THE HIGH COURT

[2005 No. 8 Ext]

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003 (AS AMENDED)

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
VALDEMARAS ALTARAVICIUS

RESPONDENT

Judgment of Mr. Justice John MacMenamin dated the 31st day of July, 2006.

1. The respondent herein is a citizen of Lithuania born on 13th November, 1983. It is alleged that on 28th December, 2001 he in the company of a number of others using mental coercion or physical violence against two juveniles stole from one of them a mobile phone contrary to paragraph 1, Article 180 of the Criminal Code of the Republic of Lithuania. The allegation in question is punishable by detention or imprisonment for a term of up to six years in the Republic of Lithuania.

2. On 30th December, 2004 Ms. Vaida Urmonaité the Deputy Prosecutor General of the Republic of Lithuania acting in the capacity of issuing judicial authority or its representative signed a European Arrest Warrant. The warrant states that the issuing of judicial authority was the Prosecutor General's Office of the Republic of Lithuania. The signatory and her official position are set out, as is the nature and legal classification of the alleged offence.

3. The European Arrest Warrant (hereinafter "the warrant") was endorsed for execution on 5th April, 2005. The respondent was thereafter arrested on 15th April, 2005 and brought before the High Court on that date. He was released on bail pending the hearing of an application under s. 16 of the European Arrest Warrant Act 2003 (as amended) (hereinafter "the Act of 2003"). On 29th April, 2005 the respondent filed and served what was a series "points of objection" setting out grounds upon which he then sought to resist his surrender to Lithuania.

4. Thereafter the matter was adjourned on a number of occasions to allow the respondent and his lawyers to obtain the advice of an expert in Lithuanian law. These adjournments were apparently sought in order to enable the defendant to deal with, and rebut if necessary, various presumptions incorporated in the Act of 2003. An adjournment was first sought for this purpose on 5th May, 2003, later adjournments of the hearing of the s. 16 application were granted to the respondent on 10th May, 2005 and 28th June, 2005. No affidavit has been filed by an expert in Lithuanian law on any issue arising herein.

5. A Notice of Constitutional Issues challenging the constitutionality of provisions of the Act of 2003 was later served and filed by the respondent on 20th July, 2003. The hearing date of the s. 16 application was finally set for the 27th October, 2005.

6. On 25th October, 2005 a letter was sent by the respondent's solicitors to the applicants solicitors seeking a copy of the Lithuanian court order referred to at paragraph B of the warrant. This document is the domestic Arrest Warrant issued on 8th February, 2002 District Court of Kedainiai Region in Lithuania ("the Domestic Warrant).

7. No challenge had been made to the validity of the Domestic Warrant in the final points of objection or the notice of constitutional issues. Furthermore although the matter was adjourned on a number of occasions following the execution of the warrant for reasons earlier outlined, the respondent did not seek a copy of this Domestic Warrant prior to 25th October, 2005. No reason was vouchsafed in the letter as to why he might require sight of a copy of the Domestic Warrant.

8. On 27th October, 2005 the date assigned for hearing of the s. 16 application the respondent sought an order from the High Court directing the applicant to produce or make discovery of the said Domestic Warrant prior to the hearing of the application. Following submissions in relation to this preliminary application Peart J. reserved judgment on the preliminary issues raised. On 29th November, 2005 this court ordered that a copy of the Domestic Warrant be produced to the High Court and furnished to the respondent prior to any hearing of the application under s. 16 of the Act. The applicant successfully appealed this decision to the Supreme Court. In its decision of the 5th April, 2006, the Supreme Court reversed the order of the learned High Court and the matter was remitted for the hearing of the s. 16 application to this court.

The Matters now in Issue

9. The points of objection comprise 26 in number. However Mr. David Keane, Barrister-at-Law (who appeared with Mr. Brian Conroy, Barrister-at-Law) on behalf of the respondent has helpfully indicated that there is one central issue which falls for determination. It does not dissent from the proposition that it fails on this point, no other issues are seriously addressed in his submission.

