

THE HIGH COURT

[2026] IEHC 522

Record No 2026 /100 EXT

BETWEEN

MINISTER FOR JUSTICE

APPLICANT

v.

JONATHAN GILL

RESPONDENT

JUDGMENT of Mr. Justice Patrick McGrath delivered on the 20th day of July 2026

1. The applicant seeks an order for the surrender of the respondent to the United Kingdom on foot of one Trade and Co-Operation Agreement Warrants ('TCAW'), dated the 31st of March 2026. The TCAW is an accusation warrant, and the Respondent is sought for prosecution in Northern Ireland for two offences, being Murder and Possession of a Firearm with Intent to Endanger Life.
2. The Respondent was arrested on foot of the TCAW on the 2nd of April 2026 pursuant to Section 13(3) of the European Arrest Warrant Act, 2003 (as amended) [*'the 2003 Act'*]. He was brought before the High Court and was from time to time thereafter remanded in custody pending the hearing of this application for surrender. He subsequently filed a Notice of Objection on the 28th of April 2026 and, submissions having been exchanged by the parties, the s16 application came on for hearing.
3. The following matters are not in dispute between the Applicant and Respondent:-

- (i) The Respondent is the person in respect of whom this TCAW has issued, and I am in any event satisfied in relation to identity;
- (ii) The TCAW was issued by a Judicial Authority in the Requesting State, namely District Judge George Conner, sitting at Belfast Magistrates Court;
- (iii) The TCAW was properly endorsed by the High Court;
- (iv) The Respondent was lawfully arrested under s. 13 of the 2003 Act on foot of the said TCAW and thereafter properly brought before the High Court;
- (v) The High Court is not required to refuse surrender under ss. 22, 23 or 24 of the 2003 Act;
- (vi) No issues arise under ss. 39, 41, 42, 43, 44 or 46 of the 2003 Act.

4. The following two objections to surrender were pursued by the Respondent at the hearing:-

- (i) There are deficiencies in the TCAW such that surrender ought to be refused as it does not meet the requirements of the Trade and Co-Operation Agreement and / or the 2003 Act; and
- (ii) The surrender of the Respondent ought to be refused as, were he to be surrendered and face trial in Northern Ireland, there is a real risk of breach of his right to fair trial pursuant to Article 6 of the European Convention on Human Rights and more specifically pursuant to the Charter of Fundamental Rights of the European Union;

SUBMISSIONS OF THE RESPONDENT

Section 11 Objection

- 5. The Respondent first submits that, confusingly and in seeming contradiction to the case made by the Minister, the warrant says that the offences for which surrender is sought occurred outside the jurisdiction of Northern Ireland, namely in Ireland.
- 6. He then goes on to say the following:-
 - (i) There is an impermissible lack of clarity as to the circumstances in which the Firearms offence is alleged to have been committed. No details are provided in

the TCAW as to the time and place of possession of the firearm and, furthermore, although it is asserted that this offence was committed ‘on a date unknown between the 2nd and 5th of April’ (accompanied by an assertion that the offence was committed outside the jurisdiction), it is simultaneously asserted that Mr. Gill was in Belfast in that time; and

- (ii) No details are given as to the place in which the Respondent is said to have participated in the Joint Enterprise which led to the alleged murder of Mr Robert Lawlor and again confusingly, whilst it is asserted in the Warrant that the offence was committed in Ireland, the assertion therein is that he was in Belfast at times when relevant acts were allegedly committed by him.

7. The Respondent submits that there has therefore been a failure to comply with the mandatory requirements of Section 11(1A) of the 2003 Act as that requires that a warrant must meet minimum standards including setting out ‘*(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence.*’

Fair Trial Objection

8. It is submitted by the Respondent that the TCAW indicates that a significant strand of the evidence upon which the issuing state intends to rely in the prosecution of Mr Gill for these offences, is data recovered from what are known as ‘ENCRO’ communications, more commonly referred to as ‘*Encrochat*’. This concerns data from previously encrypted phones which had been operated under an Encrochat Licence, and which could not previously have been accessed by conventional means. In 2020, however, following the hacking of such EncroChat communications, this previously encrypted data could be accessed and some of this data, provided to the PSNI by France, is being relied upon in this prosecution.
9. The Respondent has referred extensively to the judgement of the CJEU in *MN* and says that a number of matters of relevance to this case arise from the reasoning in that judgment:-

