

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (CROWN SIDE)

**IN THE MATTER OF AN APPLICATION BY PATRICK McCRORY FOR
JUDICIAL REVIEW**

CARSWELL LCJ

Introduction

This is an application for judicial review of the decision by a resident magistrate sitting in Belfast Magistrates' Court on 12 November 1999, whereby he ordered, pursuant to the provisions of the Backing of Warrants (Republic of Ireland) Act 1965 (the 1965 Act), that the applicant be delivered into the custody of a member of the Garda Síochána at some convenient point of departure from the United Kingdom to the Republic of Ireland (the Republic).

The Factual Background

The applicant appeared at the court on foot of three warrants to arrest issued by a judge of the District Court of the Dublin Metropolitan District. The charges with which they were concerned were (a) having an imitation firearm with intent to cause injury to or incapacitate or intimidate a person (b) assault on one Joseph Kinsella (c) having an imitation firearm with intent to commit an indictable

offence, all on 24 June 1992. The warrants were accompanied by the requisite certificates, and no point was taken on behalf of the applicant about the correctness of the documentation grounding the application to the magistrates' court.

Formal depositions were made by an officer of the RUC and a detective garda of the Garda Síochána. No reference was made at the hearing to the possibility that the applicant might be prosecuted or detained in respect of any other offence, and the applicant's solicitor did not direct any questions to the officers about such a possibility. The solicitors acting for the applicant then entered into correspondence with the Garda Síochána on this question, and it transpired that the police in the Republic did want to interview him in relation to the disappearance of Charles Brooke Pickard in County Kerry on or about 26 April 1991. The circumstances in which it was desired to interview him were set out in a communication dated 10 January 2000 from the Garda Síochána to the applicant's solicitors:

"I am in receipt of your list of questions in relation to above subject. As I have already outlined Mr. Charles Brooke Pickard was last seen on the 26th April 1991 at White Strand, Castlecomer, Co. Kerry.

An intensive Garda investigation was conducted into his disappearance which involved the arrest and interviewing a number of persons. To date nobody has been charged with any offence connected with Mr. Pickard's disappearance. Our enquiries revealed that Mr. Pickard was a victim of an abduction by possibly five persons some of whom were in possession of firearms. The purpose of this abduction would appear to have been related to an attempt to steal money which it was suspected he had in his possession. There is no evidence that such abduction was carried out by an illegal organisation.

From an early stage of this investigation Mr. McCrory's alleged involvement in the disappearance was established and the Garda were anxious from this point on to interview him. We are satisfied that Mr. McCrory visited the South Kerry area prior to the disappearance of Mr. Pickard and was involved in a plot to steal money from him.

It is our intention that Mr. McCrory will be arrested for the offence of False Imprisonment of Mr. Charles Brooke Pickard on the 26th April 1991 and interviewed re same. This is of course subject to the consent of the U.K. Authorities under the Rule of Specialty."

The applicant commenced proceedings for habeas corpus, which were adjourned for a period, and then the court granted bail to the applicant. We were not concerned with the habeas corpus proceedings in the hearing before this court, only the application for judicial review commenced on 28 January 2000. The grounds on which the applicant seeks relief, as set out in paragraph 3 of his statement, are as follows:

- "3. The grounds on which the Relief is sought are as follows;
- (a) That the Applicant was denied a fair hearing before the Magistrate insofar as he was denied the opportunity of raising issues before that Court which were relevant to the application and could have provided the Applicant with a defence to the Extradition Order sought.
- (b) The Applicant was denied the opportunity of raising the issues referred to in the above paragraph due to the fact that relevant matters now within his knowledge were not then known to the Applicant but were known to the Garda Siochana, the requesting authorities.

- (c) The decision of the Magistrate was made without reference to relevant matters which ought to have been considered by the Court.
- (d) The relevant issues and matters referred to above are:
 - i. That the Applicant if extradited will be arrested by the Garda Siochana for the offence of False Imprisonment and questioned regarding same.
 - ii. The above alleged offence involves the abduction of a Mr. Pickard in 1991 in South Kerry by five persons using firearms. The persons were masked and a vehicle was burnt out afterwards.
 - iii. A number of persons (possible as many as seven) were arrested by the Garda Siochana in connection with the matters referred to above and each were arrested pursuant to section 30 of the Offences Against the State Act 1939.
 - iv. The circumstances of the above alleged offences strongly suggests that it may have been perpetrated by an illegal organisation and hence an offence of 'a political character' within the meaning of The Backing of Warrants (Republic of Ireland) Act 1965."

