

**Neutral Citation No. [2009] NICty 5**

*Ref:* [2009]NICty5

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

*Delivered: 8/7/09*

**IN THE RECORDER'S COURT FOR THE DIVISION OF BELFAST  
BEFORE THE RECORDER**

**IN THE MATTER OF AN APPLICATION UNDER THE EXTRADITION ACT 2003**

Between:

LITHUANIA

Applicant

and

LIAM CAMPBELL

Requested Person

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[1] The Requested Person, Liam Campbell, appeared before me on Wednesday 27<sup>th</sup> May 2009, having been arrested earlier that day by the Police Service of Northern Ireland under a European Arrest Warrant dated 18<sup>th</sup> December 2008 issued by the Republic of Lithuania.

[2] By the terms of the Warrant Lithuania wish to have Mr Campbell arrested and surrendered for the purpose of conducting a criminal prosecution for one offence of smuggling, one offence of a terrorist act and one offence of illegal possession of firearms, ammunition, explosives or explosive substances, which offences were alleged to have occurred in 2006, 2007 and 2008. I will hereafter refer to these as "the offences". Lithuania also sought the arrest and surrender of other parties for the purpose of prosecuting them for the offences.

[3] The court is now aware that at the same time as the Warrant was sent to the authorities in the United Kingdom for execution if Mr Campbell was found to be in the United Kingdom, it was also sent to the Republic of Ireland. From information received from the Central Authority for the European Arrest Warrant, Mutual Assistance and Extradition Division of the Department of Justice, Equality and Law Reform in the Republic of Ireland the Warrant was received by the Central Authority and endorsed by the High Court of Ireland for execution on 14<sup>th</sup> January 2009. The respondent was arrested on foot of the Warrant on 20<sup>th</sup> January 2009. Bail was granted

by the High Court which was perfected on 26<sup>th</sup> January 2009. I will refer to the terms of that bail later in this judgment.

[4] On 22<sup>nd</sup> May 2009 Mr Campbell entered Northern Ireland. He was arrested by the PSNI under the provisions of the Terrorism Act 2000, but was released after four days. He was however then immediately arrested under the Warrant and appeared before me, as stated, on 27<sup>th</sup> May.

[5] Between the time of his arrest in the Republic of Ireland on 20<sup>th</sup> January 2009 and his entering Northern Ireland on 22<sup>nd</sup> May 2009 certain steps had been taken in connection with the legal process for the execution of the Warrant received by the Republic of Ireland. I will return to what those steps were and at what stage the proceedings had reached in the Republic, however at this point I record the issue which has arisen. That is whether this court in Northern Ireland should carry out its obligations under the Extradition Act 2003 ("the 2003 Act") in determining whether, having been arrested in Northern Ireland, Mr Campbell should be surrendered to Lithuania. Mr Campbell argues that since he had been arrested in the Republic of Ireland and the court there had embarked on its legal process for the execution of the Warrant to determine whether or not it should surrender Mr Campbell to Lithuania, this court should not take any further steps in order to afford him the right to return to the Republic of Ireland so that the process in that jurisdiction can continue.

[6] I believe it is accepted by both parties to this matter that there is no specific provision either in the Framework Decision of 2002, which provided for the setting up of the European Arrest Warrant procedures, or the 2003 Act that addresses a situation such as that now faced by this court.

[7] I record that when this issue was first raised I contacted Deputy Prosecutor General who had been certified under the 2003 Act as the 'judicial authority' in Lithuania who issued the Warrant. I advised the prosecutor of the arrest of Mr Campbell in the United Kingdom, and also set out the background to the proceedings as I understood them to be in the Republic of Ireland. I invited him to comment as to his wishes, as the issuing authority, as to how this court should proceed. As I indicated to the parties at an earlier hearing the prosecutor, as the judicial authority, indicated he wished the proceedings to continue in Northern Ireland.

[8] At the same time the legal representatives representing the Requesting State made contact with the Central Authority in Dublin seeking their views on the current status of the Warrant in the proceedings in the Republic. Annexed to an affidavit of Mr Anthony Doyle of the Central Authority there is a letter dated 15<sup>th</sup> June 2009 from the Chief State Solicitor's Office setting out the steps that had been taken and an indication of the timescale involved in their proceedings. In the final paragraph of that letter from the Chief State Solicitor, Mr David J O'Haggan, it says as follows:-

"Finally, there does not appear to be any mechanisms in the Framework Decision to allow one member State hand over (sic) a subject to another

member State for the purpose of processing the EAW application in the latter. It therefore appears the most direct route for his surrender to Lithuania is if the EAW transmitted to the UK is processed in the normal way.”

A further step taken by this court was to contact Eurojust for the purpose of seeking information on two questions namely:-

(a) “Is there any obligation on the part of the Request State to advise the Requesting State, either directly or through Eurojust, that action/arrest and being brought before a court has been taken.”

The reply to this was:-

“There is no such obligation to advise via Eurojust. As far we are aware, there is no obligation to advise on authorities in Ireland or the United Kingdom, although in practice notification may be given.”