- (i) In that case, which considered the transfer and retention of EncroChat data between member states by way of an EIO, this was only deemed permissible by the CJEU because of the safeguards which attached to its use and most importantly the CJEU relied upon the mutual trust and obligations of member states to adhere to EU law in the manner of transmission, use and retention of such data;
- (ii) Although member states are entitled to determine the rules in relation to admissibility of evidence in criminal proceedings and related matters, an issue may (per the CJEU) still arise where the EIO or data is proven to have been obtained unlawfully or where, though obtained lawfully, the affected person is not able to comment effectively on such evidence where it is sought to be used against him or her, and in such circumstances a criminal court is required to disregard the evidence;
- (iii) Where such an interception would not be permissible under the domestic law of either state, this will have an impact on the legality of the exchange of information by way of an EIO

10. The Respondent submits that many of the safeguards which apply to the harvesting and use of EncroChat material do not apply to the United Kingdom following its departure from the EU. Further, it would not be possible to challenge the use of such material in the UK before the CJEU, and the UK are not bound by any decisions of that court. The Respondent also submits that none of the reasoning which allows for the sharing and exchange of such data between EU States, namely the trust and confidence between such states and the application of the Charter to the actions of the authorities in such states, can apply here as the UK is now outside the EU and no longer bound by the Charter.

11. Reference is also made to the decision of the Court of Appeal of England and Wales in *R v A & Ors* [2021] EWCA Crim 128 where it was held that, as a matter of English law, EncroChat data does not amount to intercepted communications. It is submitted that there is therefore a significant divergence between the EU law position, treating such data as intercepted material, and that of the UK.

12. In conclusion therefore it is submitted that the UK is not bound by the reasoning of *MN* and by the safeguards attaching to the transmission and use of such data by way of EIO and nor are they bound by the definition of Encrochat as *'intercepted communications'* which would lead, as a matter of UK law, to its automatic exclusion in a criminal trial in the UK.

SUBMISSIONS OF THE APPLICANT

13. The Applicant first refers in considerable detail to the contents of the case against the Respondent as set out in the TCAW. It is inter alia stated therein:

- The Respondent is sought *'on a joint enterprise basis'* for the murder of Robert Lawlor who *'was shot dead in the front garden of....[an address in Belfast] on Sunday 4 April 2020'*
- This murder formed part of an ongoing drugs feud stemming from the Republic of Ireland, with criminal associations in Dublin, Sligo and Drogheda and that Mr Gill was a *'significant figure in the Organised Crime Gangs with the Republic of Ireland'* and in a faction opposed to Robert Lawlor.
- The Respondent's criminal enterprise reaches into Northern Ireland and into criminal gangs in that jurisdiction and names various other persons involved;
- Mr Lawlor was killed when he was shot several times at close range by an unknown person, wearing dark clothing and with a scarf disguising his face.
- In the body of the Warrant, it is stated that *'extensive police enquiries around telecommunications data, automatic number plate recognition ('APNR') data, CCTV and vehicles provide evidence to suggest that Gill was instrumental in all aspects of the murder of Lawlor'*. In the days leading up to and including the morning of the murder, telephone data linked to the Respondent shows close and regular contact with a telephone used by a named associate as the *'job phone'*.
- The Respondent has been identified as the user of EncroChat handles *'fly.com'* and *'steadybuster'*. An examination of the data shows the Respondent, as the user of those handles, being instrumental in the planning, preparation, surveillance, clean-up operation and disposal of evidence in relation to the murder of Lawlor',

- Evidence suggests that the Respondent, within a few days of the murder, may have travelled to Belfast on a scouting mission to assess the area where the deceased lived and the viability of an attack;
- Various strands of evidence which suggest that the Respondent was involved in spotting the deceased leaving his residence on the morning of the murder;
- Various strands of material gathered by police (including phone data, location data vehicle movements and EncroChat data) evidence that the Respondent transported the gunman and getaway driver to Newry after the murder and that he had used another person to organise and burn out the original getaway vehicle;
- Encrochat conversations between the Respondent and another associate show communications in relation to the murder beforehand and what appear to be messages of congratulation afterwards.

