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Oifig an Aire Dlí agus Cirt

S.101/87

16 October, 1989.

MEMORANDUM FOR THE GOVERNMENT

Report on the operation of Part III of the Extradition Act, 1965
in the year 1988 to be made to the Houses of the
Oireachtas by the Government pursuant to section 6
of the Extradition (Amendment) Act, 1987.

Decision sought

1. The Minister for Justice submits herewith a report on the operation in 1988 of Part III of the Extradition Act 1965 as amended which has been prepared by the Attorney General and requests the Government to approve the text of the report and authorise its presentation to both Houses of the Oireachtas.

Background

2. Section 6 of the Extradition (Amendment) Act 1987 requires the Government, as soon as may be after 1 January in each year, beginning in 1989, to make a report to each House of the Oireachtas on the operation in the preceding year of Part III of the Extradition Act 1965 (i.e. the backing of warrants arrangements which we operate with Britain and the North). The new safeguards introduced by the Extradition (Amendment) Act 1987 were provided for by way of amendment of Part III of

the 1965 Act. The terms of section 6 are such that the report must deal with the operation of Part III in its entirety and not just of the new safeguards.

Report on the operation of Part III in 1988

3. A report on the operation in 1988 of Part III of the 1965 Act which has been prepared by the Attorney General is accordingly submitted for the Government's approval for presentation to both Houses of the Oireachtas. The report is attached at Appendix 1.
4. The report is factual and statistical in nature and does not address policy issues or possible changes in legislation. The main developments occurring in 1988 that are recorded in the report are that -
 - (a) five persons were extradited, 2 to Britain and 3 to the North;
 - (b) nine persons were the subject of orders made by the District Court for delivery to Britain and the North including three referred to at (a) above. (Of the remaining six persons two were extradited in 1989, three are appealing the orders and one person has had the order set aside by the High Court);
 - (c) orders were refused by the District Court in respect of two persons and on appeal by the State to the High Court by way of case stated those decisions were held to have been incorrect;
 - (d) warrants were endorsed in respect of eleven persons;*

* These include four persons referred to at paragraphs (a) to (c) above. In the case of the remaining seven persons, the warrant was later withdrawn in the case of one person, warrants were executed in 1989 in the case of two persons and the warrants still remain to be executed in the case of the other four persons. These eleven cases also include three cases in which the Extradition (Amendment) Act, 1987 applied to warrants received.

- (e) the Attorney General did not give a direction under section 44A of the Extradition (Amendment) Act, 1987 in the course of the year;
- (f) warrants were returned for a variety of reasons in the cases of thirty-two persons. In six of these cases warrants were not endorsed for legal reasons on the advice of the Attorney General - in five cases because of deficiencies in the documentation that had been furnished, and in the other case because the circumstances were such as to make it unlikely the person concerned could receive a fair trial.

Presentation of Report

5. The Minister has been advised by the Attorney General that section 6 of the Extradition (Amendment) Act 1987 leaves the Government with the option of making the report to the Oireachtas verbally or in writing. The Government may wish to consider the means by which the report should be made.

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REPORT

On the operation of Part III of the Extradition Act, 1965 in the year 1988 made to the Houses of the Oireachtas by the Government pursuant to section 6 of the Extradition (Amendment) Act, 1987.

Extraditions

1. During the year under report a total of five persons were extradited, three to Northern Ireland and two to England. Four of these persons were wanted for prosecution and one was wanted for the purpose of serving a sentence already imposed. Brief particulars of the cases are as follows:

Case A. Extradited to England on foot of Orders for Delivery (made in 1988) in respect of four warrants (received and endorsed in 1987) for murder; manslaughter; causing grievous bodily harm with intent to do so; and entering a dwellinghouse with intent to steal.

Case B. Extradited to Northern Ireland on foot of Orders for Delivery (made in 1986) in respect of five warrants (received and endorsed in 1986) for setting fire to premises; entering a dwellinghouse and stealing a shotgun and ammunition; throwing petrol bombs with intent to destroy or damage a builder's premises;

throwing petrol bombs with intent to destroy or damage railway premises; and possession of a shotgun and ammunition under such circumstances as to give rise to reasonable suspicion that he did not have them for a lawful object.

Case C. Extradited to Northern Ireland on foot of Orders for Delivery (made in 1984) in respect of seven warrants (received and endorsed in 1984) for escape from lawful custody; assault and false imprisonment of five persons; and hi-jacking a lorry.

Case D. Extradited to England on foot of an Order for Delivery (made in 1988) in respect of a warrant (received and endorsed in 1988) for burglary.

Case E. Extradited to Northern Ireland on foot of an Order for Delivery (made in 1988) in respect of one warrant (received and endorsed in 1988) to serve a sentence of five years imprisonment for attempted robbery concurrently with three other sentences of three years imprisonment and one sentence of one year's imprisonment.

Orders for Delivery made by the District Court.

2. During the year under report Orders for Delivery were made by the District Court in respect of nine persons. Three of these (referred to at paragraph 1 above, cases A, D and E) were

extradited during the year. The position regarding the other six is as follows:

- Two were extradited in 1989.
- Proceedings, which were commenced in the High Court, contesting the Orders for Delivery which were instituted by three of the persons have not yet concluded.
- In the case of one person the High Court set aside the Order for Delivery.

Orders for Delivery applied for and refused by the District Court.

