Neutral Citation [2013] IEHC 218

THE HIGH COURT

[2013 No. 844SS]

IN THE MATTER OF ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND 1937

BETWEEN

ANJELI KRISTO

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON AND BY ORDER DETECTIVE GARDA JOHN COAKLEY AND THE GARDA NATIONAL IMMIGRATION BUREAU

RESPONDENT

JUDGMENT of Mr. Justice Colm Mac Eochaidh delivered on the 16th day of May 2013

1. This is an enquiry into the legality of the detention of the applicant in Cloverhill Prison pursuant to Article 40.4.2 of the Constitution.

2. I am told that the applicant is an Albanian national. He is married to a Greek national and they have lived in Greece for many years with their children. For the past six months or so the applicant has been in Ireland unlawfully.

3. Some time in April 2013, the applicant took a flight from Dublin Airport to Maastricht in the Netherlands. He entered the Netherlands on a false Greek passport. He was apprehended by the Dutch authorities and charged with a related offence. (This criminal matter was due to come before a Dutch Court on the 13th of May 2013.)

4. On 3rd May 2013, Garda National Immigration Bureau ("GNIB") officers at Dublin Airport were contacted by the Dutch authorities to say that the applicant was to be returned to Ireland on a flight leaving Maastricht at 12.50 p.m. local time that same day. The applicant was met at the aircraft in Dublin Airport by a garda. He was not accompanied by any Dutch officials. He was brought from Terminal 1 to the GNIB facilities at Terminal 2 where he was questioned by Detective Garda John Coakley who was called to give evidence in this enquiry and testified that he asked the applicant his name, his date of birth and his nationality. The applicant appears to have understood these questions and supplied the relevant information. He said that the applicant was carrying almost €6,000 in cash and had a mobile phone. He asked the applicant if he had a passport. The applicant confirmed that he had no passport. He informed the applicant that he was refusing him entry to the state and that he was arresting him. He then produced a written notice and gave it to the applicant who was aked to sign it which he duly did. It is in the following terms:

> "To: Mr. Angeli Krista
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> This is to inform the person to whom this notice is addressed that s/he is being refused permission to land in accordance with the provisions of the Immigration Act 2004 on the following grounds:
>
> G. That the non-national is not in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality.
>
> Signed: John Coakley Immigration Office Date: 3 May 2013"

5. This notice was given to the applicant at some time between 1.15 p.m. and 1.30 p.m. on 3rd May 2013, approximately 30 minutes after his arrival in the State. It was then explained to the applicant he would be detained until a travel document could be obtained for him and then he would be removed from the State. The applicant informed Detective Coakley that his Albanian passport was in Greece and that he had a telephone number for his son who, if contacted, would be able to post it to Ireland. He gave his son's phone number to Detective Garda Coakley who dialled the number but the person who answered the phone could not speak English.

6. Detective Garda Coakley attempted to explain to the applicant that he should call his son personally and ask his son to make arrangements for the immediate delivery of his passport to Ireland and that this was needed to permit the applicant to leave the country. However, it became apparent that the applicant could not understand what the garda was trying to convey. The garda contacted a translation and interpretation service which located an Albanian speaker. He explained to the interpreter what he wished to express to the applicant and the translator then conveyed that message to the applicant. The applicant then dialled the phone number and an exchange lasting about 20 to 30 seconds took place. Apparently, the applicant had the wrong number. The applicant indicated that he wished to try to remember the number and he was given a pen and paper and brought to a room where he could try to recall his son's phone number in Greece. At approximately 2.20 p.m., it was apparent that he could not recall his son's phone number. During this time, the applicant was in a large room which had seating and a writing table and access to a bathroom. He was offered a drink which he declined. Between 2.20 p.m. and 3.00 p.m., Detective Garda Coakley had two brief conversations with the applicant enquiring whether he could remember his son's phone number. He decided that he would give the applicant until 3.00 p.m. to attempt to recall the number and then to telephone his son if he succeeded. However, the applicant could not recall his son's phone number.

7. The applicant was brought from Dublin Airport to Cloverhill Prison by the Garda Transport/Escort Unit, leaving Dublin Airport at approximately 3.45 p.m. and arriving in Cloverhill Prison, according to Detective Garda Coakley's estimate, 30 minutes later. The Assistant Governor of Cloverhill Prison gave evidence that he was taken into that prison at approximately 16.35 hours.

