THE HIGH COURT

Record Number: 2006 No. 111 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND

BERNARD MARTIN BIGGINS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 8th day of November 2006

1. The surrender of the respondent is sought by the appropriate judicial authority in Scotland, namely a Sheriff at Glasgow Sheriff Court, who issued a European arrest warrant dated 17th August 2006. The warrant was endorsed for execution by the High Court here on the 5th September 2006, and the respondent was arrested duly on the 8th September 2006 and thereafter brought before the High Court as required under the Act. The offence for which he is sought to face trial is one described in the warrant as "assault to injury and attempt to murder".

2. No issue is raised as to the identity of the respondent, and I am satisfied from the affidavit evidence of Sgt. Linehan, the arresting officer that the person before the Court on this application is the person in respect of which this arrest warrant has been issued. I am also satisfied that at the time of arrest and thereafter, Sgt. Linehan complied with the requirements of the Act.

3. As far as correspondence is concerned, the requesting authority has ticked the box in paragraph (e) of the warrant beside the words "murder, grievous bodily harm", so as to indicate that the offence for which he is sought is one in respect of which double criminality does not have to verified, pursuant to the provisions of Article 2.2 of the Framework Decision of 13th January 2002. It will be noticed that the box concerned refers to "murder" and not to "attempt to murder". An issue has been raised in relation to this, and which I will deal with in due course. The offence is nevertheless of the required minimum gravity.

4. The domestic warrant on foot of which the European arrest warrant issued is one dated the 4th October 2004. It issued in circumstances where the respondent had, following his arrest, been remanded in custody. Thereafter he appeared in custody before the Court on the 7th November 2003, when he was granted bail on certain conditions, and was remanded to appear again on the 4th October 2004. He failed to appear and the Court issued what in this jurisdiction would be commonly called a bench warrant.

5. It follows that this is not a case in which any undertaking is required under s. 45 of the Act before the Court may make the order for surrender. Subject to dealing with the Points of Objection raised by the respondent and the submissions urged on his behalf by Kieran Kelly BL, I am satisfied that the Court is not required under sections 21A, 22, 23, or 24 of the Act to refuse to order his surrender, and that his surrender is not prohibited by anything in Part III of the Act or the Framework Decision.

6. Before dealing with the points raised, I will set out a brief resumé of the alleged facts of the case as they appear in the European arrest warrant. The respondent and his partner and her 7 month old baby resided together at an address in Glasgow. It is alleged that they had a row during which the respondent approached her from behind, grabbed her by the throat, and tightened his grip so that she became unconscious. She recalls him saying to her during this incident "*I'm going to leave you something to remember me by*", before applying further pressure to her neck. The police noticed a redness on the neck of the victim following her complaint. These facts are what has given rise to the alleged offence of "assault to injury and attempt to murder" referred to in the warrant.

7. There are a number of issues raised by the respondent. I will deal with them in the order in which there were argued before me.

> *1. The offence is one of 'assault to injury and attempt to murder, whereas the box ticked for the purpose of correspondence is 'murder and grievous bodily injury', and therefore there has been a failure to comply with the requirements of the prescribed form of warrant contained in the Framework Decision.*

8. Mr Kelly points to the obvious fact that in this case there was no 'murder' yet this is the box that has been ticked in part (e) of the warrant. He submits that inchoate offence of 'attempted murder' is not provided for, and that therefore correspondence ought to have been made out, and the fact that it has not been is a failure to comply with the strict terns of the Framework Decision and the Act. He has urged that the Courts have consistently required that penal statutes be strictly complied with, and that this requirement cannot be expected to or required to yield to any principle of international comity. He has referred to the judgment of the Supreme Court in *DPP v. Kemmy* [1980] IR 160, as well as to that Court's judgment in *Aamand v. Sloane* [1995] 1 I.L.R.M. 61, as well as the judgment of Finlay CJ in *Sloan v. Culligan* [1992] I.L.R.M. 194. In each case it has been emphasised that where a statute is a penal statute it must as regards proofs required be strictly construed.

