejected.

Correspondence

65. There is a degree of overlap between this objection and the section 11 objection.

66. Under this heading, the respondent submits that his surrender is prohibited as the alleged conduct does not correspond with an offence or offences under the laws of this State.

67. The applicant accepts that this is not a 'tick box' offence as provided for under Article 2.2 of the Framework Decision and that accordingly correspondence must be made out.

68. The Supreme Court considered the requirements of correspondence in *Minister for Justice, Equality and Law Reform v. Dolny* [2009] IESC 48. At paragraph 14, Denham J. said that:

> "*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. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the*

terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction."

69. At paragraph 17, Denham J. went on to say, in terms of the approach to be taken, that:

> "*The words on the warrant are plain: 'beat … on the face and head with his fists … causing injury to his body …' The natural and ordinary meaning of the words is clear. There is well established jurisprudence on the approach to be taken to the words in warrants under the Extradition Act, 1965 as amended. Thus in Wilson v. Sheehan [1979] I.R. 423 at p. 429 Henchy J. stated:-*
>
> > *'When it comes to the words in the warrant by which the factual content of the specified offence is identified, the correct rule is that those words should prima facie be given their ordinary or popular meaning unless they are used in a context which suggests that they have a special signification.'*
>
> *In that case the warrant had alleged that the requested person '… did rob Michael Barker of £281 in cash and immediately before doing so used force, to wit personal violence, on the said Michael Barker.' Henchy J. held at p.430 that:-*
>
> > *'Since the word 'rob' in ordinary usage means 'deprive a person of property unjustifiably by force,' all the District Justice had to decide was whether the charge in the warrant that the plaintiff had robbed a person of money, using personal violence to that person immediately before doing so, would constitute an offence if the same conduct were charged in an indictment in this state.'*

I am satisfied that a similar approach may be taken to the words on a warrant issued under the European Arrest Warrant Act, 2003, as amended. Thus a court may look at all the information provided, the facts and acts described, and give to words their ordinary and popular meaning."

70. As I held in *Minister for Justice, Home Affairs and Migration v. Tudor* [2026] IEHC 75, the question then becomes one of whether the facts as described on the warrant would, if established, constitute an offence under the criminal law in this jurisdiction.

71. As Binchy J. commented in *Minister for Justice and Equality v. Kasevicius* [2019] IEHC 434, there is no requirement for the facts to be presented by the issuing judicial authority in the same way in which they might appear in this jurisdiction on a summons or a charge sheet or an indictment.

72. In *Minister for Justice and Equality v. Witek* [2021] IEHC 195, Burns J. said that the approach to correspondence had to be individualised and on a case-by-case basis. At paragraph 13, Burns J. said that:

> "*... The matter is not determined by the particular provision of the law in the issuing state, but rather the Court must look at the acts said to constitute the offence alleged in the issuing state. It is quite conceivable that a particular set of circumstances alleged to contravene article 276 of the Polish Criminal Code could be found to correspond with an offence contrary to s. 4 of the Act of 2001 while other circumstances may not. The Court looks to the acts alleged to have been committed by the respondent.*"

73. In this case, the applicant submits that correspondence can be found with an offence contrary to section 92 of the Trade Marks Act 1996 ("the 1996 Act") dealing with the fraudulent application or use of trade marks in relation to goods.

74. Section 92 of the 1996 Act provides that:

> "*(1) Subject to the provisions of subsection (3), it shall be an offence for any person—*
>
> > *(a)* ***to apply a mark identical to or nearly resembling a registered trade mark to goods*** *or to material used or intended to be used for labelling, packaging or advertising goods,*
> >
> > *(b) to sell, let for hire, offer or expose for sale or hire or* ***distribute****—*
> >
> > > *(i)* ***goods bearing such a mark****, or*
> > >
> > > *(ii) material bearing such a mark which is used or intended to be used for labelling, packaging or advertising goods,*
> >
> > *(c) to use material bearing such a mark in the course of a business for labelling, packaging or advertising goods, or*
> >
> > *(d)* ***to possess in the course of a business*** *goods or material bearing such a mark with a view to doing any of the things mentioned in paragraph (a) to (c),*
>
> *when that person is not entitled to use the mark in relation to the goods in question or authorised by a person who is so entitled.*
>
> *(2) Subject to the provisions of subsection (3), it shall be an offence for any person to possess in the course of a business goods or material bearing a mark identical to or nearly resembling a registered trade mark with a view to enabling*

or assisting another person to do any of the things mentioned in subsection (1) (a), (b) or (c), knowing or having reason to believe that the other person is not entitled to use the mark in relation to the goods in question or authorised by a person who is so entitled.