8. Detective Garda Coakley informed the court that the purpose of the applicant's presence in the airport between 1.30 p.m. and 3.45 p.m. was to facilitate the applicant's efforts to make contact with his son and to make arrangements for the immediate delivery of his

Albanian passport from Greece to Ireland. He said that he was of the view that it would be easier for the applicant to seek to make contact with his son from the garda facilities at Dublin Airport rather than from Cloverhill Prison.

9. Detective Garda Coakley also informed the court that the Albanian Embassy in London had been contacted to enquire about obtaining a passport for the applicant. Documentary evidence of identity and of the applicant's connection to Albania would be required before any new passport would be issued. As such, Detective Garda Coakley was of the view that the quickest way for the applicant to obtain a travel document was to contact his son in Greece to get his own passport.

10. The applicant's solicitor gave evidence and expressed her opinion that the applicant had a very poor command of English. Initial attempts to take instructions from him at Cloverhill Prison failed because of the language barrier. She confirmed that she met the applicant in the precincts of the court prior to the hearing of the enquiry and was able to take instructions with the assistance of an Albanian friend of the applicant's who translated the exchange.

11. The applicant's solicitor informed the court that she had spoken to a Mr. Bauman who confirmed that he was the applicant's lawyer in the Netherlands, that he had been sent the applicant's Albanian passport and that he had given it to the Chief Prosecutor in the Netherlands on 2nd May 2013. The applicant's solicitor also informed the court that she asked the applicant if he could read English and he said no.

The relevant facts which emerge from the foregoing account are:

(a) The applicant arrived in Ireland involuntarily on 3rd May 2013.

(b) Having been accompanied from the plane to the GNIB facilities at Terminal 2, he was arrested some time between 1.15 p.m. and 1.30 p.m.

(c) The purpose of his detention in the airport was to facilitate contact between the applicant and his family to make arrangements for the delivery of his passport from Greece to Ireland.

(d) The applicant was accompanied from Dublin Airport to Cloverhill Prison at about 3.45 p.m., approximately two hours and 15 minutes after his arrest.

(e) The applicant has a very poor command of English and it is unlikey that he understood the written notice given to him

(f) Officials contacted the Albanian Embassy m London to enquire how a passport could be obtained for the applicant.

12. Mr. Humphreys S.C., on behalf of the applicant, submitted that there were multiple deficiencies associated with the arrest and detention of the applicant.

13. The first deficiency explained to the court was that the applicant was arrested and detained pursuant to s. 5(2) of the Immigration Act 2003 which was unlawful as the section did not apply to persons in the circumstances of the applicant, it was argued.

14. Section 5(1)(e) of the Immigration Act 2003 (as amended) applies to a "a non national who has failed to comply with s. 4(2) of the Immigration Act 2004" which in turn provides that "A non-national coming by air or sea from a place outside the State shall, on arrival in the State, present himself or herself to an immigration officer and apply for a permission." A 'permission' in this regard is a document or an inscription on a passport or other equivalent document which authorises a non-national to land or be in the State.

15. Section 5(1)(f) of the 2003 Act applies to a a non-national who has been refused a permission under section 4 (3) of the 2004 Act to land or be in the State.

16. A non-national of either category may be arrested and detained under warrant in accordance with s. 5(2) of the 2003 Act.

17. Mr. Humphreys argues that as the applicant arrived in the State involuntarily, he did not present himself to an immigration officer and did not apply for permission to land or permission to be in the State. Therefore, he is not a person who failed to comply with a requirement to present to an officer and seek permission to land.

18. It is not as uncommon as one might think for non-nationals to arrive in Ireland involuntarily, For example, persons in the position of the applicant who have been returned by another State; or persons who threaten the safety of aircraft in flight causing the vessel to land to remove the troublesome passenger; or extradited persons, etc. However, the terms of s. 4(2) of the 2004 Act are mandatory. Non-nationals who arrive in Ireland by air or sea must present themselves to an immigration officer and must apply for a permission - whether they wish to or not.

19. The respondent argues that if the applicant is correct in his contention, then non-nationals arriving in the State who do not seek permission to land would be beyond reach of immigration control. Criminal law would not assist in this regard either, for although it is an offence for a non-national not to present to an immigration officer and not to seek leave to land or to be in the State, non-nationals arriving involuntarily would be unlikely to have the necessary intention to commit the offence and therefore could not be processed under the criminal code (see *T.M. v. Governor of Mountjoy Prison* [2011] IEHC 336, Charleton J. para. 12).

