Neutral Citation Number: [2008] IEHC 204

THE HIGH COURT

2005 No. 1376 J.R.

BETWEEN

LIAM GROGAN

APPLICANT

AND

THE PAROLE BOARD AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

Judgment of Mr. Justice McMahon delivered on the 27th day of June, 2008

1. Background

1. The applicant is in custody in Portlaoise prison, serving a 22 year sentence for conspiring to cause an explosion with intent to endanger life or damage property in London. The sentence was imposed by the Central Criminal Court, sitting at the Old Bailey, London, England in May, 1999. The applicant was repatriated to Ireland to serve his sentence in November, 2000. In July, 2005 the applicant became eligible to have his sentence reviewed by the parole board ("first respondent"), as seven years had elapsed since the imposition of the sentence. In preparation for his review the applicant contacted a solicitor and asked him to assist in the preparation of a legal submission to the parole board. The applicant nominated his solicitor to take receipt of documentation from the parole board on his behalf. The parole board agreed to furnish relevant documentation to the applicant but not to his solicitor, although it indicated that the applicant was entitled to disclose the same to his own solicitor. The parole board also indicated that although legal submissions could be submitted to the board, no specific funding was available for the preparation or submission of same. Neither the Attorney General's Scheme, a non-statutory scheme administered by the Department of Justice, Equality and Law Reform which covers legal fees for impecunious persons in certain criminal matters, nor the Criminal Legal Aid Scheme, which is provided for by the Criminal Justice (Legal Aid) Act 1962, allows for remuneration for the preparation of legal submissions to the parole board. The applicant argues that since his right to liberty is at stake and he is not in a position to adequately represent himself, the constitutional right to basic fairness by virtue of Article 40.3.1 of the Irish Constitution requires that the applicant be furnished with legal aid for the preparation of the aforesaid legal submissions.

2. The Applicant

2. While in university in Dublin, the applicant in the final year of his commerce degree joined the real IRA. The day after he went to London in July, 1998 he was arrested and was subsequently convicted. The judge who sentenced him indicated that he was satisfied that the applicant had not intended to endanger life but to damage property only.

3. The applicant has since that date disassociated himself from the real IRA, with which he was associated as an undergraduate and is now of the opinion that such organisations should disband. The applicant graduated from UCD in 1998 and while serving his sentence he has obtained a law degree (October, 2006) and has also completed a course in criminology.

3. Legal Context

4. Of major importance in the present case is the distinction between the normal right to liberty on the one hand, and the entitlement to release once lawfully in custody on the other hand. One's liberty is a constitutional right which can only be taken from one in a lawful manner. Normally this will involve a full criminal trial, where full due process must be accorded to the accused. If this is observed, however, and a custodial sentence is imposed, one moves into a different frame of legal reference. The prisoner is then handed over to the executive to execute the punishment lawfully imposed by the courts. In a large measure the due process stage is over and whatever rights the prisoner may have while in custody, they do not arise from his right to a fair trial or from the courts' obligation to administer justice in that context. (Article 34 and 38 of the Constitution).

5. When the prisoner is entrusted to the executive, the executive is obliged to carry out the sentence of the court. It cannot look behind the sentence or question its fairness, for to do so would disturb the delicate balance struck by the separation of powers as enshrined in the Constitution. (The converse is also true: when the judiciary trespass on the executive's jurisdiction it will be struck down by the courts: *The People v. Cahill* [1980] I.R. 8; *O'Brien v. Governor of Limerick Prison* [1997] 2 I.L.R.M. 349; *The People (D.P.P.) v. Finn* [2001] 2 I.R. 25. That the sanctity of the judicial process will also be respected where the prisoner is repatriated to serve his term in his native country, is clear from the international conventions permitting such repatriation and to which the contracting States sign up. This is evidenced by the Convention on the Transfer of Sentenced Persons, Strasbourg, 21st of March, 1983 and the Transfer of Sentenced Persons Act 1995. In general, for similar reasons, the fairness of the trial or the appropriateness of the sentence cannot be reviewed by the courts in the country where the prisoner has elected to serve his sentence.

