

THE HIGH COURT

[2026] IEHC 507

Record No. 2022/171 EXT

BETWEEN

MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

APPLICANT

AND

ANDRZEJ GRUCHACZ

RESPONDENT

JUDGEMENT of Mr Justice Patrick McGrath delivered on the 17th day of July 2026

BACKGROUND

1. In this application the Minister seeks the surrender of the Respondent to Poland on foot of a European Arrest Warrant dated 04/09/19.
2. Orders for the surrender of the Respondent have previously been made following the receipt previously of other EAWs from Poland as follows:
 - i. MJE v Gruchacz 2014 158 EXT (Withdrawn 01/02/16)
 - ii. MJE v Gruchacz 2014 159 EXT (Final order made 29/03/17)
 - iii. MJE v Gruchacz 2016 88 EXT (Final order made 28/07/23) (Judgement delivered by Donnelly J. on 19/12/16)

3. Surrender has been postponed on those two EAWs as the Respondent is currently serving a life sentence in this jurisdiction following his conviction for the offence of murder in the Central Criminal Court. His appeal against this conviction was subsequently refused by the Court of Appeal and the Supreme Court subsequently refused to give him leave to appeal to that Court.
4. The respondent has previously been represented in these proceedings by solicitor and counsel. He has had three separate sets of solicitors since the commencement of these proceedings and, having discharged the services of his last solicitor, has now decided to act for himself in this case. Furthermore, he previously had the assistance of a Polish interpreter but has decided that he does not require the assistance of any interpreter, despite the suggestions of the court that such a facility might assist him.
5. As the offences for which his surrender is now sought were allegedly committed in Poland prior to his surrender to this state from Scotland for the purposes of his prosecution in Ireland, the consent of the Scottish authorities to his onward surrender to Poland had to be sought prior to this Court considering the Minister's application for surrender on this EAW.
6. The respondent, as was his entitlement, wished to make submissions to the relevant Scottish court as to why consent should not be given in this case, and arrangements were made to enable him to participate in that process via video link. The hearing and determination of that application in Scotland led to a delay in the consideration of this application for surrender. The Scottish authorities have now waived the specialty rule and consented to the onward surrender of the respondent to Poland, should this be ultimately ordered by this Court.

GROUND UPON WHICH RECUSAL SOUGHT

7. The respondent has now brought a motion seeking an order that *'the presiding judge immediately recuse himself, herself from any further hearing, determination, or processing of Record Numbers 2014/158EXT, 2014/159EXT, 2016/88EXT and 2022/171EXT'*. This application is made on the

‘grounds of Objective Bias, Procedural Hostility, Coordinated Structural Unfairness and Prosecutorial Misconduct. These factors have rendered this specific forum incapable of delivering an objective, fair, or effective remedy under Article 34.1, Article 38, and Article 40.4.1 of the Irish Constitution (Bunreacht Na H’Eireann), and Articles 5, 6, 8, 13 and 34 of the European Convention on Human Rights’

8. The Respondent thereafter has set out eight grounds and elaborated upon the same in the Motion he has personally filed.

Ground No 1

9. The first ground is entitled *‘Coercive CoOrdination and Bench Prosecution Coaching’*. Here the respondent refers to what allegedly transpired during an unsuccessful application by him on the 3rd of June 2026 for access to various DAR records. He asserts that this court, in a manner which constituted the *‘coaching’* of the state barrister and in a manner which showed an *‘unconstitutional coordination between the bench and the state’*, assisted counsel for the Minister in relation to her citation of extracts from a case, namely the decision of the Supreme Court in *Smith v DPP* [2025] IESC 42.

10. Counsel for the Minister says that what occurred in this regard was a perfectly normal exchange between counsel and a Judge. Having produced the leading recent authority on the issue of access to the DAR, *Smith v DPP* (op. cit), she highlighted in submission specific paragraphs from that decision. In the course of the interchange between counsel and the court, I referred to other paragraphs and indeed referred to this authority in the course of my ruling.

