THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 174

Record Number: 2017/606

Peart J.
Mahon J.
Hedigan J.

BETWEEN/

ERIC EOIN MARQUES

APPELLANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT OF MR. JUSTICE MICHAEL PEART DELIVERED ON THE 18TH DAY OF JUNE 2018

1. The United States of America has been seeking the extradition of the appellant ever since it communicated a request for a provisional warrant for his arrest on grounds of urgency to the Minister for Justice ("the Minister") under Part II of the Extradition Act, 1965 ("the Act") on 29th July 2013.

2. The appellant was arrested on foot of a warrant issued by the High Court on the 1st August 2013, and held in custody here pending a determination by the High Court of the formal request for his extradition which was communicated by Diplomatic Note on the 13th August 2013. Many grounds of objection were raised by the appellant in the High Court when resisting the application by the Attorney General under s. 29 of the Act to have him committed to prison until such time as the Minister made an order for his extradition under s. 33 of the Act. The High Court (Donnelly J.) made an order under s. 29 on the 16th December 2015, having rejected the grounds of objection raised by the appellant.

3. That order was the subject of an appeal to this Court which was dismissed for reasons contained in a written judgment (Peart J.) delivered on the 12th December 2016.

4. The appellant had issued separate judicial review proceedings which were heard in the High Court at the same time as the extradition proceedings. In those proceedings the appellant sought to quash a decision made by the Director of Public Prosecutions not to prosecute the appellant in this jurisdiction in respect of the offences for which his extradition was being sought. His solicitor had written to the DPP making such a request, highlighting the sentence regime that the appellant would face if extradited and convicted in the United States, as well as his personal circumstances, including that he suffers from Asperger's Syndrome, and the harsh prison conditions that he would inevitably face if convicted. The letter also indicated his client's willingness to enter a guilty plea, if prosecuted here by the DPP, so as to assuage any fears that she might have that that there could be evidential difficulties which might prevent a successful prosecution in this jurisdiction.

5. It suffices to say that by order dated the 16th December 2015, the High Court (Donnelly J.) refused that application for judicial review. That decision was also the subject of an appeal to this Court which, for reasons appearing in a separate written judgment (Peart J.) delivered on the 12th December 2016, was also dismissed.

6. Following the dismissal of those appeals, the appellant made an application to the Supreme Court for leave to appeal. This was refused. He further sought to bring his case before the European Court of Human Rights, including for a stay on his extradition. That application was refused on the 1st June 2017.

7. Following the refusal of leave to appeal to the Supreme Court, the Chief State Solicitor wrote to the appellant to inform him that his extradition would then proceed immediately.

8. Upon receipt of that letter, the solicitor acting for the appellant wrote to the Chief State Solicitor on the 31st May 2017 asking that, in the event of the Minister deciding to order surrender under s. 33 of the Act, the reasons for so deciding should be provided. There was no response to that letter prior to the Minister making an order for the appellant's extradition under s. 33 of the Act on the 1st June 2017 directing his surrender to a person duly authorised by the United States of America to receive him. The appellant learned of that order only when members of An Garda Síochána arrived to arrest him at the prison in which he was being held and take him to Dublin Airport in order to effect his surrender. That move led immediately to an application to the High Court for leave to seek a judicial review of the s. 33 order on the grounds, *inter alia*, that she be required to provide the reasons for her decision to make that order in the light of the discretionary nature of her power under s. 33 and the provisions of s. 15 of the Act.

9. It appears that upon the making of that application for leave to seek a judicial review, the appellant's solicitor was handed a letter dated 2ndJune 2017 which contained the Minister's reasons for her decision to make the order under s. 33 of the Act. This letter was from the Mutual Assistance Division within the Minister's department. It advised that the Minister had signed an order under s. 33 of the Act directing the extradition of the appellant to the relevant authorities in the United States, and gave certain reasons for the decision which I address later in this judgment.