10. For ease of reference the issues will be recited in brief.

11. Points 1 and 2 Assert the arrest and surrender of the respondent was not in accordance with law or in compliance with the Framework Decision 2002/584/JHA Council Framework Decision Council of the European Union of the 13th June, 2002.

12. Points 3, 4 and 5 are the central issues which arise for consideration in this judgment. These relate to the question as to whether the competent judicial authority stated on the face of the warrant that is the "Prosecutor's General Office of the Republic of Lithuania" is a "judicial authority" that term is defined in s. 2 of the Act of 2003. Under this rubric issues arise as to the interpretation of s. 2 of that Act.

13. The applicant was also put on proof that the offence recited in the warrant is robbery as defined is an offence known to Irish law (points 6 and 7).

14. The respondent also relies on points 8 and 9 which raise issues as to the retrospective operation of the Act of 2003 (point 8 and 9).

15. An objection under point 10 is raised wherein it is averred that the provisions of the Act as amended is repugnant to Article 40.4.1 of the Constitution of Ireland by reason of its being disproportionate to the legitimate object which that Act seeks to attain. This is a matter which has been considered in the case of the Minister for Justice Equality and Law Reform v. Stapleton and is merely formally advanced. Points 11, 12, 13 and 14 have been specifically abandoned by the applicant and it is unnecessary to receipt them here.

16. At paragraph 15 the respondent formally raises the issue as to whether the surrender procedure set out in the Framework Decision the 13th June, 2002 are compatible with Article 34(2)(b) of the Treaty of the European Union (TEU) under which the Framework Decisions may be adopted only for the purposes of approximation of the laws and regulations of the Member States. Point 16 to 23 are abandoned and need not be recited.

17. Points 24 and 25 are formally relied on. These contain an averment that the warrant fails to demonstrate or specify that the enforceable judgment referred to in section B(2) thereof was issued in respect of the same offences as those referred to in section E contrary to the requirements of s. 11(1)(d) of the Act of 2003 as amended by the Criminal Justice Terrorist Offences Act of 2005 (the Act of 2005). It is contended that the warrant fails to specify the circumstances in which the alleged offence was committed contrary to s. 11(1)(f) of the Act of 2003 as amended. Point 26 is not relied upon and need not be recited.

18. But essentially what therefore falls for determination in this judgment is whether the Prosecutor General's Office of the Republic of Lithuania (hereinafter the Prosecutor General) is a judicial authority within the meaning of s. 2 of the Act of 2003.

19. In order to place this issue in context it is necessary first to consider the Framework Decision which forms the basis for the Act of 2003.

The Framework Decision of the European Arrest Warrant Act 2003 (as amended)
20. The process of surrender of persons pursuant to a European Arrest Warrant applicable herein case derives from the Framework Decision adopted pursuant to Article 34 of the Treaty on the European Union. Article 34(2)(b) of the Treaty provides that Framework Decisions "shall be binding on Member States as to the result to be achieved …". The Act of 2003 is the means adopted by this State to give effect to its obligations under the Framework Decision. These obligations are reflected in s. 10 of the Act which provides that where a European Arrest Warrant has been duly issued in respect of a person within the State, that person shall, subject to and in accordance with the provisions of the Act and the Framework Decision be arrested and surrendered to the issuing State.