Ground No 2

11. The next ground of the respondent is headed *‘Procedural Segregation and Refusal of Reply’*. Here the respondent alleges that this court allowed the applicant to make *‘sweeping verbal assertions while muzzling the Respondent whenever he attempted to read technical, statutory facts into the record’*. He complains that the court

‘repeatedly cut off the respondent’s arguments by deploying the keyword ‘irrelevant’ to avoid addressing core jurisdictional defects spanning these four interconnected files’

12. The applicant in reply says that the respondent was given a proper opportunity to make his application for the transcript of the various hearings in relation to the earlier EAW cases and, having heard from him, the court decided he was not entitled to those transcripts.
13. The applicant says that the respondent is in effect seeking to argue that, because the court refused his application for transcripts in relation to the earlier cases, this amounts to objective bias. The Minister submits that, as here, the fact that a Judge rules against an applicant cannot amount to objective (or indeed any form of) bias as this is part of the task of a Judge hearing a case. Counsel for the Minister refers in this regard to the comments of O’Malley J in *Murphy v DPP* [2021] IESC 75.

Conclusions on Grounds 1 and 2

14. The respondent is here referring primarily to an application made by him for access to DAR records and / or transcripts of various hearings in other cases in which he was a party before the courts in this jurisdiction and of earlier hearings in this case. This application was heard on 3rd of June 2026 and, following submissions by the respondent and applicant, the court made an ex-tempore ruling refusing to order the release of such records and / or transcripts.
15. In the course of the Minister’s reply, counsel referred to the leading recent authority of the Supreme Court on this issue, namely *Murphy v DPP* (op. cit.) Various paragraphs were highlighted by counsel for the applicant and the court also referred during those submissions to other paragraphs in that judgment.
16. The respondent was put at no disadvantage in the manner in which that application was heard and determined. The leading authority was properly brought to the attention of the court and as is common practice, the court and counsel each referred to various paragraphs in that judgment in the course of submissions. The Respondent

was not in any way shut out from making his submissions, whether generally or in relation to the authority cited.

17. The court thereafter made its ruling and refused the application. It goes without saying that the fact that a party to litigation is unsuccessful in any application, interlocutory or otherwise, does not of itself evidence bias, whether subjective or objective, on the part of the tribunal who has made the decision.

Ground No 3

18. The third ground pleaded by the respondent is '*unconstitutional courtroom exclusion to mask detention timelines.*' The respondent here is raising an issue concerning the operation of the relevant statute(s) of limitations in Poland and has *inter alia* submitted that the State put an inaccurate timeline before the court when, relying on the contents of the EAW, it stated that the statute of limitations in Poland will expire in October 2026.

19. As part of this complaint the Respondent refers to his removal from the court on the 3rd of June 2026 and his allegation that this '*allowed the prosecution to write inaccurate statutory timelines into the record in the forced absence of the defendant*'

20. The Minister points out that, the Respondent having raised issues concerning the operation of the statute of limitations in Poland, the court directed that a s. 20 request be sent to Poland seeking clarification in this regard. The respondent had claimed that the Polish constitutional court had declared constitutionally void a statute that had purported to suspend the operation of limitation periods for a period of time during the covid pandemic. A reply has been received from Poland which seems to substantially confirm the accuracy of what was submitted by the Respondent and, having considered this reply, the Court has directed a further s. 20 request be sent to Poland seeking clarification as to what precisely are the limitation periods which now apply in light of the developing case law in that state.