10. It was agreed between the parties that there would be a telescoped hearing of these judicial review proceedings. They were listed for hearing on the 25th October 2017. Following that hearing, the trial judge delivered a written judgment on the 30th November 2017 explaining her reasons for refusing to make the orders sought, including one of certiorari to quash the Minister's order under s. 33 of the Act for insufficiency of reasons and the failure by the Minister to ascertain and consider the reasons why the DPP had previously decided not to prosecute the appellant in this jurisdiction in respect of the extradition offences. The appellant now appeals to this Court.

11. Section 33(1) of the Act provides:

> "33.(1) Subject to sections 31 and 32 [not relevant] the Minister *may*, if the person committed is not discharged by the decision of the High Court in habeas corpus proceedings, by order direct the person to be surrendered to such other person as in his opinion is duly authorised by the requesting country to receive him and he shall be surrendered accordingly."

12. I have highlighted the word "may" in s. 33(1) as it is the discretionary nature of the power given to the Minister by this section that is relied upon by the appellant.

13. The appellant also relies upon s. 15(2) of the Act which provides:

> "Extradition *may* be refused by the Minister for an offence which is also an offence under the law of the State if the Director of Public Prosecutions or the Attorney General has decided either not to institute or to terminate proceedings against the person claimed in respect of the offence." [Emphasis provided]

14. I have already made reference to the earlier judicial review proceedings wherein the appellant had sought to quash the DPP's decision not to prosecute him for the extradition offences in this State. The issue now raised is a different one. It is essentially that where "extradition may be refused" under s. 15(2) of the Act where the offence is also an offence under the laws of this State, and the DPP has decided not to prosecute him, the Minister needs to know the reasons for the decision not to prosecute before she can properly exercise her discretion whether or not to make a s. 33 surrender order, since the reasons could be a relevant factor to consider.

15. A further issue raised by the appellant is whether or not the reasons given by the Minister in her letter dated the 2nd June 2017 for her decision under s. 33 to order the appellant's surrender are adequate.

16. In a most detailed written judgment delivered on the 30th November 2017, the trial judge determined each of these issues against the appellant. Her conclusions are succinctly summarised in para. 82 of her judgment as follows:

> "82. For the reasons set out in this judgment, I am satisfied that:
>
> (a) Section 15 (2), and indeed s. 33 (1) of the Extradition Act 1965, grant to the Minister a residual discretion to refuse to order the extradition of a requested person who has been committed to prison under the provisions of s. 29 of the Act of 1965 where the High Court is satisfied that the requirements of the Act have been met and extradition is not prohibited.
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> (b) It was not necessary for the Minister to obtain the DPP's reasons for non-prosecution prior to exercising her discretion under s. 15 (2) of the Act of 1965.
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> (c) The reasons given by the Minister for her decision to order the appellant's extradition were sufficient."

The High Court's judgment

The Minister's discretion in s. 15(2) and in s. 33 of the Act

17. In her consideration of the discretionary nature of s. 15(2) and of s. 33 of the Act, and the interplay between the two, the trial judge referred to the treaty origins of those provisions, and in particular Article 9 of the European Convention on Extradition ("the Convention"), done at Paris on the 13th December 1957. Part II of the Act is, as noted by the trial judge, the domestic implementation of the Convention. At para. 28 of her judgment, she noted that in most instances where the State was given a discretionary right to refuse extradition on a particular basis, the Oireachtas had chosen to implement that discretionary right by an affirmative prohibition on that ground – *e.g.* in relation to offences which attract the death penalty in the requesting state or, as provided for by Article 7 of the Convention, on the basis of the place of commission of the offence. The trial judge went on to state in relation to the *current* s. 15 (as substituted by s. 27 of the 2012 Act):

> "This State has decided not to avail of discretionary right contained in Article 7 (1) of the Convention and Article III of the Integrated Treaty [Integrated Treaty between the United States of America] to have a blanket refusal for all extradition requests for offences committed on the territory of Ireland".