21. As was pointed out by Murray CJ in the appeal taken in these proceedings from the decision of Peart J. (Minister for Justice Equality and Law Reform plaintiff/appellant and Valdemaras Altaravicius respondent Supreme Court dated 5th April, 2006 Murray CJ at p. 6), (The Act must be interpreted having regard to the terms of the Framework Decision which it implements and with particular regard to the objects to be achieved thereby. The system or mechanism of surrender created by the Framework Decision applies in all Member States of the European Union. Recital 5 in the preamble to the Framework Decision refers to " … the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences …". It has as its object " … to remove the complexity and potential for delay …" in pre-existing expedition procedures. It is founded on the mutual recognition of judicial decisions and judicial cooperation within the European Union. It emphasises that the mechanism of the European Arrest Warrant is based in a high level of confidence between Member States. Both the preamble and provisions of the Framework Decision, as well as the Act of 2003 acknowledge that in operating this system of surrender, fundamental rights including fairness of procedures must be respected. In the course of the judgment Murray C.J. points out -

> "It is important to note that the ideas of mutual recognition and mutual respect relate to judicial decisions of a judicial authority, within the meaning of the Framework Decision, in one State by judicial authorities in other Member States. Thus the fundamental premise of mutual recognition and respect necessitates that the underlying concepts relating to judicial decisions of a judicial authority are to be seen in the context of the Framework Decision by reference to such recognition in one State of judicial authorities in other Member States."

22. The Framework Decisions cannot, in terms of community law, have direct effect since Article 34.2(b) of the Treaty on European Union expressly excludes such effect). However the Oireachtas has chosen to give it, at least with regard to the significant number of its provisions, such effect and make it directly applicable within the State. As was pointed out by Murray CJ:

> "This is achieved *inter alia* by s. 10 of the Act of 2003 which provides that where a European Arrest Warrant has been duly issued in respect of a person "that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision be arrested and surrendered to the issuing State".

23. He added:

> "The Act does not confine itself to including the Framework Decision in a schedule for reference purposes. There are other provisions of the Act of 2003 which require the courts to interpret the Framework Decision directly but it is sufficient for present purposes to note that s. 10 in deciding on an application for a surrender pursuant to the terms of the Act of 2003 the court must apply both the provisions of the Act and the Framework Decision."

24. The Chief Justice concluded:

> "It is, to say the least, an idiosyncratic method of legislating and likely to create ambiguity".

25. However one consequence which would appear to flow inexorably from the references which are contained at s. 10 (and s. 16) of the Act of 2003 is that insofar as relates to this application, the provisions of the Act must be interpreted having close regard to the provisions of the Framework Decision as an interpretative aid. In the judgments of the Supreme Court in Altaravicius it was also held that the learned High Court judge had erred in directing the production of the underlying domestic Arrest Warrant because he had failed to take any account of:

> (a) the provisions of Article 1.2 of the Framework Decision which provides that Member States "shall execute any European Arrest Warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision";
>
> (b) the provisions of s. 4 of the European Arrest Warrant Act 2003 (as amended) which provides that "it shall be presumed that an issuing State will comply with the requirements of the Framework Decision unless the contrary is shown";
>
> (c) the presumption which underlies extradition treaties and legislation, such as the Framework Decision and the European Arrest Warrant Act 2003 and 2005 is that States who are parties to such treaties or extradition arrangements with Ireland (such as the Republic of Lithuania) will act in good faith. Neither the Framework Decision nor the Act of 2003 as amended, explicitly require the production of the Domestic Warrant. The system established is for a single warrant that is the European Arrest Warrant. There is a presumption that the requesting State will comply with the Framework Decision. This

presumption lies "unless the contrary is shown": (see s. 4 of the Act of 2003 as amended).

26. While it is open to a respondent to adduce evidence, to raise grounds, to show that the requesting state has not complied with necessary proofs, under the Framework Decision and the Irish statutory scheme there is a presumption that what is set out in the European Arrest Warrant is accurate and that the requesting State is acting in good faith. As Denham J. pointed out -

> "A presumption is what it says it is, it is presumed that the document is in order. The presumption may be rebutted, but the courts starts with the presumption that the document is in order. The presumption stands until something to the contrary is shown. A person may seek to rebut the presumption, however it is for that person to present legal reasons or evidence as to why the presumption should be rebutted …".