6. Although there are powers to pardon and commute sentences there is no constitutional obligation on the Executive to introduce schemes for early or temporary release of prisoners, and if it does so the exercise of such executive powers can only be criticised by the courts if they are carried out in "a capricious, arbitrary or unjust way" as stated by Finlay C.J. in *Murray v. Ireland* [1991] I.L.R.M. 465, and cited with approval by Hardiman J. in *Kinahan v. Minister for Justice* [2001] 4 I.R. 454 at p. 459.

7. The Irish case law relating to the temporary release of prisoners has been examined by the courts in several cases in recent years. These authorities are not directly pertinent to the case before the court and for this reason I do not propose to dwell on them at length. Suffice to say that the distinction between being granted temporary release on the one hand, and such release being terminated, or denied where there was a "legitimate expectation", on the other hand, is an important one in that context when considering this jurisprudence. The courts have shown a distinct reluctance to recognise any entitlement in the former category. Nothing, however, in these recent authorities prevent me from reaching the decision I do in the present case, which I remind myself is concerned with a claim by a prisoner that he is entitled to legal aid to enable him to make a submission to the parole board.

8. Of more relevance to the case before the court is the judgment of Butler J., in *Barry v. Sentencing Review Group* [2001] 4 I.R. 167, where the learned judge rejected a claim by a prisoner that he had a right to legal representation before the sentencing review group. (The sentencing review group was the precursor to the parole board). In that case Butler J., stated at pp.169-170:-

> "As indicated, the applicant has at all material times had the benefit of independent legal advice and representation and his entitlement thereto is not at issue. What is at issue is whether he should be entitled to representation at an oral hearing before the first respondent. I do not believe that this is necessary to satisfy the requirements of fair procedures. The function of the first respondent is purely an advisory one and it exercises no power akin to a disciplinary body. It meets for the purpose of coming to a recommendation in a non-adversarial way. To introduce full legal representation at a formal hearing would, in my view, be disproportionate and would have the effect of changing the whole character of the procedure set up by the second respondent.

9. It should, for the sake of completeness, be noted that since these proceedings have been instituted, the executive has decided to establish a parole board on an interim basis and that, while it has not yet got a statutory basis, it has replaced the activities of the first respondent and will have a wider remit than the first respondent."

10. The parole board is also merely an advisory body and simply makes recommendations to the Minister and has no more power to make a decision than its predecessor.

11. I accept Butler J's., statement as an accurate statement of the law and adopt it here as a guide to my determination. In particular, I hold, for this reason, that there is no obligation on the parole board to serve the relevant documentation to which the prisoner is entitled, on his named solicitor. In furnishing the prisoner with two copies of the documents, and permitting him to forward these to his solicitor, to enable a legal submission to be made on behalf of the prisoner to the board as the prisoner is entitled to do, the parole board has more than met with any obligation it may have in that regard. The question, however, may be legitimately posed then, if the applicant has no right to legal representation in the first place, how can he have a right to be funded for such representation?

12. Attention must be drawn to another distinction which is at issue in the present case: the right of a person to have legal representation in a particular process on the one hand, and the obligation of the State to pay for this representation on the other hand. These are two entirely distinct concepts; one, relating to justice or fair procedures, the other, relating to executive decisions.

4. The Parole Board

13. Article 13.6 of the Constitution provides:-

> "The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may also be conferred by law on other authorities."

14. Section 23(1) of the Criminal Justice Act 1951, provides that:-

> "…the Government may commute or remit, in whole or in part, any punishment imposed by a Court exercising criminal jurisdiction, subject to such conditions as they may think proper."

