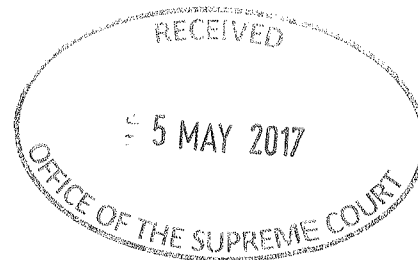


SUPREME COURT

Respondent's Notice



Supreme Court record number	2017/00014
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[Title and record number as per the High Court proceedings]

Francis Lanigan	V	Central Authority, Minister for Justice and Equality, Ireland, Attorney General (Defendants) and Human Rights Commission and Commission of the European Union (Notice Parties)
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Date of filing	5 th May, 2017
Name of respondent	Central Authority, Minister for Justice and Equality, Ireland and Attorney General
Respondent's solicitors	Chief State Solicitor's Office
Name of appellant	Francis Lanigan
Appellant's solicitors	Padraig O'Donovan & Co. Solicitors

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	Central Authority, Minister for Justice and Equality, Ireland and Attorney General
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The respondent was served with the application for leave to appeal and notice of appeal on date
The application was served on the 20 th of January, 2017

The respondent intends :	
<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input checked="" type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<input type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	
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Respondent's Representation

Solicitor			
Name of firm	Chief State Solicitor's Office		
Email	Hugh_dockry@csso.gov.ie		
Address	Osmond House, Little Ship Street,	Telephone no.	4176129
		Document Exchange no.	186
Postcode	Dublin 2	Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Robert Barron SC		
Email	rbarron@lawlibrary.ie		
Address	Law Library, Four Courts	Telephone no.	8174570
		Document Exchange no.	816015
Postcode	Dublin 7		

Counsel			
Name	Tony McGillicuddy		
Email	tmcgillicuddy@lawlibrary.ie		
Address	Law Library, Four Courts	Telephone no.	8175980
		Document Exchange no.	810292
Postcode	Dublin 7		

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

3. Information about the decision that it is sought to appeal

The Respondent herein does not agree with the narrative outlined by the Applicant in the section entitled "*Information about the decision that it is sought to appeal*" in any respect. The said narrative is polemic in nature and does not set out "facts" to assist this Honourable Court with the matters at issue in these proceedings.

The basic fact of this appeal is that the Applicant was detained on the 4th September, 2015 pursuant to a Committal Warrant issued by the High Court addressed to the Governor of Cloverhill Prison (and the Superintendent in charge of the Bridewell Garda Station), in accordance with Section 16 of the *European Arrest Warrant Act, 2003* (as amended) (the High Court having directed the surrender of the Applicant to the United Kingdom to face trial for an offence of murder and an offence of possession of a firearm with intent to endanger life).

The history of the proceedings in relation to the Applicant shows that he has brought multiple applications in respect of those Section 16 proceedings. The instant proceedings contained a further challenge and/or criticisms made of the conduct of the hearing of the s.16 application by Ms. Justice Murphy in the High Court and, *inter alia*, claims that Section 16(11) and s.20 of the *European Arrest Warrant Act, 2003* (as amended) were unconstitutional and/or that the interpretation of s.20 of the 2003 Act was contrary to the Applicant's constitutional rights. The Respondents filed a Defence and brought a motion to dismiss the within proceedings as, *inter alia*, an abuse of process and on the basis that the constitutional claims were bound to fail and that the High Court should dismiss them.

The following history of the proceedings is outlined to assist This Honourable Court.

Section 16 proceedings in the High Court and uncertified appeal to the Court of Appeal:

1. *In the High Court Ms. Justice Murphy ordered the surrender of the Applicant (the Respondent in the EAW proceedings themselves) to the issuing state pursuant to s.16 of the European Arrest Warrant Act, 2003 on the 4th September, 2015.*
2. *The High Court had delivered a preliminary judgment in the proceedings on the 17th November 2014. Following that, it had made an Article 267 Reference to the Court of Justice of the European Union and judgment was delivered by that Court on the 16th July, 2015 (Case 237/15). A further hearing took place on the 20th July 2015 in the High Court. Thereafter, the High Court delivered its further judgment on the application on the 2nd September, 2015 and dismissed all of the Respondent's objections.*
3. *The Applicant then applied for leave to appeal on the 4th September, 2015 on seven distinct questions of law, all of which were refused, and which are all attached as a*

schedule to the second order made by Ms. Justice Murphy on the 4th September, 2015.