18. This represented a change from s. 15 *as originally enacted* which had, in accordance with Article 7.1 of the Convention, provided for a mandatory prohibition of extradition in respect of an offence regarded under the laws of the State as having been committed in the State. At para. 28 of her judgment she stated:

> "28. … The Oireachtas has chosen to implement the second paragraph of Article 9, which gives to a contracting state the right to refuse extradition if a decision has been made not to prosecute, in a different way. This was done, not by making it mandatory for the court to refuse extradition in those circumstances, but by giving to the minister a discretionary right to refuse extradition. Thus, there is no prohibition on extradition where the prosecuting authority in this jurisdiction had made a determination either not to initiate proceedings or to terminate those proceedings; the minister has a discretion to refuse to extradite if that has occurred. From the perspective of Ireland's international obligations, this manner of implementation is in perfect accord with the provisions of the Convention and the Integrated Treaty. Ireland could have refused all extradition in these circumstances but it did not do so. Instead the legislation leaves a discretion in the hands of the minister to refuse."

19. As for the Minister's discretionary power under s. 33 (1) of the Act to make an order for surrender, the trial judge noted that it was different from that contained in s. 15(2) of the Act. In that regard, the trial judge stated:

> "The residual discretion in s. 33 (1) of the Act of 1965, to which the Minister has referred, appears to have a different origin from that of s. 15(2) of the said Act. Indeed, the discretion granted therein is probably more readily understandable as the purely political (in the sense of global politics) discretion alluded to by the Minister. The Convention and the Integrated Treaty contain mandatory and discretionary grounds upon which extradition must, or, as appropriate, may be refused. Those grounds for refusing extradition are contained in the Act of 1965. Section 33 (1) on the other hand, appears to reflect an overarching right of the Minister to refuse extradition despite compliance of the request with the provisions of the Act, the Convention and the Treaty. Ireland may be held accountable at an international level for failure

to comply with its obligations if there is a refusal to extradite which is not based upon a ground permitted under the Convention or Integrated Treaty. Conversely, there is no cause for complaint by requesting state if the Minister decides to refuse extradition on the basis of the grounds set out in Article 9 of the Convention or Article IV(a) of the Integrated Treaty which is contained in s. 15(2) of the Act of 1965."

20. It was the appellant's argument that it is the discretionary nature of the Minister's power under s. 15(2) which could have permitted the Minister to decide not to make the s. 33 order, in the light of the DPP's decision not to prosecute him in the State for the extradition offences, and therefore that the Minister must know the DPP's reasons. It is argued that those reasons would be a relevant consideration to the exercise of the discretion to refuse extradition. The applicant does not agree that the section is simply permissive in the sense of merely enabling the Minister to refuse extradition in the event that the DPP decided not to prosecute, for whatever reasons the Minister might have over and above the mandatory statutory prohibitions contained in the Act.

21. The trial judge went on to note that s. 15(2) does not make any express provision as to how the discretion provided for should operate. She noted in para. 33 of her judgment that:

> " … The Minister contends that s. 15(2) merely provides a residual discretion, whereas the applicant contends that in order to be operable, the Minister has to have certain information, including the reasons from the DPP for not prosecuting".

22. The trial judge reached her conclusions as to the nature of the discretion which the Minister has under s. 15(2) as follows:

> "36. The discretion provided for in s. 15(2) has been left deliberately with the executive rather than with the courts. It is not a mandatory ban on extradition but gives a discretion to refuse extradition even when the DPP has not initiated a prosecution. Leaving the discretion with the Minister may reflect the essentially political nature of extradition as distinct from the judicial cooperation procedure under the European Arrest Warrant surrender provisions. Extradition (as distinct from surrender) operates at the level of agreement between States where the role of the courts is to oversee compliance with the terms of the Extradition Act. The Courts' role is to ensure that the requested person is not extradited unless such extradition is lawfully permitted. The protection of a requested person's rights is fundamentally a matter for the courts under the scheme envisaged by the Act of 1965. The courts' role in surrender procedures is also to ensure rights are protected, but the essential difference is that the executive plays no role in the decision to surrender – that is solely a matter for the courts.
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> 37. This method of implanting [sic] Article 9 of the Convention by the granting of a discretion to the Minister deliberately removes from the courts the decision-making role as to whether extradition should be refused where a decision not to prosecute has been made by the Director of Public Prosecutions. That is an important fact in this case because, unlike other bars to extradition, s. 15(2) grants no right to a requested person not to be extradited for an offence under the law of the State where the DPP has not initiated a prosecution. The courts have no role in that decision although the courts retain a role in ensuring that the decision-making process is carried out in a lawful manner. At most therefore, s. 15(2) creates a right for the requested person to have the Minister exercise her discretion in a lawful manner."