Conclusion on Ground 3

21. A reply has been received from the IJA which would appear to support some, or all of the submissions made by the respondent in this regard and would suggest that at least some of the offences for which his surrender is sought in these proceedings may now be statute barred. A further s. 20 request has been sent to Poland seeking clarification on this matter, and a reply is awaited.
22. As can be seen from the above, far from not considering matters legitimately raised by the respondent in the course of these proceedings, a s. 20 request was issued to the Polish authorities following him raising an issue concerning the operation of the Statute of Limitations under Polish Law and the effect of a ruling of the Polish Supreme Court.
23. Upon receipt of all necessary information in this regard the court will consider the submissions made by the parties on this issue and determine what, if any, effect the operation of the Polish Statute of Limitations might have on this application.
24. Insofar as the removal of the respondent from the body of the court is concerned, this has regrettably proven to be unavoidable on a number of occasions when this case has been listed in court. The respondent has repeatedly interrupted the court during these hearings, refused to listen to queries raised by the court, repeatedly talked across counsel for the state when she was seeking to make her submissions and on multiple occasions refused to comply with directions made by the court in the course of the hearing.
25. The respondent is entitled to be present at the hearing of this matter and, prior to taking the undesirable step of removing him from court, I have on all occasions given the respondent warning that, if he does not cease to engage in disruptive behaviour, I will be left with no option but to order his exclusion. On several such occasions, rather than complying with the court, he has simply said that he wanted to leave the court as it was acting in an unfair manner. On each occasion the court has ordered his removal, I directed that the respondent be brought back into court after a short period of absence and always endeavoured to have him present at all stages of these hearings.

26. All court hearings must be conducted in an orderly and civilised manner, and each side must be given the opportunity to make their submissions. Such submissions can of course be forcefully made but must always be done in a manner which is respectful to the other side and to the court. Any judge hearing a case must be able to hear the submissions of each party in the matter and also must have the opportunity to raise queries with each party. A judge is entitled to take steps to ensure that hearings are conducted in a manner which is fair to both sides, and which ensure that he or she has been able to hear and consider the submissions of each party.
27. Any litigant has a right to be present at the hearing of his or her case and has the right to set out his or her case and this extends to doing so forcefully. A judge is entitled, in the management of his or her business, to take steps to ensure that the parties direct their submissions to issues that are of relevance to the case at hearing. The parties must comply with the directions of the judge, whether they agree or disagree with such directions.
28. As already observed, the respondent has repeatedly interrupted the court and has refused to abide by the directions of the court in the course of various hearings. He has cut across and interrupted counsel for the state in the course of her making submissions, even after he has been advised that he would have an opportunity to reply. He was repeatedly advised that should he persist in this behaviour and not abide by the court's directions, the court might have no option but to order his removal. Regrettably and due to his continued misbehaviour, I had no option but to direct his removal in order that the case could properly proceed. On all such occasions he was brought back into court after a relatively short time, and I sought to again ensure that he could be present.

Ground No 4

29. The fourth ground is referred to as '*The Judicial Separation Paradox and the 'Active Consideration' Loop*'. Here the respondent appears to be referring to what he says is a ruling some twelve months ago by a Court in Warsaw that his domestic sentences be served in Ireland. He complains about the alleged failure of the Minister to credit the thousands of days he has served since 2014 in custody in Ireland against these '*short*

sentences.’ He has also complained about this court, in these proceedings, apparently seeking to wrongly ‘sever’ the earlier proceedings and ‘branding any argument of continuous illegal arrest as ‘irrelevant’’. He inter alia claims that this refusal is a ‘global Article 5 abuse of process calculation’

30. The Minister submits that the matters raised by the respondent are irrelevant to the issues in these EAW proceedings. Firstly, insofar as any order made by a Court in Warsaw is concerned, there is no right on the part of the respondent to serve any sentence for domestic Polish offences in Ireland and secondly there is no obligation on the Irish authorities to accept any request that he be allowed served any such sentence here.
31. The other proceedings to which the Respondent refers follow on from applications made following the receipt of separate warrants and were dealt with in previous EAW Act proceedings. The orders made in those cases remain extant but are postponed as the respondent is in jail serving an Irish sentence.

Conclusion on Ground 4

32. These proceedings concern an application for his surrender on one EAW and are entitled 171/2022EXT. Orders have already been made following the receipt of other EAWs from Poland, as set out at paragraph 2 above.
33. The applicant has provided the court and the respondent with a booklet of the judgments and orders made in those proceedings. The respondent can make submissions at the substantive hearing in relation to the effect he says these rulings have on this application and the decision of the court thereon. He is not being excluded from making such submissions and the court will then have to make its decision on any such submission.
34. These proceedings are concerned with the possible surrender of the respondent on foot of a separate and distinct EAW. The question of where the respondent might serve any sentence which is imposed for the offences in that EAW is not a matter which can be considered by the court when carrying out its functions in this case. If

his surrender is ordered following the conclusion of these proceedings, then he can apply to the Polish and Irish authorities seeking to serve this sentence in Ireland. The Irish authorities may or may not accede to this application, but this is a matter which does not arise in these extradition proceedings.