15. The Government's right to delegate the power to commute or remit a sentence to the Minister for Justice was provided for in s. 23(3) of the Criminal Justice Act 1951. Section 23(3) of the 1951 Act, has now been replaced by a new s. 23A (1) as provided for in s.17 of the Criminal Justice (Miscellaneous Provisions) Act 1997, which provides that:-

> "The Government, may by order, delegate to the Minister for Justice any power of the Government under section 23 of this Act."

16. Both the Criminal Justice (Miscellaneous Provisions) Act 1997, and the Prisons Act 2007, give power to the Minister for Justice to make rules for the regulations and good government of prisons. Section 35(2)(f) of the Prisons Act 2007, provides that such rules may provide for the remission of a proportion of a prisoner's sentence. The Prisons Rules 2007 have been implemented by way of statutory instrument, (S.I. No. 252 of 2007) and r. 59 which deals with the rights of certain categories of prisoners to remission is stated at r. 59(3) not to apply to prisoners sentenced to life imprisonment.

17. The parole board was appointed by the Minister for Justice on the 4th April, 2001, and this body has not yet been placed on a statutory footing. The role of the parole board is to advise the Minister in relation to the administration of lengthy custodial sentences. In general, prisoners sentenced to fourteen years or more have their sentence reviewed after seven years have been served. The parole board thereafter makes a recommendation to the first named respondent.

18. The applicant submits that the determination by Butler J. in the *Barry* case must be read in conjunction with the alleged fact that as the Minister follows the recommendations of the parole board in over 90% of the cases, the Minister merely rubberstamps the board's recommendations and that the real decision maker therefore is the parole board.

5. The Right to Legal Aid: the Applicant's Case

19. The essence of the applicant's case is set out in paras. 25-28 of his legal submissions which are reproduced here.

> "25. In the *State (Healy) v. Donoghue*, O'Higgins C.J. held that s.2 of the Criminal Justice (Legal Aid) Act 1962, provides that if it appears to the District Court that the means of a person charged before it with an offence are insufficient to enable him to obtain legal aid and that, by reason of the gravity of the charge or of exceptional circumstances, it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence, the court shall "on application being made to it in that behalf" grant him a certificate enabling him to obtain free legal aid as soon as it becomes apparent, whether from the gravity of the circumstances of the offence or a plea of guilty or conviction or other evidence, that a custodial sentence is imminent or likely. A conviction and sentence may be quashed on review by the High Court for being in violation of the accused's constitutional rights on this ground, notwithstanding that there is no evidence before the High Court that the accused was unaware of his legal rights by reason of illiteracy, lack of education or otherwise.
>
> 26. The corollary of this could also be argued that when a person's liberty is threatened (as is the case when someone is serving a sentence, but is eligible for review by the parole board) then they should be entitled to legal representation at the review and that they should also be entitled to be aided for these representations if for example they are an impecunious litigant. The applicant is impecunious as a consequence of his prison sentence, he has no income. It is submitted that in order to give effect to any legal representation, such representation requires to be legally aided. In this regard, the applicant relies upon the case of *State (Healy) v. Donoghue* referred to above. The applicant accepts that entitlement to legal aid is not an absolute entitlement. However, it is submitted that where a decision is to be made which will impact on the constitutional rights of the impecunious person, such a decision is sufficiently grave to merit legal aid. Furthermore, it is submitted that to grant the applicant a declaration that he is entitled to representation, without underpinning that declaration with an entitlement to legal aid, would be to render that declaration a legal nonsense.
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> 27. In *Cahill v. Reilly*, Denham J., when sitting in the High Court, held that s. 2 of the Criminal Justice (Legal Aid) Act 1962, provides that if it appears to the District Court that the means of a person charged before it with an offence are insufficient to enable him to obtain legal aid and that, by reason of the gravity of the charge or of exceptional

circumstances, it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence, the court shall "on application being made to it in that behalf" grant him a certificate enabling him to obtain free legal aid and to have a solicitor assigned to him for that purpose. The Court also held that a conviction and sentence may be quashed on review by the High Court for being in violation of the accused's constitutional rights notwithstanding that there is no evidence before the High Court that the accused was unaware of his legal rights by reason of illiteracy, lack of education or otherwise.