4. *Following that, the Applicant filed a Notice of Appeal on or about the 11th September, 2015 and set out 6 Grounds of Appeal on the same or similar matters for which leave to appeal had been refused by Ms. Justice Murphy in the High Court pursuant to s.16(11) of the European Arrest Warrant Act, 2003.*
5. *The Respondent's Notice, dated the 21st September, 2015, set out the grounds of opposition which included the claim that the Court of Appeal had no jurisdiction to entertain the appeal as the High Court had not certified that the case was one falling within the terms of Section 16(11) of the European Arrest Warrant Act, as amended.*
6. *On foot of that Notice, the Respondent issued a Notice of Motion on 29th September 2015 seeking to have the appeal struck out. That motion was heard on the 11th January 2016 and judgment delivered on 16th March, 2016 striking out the appeal.*
7. *In its judgment of the 16th March, 2016 the Court of Appeal recited the six Grounds of Appeal which were pleaded by the Applicant and held, at paragraph 22, that the said grounds contained no challenge to the validity of the Act or of any of its provisions. Arising from that, the Court of Appeal struck out the said appeal.*
8. *The Applicant did not seek to challenge the constitutionality of any law either in his application for leave to appeal before the High Court or in his (uncertified) Notice of Appeal to the Court of Appeal. Thus, no assertion was made in the said application(s) that any law was invalid having regard to the provisions of the Constitution.*
9. *The Applicant sought leave to appeal the decision of the Court of Appeal to the Supreme Court. That application was dismissed in a Determination dated the 27th June, 2016 with reference number [2016] IESCDET 85.*

Article 40 proceedings before Mr. Justice Barrett and Court of Appeal:

10. *The Applicant instituted Article 40 proceedings before Mr. Justice White on the 9th September, 2015. Thereafter, the said Inquiry was granted by Mr. Justice Hunt, to whom the matter had been adjourned, on the 11th September, 2015. A hearing date was given for the Article 40 application of the 14th September, 2015.*
11. *The said proceedings were heard by the High Court (Mr. Justice Barrett) on the 14th September, 2015 and judgment was delivered on the 17th September, 2015 dismissing the Article 40 application.*
12. *Importantly, the Applicant argued grounds of unconstitutionality in that Article 40 application and same were dismissed by the High Court.*
13. *Thereafter, the Applicant's appeal was dismissed by the Court of Appeal in its judgment of the 19th October, 2016 after a hearing which took place on the 18th March 2016.*
14. *The Applicant has sought to appeal the dismissal of that appeal to the Supreme Court in an application with a Record Number S:AP:2016:000141.*
15. *The said application was filed on the 1st December, 2016 and amended on the 25th January, 2017. The Respondent's Amended Notice opposing the said application was filed on the 24th February, 2017.*

Stay application before Mr. Justice Butler in September 2015:

16. *An Application was made before Mr. Justice Butler on 25th September, 2015 for a stay on the operation of the Section 16 Order and Mr. Justice Butler granted the following Orders:*
- (i) A stay on such part of the Order under s.16(1) of the European Arrest Warrant Act, 2003 made by the High Court (Murphy J.) on the 4th September, 2015 as directed that Francis Lanigan be surrendered to such other person as is duly authorised by the issuing State to receive him pending further Order.*
 - (ii) A stay on such part of the Order of the High Court (Murphy J.) made on the 4th September, 2015 pursuant to s.16(4)(c) of the European Arrest Warrant Act, 2003 (as reflected in (a) and (b) on page 2 of that Order) pending further Order.*
17. *The relevant section of the Order of Murphy J. of the 4th September, 2016 which is affected by Point No. (ii) in the Order of Butler J. is as follows:*
- “The Court further directs*
- (a) That if the respondent is not surrendered before the expiration of the time for surrender under s.16(3)A of the European Arrest Warrant Act 2003 as amended he is to be brought before the High Court again as soon as practicable after that expiration or*
 - (b) If it appears to the Central Authority in the State that because of circumstances beyond the control of the state or the issuing state concerned that the respondent will not be surrendered on the expiration referred to at (a) he is to be brought before the High Court again before that expiration.”*
18. *No appeal has ever been taken against the Order made by Mr. Justice Butler by the Applicant herein.*