The Statutory Provisions

The argument presented by Mr O'Rourke on behalf of the applicant turned on the interpretation of the 1965 Act and the Suppression of Terrorism Act 1978. Section 1(1) of the 1965 Act (as amended) provides for the endorsement of warrants, the inter-State process which operates between the United Kingdom and the Republic, instead of the ordinary system of extradition (although for convenience we shall refer to the process in this judgment as extradition):

" 1.-(1) Where -

- (a) a warrant has been issued by a judicial authority in the Republic of Ireland (in this Act referred to as the Republic) for the arrest of a person accused or convicted of an offence against the laws of the Republic, being an indictable offence or an offence punishable on summary conviction with imprisonment for six months; and
- (b) an application for the endorsement of the warrant is made to a justice of the peace in the United Kingdom by a constable who produces the warrant and states on oath that he has reason to believe the person named or described therein to be within the area for which the justice acts or on his way to the United Kingdom;

then, subject to the provisions of this section, the justice shall endorse the warrant in the prescribed form for execution within the part of the United Kingdom comprising the area for which he acts.”

Section 2(1) provides for the person concerned to be brought before a magistrates’ court, which must order his extradition if the warrant is in order:

“ 2.-(1) So soon as is practicable after a person is arrested under a warrant endorsed in accordance with section 1 of this Act, he shall be brought before a magistrates’ court and the court shall, subject to the following provisions of this section, order him to be delivered at some convenient point of departure from the United Kingdom into the custody of a member of the police force (Garda Síochána) of the Republic, and remand him until so delivered.”

Section 2(2) then sets out a number of circumstances in which the court is to refuse to make an order for extradition:

“ (2) An order shall not be made under subsection (1) of this section if it appears to the court that the offence specified in the warrant does not correspond with any offence under the law of the part of the United Kingdom in which the court acts which is an indictable offence or is punishable on summary conviction with imprisonment

for six months; nor shall such an order be made if it is shown to the satisfaction of the court –

- (a) that the offence specified in the warrant is an offence of a political character, or an offence under military law which is not also an offence under the general criminal law, [...]; or
- (b) that there are substantial grounds for believing that the person named or described in the warrant will, if taken to the Republic, be prosecuted or detained for another offence, being an offence of a political character or an offence under military law which is not also an offence under the general criminal law.”

In 1978 Parliament passed the Suppression of Terrorism Act 1978 (the 1978 Act), in order to give effect to the European Convention on the Suppression of Terrorism, to which the United Kingdom and the Republic are signatories. Section 1, as amended by the Extradition Act 1989, reads as follows:

“ 1.-(1) This section applies to any offence of which a person is accused or has been convicted outside the United Kingdom if the act constituting the offence, or the equivalent act, would, if it took place in any part of the United Kingdom or, in the case of an extra-territorial offence, in corresponding circumstances outside the United Kingdom, constitute one of the offences listed in Schedule 1 to this Act.

(2) For the purposes mentioned in subsection (3) below –

- (a) no offence to which this section applies shall be regarded as an offence of a political character; and
- (b) no proceedings in respect of an offence to which this section applies shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.

(3) Those purposes are –

- (a) [...]
- (b) [...]
- (c) the purposes of the Backing of Warrants (Republic of Ireland) Act 1965 in relation to any warrant issued in the Republic of Ireland to which this paragraph applies by virtue of an order under subsection (4) below;
- (d) [...]

(4) The Secretary of State may by order direct that subsection (3)(c) above shall apply to warrants of the kind mentioned in section 1(1)(a) of the said Act of 1965 issued while the order is in force, [...]

(5) On the revocation of an order made under subsection (4) above -

- (a) subsection (3)(c) above shall cease to apply to any warrant issued while the order was in force;
- (b) [...]"

Schedule 1 to the 1978 Act sets out a list of offences which are not to be regarded as offences of a political character, which includes murder, kidnapping and false imprisonment, together with attempts and conspiracy to commit any of the scheduled offences.

The Meaning of "Accused"

The first issue which arises is whether the applicant has been "accused" of the offence of false imprisonment, which is material in order to determine the application of the 1978 Act. Although the point was not argued by Mr O'Rourke on behalf of the applicant, we think that it merits some consideration. Section 1(2)(a) of the 1978 Act provides that for the purposes of the 1965 Act no offence to which that

section applies is to be regarded as an offence of a political character. By section 1(1) the section applies to any offence of which a person “is accused or has been convicted outside the United Kingdom”. It follows accordingly that for the exception to section 2(2)(b) of the 1965 Act to operate the person whose extradition is sought must have been “accused” of one of the offences specified in the Schedule to the 1978 Act.