27. Denham J. added that such an approach does not bar the respondent from making a case against his rendition nor does it debar the court from considering whether, on the face of a specific warrant there are facts or law or mixed questions of law and fact which require that further documentation be furnished to the court. Denham J. points out that there is a discretion on the executing judicial authority to seek information from the issuing Member State if it considers that there is insufficient information to allow it to decide on surrender. The High Court itself may also require the issuing judicial authority to provide it with additional documentation or information if that provided is insufficient to enable it to perform its function.

28. No further request or submission was made to the court in these proceedings pursuant to s. 16 or s. 20 of the Act of 2003. Moreover, it should be observed that the facts of the instant case are distinct from those which arose before Finlay Geoghegan J. in the *Minister for Justice, Equality and Law Reform v. Fallon* (The High Court, unreported, 9th September, 2005). In that case Finlay Geoghegan J. had before her an affidavit setting out evidence as to foreign law which raised an issue seeking to counter any presumption that may exist that a European Arrest Warrant had been duly issued by the issuing State.

29. The rights of a respondent were also dealt with Geoghegan J. and Fennelly J. in the earlier decision of *Dundon v. Governor of Cloverhill Prison* [2006] I.L.R.M.

30. In this context the court must now turn to the core issues which are raised herein.

Judicial Authority

31. The essential point made by the respondent is that the warrant is not issued by a "judicial authority" as defined in s. 2 of the Act of 2003. In their clearly focussed arguments and submissions counsel for the respondents make the following points. First, there was no evidence before this court that the Prosecutor General's Office of the Republic of Lithuania is the judicial authority of Lithuania competent to issue a European Arrest Warrant by virtue of the law of that State. This is by way of contrast between the evidence in the instant case and that available to a divisional sitting of the High Court of *England and Wales in Enander v. Governor of H.M. Prison, Brixton and Another* [2005] E.W.H.C 3036 [Admin]. Second, the maxim *omnia praesumumtur rite esse acta* has never been extended to excuse the necessary proof of a statutory requirement. Third, there is said to be cogent evidence in this case of non-compliance with the requirements of s. 10 of the Act of 2003 as it applies to the term judicial authority expressly defined by s. 2 of the same Act. The evidence is said to be the wording of the European Arrest Warrant at issue. A prosecutor is not a judge, magistrate or other person of the same "genus" authorised under the law of the Member State concerned to perform functions the same as, or similar to those performed under s. 33 of the Act that is a court in this State. Fourth, even if the applicant could satisfy the court that the prosecutor is in the same genus as a judge or magistrate he has failed to adduce such evidence in this case. Fifth, while s. 4(a) of the Act of 2005 creates a presumption in favour of the applicant that a State which has issued a European Arrest Warrant for execution within the State will comply with the requirements of the Framework Decisions, this is phrased in the future tense. There is no presumption that an issuing State "has complied" or "is complying" with those requirements under the Act the post surrender obligations of issuing Member States is directed towards future obligations. There is no presumption of past or present procedural compliance with the Framework Decision contained in the Act of 2003 as amended by the Act of 2005. Sixth, extradition provisions are to be construed strictly on the basis that they constitute a "penal statutory code involving penal sanctions of an individual" (*Almand v. Smithwick* [1995] 1 I.L.R.M. 61 at 67). Finally, it is submitted that "judicial authority" must be interpreted having regard to the *Ejusdem Generis Rule* and in accordance with the principle that the Oireachtas does nothing in vain.

Definitions of "Judicial Authority"

32. In the course of argument reference has been made to a number of different definitions of "judicial authority" or "issuing judicial authority".

33. The Framework Decision itself at Article 6(1) defines "issuing judicial authority" as:-

> "The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European Arrest Warrant by *virtue of the law of that State*." (emphasis added).

34. Section 2(1) of the Act of 2003 defines "issuing judicial authority" in slightly different terms:-

> " 'Issuing judicial authority' means in relation to a European Arrest Warrant, the judicial authority in the issuing State that issued the European Arrest Warrant concerned."