Plenary Proceedings instituted by the Applicant in the High Court the subject matter of this appeal:

19. *The Applicant issued the plenary proceedings in the High Court (entitled Francis Lanigan Plaintiff -v- Central Authority, Minister for Justice and Equality, Ireland and Attorney General Defendants bearing record number 2014/6374P) on 23rd July 2014 (served on 11th December 2014), in which he, inter alia, challenged the constitutionality of provisions of the European Arrest Warrant Act, 2003.*
20. *The Defendants in those proceedings filed a defence and, thereafter, brought a motion to strike out the proceedings and same was heard by the High Court (Mr. Justice White). Judgment on that motion was delivered on the 11th November, 2016 in which the proceedings were dismissed. The costs of the action were awarded to the Respondents in those proceedings.*
21. *A Notice of Appeal has also been filed with the Court of Appeal in respect of those proceedings and, again, the Respondent's Notice to that appeal in the Court of Appeal is to be lodged in the near future.*

Second Article 40 Application before Mr Justice Noonan

22. *On 15th October 2015 the Applicant sought to make a second application under Article 40.4.2 of the Constitution for his release, arising out of the grant of the stays on the surrender Order granted by Mr Justice Butler. That ex parte application was heard by*

Mr Justice Noonan who having heard argument declined to order and enquiry and dismissed the application.

23. *The Applicant brought an appeal against that order to the Court of Appeal which in a single judgment in which it dismissed the appeal against the Order of Mr Justice Barrett allowed the appeal against the ex parte refusal of Mr Justice Noonan to order an enquiry.*

Article 40 Proceedings before Mr. Justice Humphreys:

24. *The Applicant had been admitted to bail by the Court of Appeal on the 9th November 2015 in the first Article 40 application. Upon that appeal being dismissed in the judgment delivered on the 19th October 2016, but the appeal in the second Article 40 having been allowed, the Court of Appeal admitted him to bail on the same terms and conditions in this application and remitted it to the High Court for hearing.*
25. *Thereafter, the Respondent caused this matter to be listed in the Non-Jury/Judicial Review List on the 9th November, 2016 and the 16th November, 2016 to secure a hearing date for the case.*
26. *Following that, the said Article 40 proceedings were heard by the High Court (Mr. Justice Humphreys) on a number of dates in December 2016. An ex tempore judgment was delivered on the 16th December, 2016 dismissing the Article 40 application. The Order in relation to same was perfected on the 19th December, 2016.*
27. *Following that, Mr. Justice Humphreys delivered a written judgment in the application on the 23rd January, 2017.*
28. *Thereafter, the Applicant herein has filed a Notice of Appeal with this Honourable Court. An amended Application for Leave, dated the 10th February, 2017, was filed with the Supreme Court but it was only served on the Respondent on the 27th of March, 2017. The Respondent's Notice opposes the application to this Honourable Court and refers to the Amended Application for Leave of the 10th February, 2017. It was filed on the 31st of March, 2017.*
29. *The Applicant has also filed a Notice of Appeal with the Court of Appeal and a Respondent's Notice, opposing that appeal, has been filed.*
30. *Insofar as the Applicant has referred to conditions in Maghaberry Prison arising from a report entitled Maghaberry Prison Conditions Report from November 2015 in the context of the Plenary Proceedings this issue was also litigated by the Applicant in the Article 40 proceedings before Mr. Justice Humphreys.*
31. *In that judgment he held, at **paragraph 63**, that "it falls significantly short of the level of real risk to the life or human rights of the applicant that would render unlawful his detention for the purposes of surrender to the UK. He will have the protection of the ECHR and Northern Irish law in order to assist in vindicating his rights in that respect. The matters set out in that report do not render Murphy J.'s order unlawful; nor do those matters require the release of the applicant."*
32. *It should also be noted that the only section of that report which addresses the position of persons (prisoners) in need of protection (which was the basis of the claim made in the Section 16 proceedings that the Applicant's right to life under Article 2 of the European Convention on Human Rights would be endangered by his surrender because of former INLA and Loyalist threats against which he claimed the Northern Irish Prison*