28. It is submitted that the applicant's situation, where he is at risk of continued deprivation of liberty is analogous to that of a person accused of a criminal offence and that in the circumstances, legal aid ought to be made available to afford him representation, particularly in the case of this applicant, who was convicted in England and in relation to whom any preparatory work will require to be done on a completely pro bono basis."

6. The Law

20. The applicant makes no claim to legal aid under the Civil Legal Aid Act 1995, confining his arguments to an extension of any entitlements he might have under the Criminal Justice Legal Aid Act 1962, which presumably, in the light of *O'Donoghue v. Legal Aid Board* (Unreported, High Court, 21st December, 2004), might give him a greater chance of success, and a constitutional argument based on fair procedures. In the *O'Donoghue* case, Kelly J. considered the constitutional right to legal aid in Ireland and found that the Civil Legal Aid Act 1995, gives substance in many ways to the constitutional entitlement to civil legal aid for appropriate persons.

21. In the context of the right to litigate and/or to have access to the courts, an issue that frequently arises is the right of a litigant to legal representation. That a litigant should have such an entitlement is clearly appropriate in the case of criminal trials. The right to legal representation is also acknowledged in civil matters where the outcome would have serious consequences for the litigant and where the proceedings are judicial or quasi judicial and especially where they are adversarial in nature. It is not necessary for me to examine these cases in detail. Suffice to say that in *Barry v. Sentence Review Group*, Butler J. rejected a claim that a prisoner had a legal right to representation before the Sentence Review Group (a precursor to the Parole Board).

22. The applicant in the present proceedings has not challenged this holding and for that reason it seems somewhat strange that he nevertheless maintains the argument that he is still entitled to legal aid to assist him in making his submission to the parole board. It is acknowledged that the parole board accepts written legal submissions and, for this reason, it is probably not inconsistent, in *stricto sensu*. In any event since the matter was fully argued before me I propose to address the separate issue which may be formulated as follows: is the applicant entitled to funding from the State to enable him to make a written legal submission to the parole board?

23. There is no specific provision for such funding under the Criminal Justice (Legal Aid) Act 1962, as amended. The legislation in force fully acknowledges the State's obligation to fund the defence of impoverished persons who find themselves faced with criminal proceedings. Attempts to establish a general constitutional right to legal aid in non-criminal matters have been spectacularly unsuccessful. It has never been explicitly recognised that there is a correlation between the rights protected by the Constitution and an obligation on the State to fund persons without resources to exercise those rights. The constitutional entitlement to legal aid as established in *The State (Healy) v. Donohue* [1976] I.R. 325, is clearly confined to proceedings where the person is facing a criminal charge. It is seen in the criminal context as a due process issue. In the following year in *The State (O) v. Daly* [1977] I.R. 312, the Supreme Court refused to extend this to a hearing under s. 207 of the Mental Treatment Act 1945, which provided for the transfer of accused persons to the Central Mental Hospital in Dundrum in certain specified circumstances. There it was stated at p. 316:-

> "While it may be accepted, following the decision of the Supreme Court in *The State (O) v. O'Brien*, that the procedure under s. 207 of the Act of 1945 constitutes an exercise by the District Justice of his criminal jurisdiction, it is very much ancillary and preparatory. No trial can take place and, of course, no punishment can be imposed. What is involved is an inquiry as to the mental health of the person charged, there being *prima facie* evidence that he has committed the offence."