14. The Minister submits that the claim that the warrant is defective as it does not clearly state the time and place of the commission of the offences on its face and does not clearly identify the acts said to comprise his part of the joint enterprise, is not borne out from a reading of the warrant.

15. The Minister further submits that the reference to the Criminal Law (Northern Ireland) Act, 1975 [*‘the 1975 Act’*] does not, as submitted by the Respondent, establish that the Northern Ireland authorities’ position is that the offences were not committed in Northern Ireland. There are extra-territorial elements to the offences in terms of, for example, the background of the feud, motive for the murder and cross border operations of the organised crime gang of which the respondent is alleged to have been a member. Part of the evidence may come from this state. The shooting and killing of Mr Lawlor, however, occurred in Belfast and there is therefore a clearly identified nexus with Northern Ireland.

16. Insofar as the objection raised owing to the potential use of Encrochat material, received by the authorities in the requesting state from French and Dutch investigators, the Minister submits that the height of the respondent’s case is that there are important EU law safeguards concerning the acquisition and use of such material and those safeguards do not bind the United Kingdom in the same way as they bind members states following Brexit. The Minister observes that the Respondent does not

submit that the prosecution's intended reliance on EncroChat evidence evidences a serious risk of a fundamentally unfair trial in the prosecution of the respondent if surrendered to the UK.

17. The Minister submits that no evidence has been adduced by the respondent to suggest that, because of the potential use of Encrochat material in the intended prosecution of Mr Gill or for any other specified reason, there is a serious risk that he would be exposed to a serious risk of a fundamentally unfair trial in Northern Ireland.
18. The Minister submits that, in the absence of such suggestion, the issue is whether the Respondent can therefore establish and assert a right to be tried in this State because he would otherwise be possibly deprived of EU law protections if surrendered to Northern Ireland to face trial. The Minister submits that there is no legal principle of authority in support of such an extreme proposition and indeed goes on to submit that such a claim does not even reach the level of arguability given that there is no prosecution against the respondent contemplated in the State in relation to these offences.

DISCUSSION AND DECISION

Section 11 and Extra Territoriality Objection

19. The requirements of s. 11 of the 2003 Act have been the subject of several decisions of the Superior Courts over the years. It is settled law that the EAW/TCAW and any additional information does not have to establish a prima facie case, let alone a strong case, against the respondent in the issuing state. Furthermore, there is no requirement that a statement of the evidence in relation to the offence(s) be provided.
20. In *Minister for Justice v Harrison* [2020] IEHC 29 Binchy J, rejecting a claim of lack of clarity in the details set out in a warrant, made the following helpful observations:

'92. In response to this, it is submitted on behalf of the applicant that the allegations against the respondent as set forth both in the EAW and in the additional information are adequate for the purposes of s.11(1A)(f) of the Act

of 2003. The respondent refers to several authorities in which the issue was considered, including the cases of Minister for Justice v Desjatnikovs [2009] 1 IR 618, Minister for Justice, Equality and Law Reform v Stafford [2009] IESC, Minister for Justice, Equality and Law Reform v Jarzebak [2010] IEHC 472 and Minister for Justice, Equality and Law Reform v Cahill [2010] IEHC 315. In the latter case, in a passage upon which the applicant relies, Edwards J stated, as regards the requirements of s.11(1A)(f);

“The objective 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 to 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 of the requested person”

93 It is submitted that it is well established that there is no requirement for the issuing state to establish a prima facie case in the European Arrest Warrant. Indeed, Counsel for the Respondent accepts that this is so. In the case of Minister for Justice, Equality and Law Reform v Philip Baron [2012] IEHC 180, Edwards J, in addressing the issue, stated:

“It is sufficient if the information both specifically asserts a link and gives a general outline of the basis for that assertion, or alternatively sets forth sufficient alleged circumstantial facts that would, if proven, allow a court to infer the necessary link. It is not necessary, however, to provide every detail of the proposed evidence by means of which the circumstances in question might be established in Court.’