Service could not protect him) states:

1.23 Prisoners who needed protection from others were identified and offered support. They were accommodated in a number of different areas of the prison. Those with whom Inspectors spoke generally felt safe where they were.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)-

- * the decision in respect of which leave to appeal is sought does not involve a matter of general public importance
- * it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court

Exceptional Circumstances

The Respondent contends that neither of the alternative preconditions in Article 34.5.4 of the Constitution are satisfied in this case, being the necessity for the High Court decision to involve matters of general public importance or it being in the interests of justice that the Supreme Court entertain the application and grant appellate jurisdiction in this case. .

Interests of Justice:

1. The Applicant's contentions at (i) of this section that he will be surrendered to a foreign country where it has been found that there is "*credible evidence*" that there is a "*risk to his life*" if being held in prison is incorrect and contrary to the express findings of Murphy J. in the s.16 proceedings which are not subject to appeal and, further, such arguments were also dismissed by Humphreys J. in the Article 40 proceedings.

2. Again, the Applicant's contentions in paragraph (ii) of the section on Interests of Justice are contrary to the evidence and findings of the High Court in the s.16 proceedings, which are not subject to an appeal. The High Court delivered an interim ruling in the s.16 application on the 17th November, 2014 and sought additional information from the UK authorities. When the hearing resumed on the 20th July, 2015 that additional information was presented to the High Court. It was open to the Applicant at that time to provide contradictory evidence to the High Court in relation to the additional information but he did not do so. Furthermore, the admission of the additional information by the High Court was in line with the decision of the Supreme Court in *Minister for Justice v. Sliczynski* [2008] IESC 73. The Applicant's contentions in this paragraph fail to respect the findings of the Supreme Court in that case, which were applied by the High Court in its judgments in the s.16 application.
3. There was no "entitlement" to a reference under Article 267 of the Treaty in respect of these matters either in the High Court or elsewhere. The High Court may refer a question to the Court of Justice of the European Union and held that there was no question requiring such a reference in this case. The Applicant's submissions in that regard are misplaced and he fails to show how any such "entitlement" arises.

General Public Importance:

4. The contentions made by the Applicant in paragraph (i) of the Notice of Appeal under this heading is an abuse of the process of this Honourable Court and insult to the High Court Judgment where it was clear that Mr. Justice White had rejected each of the Applicant's contentions and had granted the application to dismiss the proceedings.

The same said decision was made on the basis that the claim in respect of s.16(11) of the 2003 Act was un-stateable in light of the decisions of the Supreme Court in *Irish Asphalt v. An Bord Pleanala* [1996] 2 IR 179 and *Irish Hardware Association v. South Dublin County Council* [2001] IESC 5 and also the decision of the High Court in *O'Sullivan v. Chief Executive of Irish Prison Service* [2010] 4 IR 562.

The Rule in *Henderson v. Henderson* formed part of the reasoning of the learned High Court judge, it being clear that some of the arguments advanced in these plenary proceedings had been raised, considered and rejected by Ms Justice Murphy and others could have been raised but were not (hence the Rule in *Henderson v Henderson*). The High Court did not uncritically or improperly apply the principle and nor did it depart from established jurisprudence concerning its application. Consequently, there is no new or purportedly new approach to the Rule in *Henderson v Henderson* arising from the High Court judgment requiring clarification by this Court as suggested by the Applicant.

Furthermore, in addition to relying on the fact that the same issues had been raised or could have been raised before Ms Justice Murphy, the learned High Court judge found that the Applicant's claims amounted to a collateral and impermissible attack on those proceedings. In addition, paragraph 42 of the High Court judgment records that White J. considered the transcripts of the s.16 hearing conducted before Murphy J. in the EAW proceedings and he decided that the said part of the Applicant's case was an abuse of the process of the

Court. Consequently, the kernel of the decision of the High Court in this case is one that relates to the peculiar facts of the case and does not raise any issue of law of general public importance.