The Garda have stated that it is their intention to arrest the applicant for the offence of false imprisonment of Mr Pickard and interview him. We have given consideration to the point whether he has been “accused” of false imprisonment, so as to trigger the operation of the 1978 Act. We have come to the conclusion that he has been so “accused”, although he has not been charged with the offence, for the following reasons:

1. For the 1965 Act to operate a warrant must have been issued for the arrest of the person to be extradited. He may have fled before being apprehended, and in such a case he will not yet have been arrested and charged. It is clear nevertheless that it is contemplated that the 1978 Act will apply to such a person, who must come within the definition of an “accused” person.
2. Section 20(1) of the Extradition Act 1989 applies to a person “accused” of an offence under the law of the United Kingdom who is returned to the United Kingdom in pursuance of extradition arrangements, although it appears from section 20(2)(a) that proceedings against him for that offence may not be begun until up to six months after his return.

3. Section 2(2)(b) of the 1965 Act operates when the court is satisfied that there are substantial grounds for believing that the person *will* be prosecuted or detained for another offence. This goes beyond mere suspicion, and the person concerned could properly be said to have been “accused” of that offence. If he did not, the scope of section 2(2)(b) would be substantially limited and its effectiveness negated.
4. The principle that extradition treaties ought to be given a liberal interpretation (*Re Arton No 2*) [1896] 1 QB 509 at 517, per Lord Russell of Killowen CJ) was approved by Lord Bridge in *Government of Belgium v Postlethwaite* [1988] AC 924 at 947, where he went on to say:

“I also take the judgment in that case as good authority for the proposition that in the application of the principle the court should not, unless constrained by the language used, interpret any extradition treaty in a way which would ‘hinder the working and narrow the operation of most salutary international arrangements.’”

We conclude for these reasons that the applicant would constitute a person “accused” of the offence of false imprisonment for the purpose of the 1978 Act.

The Construction of Section 2 of the 1978 Act

The main point argued on behalf of the applicant was whether on its true construction the 1978 Act applies to offences within section 2(2)(b) of the 1965 Act or whether it is confined to offences to which section 2(2)(a) applies. Mr O’Rourke submitted that the effect of the wording of section 2(3) of the 1978 Act was to confine the operation of the Act to the latter paragraph. Section 1(2) of the 1978 Act provides that for the purposes mentioned in subsection (3) no offence to which the section

applies is to be regarded as an offence of a political character. By subsection (3)(c) it is provided that those purposes are those of the 1965 Act --

“in relation to any warrant issued in the Republic of Ireland to which this paragraph applies by virtue of an order under subsection (4) below”.

Subsection (4) then reads:

“The Secretary of State may by order direct that subsection (3)(c) above shall apply to warrants of the kind mentioned in section 1(1)(a) of the Act of 1965 issued while the order is in force.”

The submission on behalf of the applicant was that by defining the purposes in terms of the warrants the legislature intended to confine the operation of the 1978 Act in relation to the 1965 Act to cases falling within section 2(2)(a) of the latter Act. In respect of other offences, those falling within section 2(2)(b), the 1978 Act did not apply and accordingly the person whose extradition was sought must have the opportunity to establish that the other offences are of a political nature. In order to do so, he must be informed of the intention of the police in the Republic to arrest him in connection with any such offence, so that he can seek to establish its nature. When this information was withheld from him and from the court, he was deprived of the opportunity to investigate the issue through cross-examination of the officers who gave evidence. Counsel submitted that deprivation of this opportunity was unfairness of such a degree as to vitiate the proceedings (though he did not contend that it amounted to an abuse of the process of the court).

The structure of section 1(3) and (4) of the 1978 Act is that subsection (3)(c) commences by defining the particular purposes of the subsection as being those of the 1965 Act, then limits the definition by reference to any warrants covered by an

order under subsection (4). Subsection (4) empowers the Secretary of State to make an order directing that subsection (3)(c) shall apply to certain warrants, which must be (i) of the kind mentioned in section 1(1)(a) of the 1965 Act, and (ii) issued while the order is in force.

