



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

**In the matter of the European Arrest Warrant Act (as amended) and the in the matter of
Liam Campbell**

Minister for Justice and Equality v. Liam Campbell

On appeal from: [2021] IECA 219

Judgment delivered on 9 May 2022

[2022] IESC XX

Headline

The Supreme Court held that the appellant, Mr. Liam Campbell should be surrendered to Republic of Lithuania in accordance with the provisions of the European Arrest Warrant Act 2003.

Composition of Court

MacMenamin, Dunne, Charleton, Baker, Hogan JJ.

Background to the Appeal

The appellant is sought to face trial in the Republic of Lithuania in relation to three offences of: smuggling, the possession of firearms and terrorism. A European Arrest Warrant issued in August 2013 and the High Court made an order for surrender in July 2020 in accordance with the provisions of s. 16(1) of the European Arrest Warrant Act 2003 (as amended) ("the Act of 2003"). Mr. Campbell appealed against the order, and the Court of Appeal dismissed that appeal.

Mr. Campbell sought and was granted leave to appeal to this Court on the grounds that the Court of Appeal erred in finding on the evidence that there was a decision to charge and try the applicant in accordance with s. 21A of the Act of 2003, and that s. 21A of the Act of 2003 was capable of a conforming interpretation with the Framework Decision.

Judgment

The Supreme Court today has dismissed the appeal of Mr. Liam Campbell and holds that a decision to charge and try has been taken in accordance with s. 21A of the Act of 2003.

Reasons for the Judgment

Baker J. examines earlier decisions of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Olsson* [2011] 1 I.R. 384 and *Minister for Justice, Equality and Law Reform v. Bailey* [2012] 4 I.R. 1 and finds that whilst s. 21A does posit a higher threshold to surrender than is found in the Framework Decision, 'that the purpose of the Act of 2003 and the principle of sincere cooperation require an interpretation of the statutory provisions in a manner consistent with the Framework Decision. A Court under s. 21A is required to engage in: "a scrutiny of the substance of the criminal procedure in the requesting state, such scrutiny to be engaged in a manner that respects the purpose of the Framework Decision itself to facilitate speedy and cooperative process for surrender and also one which respects the procedures in the requesting state." [85]-[88]

Baker J. states that a decision to try a person is a decision that he or she be sent forth for trial, and not a statement that the trial process has commenced. A decision to try person is not coterminous with the fact that the trial has commenced, but is rather a state of facts which means that sufficient evidence exists or is thought to exist to put a person to trial. [92] Baker J. holds that a court is required to on an application to surrender to assess for the purposes of s. 21A: "whether a present decision has been made or a present intention exists to prosecute the person, that is to charge and try him in accordance with the criminal procedures in the requesting state, and whether the requesting state has sufficient evidence to form that decision or intention. It is not permissible to surrender a person in order to gather that required evidence." [94]

Baker J. applies this to the facts in the present case and determines that on the basis of the evidence of the requesting state, all that remains before Mr. Campbell is charged is “a procedural step”, and the Lithuanian authorities have said that they are satisfied that the evidence gathered to date is sufficient, without the need for the gathering of further evidence, for the actual charging and trying of Mr. Campbell to occur. **[105]** She holds that the fact that the requesting authority has said there is a “high probability” that charges will be brought against Mr. Campbell does not express a contingency that he will be brought to trial if certain things happen, but expresses rather the possibility that the present decision to try him and the present intention to do so may be reversed if, for example, there is a loss of evidence or the death of an important witness. **[107]**

Baker J. in dismissing the appeal, holds the evidence in this case points to a present decision by the Lithuanian authorities that Mr. Campbell will be charged and tried, and that there is a high probability that the decision will in due course be realised following the completion of the mandatory preliminary questioning. **[115]**

Charleton J. concurs with the reasoning of Baker J., finding that the order proposed to surrender the subject of the judicial warrant from Lithuania is appropriate. Highlighting the “flat contradiction” between the circumstances in which surrender could be refused between s. 10 of the Act of 2003 and s. 21A of the Act of 2003, Charleton J. holds that, while the State’s obligation under the European treaties is wider than the limitation imposed by s. 21A, it is the 2003 Act itself which requires construction in this appeal. **[2]-[8]**

In considering the system of pre-trial questioning required by the Lithuanian system, Charleton J. cites the historical existence of similar pre-trial safeguards in this jurisdiction in the form of grand juries. While this system was ultimately abolished by s. 27 of the Courts of Justice Act 1924, similar mechanisms have been retained in the Irish criminal procedure, in the form of a preliminary examination by a judge as a part of the right of trial in due course of law under Article 38, per *People (AG) v. Boggan* [1958] I.R. 67. **[9]-[12]** It is held that viewing the Lithuanian system as differing radically from the Irish one in relation to the finality of a decision to prosecute is wrong in light of s. 4E of the Criminal Procedure Act 1967, which allows for an accused to apply to a trial court to dismiss the charges against him or her. **[18]**

Note

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

1st February 2022

[\[2021\] IESCDet 107](#)

[\[2021\] IECA 219](#)

[\[2020\] IEHC 344](#)

Oral submissions made before the Court

Supreme Court Determination granting leave

Court of Appeal Judgment (under appeal)

High Court Judgment