24. That there is no entitlement to free legal aid where the citizen is obliged to appear before a tribunal other than the courts, although it may have significant consequences for him, has been established in *K Security Limited & Anor v. Ireland & Anor* (Unreported, High Court, 15th July, 1977). Barrington J., in *Condon v. CIE* (Unreported, High Court, 22nd November, 1984) cited the *K Security* case with approval where the plaintiff claimed, inter alia, that the State had a constitutional duty to defray his legal costs in appearing before an inquiry into a rail accident being held under the Regulation of Railways Act 1871, having regard to the provisions of Article 40.3. The learned judge held that although it required that the plaintiff be given a fair opportunity of defending himself, (it was alleged that he bore responsibility for the accident), it was quite another thing to say that the State must pay the costs of his defence. Barrington J., refused to accept that the decisions of the Supreme Court in *Re Haughey* [1971] I.R. 217 and *The State (Healy) v. Donohue* [1976] I.R. 325, compelled him to do otherwise.

25. Arguments that legal aid should be provided to persons who are obliged to appear before a professional disciplinary tribunal and a tribunal of inquiry have also been rejected by the High Court as evidenced in the decisions of *Malocco v. The Disciplinary Tribunal, The Attorney General and the Law Society of Ireland* (Unreported, High Court, Carroll J., 16th December, 2002) and *McBrearty v. Morris* (Unreported, High Court, Peart J., 13th May, 2003).

26. In *Corcoran v. Minister for Social Welfare* [1991] 2 I.R.175, an applicant before a statutory tribunal exercising quasi judicial powers under the Social Welfare (Consolidation) Act 1981, argued that he was entitled to be legally represented before the Appeals Officer. Murphy J., in rejecting this argument stated at p.183 that:-

> "No precedent or authority has been produced for the general proposition that a lay tribunal exercising a quasi judicial function must afford to the parties appearing before it an opportunity to procure legal advice and be represented by lawyers. Less still is there any authority for the proposition that the State would be bound to pay for such assistance".

27. From the above it can be seen that the courts have assiduously been at pains to confine the constitutional right to free legal aid to criminal cases.

28. Insofar as the applicant placed emphasis on the cases of *Kirwan v. Minister for Justice Ireland and the Attorney General* [1994] 2 I.R. 417, and *Magee v. Farrell, the Minister for Justice Equality and Law Reform, Ireland and the Attorney General* (Unreported, High Court, Gilligan J., 26th October, 2005) which is currently under appeal to the Supreme Court, I should perhaps consider these cases more closely. I must also look at *M.C. v. The Legal Aid Board* [1991] 2 I.R. 43.

29. In *Kirwan* the applicant had been found guilty but insane in relation to a charge of murder and was thereafter detained in the Central Mental Hospital. Subsequently, it was determined in proceedings brought by third parties that such persons were detained at the will of the government. An advisory committee was established to advise the government in relation to the release of such persons. Lardner J in the High Court granted a declaration that the applicant was entitled to receive "such legal aid as was necessary to enable him effectively to present his application and submissions" but declined to specify the extent of representation provided that ought to be paid for. The basis of that declaration was that the applicant was being detained involuntarily pursuant to statute and that "the decision whether or not to release the applicant which the executive is required to make is of great importance for the public and for the applicant. The interest and safety of the public is or may be affected by it, as is or may be the liberty of the applicant." (at p.424)

30. In the case before the court the applicant is serving a 22 year sentence imposed by a court of law. Any exercise of the power to commute or remit punishment is a privilege and not a right. In *Kirwan* on the other hand, the applicant was not serving any fixed sentence of imprisonment. Rather he was detained in the Central Mental Hospital until further order of the Central Criminal Court. What that meant was that he had been acquitted of a criminal offence and was being detained at the pleasure of the Executive. The applicant had a right to be released from that detention at such time as he was no longer suffering from mental illness. The determination of a medical fact could mean that *Kirwan* would be entitled to be released from custody forthwith. It is also worth noting that Lardner J. in his judgment unreservedly accepted the Court's decision in *The State (O) v. Daly* [1977] I.R.312.