23. The trial judge then went on to consider the nature and extent of the Minister's discretion, and how it should be exercised. She noted that the express provisions of s. 15(2) does not delineate the parameters of that discretion, and stated that it was "the duty of the Minister, and ultimately the courts, to ensure that the discretion granted by the legislature is correctly exercised … It is a matter of construction of the subsection, which is located within the Act implementing our international commitments regarding extradition, which will provide the basis for interpreting the role of the Minister". She went on:

> "39. The architecture of the Act of 1965 encompasses the fundamental procedures on which extradition requests are dealt [sic]. No person may be extradited unless the High Court has adjudicated upon the merits of the application. The High Court is even required to adjudicate on whether extradition may lawfully be permitted where a requested person consents to surrender. The scheme of the Act is that the requested person's rights are protected through the High Court's adjudication on whether extradition is lawfully permitted or not. Subsection 15(2) must be interpreted in that context."

24. The trial judge concluded on the nature of the discretion by stating:

> "40. The applicant has submitted that s. 15(2) and/or s. 33(1) requires the Minister to carry out a detailed analysis as to whether extradition should be refused on "compassionate" grounds *i.e.* at a standard less than the courts apply when considering issues such as the potential for a breach of constitutional rights. The courts have already carried out the enquiry into whether the applicant's rights have been and will be protected, using the appropriate standard of proof in that regard. From a close perusal of the Act of 1965, there is no basis for interpreting s. 15(2), or indeed s. 33 (1) in a manner which would grant an even greater right to protection from extradition than those expressly set out in the Act of 1965 which are adjudicated upon by the courts, by requiring the Minister to carry out an assessment based upon a lesser standard.
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> 41. It is ultimately a matter for the Minister to decide in any given case if extradition should be refused under s. 15(2) of the Act of 1965. This is not to say that the Minister is making a "political" decision but it is a decision within the executive sphere. The right of the Minister to refuse extradition in those circumstances does not create a right not to be extradited. In that sense the discretion is residual."

The Minister's obligation to seek out and consider the DPP's reasons not to prosecute

25. Having so concluded as to the nature of the Minister's discretion, the trial judge proceeded to address the question as to whether the Minister was obliged to seek out and consider the DPP's reasons for not commencing a prosecution in this State in respect of the extradition offences in order to properly exercise her discretion whether to make an order under s. 33 of the Act. The Minister's view on that question is that it is neither necessary nor appropriate that she should seek an explanation from the DPP as to why a decision not to prosecute was taken. The appellant argued that although the DPP was in general not required to provide reasons to the suspect or to the victim of an alleged crime, it is not an absolute immunity. Reference was made to the requirement to give reasons under the EU Victim's Directive (Directive 2012/29/EU) or where there was some evidence of *mala fides* or improper purpose. The appellant submitted in the High Court that where such a decision impacted upon a decision to extradite, there was no reason why the DPP ought not to be asked for her reasons, and that it could not be argued, as it would be generally, that it would be unduly

burdensome for her to be required to do so in the small number of cases where this issue might arise in an extradition context.

26. The Minister's submission relied upon the special independent position of the DPP under the Constitution, as recognised in cases such *as Carlin v. DPP* [2010] 3 IR 547, and *Monaghan v. DPP* [2007] IEHC 92.

27. The trial judge considered that on the plain and ordinary meaning of the wording of s. 15(2) there was intention evinced on the part of the legislature to create a statutory exception to the immunity otherwise accorded to the DPP in relation to decisions not to prosecute, and indeed that the Act of 1965 is not directed to the DPP, albeit that the DPP is referred to in s. 15(1) of the Act. She was also satisfied that that s. 15(2) did not impose any obligation on the Minister to seek the DPP's reasons. She therefore considered that it could not have been the intention of the legislature that the Minister could not make a decision to extradite because she did not know the reason for the decision not to prosecute in this jurisdiction. In that regard she stated at para. 51:

> " … I am quite satisfied that s. 15(2) did not impose upon the Minister a requirement to seek those reasons. The absence of a statutory right to those reasons and the well enunciated practice of the DPP to only give reasons in limited circumstances would make any request for those reasons entirely irrelevant".