20. The argument that the applicant never sought permission to land or to be in the State because he arrived involuntarily fails to take account of other provisions in s. 5(1) of the 2003 Act which appear to address the applicant's circumstances. As noted above, section 5(1)(f) extends the powers of the section to cover "a non-national who has been refused a permission under s. 4(3) of the Immigration Act 2004" and s. 5(1)(g) includes a "non-national who is in the State in contravention of s. 5(1) of the 2004 Act".

21. The applicant is a non-national who has been refused a permission under s. 4(3) of the 2004 Act. It seems to me that the inclusion of provisions ins. 5(1) dealing with persons who have not sought permission to land (s. 5 (1)(e)) and dealing separately with persons who have been refused permission to land, (s.5(1)(f)) adequately addresses the position of a person (in the position of the applicant) who has not actively sought permission to land in the State but who nonetheless has been refused that permission. My view is that it is both lawful and logical for an immigration officer to refuse permission to a non-national to land or be in the State even though the non-national does not actively seek that permission in circumstances where there is a statutory duty on the non-national so to do. The failure to apply for permission to land is not a bar to a refusal of that permission and that is what happened in this case. Non-nationals are required by law to seek and to obtain permission to enter and remain in the state. The failure of a non-

national to seek that permission could not deprive the State of its entitlement to regulate the presence of such persons by refusing him or her permission.

22. I also find that the applicant's circumstances are covered by s. 5(1)(g) of the 2003 Act in that that he is a "non-national who was in the State in contravention of s. 5(1) of the Immigration Act 2004" which provides that "No non-national may be in the State other than in accordance with the terms of any permission given to him ...". From the moment the applicant entered the territory of the State, he was a non national who was in the State without permission. It is important to emphasise that no criminal offence is thereby committed. The State empowers itself to arrest and detain for the purposes of removal from the State non-nationals who are within its territory without permission.

For these reasons I reject the argument that the involuntary nature of the applicant's arrival had the effect of placing him outside the scope of s. 5 of the Immigration Act 2003. He was a person in respect of whom an arrest and detention could be effected as provided for in s.5 (2) of the 2003 Act. I find that he was lawfully arrested.

23. The second argument advanced by Mr. Humphreys S.C. is that s. 5(2)(a) of the Immigration Act 2003 requires that a person " . . may be arrested by an immigration officer or a member of the Garda Síochána and detained under warrant of that officer or member *in a prescribed place* and in the custody of the officer of the Minister or member of the Garda Síochána for the time being in charge of that place". By S.I. No. 56 of 2005, the Minister for Justice, Equality and Law Reform made Regulations entitled 'Immigration Act 2003 (Removal Places of Detention) Regulations 2005' which provide that "Each place listed in the Schedule to these Regulations and every Garda Síochána station is a place prescribed for the purposes of s. 5(2)(a) of the Immigration Act 2003". The Schedule to the Regulations lists Cloverhill Prison as a prescribed place, amongst other prisons. It does not include any airport or sea port as a prescribed place. It will be recalled from the earlier part of this judgment that the applicant was arrested and detained at approximately 1.30 p.m. in Terminal 2 of Dublin Airport and brought to Cloverhill Prison approximately two hours and 15 minutes later. As Dublin Airport is not a prescribed place, Mr Humphreys argues that the applicant's detention is unlawful.

24. In *Ni. v. Garda Commissioner* [2013] IEHC 134, a decision of the 2ih March 2003, Hogan J. decided that the detention of Mr. Ni in Dublin Airport for six hours constituted detention in a place which was not prescribed and that it was therefore unlawful. Though there are strong similarities between the facts in Ni and the facts in this case, there are also significant points of contrast.

25. Mr. Ni arrived at Dublin Airport at midday on 28th February 2013 from Shanghai *via* Paris, in possession of a multiple entry visa permitting him to work and study in Ireland. Mr. Ni presented at the immigration desk and made a poor impression on the immigration officer who conducted certain enquiries. At 2.30 p.m. that day, Mr. Ni was refused permission to land. He was arrested at 2.45 p.m. by a member of An Garda Síochána. He was detained in Terminal 2 as it was intended to put him on a flight at about 8.30 p.m. that evening back to Paris. He objected so strongly to his removal from the State that the Captain of the aeroplane refused him permission to board. He was then taken to a garda station in Clontarf. (All garda stations are prescribed places for the purposes of s. 5(2)(a) of the 2003 Act.)