Ground No 5

35. The fifth ground is entitled '*The Prison Court Documents and Exclusion of the 200 Page Dossier*'. Here the respondent refers to a dossier of some 200 pages which he says was submitted to the Court on the 12th of May 2026 and which he says as part of a '*destructive pincer movement between the bench*' he has been kept from accessing in court and has wrongly been deemed irrelevant.

Conclusion on Ground 5

36. This dossier cannot be retrieved from the court records, and, despite a search, the court service cannot locate the person who is listed as having signed for the dossier at 16.48 on the 12th of May 2026. The court has now given the respondent an opportunity to check if all documents he wishes to be before the court are on the court file and, if not, to file any missing documents in the court. The matter therefore remains to be finally clarified, and the court will receive and consider such documents as submitted by the respondent.

Ground No 6

37. Ground 6 is headed '*Judicial Blindness to Prosecutorial Document Alteration and Fraud*'. The respondent here is referring to the recent Scottish High Court Judgment in his case which consented to this application proceeding. The respondent claims that there has been a '*coordinated cross border manipulation scheme executed jointly by the prison administration and the Applicant*'. He claims that, whilst the prison authorities withheld the authentic version of the judgment, the Minister handed a physically altered and edited copy of that judgment.

38. He claims that when this fraud was brought to the attention of the court, the court failed to intervene to sanction the state and inter alia halt execution of the EAW and this thereby violates the requirement for an impartial tribunal.
39. The Minister states that a copy of the only version of the Scottish High Court decision that the applicant ever received was given to the respondent and is the one in the papers before the court. The Minister says that he is a stranger to any allegations concerning the existence of other versions of this document.

Conclusion on Ground 6

40. The court has invited the Respondent to provide copies of the other versions of this document so that the matter can be on file and the court can consider any submissions made by the parties in this regard.

Ground 7

41. The respondent here complains of '*Condonation of cross-border mail interdiction and arbitrary refusal of written reasons*'.
42. Firstly, the respondent complains about the alleged interference by the prison authorities with a package containing '*cross border EAW documents*' that had been delivered to him in prison in May of this year. He is here referring to how the prison authorities allegedly repackaged documents addressed to him and received from Scotland following his service of formal letter before action on the Scottish authorities on 7th May 2026 and inter alia alleges that certain documents were '*systematically stripped*'. He complains that this court arbitrarily refused to investigate or rule on this '*mail tampering*'
43. The respondent has further complained of the court's '*wholesale refusal*' to issue written judgments of its various interlocutory decisions or provide transcripts of the hearing and states that the reason given by the court for refusing to release the transcript was because the state did not have a copy of the same. This is alleged to be a violation of Article 6 (Equality of Arms) of the Convention and, given his intended

petition to the ECtHR, *'an active state obstruction of the right to individual petition under Article 34 ECHR'*

44. The Minister states that the prison authorities have the right to examine mail being sent to prisoners. Furthermore, the applicant notes that the Respondent has in fact says he has the relevant documents he wishes to rely upon and no issue of relevance to these proceedings appears to arise.

Conclusion on Ground 7

45. No evidence has been adduced to suggest that there was an unlawful interference with the respondent's mail by the prison authorities. In any event, as submitted by the Minister, firstly the authorities generally have a right to check mail that comes into prison. And secondly, the respondent is not claiming that he has suffered any disadvantage in these proceedings as a result of the checking and / or censorship of his mail and particularly his mail received in connection with his litigation in Scotland.

46. The court has already ruled on the provision of transcripts and there is no obligation on the court to provide written rulings on each and every occasion the court sits in this matter and following each and every application by the respondent.