(b) “If there is, is the Requested State obliged to take any step, for example to suspend any action in another country to which the EAW had also been sent?”

The reply inevitably was that given the answer to the first query, it was not necessary to address that question.

[9] There therefore appears to be common ground outwith the views of the representatives before this court that there is no mechanism to deal with the issue before the court but that in the circumstances of this case the issuing authority in Lithuania wish the matter to proceed in the United Kingdom: and the legal representatives of the Chief State Solicitor’s Office are of a similar view. That latter view of course can in no way bind the court in the Republic of Ireland. I consider it inappropriate for this court to seek the views of the court in the Republic but rather to proceed to consider how this matter can be resolved within the context of the Framework Decision, the Extradition Act 2003, and case law.

### THE LEGAL FRAMEWORK

[10] In *Rozaitiene -v- Lithuania* [2009] NIQB page 3 the Court of Appeal in Northern Ireland set out the principles of the new arrangements introduced by the Extradition Act. It stated:-

“Recital (5) [of the Framework Decision] envisages the replacement of simple judicial co-operation with free movement of judicial decisions in criminal matters and the introduction of a simple system of surrender of sentenced and suspected persons. Recital (10) acknowledges that member States have a high level of confidence in each other (and inferentially in their judicial and justice systems) and the European

Arrest Warrant is based on that confidence. It is evidence that the procedure is founded, as Lord Bingham observed in *Office of the King's Prosecutor, Brussels v Cando Armas and Another* [2005] UKHL 67 [2006] 2 AC 1, at paragraph 2 "in the integrity of each other's legal and judicial systems." In the same case Lord Hope at paragraph 22 described the new procedure as simply a system of backing of Warrants, a procedure well known to the two jurisdictions on the island of Ireland. Significantly he went on to say that the European Arrest Warrant –

"is designed to enable the persons against whom they are directed to be handed over in the shortest possible time to the requesting authorities. The grounds on which a member State can decline to give effect to the European Arrest Warrant are, as my noble and learned friend, Lord Scott of Foscote, points out, very limited."

The system of mutual recognition of this kind, such as that which in their relations with each other three jurisdictions within the United Kingdom have long been used to, is ultimately built on trust. Trust in its turn is built upon confidence. As recital (10) of the preamble puts it, the mechanism of the European Arrest Warrant is based on high level of confidence between member States. The reason why discussions about the introduction of the European Arrest Warrant generated so much heat in the United Kingdom was a lack of confidence in the ability of the criminal justice arrangements of other member States to measure up to the standards of our own, and the corresponding lack of trust in the ability of the new system to protect those against whom it might be used. Now that the argument is over and the new system is in force it has to earn that trust by the way it is put into practice. The system has, of course, been designed to protect rights. Trust in its ability to provide that protection will be earned by a careful observance of the procedures that have been laid down.

Lord Scott of Foscote in the same case, made some significant statements about the principles underlying the new procedure and the approach to be adopted to it, by domestic courts.

"53 Accordingly, the grounds on which a member State can decline to execute a European Arrest Warrant issued by another member State are very limited. Article 3 sets out grounds on which execution must be refused. Article 4 sets out grounds on which execution may be refused. None of these grounds enable the merits of the proposed prosecution or the soundness of the conviction or the effect of the sentence to be challenged. There is one qualification that should, perhaps, be mentioned. The execution of an Arrest Warrant can be refused if, broadly speaking, there is reason to believe that its execution could lead to breaches of the human rights of the person whose extradition is sought: see recitals (12) and (13)."

[11] Notwithstanding the replacement of “extradition” by the concept of “arrest and surrender”, the language of our legislation retains the use of the word “extradition” – the 2003 Act itself has been entitled The Extradition Act 2003.

[12] This mismatch of language between the Framework Decision and our legislation continues in various areas, one of which is relevant to the matter under consideration. The concept of “execution” in Article 1 of the Framework Decision refers to a process of “arrest and surrender”. On the other hand section 3(2) of the 2003 Act refers to execution of a Warrant in terms of arrest alone - although in section 4 the language then reverts to the section 3 action being described as “arrest”. There then follows within the 2003 Act the structure to be followed by the court where someone is arrested and brought before the court. Section 7 provides the steps to be taken at the initial hearing before the “appropriate judge”. Under section 7(2) the judge must decide whether the person before him or her is the person in respect of whom the Warrant was issued. In this case that was confirmed. Under section 7(5) where the judge decides that the person before him is the requested person then he must proceed under section 8. This provides that the judge is required to fix a date on which the extradition hearing is to begin, must inform the person of the contents of the Part I Warrant; must give the person the required information about consent; and must remand the person in custody or grant him bail. From that point the matter moves to the extradition hearing.

[13] A judge must also decide whether the offence as specified in Part I Warrant is an ‘extradition offence’. If that is answered in the affirmative, which I have done in this case, the judge “must” proceed under section 11. Under section 11 the judge then has to decide if the person should be surrendered to the Category I Territory or if that surrender is barred by reason of any of the grounds set out in section 11(1) and the succeeding sections.