9. Micheál P. O'Higgins BL on the applicant's behalf submits that the warrant complies with the provisions of s. 11(1)(d) of the Act, as amended, and which requires that a European arrest warrant shall specify "*the offence to which the European arrest warrant, including the nature and classification under the law of the issuing state of the offence concerned*". In this regard he refers to the fact that the offence is clearly specified in paragraph (e) of the warrant as "assault to injury and attempt to murder". He refers to the fact that attempt to murder is an inchoate offence both in this jurisdiction and under the laws of the requesting state, and that there is no failure to comply with the terms of the Framework Decision or the Act where the requesting state has chosen to tick the box which relates to the substantive offence of murder, where the respondent is being sought for trial on the offence of attempted murder. He submits that the respondent knows from the warrant exactly what it is that he is wanted for. A letter dated 25th October 2006 from the Crown Office and Procurator Fiscal Office on Edinburgh has also been produced by the applicant. Mr Kelly has expressed objection to this letter being produced in this way. But given the nature of the new arrangements under the Framework Decision, where the judicial authority in the requesting Member State is dealing with the corresponding judicial authority in the requested Member State, I see no reason not to receive for consideration such a letter. In any event this letter merely clarifies that the respondent is sought in respect of one charge namely attempted murder. The letter goes on to state that attempted murder is an aggravated form of assault due to the physical consequences to the victim, and that assault is the crime of attacking another person deliberately with evil intent. The letter then states uncontroversially that murder is a common law offence and may be tried on indictment, and that in Scotland, common law offences are not contained in any statutory form but have long been recognised and punished by the criminal courts. Mr O'Higgins submits that in so far as the warrant itself contains nothing as far as the nature and classification of the offence is concerned, since it does not explicitly state the common law nature of the offence of attempted murder, the letter puts the matter beyond any doubt for the respondent, who could not, in any event even if the letter was not available, say with any conviction that he was not aware of exactly what offence he was being sought for. He refers also to the fact that within the warrant itself is a certificate from the judicial authority to the effect that the conduct alleged against the respondent

in the warrant constitutes the extradition offences specified.

10. Finally Mr O'Higgins submits that the point is one of a purely technical nature which should be rejected on the basis of the judgment in *Minister for Justice, Equality and Law Reform v. Rodnov*, *ex tempore*, unreported, Supreme Court, 1st June 2006, where the Chief Justice stated, *inter alia*, that while there was an absence in the European arrest warrant in that case of certain wording contained in the prescribed form of warrant in the Framework Decision "*it was not a want of formality which affected in any way the substance or effect of the European arrest warrant*".

11. I am satisfied that in this case there has been no deviation from the requirements of the prescribed form of warrant or the requirements of the Framework Decision in any way which affects its substance or effect. Neither has the respondent been put at any disadvantage by being caused on any rational basis any misunderstanding as to the basis on which his surrender is being sought. The cases to which Mr Kelly has referred concerning the obligation to strictly construe penal statutes or statutory provisions which have the capacity to deprive a person of his or her liberty must be kept in context. While I appreciate that some of the decisions refer specifically to an extradition context, it must be recalled that such context was at a time prior to 1st January 2004, when the European Arrest Warrant Act, 2003 came into law giving effect to the new surrender arrangements set forth in the Framework Decision. That Framework Decision has introduced a fundamental change in the nature of the process undertaken when one Member State seeks the surrender of a person resident in another Member State. Those arrangements have replaced former extradition procedures with a process of surrender for the purpose of the mutual recognition of arrest warrants issued in the requesting Member State. In so doing, fundamental rights are respected, and certain safeguards have been included in order to protect the constitutional and Convention rights of persons whose surrender is sought. But it is expressly stated in the Preamble to the Framework Decision at Recital (10) that "*the mechanism of the European arrest warrant is based on a high level of confidence between Member States", and "that its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles of Article 6(1) of the Treaty on European Union…..*". This cannot be simply regarded as an empty formula. The Framework Decision is to be referred to when interpreting and construing the legislation. In a situation such as the present case, where the respondent can be in absolutely no doubt as to the purpose of his surrender and what offence he will face trial in respect of, the argument made on his behalf under this heading must be regarded as being purely technical and not amounting to an argument of substance.