Ground No 8

47. The respondent alleges *'Jurisdictional collapse via foreign judicial incompetency'*

48. The respondent here says the following:-

'23. Equipped with the authentic email version of the judgment, the Respondent has appealed the 2014 illegal warehousing phase in Scotland. The Scottish Appeal Court has subsequently issued a formal declaration claiming that it is 'not competent' to hear the appeal

24. Under the European Arrest Warrant Act 2003 and the principle of mutual recognition, the executing jurisdiction's authority is strictly dependant on the

existence of a valid, underlying domestic framework in the issuing state. When the sending jurisdiction (Scotland) formally declares itself incompetent to review its own severe procedural deviations and 140 day illegal warehousing, the baseline of mutual trust collapses. The current court cannot continue to execute these EAW loops when the originating infrastructure has officially declared a total denial of an effective remedy under Article 13 ECHR'

49. The Minister states that what transpired during any hearings in Scotland would appear to have no relevance to the issues being determined in these proceedings. He further states that, in any event, the respondent can make submissions on the relevance of any such matters in the course of this section 16 application.

Conclusion on Ground 8

50. This court is here concerned with an application by the Minister for an order under s. 16 of the 2003 Act, made on foot of an EAW received from Poland seeking the surrender of this respondent in respect of offences as set out therein.
51. The respondent was previously incarcerated in Scotland and, following an application by the Irish authorities, was surrendered to this State for the purposes of prosecution. He was subsequently convicted of an offence of murder and is currently serving a life sentence for that offence.
52. Given the rules set out in the Framework Decision, prior to making any order for the surrender of the respondent to Poland on this EAW, the consent of the Scottish authorities to his onward surrender to Poland had to be obtained. The respondent was entitled to make submissions to a Scottish court as to why such consent ought not be given and the hearing of this application was delayed pending the outcome of that process. Having heard the submissions of the Respondent, the Scottish Courts gave their consent, and the matter is now before this court for determination.
53. The Minister may well be correct in his submission that what occurred in Scotland in such proceedings, or when the respondent was incarcerated there previously, has no relevance to these proceedings.

54. No decision has however been made to date as to the relevance or possible relevance of the Scottish proceedings to this application. The respondent wishes to submit that the conduct and outcome of these proceedings effect the current application before the court, and he can make such submission at the substantive hearing of the s. 16 application. The minister will make his reply, and the court will consider this aspect of the case and rule thereon.

Conclusion of Respondent Submissions

55. The Respondent concludes by saying that his '*natural elevation of voice*' during hearings was a predictable human consequence of witnessing a 12-year transnational course of wrongdoing '*actively protected by a collusive courtroom environment in real-time*'. He says that this court has lost jurisdiction because it '*has abandoned its role as an impartial arbiter, condoned prosecutorial document alteration, permitted the physical extraction of the defendant during statutory calculations, and refused to issue written reasons or transcripts*'

56. He finishes by says that, if the court does not recuse itself, he will make an application to the ECtHR.

RELEVANT LEGAL PRINCIPLES RE RECUSAL AND BIAS

57. The issue of judicial bias and recusal has been considered in recent years by the Supreme Court in *Murphy v DPP* (op. cit.) and *Kelly v UCD & Others* [2025] IESC 6.

58. The appellant in *Murphy* had been tried before Waterford Circuit Court on two charges of what is commonly referred to as '*diesel laundering*'. At the conclusion of his first trial on those charges, the jury had been unable to reach a verdict. The case was therefore listed to be retried in Waterford Circuit Court.

59. In the course of the first trial the trial Judge, having made findings in relation to the credibility of prosecution witnesses in the course of a *voir dire*, had excluded some

(but not all) challenged evidence as inadmissible and subsequently refused a direction at the end of the prosecution case.