35. At s. 2(1) of the Act of 2003 "judicial authority" is defined:-

> " 'Judicial authority' means the judge, magistrate or *other person authorised under the law of the Member State concerned* to perform functions the same as or similar to those performed under s. 33 by a court in the State." (emphasis added).

36. Section 33 of the Act of 2003 deals with the issue of a European Arrest Warrant by a court in this State and in that context a court is defined as meaning under s. 33(5):

> "(a) The court that issued the Domestic Warrant to which
>
> (i) of section 33(1)(a) applies or,
>
> (b) The High Court.

37. It is apposite to note that these two definitions of "court" are referable to that section of the Act which in turn is part of chapter

II of the Act of 2003 referring to the issuing of European Arrest Warrants by this State.

38. In seeking to apply the doctrine that the Oireachtas does nothing in vain the respondent effectively seeks to draw a distinction between the terms "issuing judicial authority" as defined at Article 6(1) of the Framework and s. 2(1) of the Act of 2003 as contrasted to the definition of "judicial authority" contained in s. 2(1) of the Act of 2003. Having drawn this line of demarcation the respondent then seeks to assert that because the presumption inserted in the Act of 2003 by s. 4(a) of the Act of 2005 is said to be prospective there is in fact no evidence before the court that the Prosecutor Generals Office of the Republic of Lithuania is a judicial authority of Lithuania competent to issue a European Arrest Warrant by virtue of the law of that State.

39. The respondent however seeks to rely on what it is contended is a significant point of contrast between the evidence in this case and that available in *Enander v. Governor of H.M. Prison Brixton and Another* already referred to. In that case in which Sweden was the issuing State, the court had before it the following evidence:

> "… the sole issuing judicial authority for the enforcement of a custodial sentence or other form of detention is the Swedish national police board." (Para. 13 of the unreported judgment of Gage L.J.).

40. While that persuasive authority is certainly of assistance I am by no means convinced that it is so at all helpful to the respondent in this case. The opposite is true the principle submission advanced by the applicant in that case was that the term "judicial authority" must be construed as meaning an authority which would be recognised as judicial in terms of domestic law. It was submitted that the Swedish national police board could not be a judicial authority. The applicant relied on the definition of judicial authority contained in the United Kingdom Backing of Warrants (Republic of Ireland) Act, 1965, where judicial authority was defined as a court, a judge or a justice of a court or peace commissioner. Secondly, the applicant sought to compare phraseology in the Framework Decision with s. 202 of the United Kingdom Extradition Act, 1989, where in subs. 4 it was stated that a document was to be considered duly authenticated if (and only if) one of these applies –

> "(a) It purports to be signed by a judge, magistrate or *other judicial authority* of the territory."

41. Furthermore *Enander* points strongly to the fact that the expression "judicial authority" in the United Kingdom legislation must be read against the background of the Framework Decision and what regime it intended to put in place. The Framework Decision *leaves to the individual Member State the right to designate its own judicial authority*. Gage L.J. stated:

> "(Counsel for the applicant) points out that the (U.K.) 2003 Act does not define the terms "judicial authority". He continued:
>
> > "But in my judgment, whilst that is not determinative of the proper interpretation, it points towards an acknowledgement that it is left to the Member States to use their own discretion as to what will or will not be designated the appropriate "judicial authority". In my opinion, any other interpretation of the term "judicial authority" would, as is submitted on behalf of the respondent, undermine the whole purpose of mutual trust and cooperation between Member States which is expressed in the Framework Decision."