12. Where the offence specified, being the offence for which the respondent will face prosecution, is inchoate in nature, such as attempted murder, it makes complete sense that the double criminality which is relevant, and which does not require verification, is that of the substantive offence, and not the incohate. The offence ticked in the box is not to be seen as a contradiction of, or in conflict with, the offence stated to be that for which the respondent is to be prosecuted. The purpose of ticking the box is to indicate an offence the nature of which is common to all Member States, i.e. murder, and for that reason is one for which double criminality can be presumed and not in need of verification. To require the slavish adherence to form alone, which underlies the respondent's submission, would be to act contrary to the spirit and stated purpose of the Framework Decision, and the fact that the offence of attempted murder is not specifically marked as one of the offences in respect of which double criminality does not have to be verified is immaterial.

13. It was for the very purpose of "*removing the complexity and potential for delay inherent in the [then] present extradition procedures*", including, I suspect, by reason of the type of arguments which were capable of more successful argument under the previous regimes, that the Framework Decision was adopted by Member States. In the absence of any real demonstration of a breach of fairness, or a serious and real departure from the form of the warrant, the argument in the present case has to fail.

14. The second issue raised by Mr Kelly is that the surrender of the respondent is prohibited by Part 3 of the Act, and in particular by section 37 of the Act which provides:

> *"37. – (1) A person shall not be surrendered under this Act if –*
>
> *… (c) there are reasonable grounds for believing that -- …*
>
> *(i) the European arrest warrant was issued in respect of the person for the purposes of facilitating his or her prosecution or punishment in the issuing state for reasons* ***connected with*** *his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, …" (my emphasis)*

15. Mr Kelly's submission on the respondent's behalf is that because of the precise and unambiguous meaning to be given to the words "connected with", it follows that since the respondent is sought for the purpose of prosecution for an offence alleged to arise out of the relationship with his partner, the offence is "connected with his …sex…" and therefore requiring to be prohibited. Mr Kelly has relied upon the judgment of Denham J. in *Minister for Justice, Equality and Law Reform v. Dundon* [2005] 1 IR. 261 at p.267 et seq. in which the learned judge refers to the judgment of Blayney J. in *Howard v. Commissioners of Public Works* [1994] 1 IR. 101 as to the rules for construction of statutory provisions. He has referred also to the judgment of Denham J. in *O'Rourke v. Governor of Cloverhill Prison* [2004] 2 IR 456 in which a very careful examination of the own "produced" was undertaken by the learned judge.

16. By reference to the same type of exercise in relation to the words "connect" or "connected with", Mr Kelly states that the Oxford Dictionary definition of the former is "to bring together so as to establish a link", and the latter is "related in some way". He submits therefore that by reference to this ordinary meaning to be given to the words "connected with", it follows that the charge must be connected i.e. related in some way, to his sex or sexual orientation as the partner of the complainant.

17. That provisions of s. 37 of the Act which I have set forth above, reflect what is contained in recital (12) of the Framework Decision, namely:

> *(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a* ***person on the grounds of his or her sex****, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons." (my emphasis)*

18. There can be no doubt that the purpose and intention of what is stated in the recital is one designed to prevent discrimination on the grounds set forth, which include on the basis of sex or sexual orientation. In other words, surrender is to be refused if the offence is one brought, for example, because of a person's sex, sexual orientation, race, religion etc. Surrender would have to be refused, for

example, if the person's surrender was being sought so that he could face trial for an offence which applied only to a person of a particular religious grouping. That is an obvious and simple example.

19. The non-discrimination provisions contained in Article 23 of the Charter of Fundamental Rights of the European Union provides:

> *"Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."*

20. There is similar language appearing in Article 14 of the European Convention on Human Rights where it is provided:

> *"14. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

21. It is true that the intention of the legislature is to be first ascertained by the words chosen by the legislature to express that intention in the provision under scrutiny, and in the present case the words used are "connected with" and not what appears in the Framework Decision, namely "on the grounds of ". By reference to these words, Mr Kelly submits that because the respondent is a male, and the offence relates to an offence against his female partner, this is an offence "connected with "his sex or sexual orientation. To find in favour of such an argument would lead inevitably to the conclusion that where one partner to a relationship, be it homosexual or hetero-sexual, murders his or her partner during a row at home, and having been charged with that offence flees to another Member State to avoid trial, that person could not be surrendered because of this interpretation of the words "connected with" in the Act giving effect to the Framework Decision. That would be a classic absurdity arrived at by an interpretation so literal, and out of context, that it could not be open to the respondent.