60. The applicant argued that, because of these rulings by that judge in the first trial, the question of objective bias arose, and he ought not to hear the retrial. He submitted that an informed and reasonable bystander would conclude that he would not receive a fair and impartial retrial because the judge would be affected by his memories and perceptions of the first trial.
61. His application was refused in the High Court and his appeals to firstly the Court of Appeal and thereafter the Supreme Court failed. In the course of her Judgement for the Supreme Court, O'Malley J referred with approval to the comments of Lord Lloyd Jones at paragraph 16 of his decision the Privy Council decision in *Stubbs v The Queen* [2019] A.C. 868 in relation to the position of a judge who had to make successive rulings in the course of the same litigation:-

'A judicial ruling necessarily involves preferring the submissions of one party over another. However, it is obviously not the case that any prior involvement by a judge in the course of litigation will require him to recuse himself from a further judicial role in relation to the same dispute. In the great majority of such cases there will simply be no basis on which it could be suggested that the judge should recuse himself, notwithstanding earlier rulings in favour of one party or another, and there will often be great advantage to the parties and the administration of justice in securing judicial continuity. The issue will only arise at all in circumstances where prior involvement is such as might suggest to a fair-minded and informed observer that the judge's mind is closed in some respect relevant to the decision which must now be made. It is not possible to provide a comprehensive list of factors which may be relevant to this issue which will necessarily depend on the particular circumstances of each case.'

62. Having cited the above passage with approval, O'Malley J continued at paragraph 64 of her judgment:

‘This passage clearly covers the position of a judge who has made interim or interlocutory rulings in the course of litigation – in the absence of evidence of bias, there is no reason why the same judge should not hear the substantive matter and indeed it may be desirable to have continuity’

63. The matter of judicial bias generally and the principles to be applied by a court where such a question arises were more recently the subject of a detailed judgement by O'Donnell CJ in *Kelly v UCD*. At the outset of his Judgment, O'Donnell CJ made the following general observations which have resonance to the application for recusal made in this case:-

1. *A hearing and decision before an impartial tribunal is not simply the personal entitlement of the parties. It is a basic, perhaps the basic, requirement of the administration of justice guaranteed to citizens by Article 34 of the Constitution, and by Article 6 of the European Convention on Human Rights (“ECHR”). It is also a long-established feature of the common law, and indeed any developed legal system. So fundamental is it that where impartiality is questioned, it is not sufficient to demonstrate that the actual hearing and outcome of any case was fair whether on the balance of probabilities or to some higher standard. Justice holds itself to a much higher standard.*
2. *The administration of justice in a civilised society requires acceptance of the outcome even where an individual might disagree with the result and a party might find it extremely burdensome. Acceptance of an outcome rests on public confidence. That public confidence in the system of the administration of justice would not be achieved if judges were only disqualified from hearings if a party could prove on the balance of probabilities that a judge was actually biased in favour of one or other party (what is described in the case law as “subjective bias” or “active bias”). It would not be acceptable that there could remain reasonable doubt on the part of the parties, or members of the public, as to the impartiality of the decision maker. Instead, the law in Ireland, and most countries, has developed a test of what is called “objective bias.” That requires disqualification where a reasonable and informed onlooker would have a reasonable apprehension that a judge or tribunal would be biased towards or against a party because of some identified factor, or, perhaps more precisely still*

where the reasonable and informed onlooker would have a reasonable apprehension that the judge would not be able to give the matter an impartial hearing and decision by reference only to the facts and law.