31. In *Magee v. Farrell, the Minister for Justice, Ireland and the Attorney General*, Mr Justice Gilligan held that the plaintiff as the mother and next of kin of Mr Paul McGee who died in Garda custody on the 26th December, 2002, was entitled to legal aid for the purpose of being adequately represented at the inquest into her son's death. In arriving at that conclusion, however, Mr Justice Gilligan emphasised that in an inquest the coroner's role "is judicial in nature" and that the inquest of itself is inquisitorial and that a jury will record a verdict. These features are sufficient to distinguish this case from the facts before this Court. This case has been appealed to the Supreme Court.

32. In *Stevenson v. Laney and Others* (Unreported, High Court., Lardner J., 10th February, 1993) Lardner J. held that an impecunious litigant had the constitutional right to civil legal aid where she was contesting wardship proceedings taken by the State in respect of a child. The threat there was that a mother would have her child taken from her and again is a very different case from that which faces the court in these proceedings.

33. Finally in *M.C. v. The Legal Aid Board* [1991] 2 I.R. 43, another case cited to the court, Gannon J. held that an individual citizen did not have a constitutional right to require that the State should provide financial support for civil litigation of a dispute with another citizen. This, however, is of little relevance to the case before this Court.

34. From the above it is clear that although attempts have been made to extend the occasions when the State has a constitutional obligation to grant free legal aid to persons who have no means, the occasions in which the courts are willing to do so in private civil matters are very few. Where the courts have recognised the State's obligation in non criminal situations, it has done so only in very serious situations where the constitutional rights of individuals are clearly involved and failure to grant aid in the circumstances will amount to a breach of its constitutional responsibilities. *Stevenson* related to wardship proceedings and *Kirwan* related to the continuation in custody in the Central Mental Hospital when the applicant had not been convicted of a crime.

35. Accepting from these authorities that there will be some cases, outside the criminal sphere, where there may be, in exceptional cases, an obligation on the State to fund persons who are obliged to interface with the legal system, it must be recognised however that such occasions will be relatively few. It would seem, outside the criminal context, that the onus is on the individual alleging such a right to convince the court that failure to fund him or her would result in a serious breach of a constitutional right. In my view the present case does not fall within that narrow category.

7. Specific Features of this Case

36. Bearing in mind the law and the relevant authorities, it is important to note some features of the applicant's case which to my mind are significant factors to be taken into account in considering the applicant's claim.

37. First, the applicant's entitlement, to use a jurisprudentially neutral word, here is not a legal right, but a privilege. There is no obligation on the State to set up a parole board to review sentences lawfully imposed by the judiciary. If the State decides to set up such a board, whose function is to review and recommend reduction of the outstanding term to the Minister, it is only expressing a sense of humaneness, to which the applicant has no legal entitlement. If the State had not such a system in place, it could not be said that the applicant, or prisoners in general, has or have a right to such a review system.

38. Second, the stage of the process which the applicant wishes to participate in is the advisory stage. The parole board does not make a decision to reduce or leave the sentence stand. The parole board can only make representations to the Minister who is the decision maker in the process. The phase at which the parole board operates is very much preliminary to the decision making stage. There is nothing preventing the applicant from writing or making a submission to the Minister if he so wishes. I am not, for a moment, suggesting that State aid would be available to him to make such a submission, but to argue that it should be available at an advisory stage prior to the decision maker's role is difficult to sustain. No legal skills associated with lawyers are required or needed to persuade the board to make a positive recommendation. This is not affected in my view by the allegation by the applicant that the Minister follows the recommendation of the parole board in most cases. The legal position is that he is not obliged to and does not do so in some cases.