21. In her recent decision in *Minister for Justice v Keane* [2022] IEHC 531, Biggs J set out the reasoning behind the requirement for the information specified in section 11 in similar vein, stating as follows:-

*'31. The requirement for clarity therefore serves two purposes:
It allows the Court to carry out its functions under the act by endorsing the EAW and establishing correspondence, and it permits the respondent to challenge his surrender on grounds such as the rule of specialty, ne bis in idem and extra territoriality
The respondent also has the right to know the reason for his arrest.'*

22. And commenting on the facts at issue in that case, she continued:

*'32. In this Court's view, the totality of the information set out in the warrant, and the additional documentation amounts to sufficient information as to the circumstances under which the offences were committed, including the date and time of the offence and the degree of involvement of the respondent. The details that have been furnished have enabled this Court to deal with the issue of endorsement of the warrant and to deal with the issue of correspondence and extraterritoriality. The details given are sufficient to let the respondent know the nature of the charges against him. Should an issue of specialty arise, the details are sufficient. The details are sufficient should any issue of ne bis in idem arise (no indication that such an issue already arises has been given).
The respondent also knows the reasons for his arrest.'*

23. In this case there is information in the TCAW which:-

- (i) Identifies the time and place of the alleged offences;
- (ii) States that the respondent was *'instrumental in all aspects of the murder of Lawlor'*;
- (iii) Details the alleged acts said to constitute his participation, namely planning and preparation, a scouting trip to Belfast two days before the murder, spotting for the deceased leaving his residence on the morning of the murder,

transporting the gunman and getaway driver to Newry afterwards and arranging the removal and burning of the getaway car;

- (iv) Identifies others involved and the communications between them; and
- (v) Sets out the nature and legal classification of the offences.

24. Applying the principles set out in *Harrison* and *Keane* to the TCAW at issue in this case, there is sufficient detail provided in the warrant for the respondent to understand the offences alleged against him and to make any relevant objection to surrender on foot of the warrant and the relevant legislation.
25. There are extra-territorial elements to the offences alleged against the Respondent but the shooting and murder of Robert Lawlor occurred in Northern Ireland, and the accused is also inter alia alleged to have been involved in several preparatory acts in Northern Ireland. There is no doubt that there is a clearly identifiable nexus with Northern Ireland.
26. Any references to the Criminal Law Act 1975 does not, as submitted by the Respondent, establish that the Northern Ireland authorities' position is that the offences were not committed in Northern Ireland.
27. The offences are ones which, from their description as set out in the Warrant, are primarily connected with Northern Ireland but have some extra-territorial elements, as some of the preparatory acts were done outside Northern Ireland. As a matter of legal principle the offences in question as described in the TCAW would not, if committed in similar circumstances in this state (in other words if the shooting, murder and many of the preparatory acts took place in Ireland but some preparatory acts of the kind alleged in this case took place in Northern Ireland) be regarded as being extra-territorial offences under Irish law.
28. Even if I am wrong in this regard and go on to consider the requirements of s. 44 of the 2003 Act and Article 601(g)(i) of the Trade and Co-Operation Agreement, there is no bar thereunder to the surrender of the Respondent.

29. It is not asserted that, on the facts of this case, there is a bar to surrender pursuant to s. 44 of the 2003 Act but rather a discretion to refuse to surrender under Article 601(g)(i) of the TCA and that this discretion ought to be exercised in favour of the Respondent. This provides that a court may refuse surrender:

‘(g) if the arrest warrant relates to offences which (i) are regarded under the law of the executing state as having been committed in whole or in part in the territory of the executing state or in a place treated as such ‘

30. Any discretion provided for under Article 601(g)(i) must be exercised in accordance with law and legal principle. Here the balance of factors points overwhelmingly against refusal of surrender on this basis. The murder and shooting took place in Belfast, and the respondent is not charged or sought for prosecution for these offences in this State.

31. Finally, for the sake of completeness and although not argued at the hearing, I agree with the submissions of the Applicant that the purpose of Article 60.1(g)(i) of the TCA is to allow the respondent to avail of EU law protections is devoid of legal or evidential basis and in fact runs contrary to the ratio in *Alchester* (referred to below).