3. *The law has recognised a list of factors which may give rise to a reasonable apprehension of bias. These include where a judge may have an interest direct or indirect in the case, has made a prior public commitment to the position of one or other party relating to the merits of the action, where the judge has connections with the party or with a witness whose credibility is at issue, or perhaps with a lawyer or lawyers representing the party, or where the judge has extraneous information or knowledge of some kind not acquired from the evidence in the case.*
4. *Irish law has developed a test for so-called objective bias by reference to a standard of reasonable apprehension and thus created a cordon sanitaire which extends far beyond the core area of actual bias proved or suspected. The justification for this policy is to ensure that public confidence in the system of administration of justice is maintained. The test for disqualification is sensitive and may be triggered by matters which are some distance from any actual bias or predisposition. Most of the difficulty in the law on disqualification comes from the attempt to delineate that outer protective boundary, at some distance removed from any question of actual bias. This is one such case.*
5. *In those cases where judges have been held to be disqualified, there is little if any likelihood that any decision would be or was actuated by a predisposition or bias towards one or other party. Instead, it might be said that an objective bystander could simply not have the high degree of assurance the law requires that the decision will not be, or that a decision given has not been, affected by considerations which are extraneous to the disposition of the case by reference to the facts, evidence, law and submissions alone*
6. *But even that outer protective boundary has, and must have, defined limits. For a variety of considerations, it cannot be correct to simply accede to any objection however flimsy to avoid controversy. First, the basic rule is that a judge should sit unless disqualified. That was well articulated by Sir Anthony Mason, in *Re JRL; Ex parte CJL* (1986) 161 CLR 342 at 352:-*
“Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding

too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.”¹

7. *In the leading case of Bula Ltd. and others v Tara Mines Ltd. and others (No. 6) [2000] 4 I.R. 412 (“Bula v Tara (No.6)”), 449 Denham J. stated, “A judge has a duty to sit and hear a case.” Much the same was said by the same judge, by then Chief Justice, in Goode Concrete v CRH plc and others [2015] IESC 70,[2015] 3 I.R. 493 (“Goode Concrete”), 518, citing with approval the leading Australian case of Ebner v Official Trustee in Bankruptcy [2000] HCA 63, (2000) 205 CLR 337 (“Ebner”). In that case Gleeson C.J. put it very simply at paragraph 19 of the judgment: judges do not choose their cases.*
8. *Second, and correspondingly, too-ready accession to objections to a judge runs counter to an important value of the system that parties should not be entitled to select their judge, even negatively. Parties do not choose their judge.*
9. *Third, the raising of allegations, particularly after the fact, is not costless. Instead, it imposes substantial costs, particularly on the successful party who sees a decision challenged on matters entirely outside their control and faces the prospect of further hearings and or appeals, both in terms of a challenge to the decision and any rehearing that might be ordered. Fair procedures should protect those parties' rights also. A similar point is made by McGuinness J. in Bula v Tara (No.6), at page 509, “It should, however, be remembered that this is a case inter partes and that the right to fair procedures does not belong solely to the applicants. The respondents, too, have a right to fair procedures. In particular, in the case of the Tara respondents (both corporate and individual) the right to finality may be very much a part of the right to fair procedures.” Bias challenges also impose costs on the legal system more generally in terms of delay and diversion of resources that would otherwise be applied to the cases of other litigants. It is important therefore that the test of disqualification and its application in any case should go so far as is necessary to ensure the maintenance of public confidence, but not further, since that deprives the successful party of the judgment to which they are entitled without any corresponding benefit in increasing public confidence. Indeed, the too-ready use of the term bias and the possibility of a consequent implication and perception that a judge disqualified has been guilty of serious wrongdoing’*

64. Having then considered the facts and submissions made in that case, O'Donnell CJ summarised the principles which are generally applicable to judicial disqualification from hearing a case at paragraph 162 as follows:-

- '(i) Judicial Conduct Guidelines do not determine the test for disqualification as a matter of law, but are relevant in the assessment of a reasonable and informed observer (para. 55);*
- (ii) Other than a case in which a judge is or is deemed to be a party (and even then the rule of necessity might require a judge to sit, e.g. when the Judicial Council, of which every judge is required by statute to be a member, is a party), there is no absolute rule of disqualification of a judge from hearing any case, and there are not separate categories of cases to which different principles apply (para. 56);*
- (iii) The same test is applicable in every case: whether a reasonable observer would have a reasonable apprehension of bias (para. 71);*
- (iv) There are three components to this test which must be assessed together (para. 105):*
 - (a) the reasonable and informed observer;*
 - (b) who has a reasonable apprehension;*
 - (c) of bias.*
- (v) The reasonable observer imports an objective standard (paras. 2-4);*
- (vi) The apprehension necessary is akin to the standard of reasonable doubt: and must be reasoned and cogent (para. 102-104);*
- (vii) Objective bias is best understood as a reasonable apprehension that the case will not receive a fair and impartial hearing (paras. 105-106);*
- (viii) The assessment of an apprehension of bias must give full weight to the declaration made by a judge under Article 34.6.1° and that such impartiality is central to the role which a judge accepts and holds themselves to (paras. 107-108);*
- (ix) It is necessary to show a rational, cogent and logical connection between a factor identified and the apprehension that the case will not receive a fair and impartial hearing (para. 113);*