42. Furthermore, as is pointed out at para.15 of that judgment was common ground in *Enander* that the statute should be construed purposively, that the Framework Decision may or should be used as an aid to construing the Act, and finally that Article 6 enables each Member State to appoint its own judicial authority, which State shall inform the General Secretariat of a Council of the competent judicial authority under its law (see article 6(3)). Openshaw J. concurring observed pithily:

> "The essential flaw on the applicant's argument, to my mind, is in seeking to define the expression "judicial authority" in s. 2(2) of the Extradition Act, 2003, as if it stood in isolation; whereas, in my judgment, plainly it is to be interpreted in the light of the Framework Decision of the European Union passed on the 13th June, 2002, which part 1 of the Act sought to implement. *By Article 6(3) it is for the requesting State to designate who is the competent judicial authority within that State*. That concept underpins entirely the cooperation and trust between Member States on which the whole scheme of the European Arrest Warrant is based." He added:
>
> > "While there was indeed evidence as to the appointment of the Swedish national police board as a judicial authority it seems to me this court not only can but must have regard to the provisions and definitions in the Act of 2003 and in the Framework Decision."

43. In the course of submissions counsel for the respondent has relied on a number of authorities which relate to the *Ejusdem Generis Rule*. These include *The People (D.P.P.) v. Farrell* [1978] I.R. 13; *Irish Commercial Society v. Plunkett* [1986] I.R. 228 and *C.W. Shipping Company Limed v. Limerick Harbour Commissioners* [1989] I.L.R.M. 416. While such an interpretative tool is undoubtedly of secondary assistance in the interpretation of words and phrases, its application in the instant case diminishes to the point of insignificance when seen in the context of the terms of the Act itself and the Framework Decision to which this court, as was pointed out by the Supreme Court in *Alatravicius* must have close regard in the process of interpretation. As observed by Lord Scarman in his speech in *Quazi v. Quaz*i [1979] 3 A.E.R. 897 the Rule is at best "a very secondary guide to the meaning of a statute" (pg. 16(b)).

44. While these observations might appear dispositive of the point it is both apposite and necessary to look at the plain meaning of the words of the term "issuing judicial authority" as defined in the Framework Decision and in the Act, and "judicial authority" as also defined in the Act. The term "judicial authority" is a broad one:

> "The judge, magistrate or other person authorised under the law of the Member State concerned to perform functions as the same as or similar to those preformed under s. 33 by a court in the State."

45. It should be noted that this definition specifically prescinds from using the phraseology as to judge or magistrate employed in the two United Kingdom statutes referred to in *Enander*. In the Backing of Warrants (Republic of Ireland) Act, 1965, judicial authority was specifically defined. So too were the terms judge, magistrate or other judicial authority defined in s. 202 of the Extradition Act of 1989 in the United Kingdom. But the distinction, particularly in relation to the latter is instructive. It is precisely in order to provide for offices such as a prosecutor general or procurator at s. 2(1) is phrased as it is referring to an "other person authorised under the law of the Member State concerned". The fundamental flaw which emerges from the applicant's case is that it seeks to insert the word "judicial" before the word "person" and to delete the defining words "authorised…" contained thereafter. The intent of the Oireachtas is clear. It is to encompass both "judicial authorities" as defined and "issuing judicial authorities" where apposite. The court rejects a submission that the *Ejusdem Generis* principle applies in the interpretation of the phrase "judge, magistrate or other person". The principle applies where a literal wide meaning can be treated as reduced in scope by the verbal context (Bennion, Statutory

Interpretation, 4th Edition, at pg. 1054 *et seq*). However, where the words are general but are followed by narrower words suggesting a genus more limited than the initial general words then the principle does not apply. (Bennion at p. 1064). The words "authorised under the law of the Member State concerned" are the qualifier for the previous words "judge, magistrate or other person". Such person is that authorised under the law of the Member State concerned.

46. An intention to exclude the *Ejusdem Generis Rule* principle may be treated as implied where the application of the principle would produce a result contrary to the legal meaning taken to be intended by parliament. The basis of any extradition procedure is one of reciprocity and mutuality. This is specifically provided for and has been set out in the Framework Decision. It would be contrary to these principles if this State were to retain power to scrutinise those persons lawfully empowered to carry out procedures relating to the European Arrest Warrants in other Member States.