22. There is plenty of authority to the effect that the intention of the legislature must be gleaned from the plain and ordinary meaning of the words used in the Act, and that unless there is some ambiguity in the choice of words, then the well recognised canons of construction should not be resorted to in order to find a different meaning, even if the plain and ordinary meaning does not appear entirely reasonable, or even absurd. See for example, Maxwell on The Interpretation of Statutes (12th ed., 1976) at p. 29. The following passage therefrom is quoted by Blayney J. in his oft-quoted judgment *in Howard v. Commissioners of Public Works* [1994] 1 IR. 101 at 154:

> *"Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common-sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to leave the remedy (if one be resolved upon) to others."*

23. Importantly, the learned judge also referred to some words of Lord Blackburn in *Direct United States Cable Co. v. Anglo-American Telegraph Co.* [1877) 2 App. Cas. 394, where that judge, referring to the need to determine the intention of the legislature by reference to the words used, nevertheless went on to say that "in order to understand these words it is natural to enquire what is the subject-matter with respect to which they are used and the object in view."

24. The context in which words are used was referred to also in a judgment quoted by Denham J. in her judgment in Howard at p. 162 thereof. In her judgment, the learned judge referred to a passage from the judgment of Lord Ratcliffe in In re MacManaway [1951] A.C. 161:

> *"The meaning which these words ought to be understood to bear is not to be ascertained by any process akin to speculation. The primary duty of a court of law is to find the natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light on the sense in which the makers of the Act used the words in dispute."*

25. I am satisfied that it is appropriate to refer to the words of the Framework Decision in the present case in order to seek out the context for the provision under scrutiny, given that the Act is for the purpose of giving effect to the Framework Decision, and also given that the legislature itself has appended the Framework Decision to the Act itself. That context informs the meaning to be given to the particular words being examined, namely "connected with" in s. 37 of the Act. The context is clearly that of discrimination on grounds of sex etc. Nowhere in the context could there be room for the idea that the legislature intended that a partner in a relationship who kills the other partner, or attempts to do so, should be immune to surrender to a requesting state to face trial for the alleged offence. Such a situation would also be truly absurd.

26. I am satisfied that in the circumstances of this case the absurdity of the result of the interpretation contended for by the respondent is such that it should be rejected. I am supported in my view that it is permissible to reject the meaning on the basis of absurdity even though the legislature for some reason used the words "connected with" rather than "on the grounds of", by reference to the words of Popplewell J. in *R v. Secretary of State for the Home Department*, ex p Naughton [1997] 1 All ER 426 at 437-438:

> *"The third reason for rejecting Mr Weatherby's argument is that it results in absurdity……Mr Weatherby submitted that it is a canon of construction that any ambiguity in a statute affecting the liberty of the subject should be construed in favour of an accused. That is a valid submission, but another equally important canon of construction is to interpret legislation, so far as is possible, to equate with common sense. Happily, common sense is still, I believe, a part of common law……. Equally there is always a presumption against construing an Act of Parliament so as to produce an absurd result."*

27. I am satisfied on the grounds both of absurdity and context the interpretation contended for by Mr Kelly, while superficially attractive at first sight, must be rejected in full. I am not overlooking the submission made by him to the effect that the use of the words "connected with" provides greater protection that the words used in the recital referred to, and that the legislature obviously chose to go that far. But the context and the absurdity of the result must weigh more heavily in arriving at the correct interpretation.

28. The third point raised by the respondent is that the making of an order of detention of the respondent upon the making of an order under s. 16 of the Act would result in the unconstitutional detention of the respondent. It is submitted that this is the result of the provisions of s. 16(4) of the Act that the respondent must be taken into custody upon the making of the order for surrender.