28. The trial judge concluded on this issue at paras. 53 and 54 by stating:

> "53. While the applicant may have some complaints that it is unsatisfactory that the legislation grants a discretion without providing a statutory pathway for the decision-maker to have full knowledge of the reasons for the non-prosecution, that does not take from the ability of the Minister to exercise her discretion and for the courts to adjudicate upon it. Ultimately, the subsection does not create a right for a requested person not to be extradited; all it provides through ministerial discretion, is for this State to exercise a lawful option provided in the Convention/Integrated Treaty to refuse surrender where a decision not to prosecute or to terminate prosecution has been made. The provision leaves it open to the Minister to refuse extradition on the basis of reasons "which are beyond the statutory bars to extradition" as referred to in her statement of opposition and submissions. It is not necessary to enumerate those situations in legislation or indeed in this judgement. Those circumstances will no doubt be decided by the Minister if and when they arise.
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> 54. In conclusion, the subsection permits the Minister to make a lawful decision, at a national and international level, to refuse to extradite even where the DPP has made a decision not to prosecute for the alleged offence. She is not required to know the DPP's reasons for non-prosecution before she makes her decision to extradite."

Adequacy of the Minister's reasons contained in her letter 2nd June 2017

29. The trial judge set out in its entirety the appellant's solicitor's letter dated the 31st May 2017 in which she set out a number of reasons why the Minister ought not to make an order under s. 33 of the Act, in the exercise of the discretion which the Minister has under s. 15(2) of the Act, and sought the reasons of the Minister for making any decision under s. 33 of the Act in the event that the Minister was to make an order under s. 33. I should clarify that at the point in time that this letter was written the appellant's solicitor was unaware as to whether a s. 33 order had been made, but clearly apprehended that if one was not made by that date, a decision as to whether to make the order was imminent, given the fact that the Supreme court had so recently refused leave to appeal.

30. This letter referred to the very serious nature of the extradition offences, the appellant's offer to plead guilty if prosecuted here, the refusal of that offer by the DPP, and her failure to give any reasons for her decision not to prosecute the appellant. It referred to the statutory function upon the Minister under s. 15(2) and stated that in order to exercise that function the Minister needed to know the DPP's reasons for deciding not to prosecute the appellant here. The letter went on to describe the personal circumstances of the appellant, his age, the prospect of him facing a far lengthier sentence if convicted in the United States than if he was convicted here, and the harsh prison regime he would face if extradited. It urged in addition that extradition should be refused by the Minister on the basis that the DPP has refused to prosecute the appellant where this is both possible and in the public interest. The penultimate paragraph of the letter stated:

> "We would ask that you not make your order unless you have satisfied yourself that the decision not to prosecute is based solely on legitimate considerations and that extradition is in the public interest. Please note that [the appellant] would consent to any procedure that would secure his guilty plea in this jurisdiction instead of his being extradited. In the event that you decide to extradite, we require a reasoned decision from you setting out why this is so. We request that this be provided in sufficient time that our client can consider it."

31. As already referred to, a letter in response to the above was provided to the appellant's solicitor on the occasion of the appellant's application to the High Court for leave to seek judicial review of the s. 33 decision, to which I referred at para. 9 above. The letter stated that the Minister took into consideration the extensive court proceedings and the contents of the letter dated the 31st May 2017 from the appellant's solicitor. It made the point that it had been open to the appellant to raise any issues of concern during the course of the various proceedings that had occurred. It noted the decision of the DPP not to prosecute the extradition offences in this jurisdiction, highlighting the independence of the office of the DPP. It stated that the Minister considered that it was neither necessary nor appropriate that she should seek an explanation from the DPP as to the reasons why a decision was made not to prosecute the appellant in this jurisdiction. It went on to say that in arriving at a decision to make the order under s. 33 the Minister took into account also the views of both the High Court and the Court of Appeal arising from the judicial review proceedings brought by the appellant, and drew attention to the subsequent determination of the Supreme Court to refuse leave to appeal.

