Neutral Citation [2013] IEHC 217

THE HIGH COURT

[2013 No. 755SS]

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 40.4.2 OF THE CONSTITUTION

BETWEEN

DHAMENDRA SING SEERUTTUN

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON

RESPONDENT

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

1. This is an enquiry under Article 40.4.2 of the Constitution into the legality of the arrest and detention of the applicant in respect of whom a deportation order was made.

2. The applicant argues the arresting garda did not have reasonable cause to suspect that the applicant intended to avoid removal from the State- that being the ground given. It is also said that the applicant's detention is unlawful because the authorities are not in a position to effect deportation within the 8-week period provided by statute. Other complaints are also made and I will address these in the course of the judgment.

3. The applicant and his wife are nationals of Mauritius who married in 1989. They have four children. The applicant's wife came to Ireland in September 2006 and has resided lawfully in the State until April 2013. (She is currently in the process of renewing her permission to be in the State). The applicant appears to have been lawfully in the State on a student visa but later returned to Mauritius. On 4th May 2008, he came back to Ireland and applied for asylum. His appeal against a negative asylum decision issued from the Refugee Appeals Tribunal in June 2009 and a proposal to deport him was communicated to him in July 2009. He applied for subsidiary protection and leave to remain in August 2009 and refusals issued in May 2012. A deportation order was signed on 17th May 2012 and he was notified of this by letter dated 23rd May 2012. Proceedings challenging the deportation order issued on 8th June 2012, and an undertaking was given not to deport the applicant. This undertaking was withdrawn on 30th July 2012.

4. Persons in the position of the applicant are required to come to the Garda National Immigration Bureau ("GNIB") on Burgh Quay in Dublin at regular intervals. Letters referred to as 'presentation letters' call proposed deportees to the Burgh Quay offices at a specified time and date. These letters, in respect of this applicant, have stated:

> "For the purpose of ensuring your deportation from the State pursuant to s. 3(9)(a)(i) of the Immigration Act 1999 as inserted by the Illegal Immigrants (Trafficking) Act 2000, I require you to present yourself at GNIB on 12 July 2012 at 14.00 in order to facilitate your deportation from the State.
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> I am to remind you that you are required to reside at the above address pending your removal from the State.
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> You may be directed to present yourself at such other time and place as directed by a member of An Garda Síochána.
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> ***If you fail to comply*** with any provision of the Deportation Order or with any requirement in this notice, an Immigration Officer or a member of the An Garda Síochána ***may arrest and detain you without warrant*** in accordance with s. 5, sub-section (1) of the Immigration Act 1999, as amended by the Illegal Immigrants (Trafficking) Act 2000. It is also an offence under s. 8 of the Immigration Act 1999 to obstruct or hinder a person authorised by the Minister to deport you from the State.
>
> Yours sincerely."[empahsis in original]

5. The applicant received presentation letters for 12th July 2012, 2nd August 2012, 11th September 2012, 1st November 2012, 13th December 2012, 24th January 2013, 7th February 2013, 7th March 2013 and 16th April 2013. (Each of the letters note that the address of the applicant as 'Flat 6, 10 Mountjoy Square, Dublin 1 ').

6. On the recitation of the facts thus far, one can see that the applicant has been in Ireland for approximately five years in pursuit of asylum status and subsidiary protection or leave to remain. Fallowing elaborate process, he was unsuccessful and the State has decided to deport him. Persons in like position are given the opportunity to leave the State voluntarily. Where this option is not taken, the deportation process commences. Ireland does not incarcerate persons intended to be deported unless neccessary. Instead, a regime of regular reporting to the authorities exists. An important aspect of this regime is that the authorities know where the proposed deportee lives. It is not surprising, therefore, that the Presentation letters always remind persons of the requirement to reside at the address that they have given. The controversy in this case relates to that.