Release on bail pending the arrangements for his surrender being put into place is not a possibility under the section. He submits that such a provision is not mandated by anything in the Framework Decision.

29. In support of this submission, Mr Kelly has referred to the judgment of Henchy J. in *People (Attorney General) v. Gilliland* [1985] IR. 643. There is no doubt that this is a very persuasive and authoritative judgment in relation to the basis on which a court should exercise its discretion in relation to granting or refusing bail in extradition matters. It certainly makes it quite clear that there should be no distinction made between persons accused of crimes in this jurisdiction and persons whose extradition is sought to face trial in another jurisdiction. Henchy J. was not prepared to accept the argument put forward on behalf of the Attorney General in that case that the absconding test applied in the case of the former, should in the latter case be applied somewhat differently in order to take account of the State's duty to comply with its international obligations under an extradition treaty. While accepting that the State had such a duty, and that a person was held so that the State could comply with same, he was of the view that the absconding test should be no different in the two instances. In that regard he stated at p. 646 of the judgment:

> *"For my part I consider that there is no reason for applying the absconding test any differently in extradition cases as compared with ordinary criminal cases. In an extradition case the State's duty is to take all reasonable steps to ensure that the prisoner will ultimately be available for extradition. In an ordinary criminal case the State's duty is to ensure that the prisoner will be available for his trial. In either case the State's duty must operate in a way that will not conflict with the fundamental right to personal liberty of a person who stands unconvicted of an offence under the law of the State. That right to personal liberty should not be lost save where the loss is necessary for the effectuation of the duty of the State as the guardian of the common good – in the extradition cases the duty normally being to fulfil treaty obligations and in ordinary criminal cases normally to enable the criminal process to advance to a proper trial. If in either case a court is satisfied that there is no real likelihood that the prisoner if granted bail would frustrate the State's duty by absconding, I do not consider that bail should be refused on the absconding test…"*

30. Mr Kelly's submission in the light of this judgment relates to the fact that under the provisions of s. 16(4) of the Act, the Court is required, upon the making of the order of surrender, to commit the respondent to a prison, and that unlike when the person is first arrested and brought before the court under s. 13 of the Act, for a remand to a hearing date there is no provision for bail being granted pending the arrangements for his surrender being put into place. His submission is that this amounts to an unconstitutional deprivation of the respondent's right to personal liberty and that the Court cannot therefore make the order.

31. Mr Kelly points also to the fact that the requirement that such a person be committed to a prison after the order of surrender is made does not come from anything in the Framework Decision. It appears only in the Act giving effect to that Decision, and that the measure is a disproportionate step, being one that goes beyond what is necessary in pursuit of the objectives of same. Article 12 of the Framework Decision under the heading "Keeping the person in detention" states:

> *"When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding"*

32. Clearly this article permitted of a situation where the legislature could have, if it saw fit, decided to permit of a situation where, upon the making of an order of surrender the requested person could remain at liberty by being granted bail pending actual surrender taking place. The Oireachtas has provided as stated in this article that upon arrest the judicial authority, i.e. the Court, can remand the arrested person either in custody or on bail. But the Oireachtas has also decided that an appropriate measure to adopt following the making of a surrender order, so as to give effect to the proviso that "the competent authority of the said member State takes all the measures it deems necessary to prevent the person absconding", is to require the Court to commit such a person to prison. As far as proportionality is concerned, it is relevant to note that under s. 16(4)(b) of the Act, the Court is obliged to inform the person being surrendered of his/her right to make complaint under Article 40.4.2 of the Constitution at any time before surrender takes place. It is also relevant to note that s. 16(5)(a) provides that subject to any order of postponement which might be made or subject to the hearing of any such application under Article 40.4.2 of the Constitution, the person must be surrendered pursuant to any such order, not later than ten days from the coming into effect of the order, i.e. 15 days after the making thereof (as provided by s. 16(3) of the Act. These safeguards are part of the statutory framework.

33. This Court is not being asked to decide upon the constitutionality of s. 16(4) of the Act. What is contended is that an order of surrender should be refused on the basis that by being placed in detention following the making of the order, and being kept in such detention until actual surrender takes place, amounts to an unlawful deprivation of the respondent's liberty.