32. The submissions by the Respondent that there is a failure on the part of the TCAW to comply with the requirements of s. 11 of the Act and his arguments as to extra territoriality, whether considered in the context of the s. 11 objection or separately, are dismissed.

OBJECTION RE FAIR TRIAL AND ENCROCHAT MATERIAL

33. Where objections are made to surrender to the United Kingdom on the basis that, if surrendered to the United Kingdom on foot of a TCAW, there would be a real risk of a breach of a respondent’s fundamental rights, the principle of mutual trust and confidence which underlies the operation of the EAW system has no application.

34. A one step test applies which requires an evaluation, without any reference to any such presumption, of all the circumstances in the individual case in order to consider

whether there are valid reasons for believing that that surrender of such a person to the United Kingdom would give rise to a real risk to a breach of his or her fundamental rights.

35. At paragraphs 78 to 80 of *Alchaster* [Case C – 202/24], the CJEU described the approach to be adopted in the following terms:-

‘78. It follows that the executing judicial authority called upon to rule on an arrest warrant issued on the basis of the TCA cannot order the surrender of the requested person if it considers, following a specific and precise examination of that person’s situation, that there are valid reasons for believing that that person would run a real risk to the protection of his or her fundamental rights if that person were surrendered to the United Kingdom.

79. Therefore, where the person who is the subject of an arrest warrant issued on the basis of the TCA claims before that executing judicial authority that there is a risk of a breach of Article 49(1) of the Charter if that person is surrendered to the United Kingdom, that executing judicial authority cannot, without disregarding the obligation to respect the fundamental rights enshrined in Article 52(2) of that agreement, order that surrender without having specifically determined, following an appropriate examination, within the meaning of paragraph 51 above, whether there are valid reasons to believe that that person is exposed to a real risk of such a breach.

*80. For the purposes of that determination, it is necessary, in the first place, to point out that, although the existence of declarations and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of a breach of fundamental rights and freedoms (see, to that effect, judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 57), the executing judicial authority must, however, take into account the long-standing respect by the United Kingdom for the protection of the fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the ECHR, which is expressly referred to*

in Article 524(1) of the TCA, and the provisions laid down and implemented in United Kingdom law to ensure respect for the fundamental rights set out in the ECHR (see, by analogy, judgment of 19 September 2018, RO, C-327/18 PPU, EU:C:2018:733, paragraph 52). 27

36. The principles governing the consideration of such objections in the context of TCAWs from the UK would therefore now seem to be similar to those which have been applied by the Irish Courts when considering applications for surrender from other third countries with which this State has more traditional extradition arrangements, such as by way of example the United States of America, Canada and Australia. In considering any such application, and objections made to surrender thereto, a Court will proceed on the basis that the non-EU state will act in good faith and furthermore that such a state, with whom Ireland has after all agreed to enter into an extradition arrangement or treaty, will behave in a manner which will respect and vindicate the rights of the proposed extraditee.
37. These general principles were summarised by Edwards J in *AG v O’Gara* [2012] IEHC 179, a case where the High Court was considering an application for surrender to the United States of America on foot of the Extradition Act, 1965 and the Washington Treaty [the then existing Treaty on Extradition between Ireland and the USA]. He referred to the different approach between EAW and non-EAW cases in the following terms:-

‘10.1 Somewhat unusually, the parties are not in complete agreement as to the law, and as it happens the Court does not completely agree with either party’s submission as to what the applicable law is.

10.2 The Court does not agree with the respondent’s contention that there is no presumption at all that the requesting state will respect the fundamental rights of the respondent. However, if the Court understands counsel for applicant’s submission correctly, which places much reliance on the remarks of Murray C.J. (as he then was) in Altravicius quoted above, and the later further remarks of Fennelly J. in Stapleton also quoted above, the applicant is effectively contending that an identical presumption arises in extradition cases

to that which arises in European arrest warrant cases. If that is the applicant's position then this Court does not agree with that either.