The Applicant's contentions in relation to s.20 of the 2003 Act were rejected on the basis that the decision of the Supreme Court in *Minister for Justice v. Sliczynski* put beyond doubt the constitutionality of the same said provision. As held by the High Court at paragraph 61 of his Judgment White, J. held that these issues had been "*definitively decided*" in the *Sliczynski* case.

5. Similar contentions arise in relation to the arguments made at (ii) relating to the issues under *Henderson v. Henderson*. This was a clear application of the principle in that case in that the Applicant is seeking to traverse and contest the conduct of the hearing before Murphy, J. in separate proceedings before the High Court.

This is part of a multi-faceted attack by the Applicant to the conduct of the hearing by Murphy, J. across a number of proceedings and is nothing more than an abuse of the processes of the High Court at this juncture. Complaints about the conduct of the s.16 EAW application have been dismissed in other proceedings, most notably in the dismissal of the uncertified appeal to the Court of Appeal in March 2016 and by the Supreme Court in June 2016 and the separate dismissal of the first set of Article 40 proceedings by Barrett J. in September 2015.

6. In relation to the contentions at paragraph (iii) that the Appellant's "central substantive issues" concern the inquisitorial aspect of EAW proceedings the inquisitorial nature of such proceedings has been made clear in *Minister for Justice v. Sliczynski* and also in *Attorney General v. Parke* (Unreported) Supreme Court November 2004. There is no matter that requires clarification by this Honourable Court in relation to the inquisitorial nature of EAW proceedings in any context whatsoever having regard to those decisions and the Applicant's contentions, while extensive in their terms, fail to set out any issue that requires clarification at this juncture in any terms whatsoever.
7. In relation to the arguments under paragraph (iii) of that section in bullet points that the decision of Murphy, J. was to "*decide critical issues of procedure in a case*" without advance notice to a "*potential prejudiced party*" this amounts, again, to an attack on the proceedings before Murphy, J. which is contrary to the findings of the Superior Courts in multiple sets of proceedings.

The said s.16 proceedings were decided and heard in accordance with fair procedures at all times by Murphy, J. The Applicant was legally represented at all times during the s.16 application hearings by Counsel and Solicitor and the assertions made in these paragraphs are baseless and unwarranted. There is absolutely no basis to consider that the surrender of the Applicant was obtained by "*side wind*" as appears to be suggested by the Applicant.

There was nothing new in the determinations of Ms Justice Murphy, who applied the law as provided for in Section 20 of the European Arrest Warrant Act, 2003, as amended, and the decision of the Supreme Court in the case of *Sliczynski*. No point of law of fundamental importance arises from that decision. Furthermore, it is well to recall that the decision of the learned High Court judge (White, J.) was one to dismiss the proceedings on the basis that there was no

prospect of the Applicant succeeding should the action proceed to trial. There is no point of general public importance arising from that decision, which applied well established principles, taking the Applicant's case at its highest and only dismissing it on the basis that there was no possibility of the claim succeeding (as the learned High Court judge expressly stated at paragraphs 63 and 64).

8. In relation to paragraph (iv) of this section, there is no basis for an appeal to this Honourable Court in relation to the interpretation of s.16(11) of the *European Arrest Warrant Act, 2003* in light of the decision in *O'Sullivan v. Chief Executive of the Irish Prison Service* and also in light of the *Irish Asphalt* and *Irish Hardware* decisions of the Supreme Court.
9. The arguments made by the Applicant at (v) of this section of the Notice of Appeal are without any basis whatsoever. The Applicant chose to litigate these matters before Mr. Justice Humphreys in the second Article 40 proceedings and the said claims in relation to the conditions at Maghaberry Prison were rejected by the High Court in those proceedings.

This is yet another example of the methodology of the Applicant to argue matters across a number of proceedings and continue to do so where they are rejected in other proceedings. The reality is that the High Court decided the s.16 application in this case according to the evidence before it at the time in September 2015 and ordered the Applicant's surrender to the Issuing State.