7. When the applicant presented at the GNIB on Burgh Quay on 16th April 2013, Detective Garda Cullen met him and asked if he was still living at Flat 6, No. 10 friend, with whom he lived and who worked in a shop on Dorset Street, had a key. He telephoned his friend in advance of travelling there with the gardaí. They left Burgh Quay in an unmarked car and went to the shop on Dorset Street. The applicant and his friend spoke - probably in Creole Mauritian. The Detective Garda conversed with the applicant's friend who informed him that the applicant did not live at the Mountjoy Square address and had never lived there. The applicant admitted to lying. Det. Garda Cullen decided to arrest the applicant pursuant to section 5(1) of the Immigration Act 1999. The terms of that provision are as follows:

> "5.-(1) Where an immigration officer or a member of the Garda Síochána, with reasonable cause suspects that a person against whom a deportation order is in force-
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> (a) has failed to comply with any prov1s10n of the order or with a requirement in a notice under section 3 (3)(b)(ii);
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> (b) intends to leave the State and enter another state without lawful authority;
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> (c) has destroyed his or her identity documents or is in possession of forged identity documents, or
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> (d) intends to avoid removal from the State, he or she may arrest him or her without warrant and detain him or her in a prescribed place."

8. I questioned Det. Garda Cullen, who gave evidence in this matter, about why he arrested the applicant and he said that the reason a person who is proposed to be deported might give a false address is to evade deportation if officials call to the given address to effect the deportation order. Det. Garda Cullen also informed the court that had the enquiry as to the address of the applicant been benign, he would not have arrested the applicant and instead would have given him a new presentation letter.

9. Evidence was also given to the court by Detective Inspector Philip Ryan of the GNIB. The court was informed that on 15th and 16th April 2013, information was sought by the GNIB from a travel agency about travel arrangements in respect of the applicant for the purposes of his deportation. Various options were communicated to the GNIB involving flights from Dublin via Dubai to Mauritius on 22nd;23rd April and from Dublin via Frankfurt to Mauritius on 23rd April. These arrangements also included arrangements for escorts for the applicant from Dublin to Frankfurt and returning from Frankfurt to Dublin. Det. Garda Cullen knew nothing of these arrangements. Detective Insp. Ryan said proximity in time of the arrangements to deport and the enquiry as to the validity of the applicant's address conducted by Detective Garda Cullen were a coincidence.

Was there a reasonable cause to suspect that the applicant intended to evade deportation?
10. The first issue to be decided is whether the Det. Garda had reasonable cause to suspect that the applicant intended to evade deportation.

11. The parties agree that the decision of the Det. Garda must be reviewed objectively. The issue is not whether Det. Garda Cullen had reasonable cause to suspect that the applicant was an intended evader but rather whether a reasonable person would so conclude on the basis of the same information. Counsel for the applicant relies on the decision of this court in *Troci v. The Governor of Cloverhill Prison* [2011] IEHC 405 (Hogan J. 2nd November 2011). In *Troci*, the applicant was arrested under s. 5(1)(d) of the 1999 Act. A deportation order had been made on 21st February 2011. The applicant had married on 1st March 2011. He had attended at the GNIB on more than 15 occasions in accordance with the presentation letters. On 15th October 2011, the applicant and his wife attended at the GNIB. In an exchange between the gardaí and the applicant, he informed the gardaí that he had no intention of going home and that he was not willing to go home. The gardaí then arrested him.

12. Referring to Irish and English case law reviewing 'reasonable cause to suspect by a police officer', Hogan J. noted the comments of Lord Hope in *McKee v. Chief Constable of the RUC* [1996] UKHL 6, [1997] A.C. 286, who said:

> "It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.
>
> This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer."

Having reviewed some of the authorities, Hogan J. noted:

> "14. Proceeding from that premise, therefore, one is therefore driven to conclude that the suspicion in question must refer either to some overt act or deed (including statements) on the part of the arrested person or some external piece of intelligence which suggests that there is a risk that such person will seek to evade the deportation process. Presenting with an apparently false identity (essentially the situation in *Om*) is one such example and failing to present to a Garda station or immigration office at a nominated time and place is quite obviously another. Reliable intelligence that the applicant plans to escape is yet another such example."

Hogan J. concluded that the indication by the applicant in *Troci* that he was unwilling to go home and that he intended to stay in Ireland did not necessarily mean that he intended to avoid removal from the State. Hogan J. concludes by saying:

> "17. Thus analysed, it will be seen that the responses to the question proved altogether too slender a basis to justify the arrest. On reflection, the reasonable person would have cross-examined Mr. Troci further regarding his intentions to evade the deportation order and to comply with the legal obligation to attend for this purpose before deeming the suspicion to have been arrived at with reasonable cause. In these circumstances, I am coerced to the conclusion that the arrest was unlawful."