10.3 In the Court's view the true position with respect to a presumption lies in between the parties respective positions. The Court considers that a default presumption does arise in extradition cases that the other country will act in good faith and that it will respect a proposed extraditee's fundamental rights. As Fennelly J. has pointed out in Stapleton the making of bilateral extraction arrangements implies at least some level of mutual political trust and, at the judicial level, confidence in the legal systems of the co-operating states. However, in conventional extradition cases the presumption is much weaker and is much more easily rebutted than is the presumption that arises under the European arrest warrant system. This is because the whole European arrest warrant system is built and predicated upon the notions of mutual trust and confidence between member states, and mutual recognition of judicial decisions, and there is a continuing and ongoing commitment to abide by these principles as expressed in the recitals to the Framework Decision, including recital 12 thereto which expressly states that the Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union. Moreover, though it is by no means perfect, there is, by virtue of the fact that all member states operating the European arrest warrant system are signatories to the Convention, a greater common understanding between the States operating the European arrest warrant system of what constitutes an individual's fundamental rights, and what is required to be done to defend and vindicate those rights. Such is the level of mutual trust and confidence in other member states who are parties to the European arrest warrant system that the Oireachtas has given statutory effect to the presumption that arises - in s.4A of the European Arrest Warrant Act 2003 (as inserted by s.69 of the Criminal Justice (Terrorist Offences) Act 2005). S.4A provides that "It shall be presumed that an issuing state will comply with the requirements of 'the Framework Decision, unless the contrary is shown" Neither

the Extradition Act 1965, nor the Washington Treaty. contains a comparable provision. That is not to say that no presumption at all arises, but as the Court has stated it is very much weaker and more easily rebutted than is the case under the European arrest warrant system. Furthermore, it needs to be emphasised that rebuttal of the presumption does not of itself establish the existence of a real risk. It merely means that the Court is put on enquiry as to whether there is a real risk.'

38. The approach outlined by Edwards J in *O'Gara* is, with one modification, compatible with the approach to such matters outlined by the CJEU in *Alchaster*. That one modification arises from the observations by that Court at paragraph 80 of *Alchaster* and set out above. Although the principles of mutual confidence and trust do not apply when considering objections in the context of a TCAW warrant, this Court must nonetheless consider any such objection, cognisant of the United Kingdom being a party to the European Convention on Human Rights, its long standing respect for the protection of fundamental rights as set out in that Convention and the provisions in place in UK law to ensure the protection of such rights and freedoms.
39. Furthermore, as made clear in cases such as *O'Gara* itself, the onus rests on the respondent to put cogent evidence before the court to support the contention that there is a real risk of the alleged breach(es) of human or fundamental rights in the requesting state. Where such cogent evidence is adduced then the court would be put on inquiry and, dependant on the nature of such evidence, further information and / or assurances may be sought from the requesting state prior to making a determination as to whether the evidence demonstrated a real risk of a breach of a fundamental right in the requesting state.
40. There is therefore an onus on the respondent in this case to put cogent evidence before the court to give rise to a concern that there is a real risk that, owing to the operation of the system of justice in the United Kingdom, he might be exposed to an unfair trial if surrendered.

41. Where, as here, objection to surrender is made on the specific basis that there is a risk that the respondent will not obtain a fair trial, particular guidance as to the approach to be adopted by the court can be obtained from the following comments of MacMenamin J in *Minister for Justice v Vestartas* [2020] IESC 12 where he stated:

'17. Surrender may be refused if it is established on cogent evidence that to make such an order would involve exposing a person to a situation where there is a real risk that he or she might be exposed to a denial of fundamental rights. Ireland will not refuse to surrender a person to another country with whom it has a bilateral or multilateral agreement merely on the basis that he or she might be treated differently, or under a different regime, than in this State. Delivering judgment in Minister for Justice, Equality and Law Reform v. Brennan [2007] IESC 21; [2007] 3 I.R. 732, Murray C.J. rejected the proposition that an order under the Act of 2003, or indeed any order for extradition, might be refused if the manner in which a trial in the requesting state, including the manner which a penal sanction was imposed, did not conform to the exigencies of our Constitution if such a trial or sentence had taken place in this country (para. 37). He observed that such an argument could hardly have been the intention of the Oireachtas in adopting s.37(1) of the 2003 Act - which addresses constitutional and ECHR protections—since it inevitably would have had the effect of ensuring that most requests for surrender or extradition must be refused.