[14] I have set out this structure to show that the court is obliged by the terms of the 2003 Act to follow certain steps in the event of it receiving a European Arrest Warrant, and the appearance before it of the person named in the Warrant. The terms of the 2003 Act are expressed in unqualified terms. While there are rights of appeal granted by the Act: and while there are provisions in the Act to deal with competing Warrants – that is where the Requested Person is sought by a number of countries in respect of their individual Warrants – there is nothing in the legislation to deal with the position with which the court is now confronted.

[15] In those circumstances Mr Ritchie BL on behalf of the Requesting State argues that the court is seized of this matter and is obliged to proceed with it. He reinforces his argument with the wishes expressed by the requesting state that this court to continue with the matter, and seeks some comfort from the view of the State Solicitor in the Republic of Ireland, whilst acknowledging that this is not a view expressed by the High Court in that jurisdiction.

#### THE SUBMISSIONS OF THE REQUESTED PERSON

[16] Mr Fitzgerald QC on behalf of Mr Campbell argued that this court should not exercise any jurisdiction under the Warrant issued by Lithuania on three general grounds.

[A] That the Warrant should not have been relied on since it had been executed in the Republic of Ireland. He argued that once the arrest took place in that jurisdiction and the proceedings were underway, that was the sole forum in which the Warrant could be heard and that the Warrant had no effect or potency outside the Republic of Ireland:

[B] That Mr Campbell was entitled to complete the process in the Republic of Ireland on the grounds of Articles 14 and 17 of the Framework Decision and the fundamental principle of the “rule of law” which argues that a legal process should proceed without executive interference:

[C] That to continue the proceedings in Northern Ireland would be an abuse of process since the present proceedings are wholly unfair given the advanced stage of identical proceedings in Dublin.

He argues:

[i] The initiation of an extradition process based on the same Warrant as that which bounds the extradition process in the Republic of Ireland amounts to an abusive process since it wrongfully interferes with Mr Campbell’s defence of the extradition process in the Republic of Ireland and the due process of law in the Republic of Ireland:

[ii] It conflicts with the principle of comity:

[iii] It is oppressive since it exposes Mr Campbell to simultaneous or consecutive proceedings in relation to the same subject matter, contrary to the principles in *DPP v Connelly*:

[iv] The proceedings give rise to a “strong suspicion that these new proceedings are being pursued for an ulterior purpose because of some perceived advantage in the selection of NI as an alternative forum”:

[v] That there is a danger that the court may come to conflicting conclusions not least since there are co-accused in the proceedings in Dublin: and

[vi] Common sense dictates that the court engaged in the proceedings, namely the High Court in the Republic of Ireland, should continue with the process.

[17] Before turning to these individual submissions I set out a number of factual matters and conclusions which I have determined on the evidence given. These are as follows:

(1) I have referred to the fact that Mr Campbell was on bail in the Republic of Ireland. There has been a dispute as to whether by him coming to Northern Ireland he was in breach of the terms of that bail. It is clear that by the order of the High Court granting the bail that he was not to leave the jurisdiction. It is also clear that when he was released on bail from prison he signed a document, as I understand it prepared by the prison authorities, which did not contain that prohibition. That is a matter to be resolved by the relevant High Court. I am however satisfied that in coming to Northern Ireland Mr Campbell was bringing his wife to work as a result of her having sustained an accident which prevented her driving. He was not absconding from the Republic of Ireland. I am satisfied that if he had been absconding and had come to Northern Ireland, or to any other country which could have engaged with the Warrant, it would be open to that other country to arrest him and invoke the procedures of that country in terms of the application to surrender him to Lithuania. I will return to this aspect later.

(2) I confirm that I do not intend to be drawn into the issue of whether or not Mr Campbell is in breach of his bail terms in the Republic of Ireland but I can comment that:

(a) If he was entitled to a travel outside Northern Ireland, and that was not a breach, I am certain that the High Court in Dublin would take into account the circumstances for his non-appearance at the hearing fixed for late June, on the basis that he wished to be at that hearing but had been prevented from doing so by the legal actions and processes of another jurisdiction: and

(b) If he was not entitled to travel out of the Republic of Ireland then he placed himself at risk of his bail being revoked.

Whilst he was granted bail in the Republic of Ireland and has not been granted bail by me in this jurisdiction, this difference arises out of the different circumstances that pertain in relation to Mr Campbell in each of the two jurisdictions. His actions in and around the time of his arrest on 22<sup>nd</sup> May and his continuing attempts to return to the Republic of Ireland, make it highly unlikely, if indeed it would ever be possible that he would turn up for any hearing in Northern Ireland. That would be somewhat different in terms of him attending any hearing before the courts in the Republic of Ireland. What I will require to consider is whether as a result of the surrender process continuing in Northern Ireland Mr Campbell has lost his liberty, then whether or not that consequence should inform the decision of the court in relation to the arguments under abuse of process.