- (x) *While the standard is one of reasonable apprehension, and is, and is intended to be, less than proof on the balance of probabilities, the matter apprehended is by definition both unusual and exceptional. Therefore, the test is a strict one, which must be rigorously applied, and is not easily satisfied. Too low a standard will damage, rather than promote, public confidence (para. 111);*
- (xi) *Disclosure, or non-disclosure, is not itself a separate test: it may be a component in the overall analysis of the test of whether a reasonable observer would have reasonable apprehension that the case will not receive a fair and impartial hearing (paras. 139-148, 155).'*

DECISION

65. Applying the principles set out with clarity by O'Malley J and O'Donnell C.J. in *Murphy and Kelly* to the claims made by the Respondent in this case, I conclude that there is no merit in this application and no reason why I should recuse myself from continuing to hear this case.
66. The complaints of bias and lack of independence made by the Respondent, whether categorised as complaints of 'subjective bias' or 'objective bias', are without any merit.
67. As made clear by the Supreme Court, citing several earlier judgments, it is a fundamental duty of a judge to hear and decide cases that are listed before him or her. Furthermore, a judge will frequently have to make rulings or decisions, interlocutory or other, during the course of a case. The fact that a Judge rules in favour of one party, and by definition against the case advanced by the other party, on any such interlocutory application cannot of itself be a ground to support an allegation of subjective or objective bias.
68. Here the various complaints that are made of what is couched as bias or predetermination or lack of independence, are either

- (i) Complaints about my decisions and rulings in the course of the case with particular focus on my decision refusing the application by the respondent for the DAR recording of earlier cases and transcripts of this case;
 - (ii) Complaints about the manner in which the court has sought to control the conduct of the case at hearing and the steps taken by me to ensure the orderly conduct of this case which regrettably have led to the temporary exclusion of the respondent from the hearing
 - (iii) Complaints about matters, such as the application of the Statute of Limitations in Poland and the effect of proceedings and decisions in Scotland, which are in fact still being investigated or upon which submissions are yet to be made and therefore ones in relation to which no decision has been made by me to date;
 - (iv) Complaints about the effect of earlier EAW proceedings and orders on the current application. This is a matter upon which the Respondent has yet to make his submissions to the court and upon which the Court has yet to make any finding or ruling;
 - (v) Complaints that all documents filed by the respondent are not on the court file and that the State is seeking to rely upon fraudulent or incomplete documents from Scotland. As can be seen above, these matters are the subject of further investigation and no determination has been made on any submission made arising therefrom;
 - (vi) Complaints about the failure of the Irish court / authorities to allow him to serve any sentence imposed in Poland whilst serving his current sentence in Ireland. This has nothing to do with the current proceedings
69. The respondent has made broad general allegations of bias/lack of independence/ misconduct/ hostility etc. The reality is however that, when one considers the complaints that he is actually making and which he has cloaked with the general mantle of 'bias', there is no evidence whatsoever of either subjective or objective bias

or any of the other matters which he says require me to recuse myself from continuing to hear this case.

70. His complaints relate to his dissatisfaction with (a) rulings of the court, (b) steps taken by the court in the face of his ongoing disruptive behaviour, (c) issues which he adamantly claims bar his surrender but which have yet to be determined and indeed some of those issues remain the subject of ongoing inquiry and (d) issues that are outside the purview of these proceedings.

71. Having carefully considered the complaints made by the respondent and the submissions made by both parties, I have no hesitation in dismissing this application and refusing to recuse myself from the further hearing of this case.