13. The applicant relies, in particular, on that last quoted paragraph. Counsel for the applicant submits that the comments of Hogan J. are authority for the proposition that deeper enquiry and questioning is required before a reasonable suspicion can be formed. Had such enquiries been conducted by Det. Garda Cullen, it would have revealed that the applicant had dutifully presented at the GNIB, as requested, on at least ten occasions and as his counsel stated, had a 100% record of compliance. A person who intends to evade removal from the State would not have been so compliant, it is said. Enquiries would also have revealed the existence of judicial review proceedings challenging the validity of the deportation order which, would, have led the Det. Garda to conclude that the applicant was not an evader.

14. It must be recalled that on the day of his arrest, the applicant was asked directly by Det. Garda Cullen to confirm that he lived at Flat 6, 10 Mountjoy Square. He confirmed that this was the truth. The applicant brought Det. Garda Cullen to the shop where his friend worked for the purposes of collecting the key and then bringing the garda to the place where he said he lived. The friend told Det. Garda Cullen that the applicant did not live with him and the applicant then admitted to lying.

15. These circumstances constitute an overt act or deed (including statements) of the applicant and an external piece of intelligence

which suggest that there is "*a risk that the applicant would evade deportation*", to borrow the phraseology of Hogan J. (see para. 14 of his judgment in *Troci*). As explained to the court by the Det. Garda, it is of central importance that addressees of deportation orders inform the Irish authorities where they live, and, if they change address, what their new address is.

The pre-deporation system could not work without this element. The system places trust in persons proposed to be deported, notwithstanding the obvious tension between the authorities and a person (such as the applicant) who has decided not leave the State vountarily. When this trust is breached they are sometimes taken into custody.

16. I conclude that Det. Garda Cullen's decision, objectively reviewed, was lawful.

Was the detention lawful?
17. The applicant submits that the arresting officer had no active intention to deport the applicant and that such intention must be in the mind of the person making the arrest. In this regard, the applicant refers to the review of the *Illegal Immigrants (Trafficking) Bill (In the matter of Article 26 of the Constitution and in the matter of Sections 5 and 10 of the Immigrants (Trafficking) Bill 1999* [2000] 2 I.R. 36), to the comments of the Chief Justice who said at p. 411:

> "Under the principles of *East Donegal Cooperative v. Attorney General* [1970] I.R. 317, and indeed in the light of modem jurisprudence at common law, an executive power of detention must not be unnecessarily exercised. Even if the power is properly exercised in the first instance, the relevant executive authority must be vigilant to ensure that the detention be brought to an end if, having regard to new circumstances or discovery of new facts or for some other reason, it is no longer necessary. This should be done independently of any application in that regard by the person concerned."

18. Both the applicant and the respondent refer to the decision of Finlay Geoghegan J. in *BFO v. The Governor of Dachas Centre* [2005] 2 I.R 1 in support of their respective positions on the proposition under discussion. The relevant passage of the decision is as follows:

> "It appears to me that there must be as a precondition to the valid exercise of the power [to arrest and detain], a concluded intention to deport the applicant concerned. It was submitted on behalf of the applicant that it must be a proximate intention. This does not appear to me to arise on the facts of this case in the light of my conclusion that there must be a definite or concluded intention to deport. Until such time as there is a definite or concluded intention to deport the person in question, it cannot be said that detention is necessary for the purpose of ensuring deportation.
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> In most instances, the making of a deportation order will be evidence of a final or concluded intention to deport the person in question. The facts of this case are unusual. The deportation order was made in August, 2002. At that stage there was a final or concluded intention to deport the applicant. The birth of her son in the State changed in a significant way her family circumstances. Counsel for the respondents submitted that the making of the application for residency based upon the birth of her Irish born son and the acknowledgement received did not alter the legal status of the applicant in Ireland. This is correct in the sense that the applicant remains a person who has no right to be in Ireland. However as stated by the Supreme Court in the Article 26 reference this does not mean that she is a person without rights. In addition there now exists her son, an Irish citizen with rights.
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> As already stated, it was accepted on behalf of the respondents that subsequent to the 3rd January, 2003, the applicant could not be deported without a decision made by the Minister on her application for residency. Hence, I have concluded that there was not, at any time subsequent to the application for residency based upon the birth of her Irish born son, which was acknowledged on the 3rd January, 2003, a final or concluded intention to deport the applicant. Hence, a necessary precondition to the exercise of the power of detention under s. 5(1) of the Act of 1999 did not exist on 27th January, 2003."