(3) It was argued that the proceedings in the Republic of Ireland were at an advanced stage. In the letter from the Chief State Solicitor of 16<sup>th</sup> June it stated that:

“Extradition proceedings regarding Mr Campbell were only at a very early stage when he departed the jurisdiction. EAW proceedings are frequently listed ‘for hearing’ prior to the actual hearing, owing to our legislation obliging remands for hearing to occur within a set timeframe. Determined ‘hearing’ in such remands is accepted by the court and practitioners to be merely notional.”

The writer then sets out the procedural steps that are relevant to the process within the Republic of Ireland specifically referring to points of objection and replying affidavits. In a subsequent paragraph he refers to the progress of proceedings in relation to one of the “co-accused”.

“It is not considered Mr Campbell’s case would have been heard in the High Court in 2009. An appeal from the High Court to the Supreme Court against an order to surrender would have been inevitable. A period of six to twelve months before hearing of the appeal would have been likely.”

This court does not regard the question of the state of the proceedings in the Republic of Ireland to be a relevant factor in the circumstances of this case. The arguments to be placed before the court, and the evidence substantiating them, can be exactly the same in terms of Northern Ireland as it is in the Republic of Ireland. I believe that I can state that the timescale referred to in the Chief State Solicitor’s letter would be one within which the proceedings in Northern Ireland could be accommodated, if not more quickly.

(4) An argument was deployed in relation to the fact that other co-accused are involved in the proceedings in the Republic of Ireland, and that different decisions could be made in respect of those co-accused and Mr Campbell. I find no reason to place any weight on this particular assertion. There is no reason why both proceedings cannot advance at their own pace and in their way according to the legal and procedural processes in each jurisdiction. The fact that Mr Campbell is in Northern Ireland in no way impacts on the ability of the other co-accused proceeding with their hearings. Indeed it would appear that the case of one of the accused has been ongoing for some time before the Warrant in respect of Mr Campbell was issued. There is nothing perverse in two jurisdictions coming to different decisions in any case. There can be in some jurisdictions Bars to extradition which do not exist in other jurisdictions: or which do not exist in one jurisdiction but do exist in others. In this case in the Republic of Ireland the concept of a Bar based on it being unjust and oppressive to return a Requested Person does not exist, whereas they exist in Northern



Ireland. In other jurisdictions there can be any number of Bars which do not exist in either the Republic of Ireland or Northern Ireland. By way of example in Italy a mother with a child of less than three years of age cannot be surrendered. That would not be the case in either of the jurisdictions with which we are now dealing.

(5) This allows me also to address the question of the continuing effect of a Warrant even though another jurisdiction has engaged with the Warrant. It is not uncommon for a requested person not to be surrendered by one country, but then to leave that country and find himself engaged in a process of surrender on the same Warrant in another country – and for that country to surrender him to the requested State. Such hearings take place on many occasions in England and Wales. In 2006 a defendant Antczak was arrested in Scotland on an EAW which was subsequently discharged (for passage of time). The defendant was then arrested in Spain in 2008 on an EAW for the same offences and surrendered. The Spanish Court specifically held that it was not bound by any decision made by another jurisdiction in relation to the Warrant.

Of course it may be desirable that all courts would come to the same view in respect of a particular person based on the same facts. However the reality is that unless and until there is uniformity in the process and the legislative provisions in individual States, there continues to be every likelihood of potential co-accused being dealt with differently in different jurisdictions. In relation to the circumstances in which this court finds itself in relation to Mr Campbell, one might have expected a specific provision to be incorporated in the Framework Decision to meet this particular set of circumstances, in the same way as provision is made in relation to competing Warrants. There is nothing in the jurisprudence of the European Union to argue against such different decisions by different legal processes in respect of the same requested person for the same offences. In those circumstances I do not believe that the fact of the potential of competing decisions should inform the decision of the court.

(6) The allegation is that there is a strong suspicion that proceedings have been pursued by the judicial authority in Lithuania under the Warrant in Northern Ireland for an ulterior purpose – that purpose being some perceived advantage in selecting Northern Ireland as an alternative forum. I have made a number of determinations in respect of this assertion. These are:-

- At one stage during argument, and it is reflected in the skeleton argument, it was suggested that the Certificate was issued by the Serious Offences Crime Authority in the United Kingdom in order to allow the Warrant to be executed in Northern Ireland as a result of Mr Campbell coming to Northern Ireland on 22<sup>nd</sup> May 2009. The Certificate itself, dated as it is 9<sup>th</sup> January 2009, shows that argument to have no substance. It was issued before Mr Campbell was arrested in the Republic of Ireland, and some five months before he came to Northern Ireland.