Furthermore, there were no substantive grounds advanced for a reference to be made to the Court of Justice of the European Union under Article 267 of the Treaty. No issue of EU law has been identified in the High Court proceedings or before this Honourable Court for such a reference. Vague references were made to case law of the Court of Justice of the European Union and to questions that arose before the Court of Justice of the European Union in the Applicant's case when it was referred to that Court. They are not relevant to this issue and give no grounds or basis whatsoever for a reference to the Court of Justice.

10. In relation to the contentions made at (vi) the Applicant appears to challenge and contest the entitlement of the State Respondents to bring an application to strike out the proceedings. The Respondents were entitled to bring such an application and the High Court dismissed the proceedings on that basis. The Applicant's case in this regard is in the nature of polemic and devoid of any legal principles whatsoever.

Exceptional Circumstances Warranting a Direct Appeal:

11. The Applicant's contentions in this regard are without merit and, again, it is reiterated that the Applicant is seeking to maintain and pursue arguments made in other proceedings where those arguments have been dismissed and re-litigate and re-run them under the guise of seeking leave to appeal in these proceedings.
12. In relation to the bullet points outlined by the Applicant the following is stated:
 - The inquisitorial nature of the EAW proceedings has been decided by This Honourable Court in *Attorney General v. Parke* Unreported High Supreme Court November 2004 and in *Minister for Justice v. Sliczynski* [2008] IESC 73 and is beyond doubt at this stage. No case has been made out by the Applicant as to why this Honourable Court is required to

assess these matters again where those judgments are clear in their terms and effect.

- The argument by the Applicant that the High Court is entitled to make findings which “*disregard relevant evidence*” is incorrect and wrong and is an insult to the High Court. All of the relevant arguments which had been made by the Applicant in the High Court were considered. The fact that those arguments were not upheld does not amount to a disregard of the Applicant’s case or amount to a breach of fair procedures.
- The Applicant has set out a long list of bullet points referencing other issues and referring to Myerscough and Owczwarz without outlining in any way whatsoever how those points arose in the instant proceedings. To the extent to which the Applicant requests this Honourable Court to consider points of law which did not arise in these proceedings then the said claims should be dismissed *in limine*.

Summary

13. Given the vast array of assertions made by the Applicant in his Notice of Appeal there is a risk of losing sight of what this purported appeal is all about. The High Court (Murphy, J.) ordered the surrender of the Applicant to the United Kingdom pursuant to Section 16 of the European Arrest Warrant Act, 2003, as amended. The Applicant had contested the making of that Order on the ground that he claimed his life would be at risk if surrendered (he subsequently, having been granted bail, lived and still lives openly in this jurisdiction). In considering the Applicant’s claim, Murphy, J. sought further information from the authorities in Northern Ireland as to how they would or could protect the Applicant from any threat to his life and hence how they would respect his right to life under Article 2 of the European Convention on Human Rights.
14. The Applicant objected to that information being admitted in evidence, not because he sought to contradict it, but on principle he claimed that it was or should be inadmissible, primarily because he could not cross-examine the persons providing the information. His complaints in this regard were rejected in the judgment delivered by Murphy, J. In subsequent Article 40.4 proceedings, both before Mr Justice Barrett (whose judgment was upheld by the Court of Appeal) and Mr Justice Humphreys, the same or similar complaints were rejected. The complaint lacks any substance because there was no challenge to the accuracy of the information provided by the authorities in Northern Ireland and the attempt to introduce such a challenge in these proceedings, in the form of the Report on conditions in Maghaberry Prison, does not alter that position because that report (as noted above) at paragraph 1.23 does not support the particular claim the Applicant is making.
15. In reaching her judgment, Murphy, J. followed well-established legal principles concerning the *sui generis* nature of extradition (or surrender) procedures and judgments of this Honourable Court, principally *Parke* and *Sliczynski*. In dismissing these plenary proceedings, White, J. did likewise, also applying the established jurisprudence on dismissing cases that are bound to fail. There is nothing new or no departure from established legal principles. This is not a case in which there are exceptional circumstances warranting a direct appeal to this Court, there being nothing peculiar about it other than the making of repeated overlapping applications and appeals raising and repeating the same or similar arguments. The fact that the Applicant makes a number of important sounding assertions (pertaining to his right to life and the right to cross-examine) does not