19. I pay particular attention to the observation by the learned judge that in most cases, the existence of a deportation order will constitute adequate evidence of a concluded intention to deport for the purposes of invoking the powers under s. 5, (1) of the 1999 Act. That this is so is reflected in the terms of the Presentation letters which addressees of such orders receive when they are asked to come to the GNIB at a pre-arranged time "to facilitate deportation from the State."

20. As pointed out by counsel for the respondent, Keane C.J. noted in the *Article 26* reference that detention would be possible even in circumstances where no travel arrangements were in place. He said:

> "Depending on the country of origin, travel arrangements may be extremely difficult to put in place and powers of detention between the making of the deportation order and in advance of the deportation itself may well be necessary in some instances."

21. Thus, even if no travel arrangements had been sought or commenced, Det. Garda Cullen, who was aware of the existence of a concluded deportation order and the content of the presentation letters, was entitled to arrest and detain the applicant on the basis of his reasonable suspicion (which I have found was objectively justified) that the applicant intended to evade removal from the State. It is not necessary that the arresting officer be party to the practical arrangements which may be in train in the background nor is it necessary that he personally intends that the person he is arresting be deported. I reject this ground of illegality.

22. It was argued that the applicant's right to be informed of his entitlement to access a solicitor was infringed. The evidence of the arresting garda was that he arrested and cautioned the applicant on Dorset Street. Immediately thereafter, when the garda and the applicant were sitting in the unmarked garda vehicle, the garda informed him that he could phone a solicitor if he wished. It is not contended by the applicant's counsel that there was a failure to inform the applicant that he could contact a solicitor. The complaint appears to be that the communication of this information lacked any formality or substance. It was, according to the submission, delivered too casually. Reference was made on behalf of the applicant to the decision of O'Flaherty J. in *Lavery v. Member in Charge, Carrickmacross Garda Station* [1999] 2 I.R. 390, where the learned Supreme Court judge said:

> "It is beyond debate that a person thus detained has a constitutional right to access to a legal advisor . . . As stated in the judgment of the Court of Criminal Appeal in the *The People (D.P.P.) v. Peter Pringle* at p. 96:-
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> 'This Court is satisfied that the Garda Sochana have a right to interrogate a person in lawful custody provided that such interrogation is carried out in a fair and reasonable manner. The Court is also satisfied, as has been clearly established, that a person in lawful custody is entitled to *reasonable* (emphasis added) access to his lawyer or solicitor. These two rights must, to some extent, be balanced and there are no grounds for holding that either right can or should be exercised

to the unreasonable exclusion of the other'."

The applicant also refers to Regulations 8 and 11 of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119/1987) and in particular to Regulations 8 and 11 thereof. Regulation 8 directs:

> "The member in charge shall without delay inform an arrested person ...(b) that he is entitled to consult a solicitor. ..The information shall be given orally."

Regulation 8 also directs that an arrested person be told that he is entitled to have notification of his being in custody sent to another person reasonably named by him. Regulation 11 indicates that an arrested person should have reasonable access to his solicitor.

23. In respect of the Regulations, these appear only to have application to an arrested person who is taken on arrest to a Garda Síochána station and that does not apply in this case.

24. I can find no infirmity with the manner in which the Det. Garda communicated to the applicant the fact that he was entitled to contact his solicitor or anybody else if he wished.