- The perceived mischief on the part of the judicial authority in Lithuania is that of forum shopping. I remind myself that the context of these proceedings is the Framework Decision. The fundamental basis of that Decision by the European States was based on a mutual recognition of each other's judicial processes, and comity in respect of both their processes and the exercise of the powers under the Framework Decision as they are enacted into national legislation. The Framework Decision itself accepts certain restrictions. Some are expressed specifically in the Framework Decision as mandatory or discretionary Bars to surrender. None of those apply in this case. It also refers to the right for individual States to incorporate into the legislation protection of human rights. That has been incorporated into our legislation, together with other Bars, and will be available to Mr Campbell as it is to all Requested Persons during any hearing should this matter proceed in Northern Ireland.

The fact is that legislation in the Nation States has incorporated principles in different ways into their legislation. But the fundamental underlying principle is to surrender the person who is the subject of the Warrant, subject to the rights set out in the Framework Decision and legislation. The requesting state looks for a person to be surrendered who is alleged to have committed crimes in that State based on a mutual recognition of, and a trust in, the system of that State. Inherent in that principle is the right of the requesting State to seek the return of that person. If "forum shopping" is the expression used to represent a decision on the part of the judicial authority to maximise the chance for the return of that person, that approach does not appear to this court to fall to be considered as an "abuse" in any sense of that word. The court reminds itself that the fundamental basis of the Framework Decision is the right of a requesting State to institute such proceedings as it considers proper to prosecute those who it is alleged have broken their laws, and through that to protect the people in that State.

(7) In addition to that general statement in relation to the allegation that forum shopping is an abuse, in this case there are no grounds for an argument that one State, the United Kingdom or the Republic of Ireland, is more or less likely to surrender Mr Campbell in terms of the exercise of the powers by the judicial authorities in these two jurisdictions. We have independent judiciary supported by rights of appeal. Secondly legislation may be different between the Republic of Ireland and Northern Ireland, but as I said earlier arguably there are more Bars to extradition in Northern Ireland than in the Republic of Ireland. Additionally, some expression of concern on the part of the judicial authority in Lithuania has been made as to the timescale of proceedings in the Republic of Ireland. I make no comment on the merits of such a view but I can comment that if honestly held by Lithuania it would override any residual perception of injustice through forum shopping (which I have determined does not exist as an

abuse) or any allegation of manipulation and dishonesty. The court firmly rejects any such suggestion, not least in the context of comity.

For these reasons I determine that there are no grounds for alleging any bad faith or manipulation on the part of the judicial authority of Lithuania or on the part of the Police Service of Northern Ireland in relation to either the arrest of Mr Campbell or the wish of the Lithuanian authorities for the proceedings under the Warrant to continue in Northern Ireland.

### DETERMINATION OF THE SUBMISSIONS

I now turn against the background of those findings to consider the submissions made on behalf of Mr Campbell.

[18] That the Warrant should not have been relied on once it was executed in the Republic of Ireland. It is argued that once Mr Campbell was arrested in the Republic of Ireland then the Warrant had no effect or potency outside the Republic of Ireland. I have dealt with this argument in the determinations that I have made at paragraph [17](5) above. If Mr Campbell had absconded from the Republic of Ireland there would have been no reason whatsoever for the judicial authority in Lithuania to re-issue the Warrant and send it again for acceptance by the United Kingdom and for further certification by the United Kingdom. The only basis for such a submission is that there was some sort of “suspension” of the Warrant in other countries as long as the Republic of Ireland is continuing with the execution process. I would have expected such a proposition to have been voiced in provisions in the Framework Decision – which it is not. I therefore reject this ground as a reason for this court not assuming its obligations under the 2003 Act.

[19] It is argued that once arrested in the Republic of Ireland and the execution process commenced in that jurisdiction, Mr Campbell had a right and an expectation that those proceedings would continue, particularly as he had engaged in them. Reference is made to the rights under Articles 14 and 17 of the Framework Decision. Before turning to consider those in a skeleton argument Mr Fitzgerald also referred to Articles 11 and 12 of the Framework Decision setting out the rights of a Requested Person, and the keeping of any Requested Person in detention. In those Articles he refers to the fact that the Framework Decision refers to “the” executing member State. It refers to “the” executing judicial authority taking a decision in accordance with the law of “the” executing member State. He argues that if there was a right for more than one member State to become engaged in the execution of the Warrant whilst another was engaged in that process, the Framework Decision would have referred to “an” executing State. I would find no benefit from the wording to support the argument that this court has no jurisdiction in relation to Mr Campbell following his arrest under the Warrant. It refers to the rights of a person appearing before a particular court in a particular jurisdiction. As and when that person is before that court then the executing judicial authority has to comply with certain obligations, including the law of that

particular State. That is self evident, and in my opinion does not address the question of a conflict between two States who find themselves in the position in which we find ourselves at present.

[20] I believe that this argument to some extent is accepted by Mr Fitzgerald since he then goes on to address Article 14 in terms that it “seems to be of the most assistance given that the issue is forum”. Article 14 provides:-

“Hearing of the Requested Person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing State.”