34. Of course, this Court has not at the time of hearing this submission made any order taking the respondent into custody, so the argument is one made in anticipation of such an order being made. The arguments made would be arguments open to the respondent on any such application under Article 40.4.2 of the Constitution which he might have brought following the making of the order in any event.

35. While I accept, as I must, the authority of the decision of Henchy J. in *People (Attorney General) v. Gilliland* already referred to, it is important to bear in mind what it decided and the context in which it was decided. By that I mean that it was in the context of Part II of the Extradition Act, 1965 where an order had been made under s. 29(1) of that Act by the District Judge, and as often occurred, the respondent launched habeas corpus proceedings following his committal, and applied for bail pending the hearing of that application. That bail was granted, but the Attorney General appealed on the basis that an incorrect test as to him being a flight risk had been applied, and that submission was rejected. The Court, even in the present case, would on an application for habeas corpus, be entitled to entertain an application for bail pending the hearing of any application made by this respondent following the making of the order for his surrender under s. 16(1) of the Act, and no doubt the Court would approach its task having due regard to what was decided in Gilliland. That case, however, is not authority for the submission that the incarceration of a person against whom an order for surrender has been made would amount to an unconstitutional deprivation of liberty. The decision, as indeed noted by the learned Henchy J. in his judgment dealt with one issue only, namely what test should be applied by the court in determining the likelihood that a person will be available for extradition.

36. I am satisfied that the taking of the respondent into custody to await his surrender does not constitute a ground for refusing to make the order sought on this application. The Court is required to do so under the Act, and the Act enjoys a presumption of constitutionality. That constitutionality is not under challenge. Arguments as to proportionality must await a case in which it is appropriate for the Court to reach a conclusion on that point. It is best that I say no more about it on this application, except that I have already referred to some safeguards which have been built into the overall scheme, namely the short time allowed in order to

put the surrender into effect following the making of the order, and the retention of an entitlement any event to bring an application for habeas corpus.

37. The final point raised is that the Council Framework Decision has not been properly ratified by the Oireachtas as required by the Constitution, and that therefore the Act giving effect to same is invalid and of no effect, and that accordingly, the surrender of the respondent would be contrary to the Constitution and contrary to law. This submission rests upon the requirement in Article 29.4.6 of the Constitution which provides:

> *"The State may exercise the options or discretions provided by or under Articles 1.11, 2.5 and 2.15 of the Treaty referred to in subsection 5° of this section and the second and fourth Protocols set out in the said Treaty but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas."*

38. It is submitted that while the Oireachtas may have given its approval to the adoption of a Framework Decision prior to the 13th June 2002, it was not given an opportunity to give its *prior approval* to what was the final version of same before it was adopted by Member States on the 13th June 2002.

39. It is perhaps for another day to be argued whether the constitutional requirement that "such exercise shall be subject to the prior approval of both Houses of the Oireachtas" requires that each word and phrase of the final document receive prior approval, or whether the approval of the "exercise" of the options and discretions in question is an approval of a more general nature for the kind of Framework Decision under discussion and the objectives to be contained therein.

40. There has been before this Court no evidence of what occurred in the Dáil on the date when the matter was raised. Mr Kelly sought to deal with this matter by reference to extracts from Dáil reports for the day on which approval was given. Mr O'Higgins referred to the case-law which has determined that Dáil reports may not be called in aid in the interpretation of statutes. Mr Kelly counters that argument by saying that this Court is not being asked to refer to Dáil debates for the purpose of interpreting a statute, but for the purpose of establishing what did in fact take place in the Dáil when some approval was given with regard to the adoption of a Framework Decision.

41. It is not for this Court to set down what would be the appropriate manner in which to argue this point, or what type of proceedings ought to be launched in order to challenge the legislation by reference to this line of argument. But I am satisfied for present purposes that the matter is not properly based in evidence, and if the matter is to be ventilated, it will have to be left to another appropriate occasion.

42. Having rejected the points raised by way of objection by the respondent, it follows that the Court is required to make the order sought and I so order pursuant to s. 16(1) of the Act.