32. In arguing the inadequacy of the reasons given in this letter, the appellant had referred in the High Court to the judgments in *Mallak v. Minister for Justice* [2012] 3 IR 297; *A.M.N. v. Refugee Appeals Tribunal and MJELR* [2012] IEHC 393; and *McDonagh v. The Commissioner of An Garda Siochana* [2015] IEHC 390. It was submitted that it was no longer adequate for the decision maker to merely acknowledge the arguments made and that there had to be a proper engagement with the matters raised in the solicitor's letter, and since this was not done in the letter received in response, the reasons were deficient.

33. The Minister's response to those submissions was, according to the trial judge's judgment, that the nature and extent of reasons varied according to the subject matter of the decision. Reliance was placed upon the judgment of Clarke J. (as he then was) in *EMI Records Ltd v. Data Protection Commissioner and Eircom Ltd* [2014] 1 ILRM 225 where he stated at p. 249:

> "It follows that a party is entitled to sufficient information to enable it to assess whether the decision is lawful, and, if there be a right of appeal, to enable it to assess the chances of success and to adequately present its case on the

appeal. The reasons given must be sufficient to meet those ends."

34. Counsel for the Minister also distinguished the circumstances of the present extradition decision from the types of decision at issue in the case upon which the appellant had relied. Counsel referred to the judgment of Hardiman J. in F.*P. v. Minister for Justice, Equality and Law Reform* [2002] 1 IR 164. The decision in that case was one taken by the Minister to refuse leave to remain on foot of an application made in that regard under s. 3(3) of the Immigration Act, 1999. One of the issues was the adequacy of the reasons provided by the Minister for the decision to refuse leave to remain. The letter from the Minister communicating the refusal of the leave to remain application stated as relevant:

> "In reaching this decision the Minister has satisfied himself that the provisions of s. 5 (prohibition of refoulement) of the Refugee Act, 1996 are complied with in your case.
>
> The reasons for the Minister's decision are that you are a person whose refugee status has been refused and, having regard to the factors set out in s. 3 (6) of the Immigration Act, 1999, including the representations received on your behalf, the Minister is satisfied that the interests of public policy and the common good in maintaining the integrity of the asylum and immigration system outweigh such features of your case as might tend to support your being granted leave to remain in this State."

35. The trial judge, having noted that s. 3(6) of the Immigration Act, 1999 set out a full list of matters to which the Minister was obliged to have, unlike provisions at issue in the present case, summarised the Minister's submission as follows at para. 64 of her judgment:

> "In the minister's submission, the decision was made in accordance with well-established principles. Sufficient information had been given to the applicant. The respondent had regard to the relevant considerations in making her decision. Counsel distinguished the cases of *A.M.N and McDonagh* on the facts of each case and pointed to the specifics of the minister's response in the present case. That response engaged with each of the points that the applicant had raised in his letter of 31st May, 2017."

36. At paras. 66 and 67 of her judgment the trial judge stated:

> "66. The nature of the decision that the minister was required to make in this case has been discussed in some detail above. The minister's discretion is a residual discretion to refuse surrender in circumstances where the DPP has decided not to prosecute. The nature of the discretion limits the extent to which reasons must be given. This is not a decision for the minister that is akin to the decision-making of the Refugee Appeals Tribunal. The latter type of decision making requires a significant engagement with evidence such as the medical report presented in the case of A.M.N relied on by the applicant.
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> 67. In the present case, the letter of 31st May, 2017 has been presented as referring to two separate issues. The first issue was the obtaining of reasons from the DPP to prosecute in this jurisdiction and secondly, issues concerning his personal circumstances. Indeed, it can be observed that the letter merged these two matters as the references to his personal circumstances were made in the context that he should be prosecuted domestically rather than be sent to the United States of America."