Under Article 15 it states:-

“Surrendered decision

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

[21] I do not find that this assists me in determining this question. Again this addresses the rights of the person in the jurisdiction in which he is arrested. When he is in that State and is the subject of that process Articles 14 and 15 set out what his rights are in terms of who shall hear any application for surrender and the obligations of the judicial authority in that State in carrying out that process. I am satisfied that this goes no further than is stated in Articles 11 and 12 and address what will inevitably be the vast majority of cases, namely how the process in a particular State is to operate when the Requested Person is arrested in that State. I find no assistance in the language either in terms of the reference to “the” judicial authority or executing State or in the language of these Articles over and above that which I have attributed to them.

[22] As regards Mr Campbell’s legitimate expectations, he was entitled to expect the executing process in the Republic of Ireland to be carried out in accordance with the law of the Republic of Ireland. He has no grounds to expect that if and when he left the Republic of Ireland he would not be subject to the continuing force of the Warrant in other countries. It has never been suggested, nor do I believe for one moment it could be suggested, that he had been advised that he could leave the Republic of Ireland without any concern as to the execution of the Warrant in another jurisdiction. Any such expectation Mr Campbell may have had has no factual or legal ground whatsoever. He came to Northern Ireland entirely voluntarily and in doing so has exposed himself to arrest and to the execution process of this Warrant subject to my determination under this ruling as to whether or not this court should cede its rights to those of the Republic of Ireland. No such ground arises either under any article of the Framework Decision, specifically Articles 11 to 15 inclusive, nor under any doctrine of legitimate expectation.

[23] As a matter of completeness I would refer to Articles 16 and 17 of the Framework Decision, since they are dealt with in Mr Fitzgerald's skeleton argument at paragraph 34. Article 16(2) states that the executing authority may seek the advice of Eurojust when making the choice referred to paragraph 1 – paragraph 1 dealing with the question of multiple requests. Article 16 does not relate to the scenario with which we are dealing today, and in any case this court has contacted Eurojust and they do not have any remit in respect of this particular aspect of the operation of the Framework Decision.

[24] Article 17 deals with the question of time limits and procedures arguing that the matter should be dealt with and executed as a matter of urgency. I have referred to this under paragraph [17](3) above, and confirm I have found no grounds under Article 17 to allow the court to cede its jurisdiction.

[25] I therefore find no grounds to sustain the argument of the requesting person under heading B of the three submissions on his behalf.

[26] I now turn to the question of abuse of process. In *Regina (Birmingham and Others) -v- Director of the Serious Fraud Office* [2006] EWHC 200 (Admin) [2007] 2 W.L.R. 635, the Court of Appeal in England determined that a judge including one in an extradition hearing under the 2003 Act, whose functions were wholly statutory, possessed no inherent powers, but had an implied power to hold that a prosecutor was abusing the process of the court. The implication of an abuse process arose from the express provisions of the statutory regime which it was the judge's responsibility to administer. The question whether abuse was demonstrated had to be considered in light of the specifics of the statutory scheme. Against the specific facts of that case the court determined that since no ulterior motive for the prosecution had been shown there was no abuse of process. In *R. (Government of the USA) -v- Bow Street Magistrates' Court ex parte Tollman* [2007] 1 WLR 1157, this implied power was confirmed and the court gave guidance as to how the court should approach any assertion on the part of a requested person that the application by the requesting state was an abuse of process. Leaving to one side any matters specifically dealt with under the 2003 Act, a judge had a duty to decide whether the process may be being abused. The court continued that no steps should be taken to investigate alleged abuse of process unless the judge was satisfied there was reason to believe that an abuse might have taken place. To that end a judge should insist on the abusive conduct being identified with particularity. If that is done then the court should consider whether that conduct, if established, was capable of amounting to an abuse of process; whether there were reasonable grounds for believing that such conduct might have occurred; and, if so, the court should not accede to the request for extradition unless satisfied that such abuse had not occurred.

[27] In *Symeou -v- the Public Prosecutor's Office at the Court of Appeal, Patros, Greece* [2009] EWHC 897 (Admin) at paragraph 5, having considered how the allegation of abuse of process should be dealt with by the judge, the court determined that it was for

the requested person to prove on the balance of probability that an abuse may have taken place. The court went on to state:-

“Lord Phillips also cited in paragraph 81, *(R) (Kashamu) -v- Government of Brixton Prison* [2002] QB 88 in which Rose J, in the context of detention in the course of extradition proceedings, had pointed to the narrow scope of the abuse of process jurisdiction: was there bad faith or deliberate abuse of the English courts procedure? It would be a very rare extradition case in which, although the statutory procedures had been followed, it would be possible to argue that abuse of process arose and made detention unlawful”.

At paragraph 33 in *Symeou* it states:-

“... the focus of this implied jurisdiction is the abuse of the requested state’s duty to extradite those who are properly requested, and who are unable to raise any of the statutory bars to extradition. The residual abuse jurisdiction identified in *Berminham* and *Tollman* concerns abuse of the extradition process by the prosecuting authority. We emphasised those latter two words. That is the language of those cases. It is the good faith of the requesting authority which is at issue because it is their request coupled with their perverted intent and purpose which constitutes the abuse. If the authorities of the requesting state seek the extradition of someone for a collateral purpose, or when they know that the trial cannot succeed, they abuse the extradition process of the requested state”.