18. It is self-evident that the manner, procedure and mechanisms by which fundamental rights will be protected in different Member States may vary according to national laws and constitutional traditions. Checks and balances in each national system may, too, vary, even though they might have the same objective, such as ensuring a fair trial. As Murray C.J. observed in Brennan, few legal systems would wholly comply with the precise requirements of our Constitution (para. 39).

19. Nonetheless, Murray C.J. was of the view that, in considering an application for surrender of this type, an Irish court must have the jurisdiction to consider circumstances where it might be established that surrender would

lead to an egregious or flagrant denial of fundamental or human rights (para. 40). An instance of this would be if it were clearly demonstrated that there was so fundamental a defect in the system of justice in an issuing state as to give rise to a situation where the grant of an application to surrender might actually violate such fundamental rights.

20. For an order of surrender to be refused on such grounds, the question is not whether the legal regime in an issuing state is at variance from that under the Constitution. Rather, it is whether it can be established, on cogent, clear evidence, that the circumstances are so egregious, or the undermining of the rule of law so flagrant, so as to create a real risk that to grant an order to surrender would lead to a denial of fundamental human rights. Such a denial could arise from circumstances in Ireland or in the issuing state.

21. It follows from this consideration, that the Framework Decision and the Act will operate on the premise that, in general, it is not the duty of Irish courts to apply principles or considerations which would be applicable to a trial or other criminal proceeding in Ireland, to proceedings which, properly, would be dealt with in an issuing state in the event of a surrender being ordered'

42. This court must therefore approach the fair trial issue raised by the Respondent with the presumption that, if he were surrendered for trial on foot of this TCAW, the Northern Irish authorities would at all times act in good faith and would at all times respect and vindicate his fundamental rights, including his right to a fair trial.

43. Although the principle of mutual trust and confidence which underpins the operation of the EAW system has no application when considering his objection to surrender to Northern Ireland, there is a default principle that that state will act in good faith and respect the rights of the respondent, including his right to a fair trial. In the absence of evidence to the contrary, the court can therefore assume that the respondent will obtain a fair in the requesting state.

44. In considering the objection made by the respondent here therefore (a) there is a presumption that Mr Gill will obtain a fair trial in the Northern Ireland and (b) the onus rests on him to show that there is a real risk that, if surrendered to the Northern Ireland, he will not obtain a fair trial.
45. As was made clear by MacMenamin J in *Verstartas* , when considering any such objection to surrender whether on foot of an EAW or an application from any state with which Ireland has an extradition treaty or arrangement, the issue is not whether the respondent will obtain the same trial as he would obtain in this state nor whether he will obtain a trial which would meet the statutory and constitutional requirements of a criminal trial under the Irish Constitution nor whether, in the course of any such trial, he will have the same protections as he would have if tried in this state.
46. The respondent must adduce cogent evidence to raise a real concern that, owing to a fundamental defect in the system of justice in the requesting state or some other established reason, there is a real risk that he would not obtain a fair trial in the requesting state.
47. In this case the respondent raises issues concerning the admissibility of Encrochat messages at his future trial in Northern Ireland. The admissibility of such evidence in domestic criminal prosecutions, like all, or any other evidence, is subject to the domestic laws and principles of the requesting state. It is a matter for the courts of any non-EU state to determine whether such messages are '*intercepted messages*' [if indeed there is such a categorisation under the domestic law of the state in question] and to rule upon the admissibility of such evidence under their criminal justice system.
48. The admissibility of Encrochat evidence in domestic prosecutions in any non-EU state, including the United Kingdom, is not governed by determinations of the CJEU in cases such as *MN*. The finding by the CJEU in *MN* that such communications are '*intercepted communications*' within the meaning of Directive 2014/14/EU is therefore not binding on the courts of the United Kingdom or indeed any other non-EU state.