47. There is also an overriding principle of statutory interpretation that must be applied in this case as set out in the judgment of the European Court of Justice in case C-105/03 criminal proceedings against Maria Pupino (judgment of the European Court of Justice delivered 16th June, 2005). In the course of that judgment (as is pointed out by Fennelly J. in Dundon v. Governor of Cloverhill Prison (Unreported, Supreme Court, 19th December, 2005) Article 34(2)(b) of the TEU provides that Framework Decisions:

> "Shall be binding on Member States as to the result to be achieved…"

48. Thus in interpreting s. 2 of the Act this court must look to the Framework Decision to see if an interpretation can be given which accords with that Framework Decision. Article 6, paragraph 1, provides that:

> "The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European Arrest Warrant by a virtue of the laws of that State".

49. As pointed out in Enander, and at risk of repetition, it is left to the Member State to designate its own judicial authority to be competent to issue the warrant by virtue of the law of that State.

50. This court concludes therefore that the fact that the Warrant in suit has been issued by the prosecuting authority in Lithuania in no way raises sufficient doubt as to the compliance by that State with the provisions of the Framework Decision. Judicial notice must be taken of the fact that most European Member States operate within a civil law system. Direct comparisons between functions and roles of institutions within the administration of justice may not be apposite. No evidential material has been placed before this court which displaces the presumption that the prosecutor general in Lithuania is a competent judicial authority for the purposes of the Framework Decision and Act of 2003. This is so particularly in the context of the adjournments which have taken place in this case to which the court must have regard. Ample opportunity was granted to the respondent to make whatever case he might in relation to this point and, if necessary to consult with legal advisors in Lithuania. Nor has any sufficient evidence been adduced such as would prompt the court to seek information as to the relevant provisions of Lithuanian law in the light of the presumptions which are applicable. While one would not go so far as to say that it must be "something overwhelming" in order to rebut such presumption, the evidence adduced would have to be clear, cogent and material. That the evidence adduced before this court, relied on by the respondent does not fall into any of those categories.

51. Insofar as the respondent herein seeks to place reliance upon parliamentary debates such a course of action is not permissible under the canons of interpretation. This court is not disposed to accept or consider an affidavit in which reference was made to such debates (see *Crilly v. G. and J. Farrington Limited* [2001] I.E.S.C. 60 and [2002] 1 I.L.R.M. 161. Indeed were reliance to be placed on statements by the Oireachtas it might be observed that those referred to would be of far greater assistance to the applicant than to the respondent.

52. By reason of the findings set out above the submissions of the applicant in relation to the question of judicial authority fail.

Correspondence

53. For completeness this judgment will deal with the question of "correspondence". By virtue of s. 70 of the Criminal Justice (Terrorist Offences) Act, 2005, the Act of 2003 was amended by the substitution of the following section for s. 5 thereof:

> "5 For the purposes of this Act, an offence specified in a European Arrest Warrant corresponds to an offence under the law of the State where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European Arrest Warrant is issued, constitute an offence under the law of the State."

54. Thus in considering correspondence the focus of the court must be on the act or omission that constitutes the offence. If such act or omission were committed in the State would it constitute an offence under the law of the State?

55. This issue was fully examined by the Supreme Court in the *Attorney General v. Dyer* [2004] 1 I.R. In the course of his decision Fennelly J. identified a number of principles set out in previous cases. These are:

> 1. In considering whether correspondence has been established the court looks to the facts alleged against the subject of their quest, as opposed to the name of the offence for which he or she is sought in the requesting State, and considers whether these facts or this conduct would amount in this State to a crime of the necessary minimum gravity.
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> 2. In considering correspondence therefore the court is concerned not with the name of the offence in the requesting country but the criminal conduct alleged in the request or warrant.
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> 3. In the absence of anything suggesting that the words used in a warrant had a different meaning in the law of the requesting State, the question of correspondence was to be examined by attributing to such words the meaning they would have in Irish Law.