alter the fundamental nature of his case: he claims that information should not be admitted in evidence in EAW proceedings even in circumstances where as in this case its accuracy was not challenged. The High Court in its judgment in this case dismissing the proceedings has done nothing more nor less than apply existing jurisprudence of this Court: that it has been held that the case is bound to fail of itself indicates that there is no issue of general public importance, it is not in the interests of justice that this appeal be accepted in this Court and it is not one exhibiting exceptional circumstances within the meaning of the Constitution.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc. in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

- i. This is not a good ground of appeal. It is no part of the function of the High Court in determining whether to dismiss a case on the grounds that it is bound to fail to make any findings of fact (the correct approach as applied by the learned High Court judge in this case is to assume the facts are in favour of the Plaintiff). The learned High Court judge made such findings on the issues before him as where appropriate and necessary to enable him to decide the application in accordance with law.
- ii. The learned High Court judge did not by inference reject any un-contradicted or other evidence. As with ground i this ground proceeds on a mistaken assumption of the role of the High Court in deciding an application to dismiss on the grounds that the action is bound to fail. Without prejudice to the foregoing, in the event that it were to be found that the learned High Court judge did by inference reject any un-contradicted evidence, the same was not and is not material to the issues in the application and does not constitute a good ground of appeal.
- iii. The arguments by the Applicant in this paragraph are an insult to the High Court (White, J.). The reasoning for the decision made is clear from the judgment itself and addresses the arguments made by both parties.
- iv. The learned High Court judge did not by inference reject the contention that where the Attorney General is not a party to proceedings in which an issue of *statutory unconstitutionality* is raised that the moving party must serve a notice under Order 60 of the Rules of the Superior Courts. Without prejudice to same, this is not a good ground of appeal (whether correct or not it does not alter the correctness of the learned High Court judge's decision to dismiss the action).
- v. The learned trial judge did not find that the case for *statutory unconstitutionality* was made before Murphy, J and in fact acknowledged that she declined to consider that issue (at paragraph 61 of the judgment of White, J.). The assertions made by the Applicant in this ground are also otherwise incorrect. Without prejudice to the foregoing this is not in any event a good ground of appeal.
- vi. The Applicant is seeking to re-litigate matters which have already been determined by the High Court in the EAW proceedings (the judgments of the High Court of the 17th November, 2014 and 2nd September, 2015) and seeking to re-argue matters on points where he was refused leave to appeal (4th September, 2015) and had his un-certified appeal dismissed by the Court of Appeal (March 2016) and upheld by the Supreme

Court (June 2016) and, further, where his first Article 40 application was dismissed by the High Court (September 2015) and by the Court of Appeal (October 2016) and in the second Article 40 (December 2016 and written judgment in January 2017). The said proceedings are an abuse of the process of the Court.

Without prejudice to the foregoing, the Respondent opposes this and indeed all the grounds of appeal on the basis that the learned High Court judge was correct in law in holding that the Applicant's was bound to fail in these proceedings.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Tony McGillicuddy BL
Robert Barron SC

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

- 1.
- 2.

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

☐

Yes

☒

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

☐

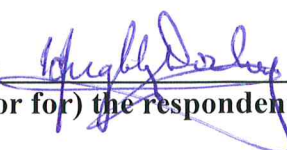
Yes

☒

No

If Yes, please give details below:

Will you request a priority hearing?	<input checked="checked" type="checkbox"/> X	Yes	<input type="checkbox"/>	No
If Yes, please give reasons below:				
Given that these proceedings are linked to EAW proceedings for which a surrender order was made by the High Court in September 2015 the Respondent is anxious that the litigation in respect of same is concluded as soon as possible where the Respondent has obligations, pursuant to EU law, to ensure the expeditious resolution of European Arrest Warrant matters.				

Signed: 
(Solicitor for) the respondent

Please submit your completed form to:

**The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin**

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.