26. The learned Hogan J. concluded his analysis of the argument made in that case as follows:

> "35. It cannot necessarily be said that the approach taken by the Oireachtas in the present case could be categorised as absurd. At worst, the Oireachtas has failed to cater for a contingency which, upon reflection, it might with advantage have addressed in the wording of the sub-section. Moreover, echoing the comments of Clarke J., I cannot usefully say what the Oireachtas would necessarily have done had it so addressed its mind to the problem.
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> 36. How long, for example, might such a visitor refused leave to land be permitted to be detained in the airport precincts? Should this depend on whether there is a functioning Garda station in the immediate vicinity? Would the same rules apply to both airports and harbours? Who should take charge of the person so detained while that person is held in the precincts of either an airport or a seaport? At what point would the person so detained have to be brought from the airport or seaport to a prescribed place of detention such as a Garda station or a prison?
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> 37. The fact that the Oireachtas might have catered for some or all of these questions and that there is a range of possible solutions to each of these queries provides clear evidence of the fact that the resolution of the conundrum thrown up by this case has to be legislative in nature and that such lies beyond the capacity of the judicial branch to supply.
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> 38. In the end, one cannot really escape the confines of language used in clear and unambiguous terms by the Oireachtas ins. 5(2)(a) of the 2003 Act. The Oireachtas envisaged that the person refused leave to land could only be detained following arrest in a place prescribed by the Minister for Justice by regulations and in the custody of either a ministerial official or a member of the Gardaí who was in charge of that place. Terminal2 in Dublin Airport has not been so prescribed by the Minister. Adapting the language of MacMenamin J. in *Kadri*, Mr. Ni is entitled to rely on the literal words of the sub-section, irrespective of his own personal merits.
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> 39. It follows, therefore, that the detention of the applicant from 2.45pm onwards on that day must be adjudged to be unlawful. Since it is the validity of that custody which it [sic] at issue before the Court, it follows, therefore, that I must direct the release of the applicant in accordance with Article 40.4.2 of the Constitution."

27. The significant point of contrast between the facts in Ni and the facts in this case are that between arrest and detention at 2.45 p.m. and the disturbance at 8.30 p.m., Mr. Ni was detained in Dublin Airport for the sole purpose of affecting his removal. There was no intention at any point until the disturbance occurred to remove him from the airport and to bring him to a prescribed place under warrant of detention. That only happened after 8.30 p.m. when it became impossible to remove him on the evening flight to Paris. In this case, contrastingly, the purpose of the applicant's presence in Dublin Airport following his arrest was related exclusively to assisting the applicant with making arrangements to obtain his passport. It was for a considerably shorter period of time than that endured by Mr. Ni - two hours and 15 minutes as against approximately six hours in Mr. Ni's case. I note in this regard that certain provisions of the Immigration Act 2003 also place an onus on the applicant to co-operate with the relevant authorities engaged in his removal from the State. Section 5(8)(b) of the 2003 Act states that a person in the circumstances of the applicant "shall, for the purpose of facilitating his or her removal from the State, co operate in any way necessary to enable an immigration officer or a member of the Garda Síochána engaged in the removal of the person to obtain a travel document, ticket or other document required for the purpose of such removal". As such, it would appear that the legislation envisages some degree of an exchange between the relevant immigration authorities and the person proposed to be removed from the State such as that which occurred between Mr. Kristo and Det. Garda Coakley in Dublin Airport.

28. At the moment of arrest, detention occurs in that there is an immediate deprivation of liberty (See *Dunne v Clinton* [1930] IR 266). In my views. 5(2) of the 2003 Act envisages an arrest on the one hand and detenion under warrant in prescribed place on the other. The Oireachtas contemplated that arrest under s. 5(2) of the Act would occur at a place where a non-national would encounter an immigration officer and in a place where an immigration officer might refuse to give permission to land. Arrests of this nature happen in airports and seaports. Deprivation of liberty/detention in those places is therefore automatic if an arrest occurs. It is unavoidable. Detention in airports and seaports is thus contemplated and permitted by the legislation. Nothing in Hogan J's detailed analysis in *Ni* would invalidate detention in a prescribed place where a person was arrested in an airport, brought to the offices of the GNIB in the airport briefly and then placed in a garda escort vehicle to be brought to a prescribed place for detention under warrant. Such incidental detention in a place not prescribed must be permissible, whether at the airport or in a vehicle used to convey a person to prescribed place.