56. The following description is given at paragraph E of the warrant:

> "Valdemaras Altaravicius is suspected that on 28th December, 2001, at about 22.00 acting with a group of accomplices, together with A. Sniuksta, E. Guseinovu and N. Brazebicius, in Songailu village, Ward of Seta, region of Kedaini using mental coercion or physical violence against juveniles Andrius Macionis and Aivaras Imsa, from the latter he stole a mobile phone "Siemens A35" of 170 Litas value and 7 Litas."

57. I consider that this conduct would have done in Ireland amount of an offence of robbery as defined in s. 14 of the Criminal Justice

Theft (and Fraud) Act, 2001. There is a stealing of money and a mobile phone accompanied by violence or a threat of violence. The maximum sentence for robbery in this State is life imprisonment. Were this court in any doubt as to whether the offence of robbery was established from the above facts the conduct alleged would nonetheless constitute theft in Irish law as defined in s. 4 of the Act of 2001. The maximum sentence for theft is 10 years imprisonment.

The Retrospective Operation of the Act of 2003
58. The respondent claims that the Framework Decision and the Act of 2003 are inapplicable as the offences alleged predate Lithuania's membership of the European Union. It is now necessary to deal briefly with these contentions.

59. No such restriction on surrender is set out in the Framework Decision or in the Act of 2003. Articles 3 and 4 of the Framework Decision, respectively, set out the mandatory and optional grounds for not executing and otherwise properly constituted European Arrest Warrant. Nowhere in those two articles is the restriction contended for by the respondent to be found. Article 32 of the Framework allows a Member State to make a statement (at the time of adoption of the Council decision) relating to dealing with requests as executing member under the previous extradition regime where acts committed before that date to be specified on the statement. Only Austria, Italy and France made such statements. It is clear that the Framework Decision is intended to apply to all acts alleged to have been committed *prior* to its commencement save or otherwise expressly limited. To imply such a restriction on surrender to another Member State would be entirely illogical and without any legal foundation. Such an implication would not only be unwarranted, but would be inconsistent with the purpose and intent of the scheme established by the Framework Decision. In acceding to the European Union on the 1st May, 2004 and to the Framework Decision, Lithuania took on the binding effect to surrender (and request surrender) in accordance with the Framework Decision.

60. It has not been the case under previous expedition legislation nor under international arrangements or treaties on extradition that a person would not be surrendered to a requesting State in respect of offences which predate the legislation or the treaty. There is no authority for such a proposition in domestic case law or under the Extradition Act, 1965 (an amended).

61. Furthermore the Act of 2003 at s. 4 expressly provides for retrospectivity in relation to offences:

> "Subject to subs. (2) and (3), this Act shall apply in relation to an offence, whether committed or alleged to have been committed before or after the commencement of this Act. Section 3 allows for the Minster for Foreign Affairs to designate a Member State that has, under its national law, given effect to the Framework Decision. No argument has been advanced as to the alleged unconstitutionality of the Act due to retrospectivity and consequently it is unnecessary for this court to make any finding under this heading."

62. For the purposes of clarity this court rejects points of objection 1 and 2 on the basis that no argument or evidence has been adduced thereof. With regard to points of objection 3 to 5 relating to "judicial authority" the arguments of the respondent fail. With regard to points 6 and 7, "correspondence" the arguments of the respondent fail. With regard to points 8 to 9, insofar as they relate to retrospection, the arguments also fail. No argument has been advanced in relation to any alleged unconstitutionality, by reason of the retrospective effect of the Act of 2003; consequently the respondent arguments under this heading are rejected. Insofar as it is advanced (point 10) that the Act of 2003 is disproportionate to its object but there being no argument advanced on this point the argument fails. Points 11 to 14 have already been abandoned. Insofar as relates to point 15 (non compatibility with Framework Decision) I consider (in the absence of arguments) that this point of objection too must fail. Points 17 to 23 must fail no submissions having been advanced thereof. Similar considerations apply to point 24 and 25. Point 26 not being pursued is abandoned.