[28] In regard to this aspect of the submission based on abuse of process I have carefully considered the submissions that have been made within the framework set out in *Tollman*. The allegation is that there is a strong suspicion of forum shopping.

[29] I have stated at paragraph [17](6) above that such would not be an abuse of process, would not be a manipulation of the system, would not be an exercise of bad faith on the part of the judicial authority who issued the warrant and now asks for this jurisdiction to continue the process. I therefore cannot accept the argument that there has been an abuse of process in the context of the principles set down in *Berminham*, *Tollman* and *Symeou*.

[30] However, there is a second aspect to this argument of abuse of process. It is that to exercise the process of execution of the Warrant in Northern Ireland is an affront to the rule of law - that it is contrary to the spirit of co-operation in extradition cases generally, the atmosphere of harmony, mutual respect and goodwill embodied in the spirit of comity; and that it is an affront to the dignity of this court. In this aspect of the submissions there is no reliance on bad faith or manipulation on the part of the requesting state or any of the executive authority in this jurisdiction. It simply states that it would be an affront even if, as I have determined, the arrest and continuation of

the execution of this Warrant in the United Kingdom is otherwise legally based. This concept is referred to in R.v. Horseferry Road Magistrates' Court ex parte Bennett [1994] 1 A.C. 42 where it states:-

“To try those proceedings will amount to an abuse of its own process ... because it offends the court’s sense of justice and propriety to be asked to try the accused in the circumstances of a particular case”.

It continues:-

“Your Lordships are now invited to extend the concept of abuse of process a stage further. In the present case there is no suggestion that the appellant cannot have a fair trial ... if the court is to have the power to interfere with the prosecution in the present circumstances it must be because the judiciary accepts responsibility for the maintenance for the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law”.

It further continues:-

“The courts have no power to apply direct discipline to the police or the prosecuting authorities, but they can refuse to allow them to take advantage of abuse of power by regarding their behaviour as an abuse of process and thus preventing a prosecution”.

Mr Fitzgerald refers to DPP -v- Connelly (1964) where Lord Devlin stated:-

“Are the courts to rely on the executive (in the form of the Crown as prosecutor) to protect the process from abuse? Have they not themselves an escapable duty to secure fair treatment for those who come or are brought before them? To questions of this sort there is only one possible answer. The courts cannot contemplate for a moment the transference to the executive of the responsibility for seeing that the process of law is not abused”.

And finally, in support of this proposition I am referred to R. -v- Liverpool Stipendiary Magistrate, ex parte Ellison [1990] RTR 220 Bingham LJ, where he stated:-

“If any criminal court at any time has cause to suspect that a prosecutor may be manipulating or using the procedures of the court in order to oppress or unfairly to prejudice a defendant before the court, I have no doubt it is the duty of the court to enquire into the situation and ensure that its procedure is not being abused. Usually no such inquiry will be prompted by a complaint on the part of the defendant. But the duty of the court in my view exists even in the absence of a complaint”.

[31] Each of the cases in which this principle is expounded refers to the actions of the executive. The court retains to itself the right not to associate itself with any action on the part of prosecutors, police or other members of the executive who have exercised powers in a way which it would be unconscionable for a court to endorse, or to allow its procedures to cloak with the dignity of the court. But in these circumstances we are not dealing with the executive. I have already determined that as far as the PSNI are concerned there is no evidence that they have manipulated the system in any way whatsoever. Mr Campbell came into this jurisdiction entirely of his own free will and was arrested under the Terrorism Act. When questioning under that Act was completed he was then arrested under this Warrant. That action has the support we now know of the judicial authority who issued the Warrant in Lithuania - that is a 'judicial authority' for the purposes of the Framework Decision. It is an authority in which, as Mr Fitzgerald argues in relation to other aspects of his submissions, we rely on comity - a respect and trust for the due execution of the obligations of the judicial authorities in member States. It is a judicial authority who both in relation to the issue of the Warrant and in its pursuit of the arrest of Mr Campbell for the offences has acted in accordance with the law. I have already determined that even if they were minded to pursue the matter in Northern Ireland in order to maximise the possibility of the surrender of Mr Campbell (something which for the reasons I have given is not necessarily so) then that is perfectly proper exercise of their powers in pursuit of the objective of prosecuting those who they believe (and we are encouraged to trust) have a case to answer in their courts for what are serious offences. They are pursuing in a proper and legal manner the rights accorded to them under a Framework Decision, based as I have stated at the outset of this judgement on mutual recognition and respect. That is a very far cry from arguments of manipulation on the part of the executive, whether that be in bringing people illegally into the country or seeking to withhold documentation (as are the facts in some of the cases which have been quoted).

