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Ellis Appeal

The court was unanimous in dismissing all grounds of appeal.

The main judgement was delivered by the Chief Justice and the following synopsis is based on an informal note taken by the undersigned at the hearing.

1. Correspondence of offences

The offences alleged on both warrants (i.e possession of explosives with intent to endanger life and conspiracy to cause explosions) corresponded with offences under Irish law. The Chief Justice rejected Ellis' argument that under Irish law a person who was never in our jurisdiction could not be tried on conspiracy charges. He held that it was a well established principle of our law that persons who participate in a conspiracy to commit crimes in our jurisdiction are amenable to the Irish courts no matter where they were when the offences were plotted or committed.

2. Lapse of Time and other exceptional circumstances.

Ellis argued that the delay (from 1983 when the offences were discovered to 1989 when the warrants were served) on the part of the British authorities in informing him of their intention to bring charges against him was prejudicial to his ability to mount an adequate defence to those charges. The Chief Justice found that there was no evidence to support this contention.

3. Fair trial and Procedures

The Chief Justice referred to the affidavits from McNamee and Gareth Pierce on this subject and noted that insofar as Pierce's experience was concerned she had been involved in a total of nine trials of Irish terrorist suspects in Britain, of which five were acquitted. He agreed with Mr. Justice Hamilton's decision in the High Court on this matter and ordered that the District Court Orders be carried out.

Justices Griffin and Hederman concurred with the Chief Justice's

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ruling on all grounds.

Mr Justice McCarthy confirmed that he too concurred with the Chief Justice on all grounds but in a reference to the 1987 ECST Act he made the point that by signing the European Convention on the Suppression of Terrorism and by enacting it into the domestic law, the Government had thereby accepted that the systems of justice in those countries party to the Convention were such as to ensure a fair trial for persons extradited to those countries.

Mr. Justice Flaherty concurred, without demur, with the Chief Justice's judgement.

Application for Stay of Execution

Mr. McEntee, for Mr. Ellis, then sought to apply for a stay of execution to enable his client to appeal to the Minister for Justice and the Government to take factors, based on the Government's political and diplomatic knowledge which were not before the court, into consideration with a view to negotiating "proper treatment" for his client from the British authorities. He based this submission on what he called the Minister for Justice's "inherent constitutional obligation" to ensure proper treatment for fugitive offenders and he relied on obiter dicta of Mr. Justice Walsh in the Finucane case to support this view.

The Court rose briefly to consider this argument but found that the 1965 Extradition Act made no specific provision for the Minister or the Government to intervene in the manner suggested. Neither was there any "inherent constitutional obligation" on the Government or the Minister to intervene in the manner suggested by Mr. McEntee. There was a fundamental separation of powers in the Constitution between the executive and the courts in deciding all matters of law. In this case the Supreme Court was the final arbiter and the Government had no further function in the matter.

J. Farrell

J Farrell  
Anglo-Irish Section  
14 November, 1990.