25. It is further alleged that there was a failure to caution the applicant or to clarify his status at the time when he was invited to visit Mountjoy Square in the company of the gardaí and in an unmarked car. The complaint here appears to be that in reality, he was under arrest but had neither been so informed nor appropriately cautioned. My view is that there is insufficient evidence of restraint of liberty or compulsion pertaining to this episode to trigger the need for formal arrest and caution. Useful guidance on such circumstances is to be found in the decision of *Dunne v. Clinton* [1930] I.R. 366, where O'Sullivan P. said at 372:

> "The first question that arises is whether this detention is something different from arrest or imprisonment. In law there can be no half-way house between the liberty of the subject, unfettered by restraint, and an arrest. If a person under suspicion voluntarily agrees to go to a police station to be questioned, his liberty is not interfered with, as he can change his mind at any time. If, having been examined, he is asked, and voluntarily agrees, to remain in the barracks until some investigation is made, he is still a free subject, and can leave at any time. But a practice has grown up of 'detention', as distinct from arrest. It is, in effect, keeping a suspect in custody, perhaps under as comfortable circumstances as the barracks will permit, without making any definite charge against him, and with the intimation in some form of words or gesture that he is under restraint, and will not be allowed to leave. As, in my opinion, there could be no such thing as notional liberty, this so-called detention amounts to arrest, and the suspect has in law been arrested and in custody during the period of his detention."

The applicant was never under a compulsion to accompany the Garda Síochána to Mountjoy Square. He was invited by the garda to cooperate with an enquiry as to where he lived and he voluntarily assisted. No evidence was given to the court, either by the applicant or by the Gardaí that there was any reluctance on the part of the applicant to engage in this enquiry in cooperation with An Garda Síochána. On this basis, I find that the applicant was not under arrest at any time at the offices of the GNIB on Burgh Quay or during the journey from Burgh Quay to Dorset Street or at any time during the encounter with the applicant's friend in the shop on Dorset Street. The arrest happened on the street outside the shop once the Garda Síochána had heard from the applicant's friend that the applicant did not live at the stated address. I therefore reject this argument.

26. It is submitted that the notification of detention required by Regulation 7 of the Immigration Act 1999 (Deportation) Regulations 2005 was breached. The Regulation provides:

> "7. Where an immigration officer or member of the Garda Síochána arrests a person pursuant to s. 5(1) of the Act and where he or she proposes to detain the person in a prescribed place, he or she shall, in writing, inform the Member in Charge, in the case of a Garda Síochána station, or the Governor, in any other case, of the arrest and direct that the person be detained until further notice."

The complaint made is that the actual notification does not direct the person's detention in a specific prescribed place. Though addressed to the Governor of Cloverhill Prison, it simply directs that the applicant "be detained in a prescribed place". It is also submitted that the 2005 Regulations require that the direction must direct that the person be detained "until further notice" and that this phrase is absent from the detention order.

27. The applicant refers to the decisions of *G.E. v. The Governor of Cloverhill Prison* [2011] IESC 41 and *Darchiashvili v. The Governor of Mountjoy Women's Prison* [2011] IEHC 264 in support of the propsosition that warrants, detention orders, etc. must comply strictly with rules as to their content and form and that there is no margin for deviation.

28. In *G.E.*, release from detention was sought because the order of detention did not show the immigration officer/garda had suspected with reasonable cause that the applicant had been unlawfully in the State for a continuous period of less than three months and that the grounds for refusing leave to enter the State did not appear on the face of the detention order. Denham C.J. referred to both ancient and new authority to the effect that orders and warrants and documents of like authority detaining persons or authorising property search must disclose the facts upon which the power to make the orders or warrants rest. The Chief Justice said:

> "31. A document, such as in issue here, should contain clear information on its face as to the basis of its jurisdiction. The information is required so that it be available to, for example, (a) the person in custody, such as the appellant; (b) the Governor of the Prison, or any other, who is holding a person in custody; and (c) the Court which is required to inquire into the custody pursuant to Article 40 of the Constitution."

29. Denham C.J. said the defect in the detention order was the failure to state that the appellant had been refused permission to land, as required by s. 5, ss (1) of the Act of 2003, and failed to state the Garda had "with reasonable cause suspected" that the appellant had been "unlawfully in the State for a continuous period of less than three months".

30. The second authority relied upon by the applicant in support of the proposition that the law will not tolerate any defects in a detention order is the decision of Edwards J. in *Darchiashvili v. The Governor of Mountjoy Women's Prison* [2011] IEHC 264. In that case, the complaint related to a breach of Regulation 7 of the Immigration Act 1999 (Deportation) Regulations 2005 (S.I. No 55/2005) (supra) requiring the detainer to be told of the arrest.