29. Having regard to the brief period the applicant spent in Terminal 2 of Dublin Airport; the purpose of his presence there; and the necessity for some short presence under detention at the airport (being automatic upon his arrest), I find that no illegality attached to those circumstances. I reject this argument.

30. The third deficiency relative to the detention urged upon the court is that the applicant was not in the custody of the proper person prior to his arrival in Cloverhill Prison. The argument made on behalf of the applicant is that Detective Garda Coakley arrested and detained the applicant at approximately 1.30 p.m. but his shift at the offices of the GNIB in Dublin Airport ended at 3.00 p.m. and the detention at Cloverhill Prison commenced one hour and 45 minutes later at 4.35 p.m.

31. Detective Garda Coakley testifed that before he left work on 3rd May 2013 at 3.00 p.m., he explained the circumstances of the applicant to the officer who was coming on duty at that time. It was this officer who made arrangements for the transportation of the applicant to Cloverhill Prison from Terminal 2 at Dublin Airport.

32. Recalling the provisions of s. 5(2)(a) as set out above, my view is that the provision deals with arrest, on the one hand, and detention under warrant in a prescribed place on the other. Detention in a prescribed place must take place in the "custody of the officer of the Minister or member of the Garda Síochána for the time being in charge of that place". I am not of the view that these rules as to detenion in a prescribed place apply to the immediate circumstances of arrest and the conveyance of an arrested person to a prescribed place. The interpretation sought to be placed on this provision by Mr. Humphreys S.C. is one which would require the immigration officer or garda who arrested the non-national to keep that person in his custody at all times until his delivery to a prescribed place of detention. Given that airports have not been prescribed as places of detention, this interpretation would require the immigration officer or the garda to remain personally with the non-national at all times during his presence in the airport, and in addition, to accompany him on his journey from the airport to the prescribed place of detention.

33. In my view, this submission reads too much into the provision. The power given to an immigration officer or a garda to arrest a non-national implies a power to take him into custody at that moment in time. When the non-national is conveyed to a prescribed place for detention, responsibility for the custody is transferred to the person in charge of the prescribed place, but there is no reason why the early stages of detention immediately following arrest could not be managed by a number of different gardaí and eventually by gardaí whose function it is to escort persons to prison. I find no illegality attaching to the fact that a number of different gardaí appear to have controlled the custody of the applicant from the moment of his arrest to the moment of his delivery to the prescribed place. I therefore reject this third argument.

34. The fourth argument advanced on behalf of the applicant is that a breach of s. 4 of the Immigration Act 2004 occurred because the grounds for the refusal to permit the applicant to land or be in the State were in English only. The rule provides:

> "S. 4(4) An immigration officer who ... refuses to give a permission to a non national shall as soon as may be inform the non-national in writing of the grounds for the refusal."

35. I accept that the applicant probably did not understand the notice in writing setting out the ground for the refusal to enter the State. I reject this argument for two reasons. Firstly, the statutory requirement is to inform the non-national in writing of the grounds for the refusal. There is no express statutory duty requiring the immigration officer or the Garda Síochána to ensure that the non-national understands the ground for the refusal to enter the State. There may be many reasons why a document setting out the ground for the refusal fails to actually inform the non national why he has been refused permission to land. It may be that the ground is expressed in complex legalese. It may be that the non-national is illiterate. It may also be, as in this case, that the non-national was incapable of understanding the notice in writing because of his poor command of English. The inability of the recipient of the notice in writing to understand its content does not mean that there has been a failure of the duty to inform that person in writing of the grounds for the refusal. In my view, that requirement is not accompanied by a duty to ensure that the recipient of the notice understands the reason given.

36. The second reason I reject the argument on this point is that even if that there had been a breach of s. 4 (4) of the 2004 Act-up to a failure to give the non-national a written notice - no such breach could taint the legality of his detention. The State has the power to arrest and detain a non-national who has no passport with which he or she could enter the State. The State is entitled to detain that person for the purposes of removing them from the State. There is a requirement to state the reason why the person is not allowed to enter the State, but a breach of that requirement could not invalidate detention and prevent the State from removing the non-national forthwith. The power to arrest and detain a non-national who has been refused permission to land is not dependent on fulfilment of the requirement that a non national be informed in writing why permission is refused. I reject this argument also.