3. Orders for Delivery were refused by the District Court in the cases of two persons. In each case the State appealed the decision by way of Case Stated to the High Court (which in 1989 found the decisions of the District Court to have been incorrect).

Discharge, under section 53(2) of Act, of Order for Delivery.

4. During the year under report the District Court, on the application of the State, discharged Orders for Delivery, previously made by the court, in three cases.

Two of these discharges (in respect of twelve warrants and thirteen warrants, respectively) were given because the

requesting police force (the R.U.C.) stated that they no longer required delivery of the persons concerned following the decision of the prosecuting authorities not to prosecute for the offences in those particular warrants.

(In one of these cases the person concerned - referred to as Case C at paragraph 1 above - was subsequently extradited on foot of the Orders for Delivery which had been made in respect of seven remaining warrants. In the other case the High Court in April, 1989 upheld Orders for Delivery made (in 1987) in respect of eight remaining warrants. The person concerned has served notice of appeal to the Supreme Court against that decision.)

In the third case - referred to as Case D at paragraph 1 above - the discharge (in respect of four warrants) was given because the requesting English police force stated that they no longer required delivery of the person concerned following the death of a witness and the decision of the prosecuting authorities not to prosecute for the offences in those warrants. The person was extradited on foot of an Order for Delivery which had been made in respect of a remaining warrant. Subsequently, following a re-examination of the remaining evidence, the English authorities requested, and were given, consent to prosecute in respect of the original four offences also.

Endorsement of Warrants.

5. During the year under report warrants received from Northern Ireland were endorsed in the cases of six persons and warrants

received from England were endorsed in the cases of five persons. The Extradition (Amendment) Act, 1987 applied to warrants in three of these cases, all from England.

Of the eleven persons, two (referred to as Cases D and E at paragraph 1 above) were extradited during 1988 and one during 1989. Orders for Delivery were made in respect of one other person and refused in the case of another (who is referred to at paragraph 3 above). In one case a warrant was executed during 1989. In a further case the warrants were returned on request to the police force concerned because the person had been arrested in their jurisdiction. Warrants remain to be executed in the cases of the remaining four persons, three of whom are serving sentences of imprisonment imposed in this jurisdiction.

In one further case warrants (to which the 1987 Act applied), received at the end of 1988 from England, were endorsed in 1989.

The Attorney General did not give a direction under section 44A (inserted by the 1987 Act) in the course of the year.

6. During the year under report warrants were returned to the requesting police force in the cases of thirty-two persons (not including those referred to at paragraphs 1 or 4 above). The warrants - some of which had been endorsed - had been received by the Gardai from the requesting police forces at various times, the earliest being in 1974 and the latest in 1988. In twenty-two of these cases the police force was the R.U.C., and various police forces in England and Wales accounted for the other ten cases.

In three of these cases the reason given for the request for the return of the warrant was that the relevant police force no longer required delivery of the person concerned because the person concerned had been arrested in their own jurisdiction. In one case the reason given for no longer requiring delivery was the lapse of time since the commission of the crime, fourteen years before; an Order for Delivery had been made in 1977 but the person concerned had been serving a sentence in this jurisdiction. In two cases no reason was given for the request to return the warrant. In one case the warrants were returned because the Gardai were aware that the person was not in this jurisdiction. In thirteen cases the return of the warrants was requested because the prosecuting authorities stated that they had decided not to prosecute for the offences contained in those warrants; other warrants, which have been endorsed, are in existence in twelve of these cases (in the remaining case the person concerned has been arrested outside the jurisdiction). In six cases the persons concerned had been tried and convicted in this jurisdiction under the Criminal Law (Jurisdiction) Act, 1976 and it was therefore unnecessary to retain the warrants. Warrants were returned in one other case which was associated with those cases and in which a prosecution under the Criminal Law (Jurisdiction) Act, 1976 was subsequently taken.

7. In six cases warrants were not endorsed for legal reasons on the advice of the Attorney General. In five of these cases (which are included among those referred to at paragraph 6 above) warrants were returned to requesting English prosecuting authorities because the Attorney General advised that there were

deficiencies in the warrants or supporting documentation which had been furnished and that it would not be proper to initiate extradition proceedings; in three of these cases fresh warrants were subsequently received, and were endorsed. In the sixth case the Attorney General advised that the warrants which had been received should not be endorsed because the circumstances of the case were such that the person concerned could not receive a fair trial and that it would not be proper to initiate extradition proceedings.

8. No Orders were made by the Minister for Justice under section 44(1) or section 50(1) of the Act during the year under report.

Results of proceedings following extradition.

9. The present position in regard to proceedings against the four persons referred to at paragraph 1 above who were wanted for prosecution is as follows:

Case A. The person concerned was convicted of murder and sentenced to be detained at Her Majesty's pleasure. No verdict was returned on the charge of manslaughter, the victim being the same as in the murder charge. The person concerned was also convicted on the other two charges and was sentenced to concurrent terms of eight years and four years detention, all the sentences to run concurrently.

Case B. The person concerned was convicted of the first four offences referred to at paragraph 1 above and acquitted of the fifth. He was sentenced to twelve months imprisonment on the first charge and to nine months imprisonment on each of the second, third and fourth charges, to run concurrently.

Case C. The person concerned was convicted of all the offences referred to at paragraph 1 above and was sentenced to three years imprisonment for the first offence and five years imprisonment for each of the others, the sentences to run concurrently.

Case D. The person concerned has been committed for trial in respect of all five offences charged against him.