49. As correctly submitted by the Minister, the objection raised by the respondent in this case is at such a level of generality that he is in effect asking this Court to rule on the admissibility of Encrochat messages in all trials in the United Kingdom. The admissibility of Encrochat material in a trial in Northern Ireland falls to be determined under the laws of Northern Ireland and it is not for this court, in the course of these extradition proceedings, to comment upon and / or rule upon the admissibility of such messages.
50. The onus is on the respondent to show that, owing to a fundamental defect in the system of trial in Northern Ireland whether generally or specifically in relation to the handling by the courts of particular types of evidence, there is a grave risk that he will not obtain a fair trial. It is not sufficient for these purposes for the respondent to simply assert or prove that, as an EU citizen whose surrender is sought from this state to face trial in a non-EU state, he cannot rely upon decisions of the CJEU, whether generally or in relation on the admissibility of Encrochat messages, in the UK Courts.
51. The respondent has failed to adduce evidence to suggest that there is a serious risk that, if returned to face trial in Northern Ireland, he would be at serious risk of a fundamentally unfair trial in that state, whether generally or specifically as a result of the manner in which the trial court might determine the admissibility and use of Encrochat messages at any such trial.
52. In *MN* the CJEU held that Encrochat messages are intercepted communications for the purposes of Directive 2014/14/EU. In a number of judgments to date, a number of UK courts have held that Encrochat messages do not constitute '*intercepted communications*' under relevant UK legislation. Under UK law '*intercepted communications*' are not admissible as evidence in a criminal trial. As Encrochat messages are not considered '*intercepted communications*' such evidence is therefore prima facie admissible in a trial, subject to the usual rules of evidence. There have been and continue to be challenges to the use of such evidence in the UK courts.

53. The fact that the CJEU has reached a different interpretation of the legal nature of Encrochat messages to the interpretation reached by the Courts in the requesting state and that the CJEU interpretation is one preferred by the respondent or one which would be more favourable to him at any future criminal trial, does not mean that the respondent has shown that he is at risk of being exposed to an unfair trial in the UK. The fact that Encrochat evidence may be admissible at his trial in the United Kingdom, in circumstances where arguably (and this contention can be put no higher than ‘arguably’) such evidence might not be admissible generally or in specific circumstances in a trial in this jurisdiction, does not of itself give rise to concerns that he would be exposed to the real risk of an unfair trial in the UK.
54. As noted by MacMenamin J in the passage from *Verstartas* cited above, such reasoning was rejected by Murray CJ in *Brennan* where he emphatically rejected the contention that an order under the 2003 Act, or indeed any order for extradition, might be refused if the manner in which the trial in the requesting state was conducted did not conform to the exigencies of our Constitution or legal order. As was stated by Murray CJ in *Brennan* the manner, procedure and mechanisms by which fundamental rights will be protected in different States vary according to national laws and constitutional traditions. Checks and balances in each national system also vary, even though they might have the same objective, such as ensuring a fair trial. And as he observed it could hardly have been the intention of the Oireachtas in adopting s. 37 of the 2003 Act that surrender could only be ordered if the system of trial in the requesting state complied with requirements of Irish law, as this would inevitably have the effect of ensuring that most requests for surrender or extradition must be refused.
55. Not only has the respondent failed to adduce cogent evidence that there is a risk he would be exposed to an unfair trial if returned to the UK but the available evidence in fact shows that there is a robust legal system in operation in the United Kingdom which governs the admissibility of all evidence, including Encrochat evidence, at criminal trials. It also demonstrates that the admissibility of such evidence has been, and continues to be, the subject of challenge.

56. The case made by the Respondent is in effect that because there is a possibility that Encrochat may not be admissible in a trial in Ireland as a result of the decision of the CJEU in *MN* and this ruling has no application to his trial in Northern Ireland and such evidence is therefore more likely to be admitted at such trial, then surrender must be refused. Such an argument is completely contrary to the reasoning of McMenamin J in *Vestartas* and previously Murray CJ in *Brennan*. The fact that the rules of evidence may operate more favourably to a defendant if tried here rather than if tried in a requesting state does not mean that the trial in the requesting state is an unfair trial. Much more is required to show there is a real risk of a violation of fair trial rights.
57. The respondent has wholly failed to adduce evidence to suggest there are any grounds for a concern that his future trial in Northern Ireland would be conducted in a manner which would violate the fair trial requirements of Article 6 of the Convention.
58. This ground of objection is therefore dismissed.