37. The fifth argument advanced on behalf of the applicant is that in accordance with s. 5(3)(a) of the 2003 Act, that a non-national may only be detained "until such time (being as soon as practicable) as he or she is removed from the State in accordance with the section but, in any event, may not be detained for a period of 8 weeks in aggregate".

38. It is submitted that as it is at present impossible to remove the applicant from the State, and in addition, that it was impossible to remove him from the State when he was in custody, either in Terminal 2 or at Cloverhill Prison, any such detention was and is unlawful.

39. Persons in the position of the applicant may only be detained for the purposes of effecting their removal from the State. The State has a period of eight weeks in aggregate in which to achieve their removal. They are required to achieve their removal as soon as is practicable within that 8-week period. Thus, a non-national could not be detained for six weeks during which time the authorities take no steps to make arrangements for his or her removal and then seek to achieve that in the final two weeks of the 8-week period.

40. It is my view that detention under the section is lawful provided *bona fide* efforts are underway to achieve the removal of the non-national from the State. In this case, the authorities were presented with a rather difficult problem where a person arrived in Ireland involuntarily with no documentation. He has informed the authorities that his passport is with his family in Greece. His solicitors have learned that his passport is now with the prosecuting authorities in the Netherlands. There is no doubt that Detective Garda Coakley did everything he could to facilitate the applicant in seeking to obtain his passport during the relatively short period he spent at Dublin Airport. I have no doubt that officials were aware that he needed to get his existing passport or to apply for a new one through the Albanian Embassy in London. Nothing in this fact pattern suggests that the State had not a fully concluded intention to remove the applicant from the State. It is true to say that at present, it is impossible to remove him as his passport is not available but this fact alone does not render his detention unlawful. I also reject this ground.

41. The final ground urged on the court m support of the proposition that detention is unlawful is that the warrant under which he is held in custody at Cloverhill Prison states that he be "detained in Cloverhill Prison, a prescribed place for the purposes of s. 5(2)(a) of the Immigration Act 2003, in the custody of such officer of the Minister for Justice or a member of the Garda Síochána at the time being in charge of that place".

42. Counsel for the applicant submits that there is no such person as 'the Minister for Justice' and s. 5(2)(a) requires that a person be in the custody of "the officer of the Minister" who, in s. 1 of the 2003 Act, is identified as the Minister for Justice, Equality and Law Reform. Various Statutory Instruments, including lately S.I. No 138/2011, have changed the name of this Minister of State such that his title is now "the Minister for Justice and Equality". In my opinion, an error of this order could never be jurisdictional nor of such profundity as to undermine the validity of detention. I accept the submission made by Mr. Conlan Smith B.L. on behalf of the respondent who so argued and pointed to the statement of O'Higgins C.J. in *The State (McDonagh) v. Frawley* [1978] I.R. 131 who said:

> "The stipulation in Article 40, s. 4, sub-s.1 of the Constitution that a citizen may not be deprived of his liberty save 'in accordance with law' does not mean that a convicted person must be released on *habeas corpus* merely because some defect or illegality attaches to his detention. The phrase means that there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law. For *habeas corpus* purposes, therefore, it is insufficient for the prisoner to show that there has been a legal error or impropriety, or even that jurisdiction has been inadvertently acceded. For example, if the judge at a murder trial in which the accused was convicted were to impose a sentence of imprisonment for life, instead of penal servitude for life as required by the statute, the resulting detention would be imposed technically without jurisdiction. But the prisoner would not be released under Article 40, s.4, for it could not be said that the detention was not 'in accordance with law' in the sense indicated. In such a case, the court would leave the matter of sentence to be rectified by the Court of Criminal Appeal; or it could remit the case to the court of trial for the imposition of the correct sentence: see the unanimous opinion expressed in the House of Lords in *Athanassiadis v. Government of Greece* at p. 289 of the report which shows a mere technical defect is not a good ground for release on *habeas corpus*."

43. The error indicated in this argument does not affect jurisdiction or any matter of substance. It is in the nature of a typographical error which is without consequence. I reject this argument also.

44. For the reasons given, I find that the applicant is being detained in accordance with law and I refuse to order his release.