



# Cúirt Uachtarach na hÉireann Supreme Court of Ireland

## Director of Public Prosecutions v. Banks

On appeal from: [2019] IECA 319

The Supreme Court today 10<sup>th</sup> February, 2022, allowed an appeal against conviction under s.21 of the Offences Against the State Act 1939, as amended, for the offence of membership of an unlawful organisation, to wit the Irish Republican Army (“the IRA”).

### Composition of the Court

O’Donnell C.J., MacMenamin, Dunne, O’Malley, Woulfe JJ.

### Judgment

The judgment was delivered by O’Malley J. (O’Donnell CJ, MacMenamin, Dunne and Woulfe JJ concurring).

### Background to the Appeal

In September 2012 the appellant was arrested on suspicion of membership of the IRA under the provisions of s.30 of the Offences Against the State Act 1939, as amended (the “1939 Act”). He was subsequently released without charge. In December 2012 the appellant was arrested for a second time on suspicion of membership of the IRA under the provisions of s.30 of the 1939 Act. He was later charged and convicted for that offence. The appellant argued that the arrest in December 2012 was for the “*same offence*” as the September 2012 arrest, and that, pursuant to s.30A of the Act, such an arrest could only be lawfully effected under the authority of a warrant issued by the District Court. It was submitted that the December 2012 arrest was unlawful as such a warrant had not been obtained. Both the trial court and Court of Appeal ruled that the second arrest was not for the “*same offence*” as the first, as it took place in different circumstances and as part of a different investigation.

The appellant argued that the breadth of the claim of privilege made by the Detective Chief Superintendent giving belief evidence was such that no meaningful cross-examination could be conducted. It was also submitted that the evidence offered in support of the belief evidence did not meet the high standard required in such circumstances. These arguments were rejected by the trial court and Court of Appeal.

### Reasons for the Judgment

The limitation on arrest under s.30A confers a measure of protection upon persons who have been arrested and released without charge. It relates not just to an arrest “**for**” the same offence but to an arrest “**in connection with** the same offence”. The matters to be considered are not, therefore, exactly the same as those applicable to a claim based on the principles of double jeopardy. In examining this limitation in the case of an arrest for the offence of membership of an unlawful organisation, it is essential to bear in mind both of the elements of that offence – adherence as well as the act or acts of participation. **[95]**

An investigation into a particular occurrence may well, *as an investigation*, be concerned with *acts* on the part of a suspect that are entirely separate from those with which the gardaí were concerned at an earlier time. However, it would be difficult to describe the element of *adherence*, which by its nature implies at least some degree of continuity, as being “unconnected”. **[95]**

The legislature has provided a straightforward means to progress an investigation where the statutory limitation applies, by requiring a warrant to be obtained from a District Court Judge in accordance with s.30A. Protection against abuse of the power of arrest would be gravely weakened if the matter were left to be determined in the context of a trial. **[96]**

The statute therefore applies to an arrest on suspicion of membership if the person was previously arrested on suspicion of membership and released without charge. The trial court erred in holding that, because the second investigation related to a different incident and so took place in the course of a different investigation, no warrant was required for the subsequent arrest. **[98] [100]**

The belief evidence of the Detective Chief Superintendent, although admissible, required to be supported by strong independent evidence. This was because of both the breadth of the claim of privilege made and the doubts caused by the absence of certain relevant information from the material examined by him. **[119]**

Having considered the other evidence in the case, the Court does not consider that it reached the necessary standard to support the belief evidence. While there were grounds for grave suspicion in relation to the appellant's role in sourcing a car that was ultimately used in a murder, the evidence was not sufficiently strong to prove the offence of membership beyond reasonable doubt. **[120]**

**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**

16 <sup>th</sup> November 2021	<b>Oral submissions made before the Court</b>
[2021] IESCDT 85	Supreme Court Determination granting leave
[2019] IECA 319	Judgment of the Court of Appeal
Bill No.SCDP0018/2012	Bill no. of Special Criminal Court proceedings