37. Having addressed what were identified by the appellant as being eight points raised in the letter written to the Minister on the 31st May 2017 the trial judge concluded at para. 77:

> "In the light of the points that the letter made, I am quite satisfied that the minister's letter was a reasoned response to the issues raised. The nature of the decision, being the minister's decision to order extradition after all court processes had been dealt with, did not require an extended or detailed consideration of all issues. The minister, in fact, did deal with the issues raised by the applicant and gave her reasons for rejecting them. The issues raised were interlinked, and indeed repetitive. The reasons given covered those points, the most important being that the DPP was independent and that it was neither necessary nor appropriate for the minister to seek an explanation from the DPP. The reasons given are adequate and the minister took into account all relevant considerations."

Appellant's submissions on appeal

38. The grounds of appeal contained in the appellant's notice of appeal can be adequately summarised as follows:

> (a) The trial judge was wrong to hold that the Minister was not required to obtain the DPP's reasons for non-prosecution, since those reasons were potentially relevant to the decision whether or not to extradite.
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> (b) The trial judge was wrong to conclude that s. 15(2) is merely permissive, and does not oblige the Minister to consider specific matters, for example the fact that the DPP has decided not to prosecute the appellant.
>
> (c) The trial judge was wrong to hold that it was not appropriate to seek the DPP's reasons for non-prosecution in the light of the independence of, and the immunity attaching to, that office, and that the need on the Minister's part to assess all information relevant to the s. 33 decision outweighed any general considerations in support of a blanket immunity from giving reasons.
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> (d) The trial judge was wrong to conclude that the reasons given by the Minister for her decision to make the s. 33 order were sufficient and that all the relevant matters had been considered, and in particular given that the Minister's letter did not say what her reasons were, and merely referred to having considered the matters raised by the appellant in his solicitor's letter.
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> (e) The trial judge was wrong to conclude that the residual discretion found in s. 15(2) of the Act limited the extent to which reasons must be given, in circumstances where there is no guidance in the Act by which the appellant can understand what discretionary matters the Minister had regard to.
>
> (f) The appellant was entitled to know the specific reasons for the decision to make the s. 33 order, given the wide discretion the Minister has in relation to matters she may consider, and the trial judge was wrong to conclude that the nature of that decision, taken after all court proceedings had concluded, did not require an extended or detailed

treatment of all issues when giving reasons.

39. Essentially, the appellant's legal submissions to this Court repeat the submissions that were made in the High Court, and to which I have referred in some detail. The appellant argues, in accordance with the grounds of appeal, that in all the respects identified therein the trial judge fell into error.

40. The Minister has argued that the trial judge was correct to conclude as she did in her written judgment, and essentially repeats the submissions made to the High Court.

Conclusions of the appeal

Sections 15(2) and 33 of the Act

41. The analysis of these provisions by the trial judge as contained in her judgment and which I have summarised above is entirely correct. I would simply add some further comment.

42. Extradition is a process of international cooperation in the criminal sphere between sovereign states whereby under some form of bilateral or multi-lateral treaty or Convention contracting states agree the basis on which persons may be sought by, and surrendered to, the requesting state from the requested state for the prosecution of offences of which they stand accused, or to serve a sentence already imposed following a conviction in the requesting state. It is not a criminal proceeding. It involves no finding of guilt or innocence. It is a process of surrender only. No rights of individuals are created as such by extradition treaties or conventions, albeit that where it is established that the fundamental rights of the requested person will be breached if he/she is surrendered, the court determining whether the requirements of the domestic law which give effect to the treaty or convention have been complied with, may nevertheless refuse to permit surrender for that reason. To this extent extradition is, as has often been said, a procedure or type of proceedings that comes before the court which is sui generis in nature emanating, as it does, from the sovereignty of states, and the concomitant right of such states to prosecute offences as part of its right to uphold the rule of law in a democratic society.

43. It is important in the context of the present case to emphasise the non-creation of individual rights in the Convention to which effect is given by Part II of the Act. As the trial judge has explained so clearly and in my view correctly, s. 15(2) of the Act gives effect to that part of Article 9 of the Convention which provides that "extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences". That is an agreement between the contracting parties to that Convention. It does not create an individual right upon any individual whose extradition is requested not to be extradited in such circumstances, or to seek not to be extradited. Whether or not the Minister chooses for whatever reason to refuse to surrender a person to the requesting state where the DPP has decided not to prosecute the extradition offences in this jurisdiction or has terminated any such prosecution is a matter solely for the decision of the Minister. The contracting parties to the Convention have agreed in effect that the Minister may choose to do so.