39. That the Minister, in making his decision, takes several factors other than the recommendations of the Parole Board into consideration is clearly evidenced by a letter from the Department of Justice, Equality and Law Reform dated 11th June, 2007, to the Governor of Portlaoise Prison concerning the applicant, Mr. Grogan. Having indicated that the Minister agrees with the Board's recommendations the letter goes on to say:-

> "The Minister, in reaching his decision, took the following factors into account:-
>
> (a) the nature and gravity of the offence to which the sentence of imprisonment being served by Mr. Grogan relates,
>
> (b) the sentence of imprisonment concerned,
>
> (c) the period of the sentence of imprisonment served by Mr. Grogan,

(d) the conduct of Mr. Grogan while in custody;

(e) reports of, or recommendations made on Mr. Grogan by –

i. the Parole Board

ii. the governor of, or person for the time being performing the functions of governor,

iii. the Garda Síochána,

iv. a Probation Officer, and

v. the Prison Review Committee."

40. Third, the right to fair procedures which is the principle, underpinning the applicant's argument in this case, presupposes a legal hearing of some sort, where decisions will be made which may affect the applicant's *rights* or have serious consequences of a legal nature for the applicant. The procedure before the Parole Board is one, where to allow humanitarian intervention to be considered in a rehabilitatory context, formality is dispensed with. The Board's primary function is to encourage the prisoner and to suggest programmes which if embraced by the prisoner, may commend themselves to the Board to make a positive advisement to the Minister. The Board is not there to determine the innocence or guilt of the applicant, much less to second guess the sentence imposed by the court. To attempt to do so would be to usurp the functions which reside elsewhere under our Constitution. Neither is the process an adversarial one. It is not even a fact finding tribunal, rather it is more of an assessment process made on the prisoner's willingness to reform. To acknowledge the need for fair procedures in such a situation would be to overstate the significance of the Board's powers and would detrimentally distort the nature of the process.

41. Fourth, the applicant claims that he is entitled to State funding to enable him to receive *assistance*, as opposed to advice, to participate in the Parole Board's process. The case law in this area clearly makes a distinction between these two concepts and whatever concessions have been made, in highly different cases, in the area of recognising the right to legal advice and aid, none has been opened to the court suggesting that such funding should be made available to give the citizen *assistance* to make his case.

42. Fifth, in the present case the applicant has been repatriated from the UK under the Transfer of Sentenced Persons Act 1995, (Ireland is a signatory to the Convention on the Transfer of Sentenced Persons, Strasbourg 1983) to allow him to serve his sentence in his own country. Article 10 of the Strasbourg Convention provides that the administrating State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State, unless it is incompatible with domestic law. There is a procedure where the nature or duration of the sentence, if incompatible with the law of the administering State, may be adapted by a court or administrative order, to the punishment on measure prescribed by its own law for a similar offence. This procedure has not been invoked by the applicant in this case. In normal circumstances therefore, it would be wrong for the State to go behind the sentence and it would be wholly improper for the parole board to do so. The applicant wishes to make a submission that the 22 years sentence imposed in the UK was much higher than what he might have expected for a similar offence in Ireland, and also that the parole system in the UK is such that, if it was applicable to his circumstances, it would be much kinder to him. These are not considerations, I submit, which it would be proper for the Minister, or indeed any organ of Government, to take into account once repatriation has taken place, except in the circumstances contemplated by the Convention itself. The State may, of course, apply its own parole system for its own prisoners, but where it is dealing with repatriated prisoners other considerations may also come into play, including the fact that the applicant fully understood these considerations when he opted for repatriation under section 6(5) of the Transfer of Sentenced Persons Act 1995.

43. Sixth, the applicant herein, is a university graduate since 1998 and has, since his imprisonment, taken a law degree and a course in criminology. It cannot be said that he is not qualified or able to make an appropriate submission to the Parole Board in these circumstances.

8. Conclusion.

44. For the above reasons I refuse the declarations or other reliefs sought by the applicant in these proceedings. Furthermore, I emphasise that the applicant has failed to establish grounds for relief under either statutory or fair procedures considerations.