[32] I promised that I would return to one matter which I would consider under this particular heading. The High Court in the Republic of Ireland had granted Mr Campbell bail in circumstances where he is a citizen of that country living in that jurisdiction. Whether or not he has forfeited that right not to be held in custody would be a matter for the court in the Republic of Ireland. On the arguments at present put forward by the State Solicitor it is regarded that he may well not have that bail renewed, but I have no doubt that he would hope to persuade the court otherwise given the circumstances of his failure to attend the hearing in late June - although this leaves to one side the argument as to whether he should have left the Republic. For the reasons that I have stated, and where it is quite clear that Mr Campbell would have no intention of remaining in Northern Ireland but rather to return to the Republic of Ireland, with no intention of returning to this jurisdiction to allow the execution of the Warrant to proceed (which after all is the very reason for making these submissions) I have decided that he should remain in custody.



[33] This is an important issue. The deprivation of liberty of any person for the shortest of times is an extremely serious matter and should only be embarked upon if there are proper reasons to continue that person's detention. However, the court has the direct view of the judicial authority of the requesting state under the Framework Decision that the matter should be dealt with in this jurisdiction. The view of the State Solicitor in the Republic of Ireland (which of course cannot reflect the view of the court) is that having been arrested in Northern Ireland the process should continue. I am satisfied that the period of time for hearing of this matter, including any appellate involvement, will not be longer than in the Republic of Ireland, and I put it no higher than that. The requested person will have the same rights as in the Republic of Ireland to a fair hearing, and indeed access to perhaps greater grounds for arguing that the court should refuse to surrender him to Lithuania than might be contained in the legislation of the Republic. Against that backdrop - am I persuaded that it would be an affront to the dignity of this court to retain Mr Campbell in custody for the purposes of the carrying out of this court's obligations, expressed in mandatory terms, under the 2003 Act? Such a decision would certainly not be a breach of comity. This court can record in unqualified terms its total respect for the judicial system of the Republic of Ireland and, to the extent that it is necessary for this court to comment at all, on the appropriate judge dealing with the matter in that jurisdiction. That is not the issue in this matter. It is the actions of Mr Campbell in coming into this jurisdiction that has given rise to the decision of this court. In all the circumstances I can see no reasons under any of the grounds put forward by his legal representatives, no matter how eloquently and persuasively put forward, that would allow me to depart from the obligations placed under the 2003 Act.

[34] Again, for the sake of completeness, I will deal with the argument of double jeopardy. As is accepted by his legal representatives this is not a classic case of double jeopardy in the sense that there has been no determination thus far in respect of the substantive issues in the Republic of Ireland. As far as Mr Campbell is concerned he will not be arguing before two courts simultaneously, since there will only be one executing authority making the decision. If the decision of this court is not to surrender Mr Campbell then should he return to the Republic of Ireland it is open to that court to continue its proceedings against him. But that is also the case if he were at any stage to leave the Republic of Ireland and go to any other jurisdiction. I have already dealt with this point in paragraph [17](6). I find no argument to sustain the submissions made on behalf of Mr Campbell.

### Conclusion

[35] I have considered all of the grounds that have been put forward in this matter. I return to my central thesis. The European Arrest Warrant is based on the principles set out in the Framework Decision. It is a document issued by a judicial authority of a requesting state. The principle contained in the creation of this instrument is that of mutual respect and mutual recognition of the judicial processes of member states. The rights of a requested person are addressed in the Framework Decision both in terms of mandatory and discretionary bars and also the right of national legislators to introduce

such further bars as they may consider proper, specifically to address the question of human rights. All of these protections and more are contained in the 2003 Act.

The judicial authority issuing this warrant sent it to Northern Ireland and to the Republic of Ireland at or about the same time, in circumstances where they would have had no control over, or knowledge of, within which jurisdiction it may be executed. In the event in January of this year it was executed in the Republic of Ireland and matters would have rested there if Mr Campbell had remained in that jurisdiction. He chose of his own free will to come to this jurisdiction and the PSNI arrested him under the Warrant which had been certified by SOCA on 9 January 2009. For the reasons I have stated I find no reason to impart to the PSNI any bad faith or abuse of their powers. They were arresting someone under an instrument duly issued by a judicial authority in a Part 1 Territory. That judicial authority has advised that it wishes the matter to proceed in this jurisdiction.

There is an argument that there is a lacuna in both the Framework Decision and in the national legislation to deal with what is clearly an unusual set of circumstances. But perhaps such circumstances are always going to be unusual, and it can be argued that there is not a lacuna but rather that if someone moves to another State at any stage, whether during or after a process of execution in a particular member of State, then based on the principles in the Framework Decision there is no reason why the process of execution should then not take place in that other State.

If on the other hand there is such a lacuna then it appears to the court that there are powers available to it, mainly based on the concept of an abuse of process in all its aspects, to ensure that no abuse of the system is allowed – whether on the basis of manipulation or on the basis of the court’s inherent power to protect its own processes and to ensure its own dignity. To that extent each case will be fact specific.

On the facts in this particular case I find no reason to utilise any of those powers. In those circumstances the submissions on behalf of Mr Campbell are rejected and the matter will be timetabled to conclusion of the process of execution of the arrest warrant in Northern Ireland.