44. The appellant has no individual right arising from the Convention, the Act or otherwise, to have his extradition refused by the Minister on the ground that the DPP has decided not to prosecute him for the extradition offences, or even to seek to have his extradition refused on that basis. While there is nothing to prevent the appellant requesting that the minister avail of his power under s. 15(2) of the Act, and to not make an order under s. 33 for that reason, there is no obligation on the Minister to give reasons, in the judicial review sense of 'reasons' in the event that he does not refuse surrender on the basis of s. 15(2). The making of the request, and the seeking of reasons from the Minister should he proceed to make the s. 33 order, does not alter the fact that he has no right to seek to have his extradition refused.

45. It follows inexorably that the appellant has no entitlement to require the Minister to obtain from the DPP her reasons for deciding not to prosecute him, before any decision to make the order under s. 33 is made. It is a matter solely and entirely for the Minister to invoke s. 15(2) if he wishes to refuse extradition on some other basis than those provided for specifically in the Act which is giving effect to the agreed terms of the Convention/Integrated Treaty. He does not have to explain either why he has not considered refusing extradition under that section, or if he has so considered, why he has decided not to refuse.

46. In his previous judicial review proceedings the appellant had sought to argue that he was entitled to the DPP's reasons for her decision not to prosecute him in this State for the extradition offenses. The DPP had responded to a letter from his solicitor in which she stated that she had reached her decision not to prosecute him in accordance with the DPP's Guidelines, and that it was not her practice to give reasons for that decision. In my judgment in his appeal against the High Court's refusal of judicial review reliefs including a declaration that the failure to provide reasons for deciding not to prosecute amounted to a breach of fair procedures ([2016] IECA 373), I stated:

> "22. … in the present case one must look at the appellant's complaint as to the adequacy [of] reasons given for the decision not to prosecute, in the context where, as he conceded, and as is clearly the case, he has no right, be it statutory, constitutional or otherwise, to be prosecuted for an offence here, even where he offers a plea of guilty. There is simply no such right known to the law. It has always been thus, as is stated by Finlay C.J. in State (McCormack) when he stated: 'the constitutional right of access to the courts is a right to initiate litigation, not a right to compel suit or prosecution'. The fact that the DPP is responsible for deciding whether or not to prosecute an offence, and the fact that s. 15 prohibits surrender as provided therein, does not create a right in favour of somebody such as the applicant whose extradition is sought to be prosecuted here for the offence for which that extradition is sought.
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> 23. The decision not to prosecute the appellant affects no recognised right in law. In my view it follows that he has no free-standing right to be given the reasons for the decision not to prosecute. The right to reasons must relate back to the type of decision under scrutiny and to some right actually engaged. If he has no right even to request what he is requesting, he has no right to reasons why his request is refused. This is clear from the authorities to which the Court was referred both in the High Court and on this appeal, and is encapsulated in the short passage already quoted above from Clarke J's judgment in Rawson. None of the well-known authorities which have been relied upon by the appellant even suggest that a decision made which affects no right to which the person has an entitlement must be explained by the giving of reasons for it."

47. These comments are apposite also in the present appeal given my conclusion that the appellant has no right to a refusal of his extradition because the DPP made a decision not to prosecute him, and no right even to require the Minister to consider exercising the power to refuse his extradition under s. 15(2).

The adequacy of the Minister's reasons for making the s. 33 order

48. I entirely agree with the conclusions reached and expressed by the trial judge in her judgment and as expressed by her at para. 77 of her judgment from which I have quoted above, and it is unnecessary to add anything further. The reasons given by the Minister are clear, and particularly given my conclusions in relation to the seeking of reasons from the DPP nothing more was required to be explained in relation to the decision under s. 33 of the Act.

49. For all these reasons I would dismiss this appeal.