(3) ***Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence if, but only if that person acts with a view to gain, for himself or another, or with intent to cause a loss to another*** *and it shall be a defence for a person charged with an offence under subsection (1) to show that he believed, on reasonable grounds, that he was entitled to use the trade mark in relation to the goods in question.*

(4) A person who commits an offence under this section shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding six months or to a class C fine, or to both;

(b) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding €130,000, or to both."

(Emphasis added.)

75. The respondent argues that there is no evidence to establish the matters emphasised above and that *mens rea* must be present but is not established on the available information.

76. It was submitted that, in respect of Part E of the warrant, I am not entitled to rely on any factual assertions contained under the heading "*nature and legal classification of*

the offence(s) and the applicable statutory provision/code of the Criminal Code." The thrust of the submission was to the effect that this section of Part E is concerned with legal matters and, insofar as statements of fact are contained therein, the Court is precluded from relying on them. I am satisfied that this would be an unrealistic approach and that the warrant must be looked at as a whole.

77. In my view, the face of the warrant establishes the following as the factual matters underpinning the alleged offence:

- The respondent went to the office of a forwarding company and unloaded fifteen boxes of perfumes into his car, in which he had travelled for this purpose, to send abroad;
- He provided an employee in that company with a previous bill of lading with which he had sent items abroad;
- He was discovered by border police officers unloading the boxes for the purpose of sending them abroad;
- The contents of the boxes were examined and an expert patent and technical report was prepared;
- The examined goods were identical to goods for which a number of the listed trade marks are registered;
- Signs on the recovered goods were found to have a similarity to the signs of the listed trade marks;
- The expert report indicated that this similarity may lead to consumer confusion, including the possibility of associating the signs depicted on the seized material with the listed trade marks;
- The total value of the seized items was BGN 143,139;

- There was no consent from the holders of the exclusive rights to the trade marks;
- The respondent was using these trade marks in his commercial activity and stored goods with these signs for the purpose of sale.

78. It seems to me that the inescapable conclusion when one asks the question of whether the particulars on the warrant would constitute an offence in this State is that it would, and the relevant corresponding offence is an offence contrary to section 92 of the 1996 Act.

79. The test is to consider the acts described and to give the words used to describe those acts their natural and ordinary meaning.

80. It is clearly alleged that the respondent was carrying out a commercial activity, which involved selling goods marked in a way to resemble the registered trade marks, without the consent of the holders of the exclusive rights to those trade marks. It is a matter of unavoidable inference from the plain words in the warrant that the respondent allegedly did so with a view to making a gain and/or with the intent to cause a loss to the holders of those exclusive rights.

81. I am, therefore, satisfied that this point of objection must be rejected.

Conditions of Detention

82. The respondent submits that his surrender is prohibited by section 37 of the 2003 Act.

83. Paragraph 4 of the respondent's affidavit contains a general averment in the following terms:

> "*I say and am advised that there is ongoing criticism of the conditions of detention in the Issuing State. I say that I am concerned that I will be exposed an unacceptable risk* [sic] *of a breach of my rights due to the conditions of detention in the Issuing State.*"

84. The respondent has not provided any evidence of a specific individualised risk to him if his surrender is made to the issuing state.

85. The respondent exhibited what is referred to as an index for the Country of Origin material. A precis of this material was submitted by the respondent and it does not seem to be in contention that this material came from reputable sources, including a Report to the Bulgarian Government on the periodic visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("C.P.T.") published on the 18th of October 2022.

86. The C.P.T. report contained criticisms relating to interprisoner violence and the conditions of detention in Bulgarian prisons, to include the lengthy periods during which remand prisoners are locked in their cells. It also contained criticisms of overcrowding in specific penitentiary establishments.

87. Reference was made to the Annual Report of the Ombudsman of the Republic of Bulgaria Acting As National Preventative Mechanism 2023 which noted systemic deficits in relation to the medical care of inmates and the generally unhygienic

conditions in Bulgarian prisons. The Ombudsman report referred to previous findings of Article 3 violations against the Republic of Bulgaria and stated that, notwithstanding these violations, there were persistent and significant problems relating to, *inter alia*, interprisoner violence and poor conditions of detention, including widespread bug infestations. Separately, the respondent submitted an index of the European Court of Human Rights ("the ECtHR") case law in respect of those findings.

