

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Rea (Winston Churchill)'s Application (Leave Stage) [2015] NIQB 7

IN THE MATTER OF AN APPLICATION BY WINSTON CHURCHILL REA  
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

TREACY J

Introduction

[1] By this application the applicant seeks, inter alia, an order quashing the decision of the Director of Public Prosecutions ("DPP") under section 7(5) of the Crime (International Co-operation) Act 2003 ("the 2003 Act") requesting mutual legal assistance from the United States Central Authority in respect of material held by Boston College, Massachusetts and pertaining to the applicant.

[2] The pleaded grounds on which relief is sought are somewhat diffuse but in substance they challenge to the vires of the request for assistance and in particular that contained under cover of the letter dated 11 September 2014. Before considering the merits of the challenge it is necessary to look at the nature and background of the request and then to look briefly at the statutory provisions governing the exercise of the statutory discretion of the DPP to make such a request.

[3] As appears from the request a criminal investigation is being carried out by officers of the PSNI into offences said to have been committed by the applicant, Winston Churchill Rea. The statutory powers enabling the issue of the Letter of Request are contained in section 7(5) of the 2003 Act. The DPP is a designated prosecuting authority for the purpose of that provision who, in pursuance of section 36(1) of the Justice (Northern Ireland) Order 2002, has delegated the powers he may exercise under section 7(5) to Mr Stephen Burnside, the Assistant Director, including the power and authority to sign the Letter of Request on the DPP's behalf.

[4] The request states that the PSNI are investigating the commission of a range of offences including murder, membership of a proscribed organisation, directing terrorism and robbery. The summary of facts contained within the request records that in Northern Ireland the UVF and the Red Hand Commando are paramilitary organisations that are proscribed and that since 1969 members of these organisations and persons associated with them have committed numerous serious criminal offences in Northern Ireland. The request states that PSNI has information which indicates that:

- (i) the applicant is a member of the Red Hand Commando who has taken part in a series of tape recorded interviews intended to form part of an oral archive devoted to Northern Ireland paramilitaries by the JJ Burns Library at the Boston College Centre for Irish Programmes in Boston, USA; and
- (ii) that the information provided during those interviews would be of assistance to the PSNI investigation into the specific offences outlined in the request.

[5] The request also notes that in January 2013 (this is a mistake, it was January 2012), the applicant gave an interview to local media recorded in the Belfast Telegraph in which he stated that he had given interviews to the Boston College project. That he has given such interviews is not in dispute and indeed is confirmed by the applicant's affidavit evidence in these proceedings. Paragraph 9 of the request states as follows:

“In January 2013 Winston Rea gave an interview to local media and this was reported in the Belfast Telegraph Newspaper. In the interview he stated that he had given interviews to the Boston College project. The newspaper quotes Winston Rea (referring to legal action taken by fellow loyalist terrorist, William Smith to have his own Boston project interviews returned to him) as saying:

*“If the (Smith) test case wins it becomes a domino effect for others wishing to have their material returned to them. If I was asked to make a contribution to further student education projects unfortunately I would have to strenuously consider it.”*

And then in paragraph 10 of the request it states as follows:

“Winston Rea's comments reported in the Belfast Telegraph Newspaper adopts William Smith's approach to the material and indicates that not only did he discuss his own terrorist activities while a member of Red Hand Commando terrorist organisation but also that he is

opposed to the PSNI obtaining the interview content. Implicit is the belief that he fears that prosecutions could be mounted as a result of the interviews being released to investigators.”

[6] Paragraph 11 of the request states that the PSNI has “evidence and information” which indicates that the applicant has “a long involvement in organising and participating in terrorist activities in Northern Ireland”, including in specific offences of murder, directing terrorism and robbery which are set out in the request.

[7] The DPP requested that all recordings of the applicant’s interviews which have not previously been provided to the PSNI held by the Boston College be obtained and provided to the PSNI. Specifically it was requested that the following materials be obtained, namely “all original recordings, written documents and/or computer records which relate to any interviews of Winston Churchill Rea which has not previously been provided to the PSNI”. It is not disputed in these proceedings that the proposed respondent, that is to say the DPP, is a designated prosecuting authority for the purpose of section 7 of the 2003 Act. It is also clear in my view that the applicant is the subject of a police investigation into crimes of the gravest kind and who has given recorded oral testimony to the Boston College project. The applicant has averred that the testimony he gave to the Boston Project related to “the motivation and ideology of individuals who joined and were active within the UVF [and that he considered] that [his] testimony to be a contribution to the troubles “legacy” and of potential future benefit to scholars dealing with the recent violent history and conflict in this country”.

[8] The DPP as a designated authority made the request for assistance in obtaining evidence pursuant to the broad powers conferred upon it by section 7(5) of the 2003 Act which provides as follows:

“(5) In relation to England and Wales or Northern Ireland, a designated prosecuting authority may itself request assistance under this section if –

- (a) it appears to the authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed, and
- (b) the authority has instituted proceedings in respect of the offence in question or it is being investigated.”

[9] The existence and exercise of such powers are plainly intended to facilitate and underpin the statutory obligation in domestic law to investigate crime and bring

perpetrators to justice (see Re MacIntyre [2012] NIQB p 65 at paras 32-46 - a case also involving a challenge arising out of the Boston College tapes).

[10] Section 7(5) imposes three requirements, the first is that the request must be made by a designated authority; secondly, that it must “appear” to the designated authority that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and thirdly that the designated authority must have instituted proceedings in respect of the offence in question, or and this is more relevant for present purposes, the offence or offences is being investigated.

[11] The request in the present case was made by the DPP as a designated authority and accordingly the first requirement is plainly satisfied. It is also clear that the second requirement is fulfilled with the detail of the relevant offences being set out at paragraphs 5 and 11 of the request which I do not need to repeat here. The third requirement that is to say that the offences are being investigated is manifest from the terms of the request itself and in particular paragraphs 12-24 thereof. Accordingly, I find all of the requirements under section 7(5) are satisfied and the DPP was therefore duly empowered to make the request to the requisite authorities in the USA. The request was plainly lawful and intra vires section 7(5) of the 2003 Act. No legal impediment to the exercise of this power has been established, even arguably. There is no credible contention that the applicant’s convention rights are infringed and it is clear the request was made within the four corners of the powers conferred upon the DPP by section 7(5) of the 2003. In these circumstances leave must be refused and the application is dismissed.