



## An Chartlann Náisiúnta National Archives

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EXTRADITION/CRIMINAL LAW (JURISDICTION) ACT

Speaking Note

FINUCANE, CLARKE AND CARRON JUDGMENTS

There are a number of points to be made in relation to the judgments in these three cases and the reaction they have prompted.

(a) General

I acknowledge that the decisions were not what might have been hoped for. But I also feel obliged to point out that those judgments were delivered by our Supreme Court whose decisions, as the highest appellate court under our system, demand respect on the part of the Government.

(b) Political Offence Exception

On the question of the implications of the judgements for the political offence exception, there is of course the important consideration that the Extradition (European Convention on the Suppression of Terrorism) Act 1987 did not apply in these cases. The position in regard to the other cases now pending before the High Court is that the warrants in each of those cases were issued after the coming into effect of the 1987 Act on 1 December 1987 and account will therefore have to be taken of the provisions of that Act when the issue of whether the political offence exception is to be applied is considered.

The effect of the Act is to withdraw the political offence exception from all offences covered by Article 1 of the Convention (e.g. offences involving the use of explosives and

automatic firearms where such use endangers persons, the taking of hostages or serious false imprisonment).

The Act also provides for a court to decide that offences covered by Article 2 of the Convention are not to be regarded as political offences where the Court, having given due consideration to any particularly serious aspects of the offence concerned, is of opinion that the offence cannot properly be regarded as a political offence. The offences covered for this purpose are serious offences involving an act of violence against the life, physical integrity or liberty of a person or involving an act against property if that act created a collective danger for persons.

Those provisions mean in effect that Ireland is one of a small number of countries (8 out of 22) which has accepted the provisions of Article 1 of the Convention in full without recourse to a reservation under Article 13. That should also to be seen against a background where other countries following that course do not extradite their own nationals. Furthermore, it means that we gave effect in part to Article 2 of the Convention which is purely optional in character.

Leaving aside for a moment the question of whether a case comes under the 1987 Act, it also needs to be stressed that what the Supreme Court has decided is simply not to follow its earlier decision in the Russell case. That leaves open the possibility that the courts may refuse the political offence exception on the basis of the lines of authority developed in the McGlinchy

and Shannon cases on the one hand and in the Quinn case on the other.

(c) New Legislation (if suggested by the British side)

Such a course now would be premature. The 1987 Act has yet to be tested, we need to see how it operates in practice. There are also, as I have pointed out, other lines of authority previously established by the courts here which can be explored depending on the facts of a particular case.

(d) Finucane and Clarke Cases: Article 40 proceedings (probability of ill-treatment)

Despite what you may feel about the decision in the Finucane and Clarke cases in regard to the probability of their being assaulted if returned, the reality is that the considerations which influenced the Supreme Court to intervene concerned matters which were largely within your control. It is accepted I think that prisoners were assaulted in the immediate aftermath of the Maze escape; it is also accepted that prison officers did engage in a conspiracy to cover up that fact. And, finally, it is accepted that it has not been possible to identify those involved with a view to disciplining them.

You will also recall that difficulties were anticipated in the Finucane case in advance of the High Court proceedings because, among other things, of the decision in the Pettigrew case and the attitude being taken by your prison authorities in relation to issues that were being raised in the proceedings here in that regard. You were urged at that stage to consider proceedings

under the Criminal Law (Jurisdiction) Act but declined to take that course.

(e) Criminal Law (Jurisdiction) Act 1976

We should also remember that we have already agreed that the problem of fugitive offenders should be tackled by all legal means at our disposal. Extradition is one such approach. The other, of course, is the extra-territorial prosecution route provided by the Criminal Law (Jurisdiction) Act. It has been decided that prosecutions should be brought under the 1976 Act in appropriate cases. Therefore should there be cases which legal advice indicates may not result in successful extradition applications it will be possible to consider proceedings under the 1976 Act. As you will be aware, the record of prosecutions taken under that Act is quite impressive.

(f) Working Group 2 Meeting (if proposed by the British side)

We would have no objection to Working Group 2 meeting to discuss the effect of the Supreme Court decisions and any issues arising therefrom.

SPECIALITY

I have used the occasion of the last two meetings of the Conference to raise with you the question of your enacting reciprocal provisions on speciality corresponding to those contained in section 3 of our 1987 Extradition Amendment Act.

By this stage I hope that you have had an opportunity to consider the issue. Do you have anything to report?

[IN EVENT OF NO INFORMATION OR NEGATIVE RESPONSE]

I must stress that this is a matter of some concern to us. It is now over 2 years since the 1987 Amendment Act became law and no progress towards putting the necessary legislation in place seems to have been made on your side. The fact that no order has been made under section 3 of the 1987 Act has already been the subject of comment and is potentially embarrassing to the Government. I would urge you to give the matter serious consideration in the light of what I have just said and would like to return to it at our next meeting. [If a meeting of Working Group 2 has been agreed in the context of the Finucane et al judgments, you might also suggest that the matter be discussed there].

POINT OF DEPARTURE (if raised by the British Side)

As I have indicated before the issue of the point of departure is being kept under review. This is not a pressing issue which we need to discuss now as the point of departure has already been specified in the cases presently pending before the courts. There is no means by which that question can be re-opened for the purposes of those cases. There is no other case immediately pending so I don't think that we should rehearse the discussion we have already had on a number of occasions already on this issue. We know your position and, as I have said, we are keeping the matter under review.