88. Reference was also made to the Annual Report of the Ombudsman of the Republic of Bulgaria Acting As National Preventative Mechanism 2024 which again criticised the persistence of long-standing problems in the Bulgarian penitentiary system.

89. Reference was made to the Ombudsman of the Republic of Bulgaria Monitoring of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Bulgaria Summaries of Reports 2023 and 2024 which were both critical of the healthcare facilities in Bulgarian prisons and 24-hour detention.

90. Reference was made to the United States, State Department, Human Rights Reports on Bulgaria 2023 and 2024. While the poor conditions in certain prisons and detention centres were criticised, positive change was noted in other facilities by NGOs. These reports also reflect accounts of overcrowding in some detention facilities and inadequate medical conditions.

91. I note that the excerpts from the above reports also contain many passages directed towards the conditions in police stations, access to lawyers and police conduct more generally in the issuing state.

92. There does not appear to be any real dispute between the parties that the materials submitted on behalf of the respondent establish the existence of generalised deficiencies within the prison system of the issuing state.

93. The approach to be adopted by the Court in relation to a complaint such as this is well established. See *Aranoysi and Căldăraru* (Joined Cases C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198) and *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783.

94. At paragraph 31 of *Rettinger*, Denham J. outlined a number of applicable principles:

> "*(i) a court should consider all the material before it, and if necessary material obtained of its own motion;*
>
> *(ii) a court should examine whether there is a real risk, in a rigorous examination;*
>
> *(iii) the burden rests upon a respondent, such as the respondent in this case, to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention;*
>
> *(iv) it is open to a requesting state to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from a respondent as to conditions in the prisons of a requesting state with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the respondent were returned to the*

requesting state he would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention. On the other hand, the requesting state may present evidence which would, or would not, dispel the view of the court;

(v) the court should examine the foreseeable consequences of sending a person to the requesting state;

(vi) the court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to governmental sources, such as the State Department of the United States of America;

(vii) the mere possibility of ill-treatment is not sufficient to establish an respondent's case;

(viii) the relevant time to consider the conditions in the requesting state is at the time of the hearing in the High Court. Although, of course, on an appeal to this court an application could be made, under the rules of court, seeking to admit additional evidence, if necessary."

95. At paragraph 34(iii), Denham J. continued:

"*The burden rests upon the respondent to adduce evidence capable of proving that there are substantial grounds for believing that if he is returned to Poland he would be exposed to real risk of being subjected to treatment contrary to article 3 of the Convention. However, the requesting state may present evidence to dispel doubts.*"

96. At paragraph 80, Fennelly J. made the following important observation:

"*It is neither possible nor appropriate to prescribe too narrowly the way in which a judge should assess the evidence, whose quality necessarily varies enormously. The credibility of any evidence will depend on all the circumstances of the individual case. In the final analysis, it is a matter for the judge to decide whether the necessary substantial grounds have been established for believing that there is a real risk of ill-treatment contrary to article 3. He does not have to be convinced that ill-treatment would probably occur. There is no shifting of the burden of proof in the absence of evidence of substantial grounds. The judge may, however, regard the failure of the applicant to respond to evidence produced as significant. In that situation, he may reasonably expect the applicant to produce some evidence.*"

97. At paragraph 45 of *Angel*, Burns J. outlined a taxonomy of factors to be considered where objections are raised in respect of prison conditions under section 37 of the 2003 Act or Article 3 of the ECHR:

"*From the review of the relevant authorities carried out by McDermott J. in Minister for Justice and Equality v. Pal [2020] IEHC 143, the following non-exhaustive list of principles emerges:-*

(a) the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and mutual trust;

(b) a refusal to execute a European arrest warrant is intended to be an exception;

(c) one of the exceptions arises when there is a real or substantial risk of inhuman or degrading treatment contrary to article 3 ECHR or article 4 of the Charter of Fundamental Rights of the European Union ('the Charter');

(d) the prohibition of surrender where there is a real or substantial risk of inhuman or degrading treatment is mandatory. The objectives of the Framework Decision cannot defeat an established risk of ill-treatment;

(e) the burden rests upon a respondent to adduce evidence capable of proving that there are substantial/reasonable grounds for believing that if he or she were returned to the requesting country, he or she will be exposed to a real risk of being subjected to treatment contrary to article 3 ECHR;

(f) the threshold which a respondent must meet in order to prevent extradition is not a low one. There is a default presumption that the requesting country will act in good faith and will respect the requested person's fundamental rights. Whilst the presumption can be rebutted, such a conclusion will not be reached lightly;