Mr O'Rourke's contention was that the focus on warrants in section 2(3)(c) and section 2(4) of the 1978 Act was intentional, to differentiate in section 2(2) of the 1965 Act between the offence specified in the warrant and other offences for which the person might be prosecuted or detained, or alternatively that whatever the legislature intended the wording of the 1978 Act had that consequence. We are unable to see any convincing reason why the legislature should have wished to draw such a distinction. Once it decided to limit the category of offences of a political nature by excepting a large range of crimes so that it was no longer possible to resist extradition in respect of these crimes, there is no logic in imposing such a limit in respect of the crimes for which the warrants were issued and not in respect of other crimes for which the person might be prosecuted. It was suggested that a person whose extradition is sought required protection against unscrupulous use by the requesting state of the extradition process to lay hold of him to prosecute him for purely political crimes for which he would not be extradited, but that protection is afforded by the rule of specialty. We accordingly cannot accept that the legislature deliberately made the distinction suggested.

Nor do we think that the provisions of the 1978 Act had that effect. The wording is somewhat clumsy in defining the scope of its application by reference to the warrants, when what it really sought to do was to apply the 1978 Act to

particular *proceedings on foot of* the warrants. If the draftsman had used this wording, it would have been more accurate syntax and the meaning would have been incontrovertibly clear. It would be equally clear that both paragraph (a) and paragraph (b) of section 2(2) of the 1965 Act are governed by the provisions of the 1978 Act. One might therefore adopt a purposive construction of the 1978 Act, in the same way as Lord Steyn, with the concurrence of the other members of the House of Lords, did in *Re Ismail* [1999] 1 AC 320 at 327D, and in section 2(3)(c) and section 2(4) read the words “proceedings on foot of” into the phrase “in relation to any warrant”. We should be prepared if necessary to adopt this purposive construction, but we are of opinion that even if we do not resort to it the applicant’s contention is not well based. Section 2(2)(b) of the 1965 Act refers to “the person named or described in the warrant”, so when the Secretary of State directed that section 2(3)(c) of the 1978 referred to warrants of a certain kind that was sufficient to include section 2(2)(b) of the 1965 Act and apply section 2(3)(c) of the 1978 Act to it.

Offences of a Political Nature

If the provisions of the 1978 Act do not apply to section 2(2)(b) of the 1965 Act, contrary to the opinion which we have expressed, it would be open to the applicant to seek to establish that the offence in connection with which the Garda desire to arrest and question him is a political offence. The phrase “offence of a political character” has, as the commentators state, been found difficult to interpret. Considerable assistance may, however, be obtained for present purposes from the decision of the House of Lords in *T v Secretary of State for the Home Department* [1996] AC 742. That case concerned asylum, but it was held that the concept is the same for

the purposes of the law of extradition. The definitions of political crime adopted by the members of the House varied somewhat, but the present case would not in our judgment come within any version of the definition. Lord Lloyd of Berwick, with whom Lord Keith and Lord Browne-Wilkinson agreed, propounded the following at pages 786-7, while accepting that because of the difficulty of defining the concept it was more of a description than a definition:

“A crime is a political crime for the purposes of article 1F(b) of the Geneva Convention if, and only if (1) it is committed for a political purpose, that is to say, with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and (2) there is a sufficiently close and direct link between the crime and the alleged political purpose. In determining whether such a link exists, the court will bear in mind the means used to achieve the political end, and will have particular regard to whether the crime was aimed at a military or governmental target, on the one hand, or a civilian target on the other, and in either event whether it was likely to involve the indiscriminate killing or injuring of members of the public.”

Lord Mustill and Lord Slynn qualified this description by specifically excluding terrorist acts from the category of political crimes.

In our judgment the false imprisonment for which the Garda wish to arrest the applicant cannot on any version of the definition or description qualify as an offence of a political nature. No evidence has been produced that it had any connection with a paramilitary organisation. There is nothing from which one might conclude that the crime was directed against the State. The abduction of Mr Pickard appears to have been carried out in the course of an attempt to steal money which the perpetrators suspected he had in his possession. The press reports adduced by the applicant show at most that there is a suspicion that the crime was drugs-related.

None of these facts come anywhere near making the offence one of a political nature. The fact that the arrest was carried out under section 30 of the Offences Against the State Act 1939 does not assist the applicant, for that Act applies to all types of crime, whether “ordinary” or “subversive” in nature: *The People (Director of Public Prosecutions) v Quilligan* [1986] IR 495. The applicant has shown nothing which might raise a case that the offence was one of a political nature, and it is not sufficient to say, as Mr O’Rourke attempted to do, that if the applicant’s solicitor had been informed of the intention of the Garda and the details of the offence of false imprisonment he might have been able on cross-examination of the police officers to elicit something which would have satisfied the court.

For the reasons which we have given we accordingly do not consider that the applicant has made out any of the grounds for judicial review advanced by him, and the application will be dismissed.

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