The complaint here was that the Governor was not notified in writing of the applicant's arrest. Edwards J. concluded, in response to the argument of the respondent that the defect was procedural only, as follows:

> "The court is satisfied that this is not merely a procedural requirement. Rather it is properly to be characterised, in this court's view, as a provision necessary for the purpose of giving full effect to the power of arrest and detention contained in s. 5 of the Act of 1999. It is not merely an incidental, supplementary and consequential provision, rather the regulation creates a necessary precondition to the lawful delegation of the power of detention, and/or the transfer of custody, of an intended deportee who has been arrested and initially detained by an authorised person in reliance on s. 5 of the Act of 1999, to the person in charge of the prescribed place at which it is proposed to further detain, or more correctly, continue the detention of the detained person."

The judge ordered the release of the proposed deportee in that case.

31. The complaint raised in these proceedings is that the notification of detention, though addressed to the Governor of Cloverhill Prison, directs that the applicant "be detained in a prescribed place". No complaint is made that about absence of clear information on the face of the detention order as to the basis of its jurisdiction. In both *G.E.* and *Darchiashvili*, the absence of information had the effect of failing to reveal the basis of its maker's jurisdiction, in the case of *G.E.*, and in the case of *Darchiashvili*, had the effect of dpriving the person in charge of a prescribed place of information as to whether the intended deportee had been arrested before being presented to him or her. In other words, a mere deficiency per se is not enough to invalidate a detention. The deficiency must have a negative, identifiable effect.

32. The wording of s. 5(1) of the Immigration Act 1999 must be recalled. It provides that the officer may arrest [a person against whom a deportation order is enforced] with or without warrant and detain him or her in a prescribed place. The obligation on the arresting garda or immigration officer is to ensure, following arrest, that the person is detained in a prescribed place. No complaint is maintained in these proceedings that Cloverhill Prison is not such a place. My view is that there was no obligation on the garda to make any mention of his obligation to ensure that the person be detained in a prescribed place on the face of the order. His obligation was to ensure that this came about and my view is that this objective was achieved. I reject this argument of infirmity in the notification of detention.

33. It is also argued that in accordance with Regulation 7 of the 2005 Regulations, that there was a breach of a rule that the immigration officer or member of the Garda Síochána must "in writing inform . . . the Governor of the arrest and direct that the person be detained until further notice". The notice clearly informs the Governor of the arrest and says that the applicant be detained "pending the making of arrangements for his removal from the State". It is clear that the Governor is informed that the detention will last until certain events occur - those being the making of arrangements for the removal of the applicant from the State. Is this the same thing as informing the Governor that the person is to be detained "until further notice"? In my view, Regulation 7 requires the officer or garda to inform the Governor that he is to detain the person in question until such time as he is contacted again. The parent statute from which Regulation 7 derives its legitimacy caps the period of detention at 56 days. The court, I think, is entitled to presume that the Governor is aware of the maximum period of the applicant's possible detention. Thus, the Governor is aware, that by operation of law the detention will terminate after 56 days (consecutively or in aggregate) or at an earlier point if arrangements are made for deportation. In my view, thus informing the Governor was the equivalent of telling him that detention might end if so notified by persons responsible for arranging deportation. I find that the in substance the Governor was infomed that the detention would be until further notice. In these circumstances, I find no breach of Regulation 7.

34. There being no infirmity in either the arrest or the detention of the applicant, no order for his release will be made pursuant to Article 40.4.2 of the Constitution. I should add that during the hearing of this matter, an adjournment was necessary and an application was made pursuant to section 5 (5) of the 1999 Act, by consent, that the applicant be released subject to the condition that he sign on at a garda station on a daily basis. Such power of release is dependent on there being court proceedings challenging the validity of the deportation order concerned. I acceded to this application.

35. At the resumption of the enquiry, I rejected the submission of counsel for the respondent that matters were now moot because the applicant was at liberty. My view was that although the applicant was not in prison, his liberty was significantly curtailed by the requirement to sign on with the gardaí on a daily basis and therefore I decided that I was required to complete the enquiry under Article 40.4.2 as to the lawfulness of the detention of the applicant. His conditional release was dependent on a valid underlying detention. If that had been found to have been invalid his supervised release would have fallen away too and he would then have been at full liberty. Thus the enquiry was not moot and the enquiry was continued to conclusion.