(g) in examining whether there is a real risk, the Court should consider all of the material before it and if necessary, material obtained of its own motion;

(h) the Court may attach importance to reports of independent international human rights organisations or reports from government sources;

(i) the relevant time to consider the conditions in the requesting state is at the time of the hearing;

(j) when the personal space available to a detainee falls below $3m^2$ of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of article 3 ECHR arises. The burden of proof is then on the issuing state to rebut the presumption by demonstrating that there are factors capable of adequately compensating for the scarce allocation of personal space, and this presumption will normally be capable of being rebutted only if the following factors are cumulatively met:-

(1) the reductions in the required minimum personal space of $3m^2$ are short, occasional and minor;

(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and

(3) the detainee is confined to what is, when viewed generally, an appropriate detention facility, and there are no aggravating aspects of the conditions of his or her detention;

(k) a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to the refusal to execute a European arrest warrant. Whenever the existence of such a risk is identified, it is then necessary for the executing judicial authority to make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. The executing judicial authority should request of the issuing

member state all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained;

(l) an assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhuman or degrading treatment is something which the executing state cannot disregard and the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the member states 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 3 ECHR or article 4 of the Charter; and

(m) it is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member state."

98. The factors identified above are, in my view, in accordance with *Muršić v. Republic of Croatia* (Application No. 7334/13, 20 October 2016), a case on which the respondent places reliance. This was a case wherein the ECtHR stated at paragraphs 137-138 that:

"*When the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors* *capable of adequately compensating for the scarce allocation of personal space (see paragraphs 126-128 above).*

The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

(1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor (see paragraph 130 above):

(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities (see paragraph 133 above);

(3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (see paragraph 134 above)."

99. Counsel for the respondent also placed emphasis on *Dorobantu* (Case C-128/18, ECLI:EU:C:2019:857) as establishing that a risk of a breach of human rights cannot be ruled out simply because there is a legal remedy in the issuing state that enables the respondent to challenge the conditions of detention and there are legislative or structural measures in the issuing state that are intended to reinforce the monitoring of detention conditions.

100. The full passage in which the CJEU made those observations is located at paragraph 85 where it stated that:

"*In the light of all the foregoing considerations, the answer to the questions referred is as follows:*

- *Article 1(3) of Framework Decision 2002/584, read in conjunction with Article 4 of the Charter, must be interpreted as meaning that when the executing judicial authority has objective, reliable, specific and properly updated information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, it must, for the purpose of assessing whether there are substantial grounds for believing that, following the surrender to the issuing Member State of the person subject to a European arrest warrant, that person will run a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, take account of all the relevant physical aspects of the conditions of detention in the prison in which it is actually intended that that person will be detained, such as the personal space available to each detainee in a cell in that prison, sanitary conditions and the extent of the detainee's freedom of movement within the prison. That assessment is not limited to the review of obvious inadequacies. For the purposes of that assessment, the executing judicial authority must request from the issuing judicial authority the information that it deems necessary and must rely, in principle, on the assurances given by the issuing judicial authority, in the absence of any specific indications that the conditions of detention infringe Article 4 of the Charter.*

- *As regards, in particular, the personal space available to each detainee, the executing judicial authority must, in the absence, currently, of minimum standards in that respect under EU law, take account of the minimum requirements under Article 3 of the ECHR, as interpreted by the European Court of Human Rights. Although, in calculating that available space, the area occupied by sanitary facilities should not be taken into account, the calculation should include space occupied by furniture. Detainees must, however, still have the possibility of moving around normally within the cell.*
- *The executing judicial authority cannot rule out the existence of a real risk of inhuman or degrading treatment merely because the person concerned has, in the issuing Member State, a legal remedy enabling that person to challenge the conditions of his detention or because there are, in the issuing Member State, legislative or structural measures that are intended to reinforce the monitoring of detention conditions.*
- *A finding, by the executing judicial authority, that there are substantial grounds for believing that, following the surrender of the person concerned to the issuing Member State, that person will run such a risk, because of the conditions of detention prevailing in the prison in which it is actually intended that he will be detained, cannot be weighed, for the purposes of deciding on that surrender, against considerations relating to the efficacy of judicial cooperation in criminal matters and to the principles of mutual trust and recognition.*"

101. It is submitted on behalf of the respondent that, if surrendered, he might be:

- held in overcrowded conditions;
- held in an inappropriate detention facility without sufficient freedom of movement outside of his cell;
- held in conditions where the space factor is coupled with other aspects of inappropriate physical conditions of detention;
- exposed to inhuman or degrading treatment at the hands of agents of the issuing state;
- exposed to interprisoner violence;
- and not medically assessed on arrival.

102. Additional information and assurances were sought from the IJA on the 5th of February 2026. This request related to the institution in which it was anticipated that the respondent, if surrendered, might be detained and the general conditions in which he would be detained.

103. Assurances were also sought in relation to the minimum individual space that the respondent would have during the course of his detention and confirmation that the respondent would be medically assessed upon his arrival and that an assessment would take place in the event of any suspected threat to his personal safety.

104. In the response dated the 10th of February 2026, the IJA indicated that upon the respondent's surrender, he will be detained at the Russe detention centre at the Execution of Punishments Regional Office - Russe. The IJA attached a letter from the

Head of the Execution of Punishments Regional Office - Russe which they stated contained answers to the further queries in the request.

105. This letter states that the Russe detention centre was opened on the 24th of October 1997.

106. It has a total of 72 sleeping places comprising 17 single cells, 20 double cells and 5 triple cells. The letter expressly states that:

> "*... The capacity is in accordance with the requirement of no less than 4 sq.m. of living space for one detained person, excluding the bathroom.*"

107. The letter describes the renovations carried out between 2014 and 2018 and the building of bathroom facilities in cell areas and for common use. Hygiene is maintained by detainees, and equipment and cleaning products are provided for same.

108. The letter states that all of the cells have one window with a bright opening area that has access to daylight and another window to the detention corridor with lighting fixtures to enable the prison guards to monitor behaviour in order to protect the detainees' lives and health.

109. Hot meals are provided by a private company and further food products can be purchased in the detention centre shop. Special dietary requirements are catered for.

110. Medical care is provided by a medical assistant and if a detained person needs hospital treatment, he or she is placed in an external facility until their discharge. Dental care is also provided on the same basis. The letter confirms that:

> "*... Each newly admitted person undergoes an initial medical examination to assess their general health condition.*"

111. The letter was signed by the Chief Inspector of the Head of the Execution of Punishments, Regional Office – Russe and the Chief Warden. It appears on the face of the letter that above both of their names and titles, there is what seems to be an electronic signature in the form of an 'X.'

112. The respondent points out that in circumstances where the letter does not emanate directly from the IJA but from another organ in the issuing state, it should not be afforded the same weight. While strictly speaking this is true, I am of the view that this does not justify approaching the information in a spirit of scepticism or distrust absent any basis for same.

113. I think it is important to note that the IJA expressly confirmed that the respondent would be held at this detention centre. It then went on to say that the "*answers*" to the other queries raised and questions posed were provided in the letter from the Head of the Execution of Punishments Regional Office - Russe. It is, in my view, unsurprising that the IJA would rely on this office in obtaining the most up-to-date and in-depth information from the detention centre in which the respondent is to be detained in response to a request for further information on the prison conditions in that centre.

114. It is true to say that the response from the IJA does not directly address the question of interprisoner violence. It must also be acknowledged that the ECHR has been interpreted on a number of occasions as imposing a positive duty on the State to ensure that an individual is not exposed to inhuman or degrading treatment from private citizens (in this context, other prisoners, where someone is in a vulnerable position by virtue of being under the control of the authorities). See *Z v. The United Kingdom* (Application No. 29392/95, 10 May 2001).

115. However, there is no evidence of any particular threat to the personal safety of this respondent. Further, the letter states that the detention corridor is lit "*around the clock*" for the purposes of monitoring behaviour and protecting detainees' lives and health.

116. I am satisfied that the further information provided by the IJA is information on which the Court can rely in applying the fact-specific and forward-looking approach mandated by the above-mentioned authorities and that this is consistent with the principles of mutual recognition and mutual trust. There is no indication in the material before me that the information provided in respect of this particular detention centre is incorrect or incapable of being relied upon. In light of the IJA's response, I am not satisfied that a real or substantial risk of inhuman or degrading treatment contrary to Article 3 of the ECHR has been made out.

117. I am, therefore, of the view that this point of objection should be refused.

Decision

118. I am satisfied that I am not required to refuse the respondent's surrender under sections 22, 23 or 24 of the 2003 Act. I am also satisfied that I am not required to refuse surrender for any other reason under Part 3 of the 2003 Act.

119. For all the above reasons, I reject the points of objection raised on behalf of the respondent to his surrender. I, therefore, propose to make an order for his surrender to a person authorised to receive him in the issuing state.