

## THE HIGH COURT

[2017 No. 111 SS]

BETWEEN

RAIMA RAFIQUE

APPLICANT

AND

THE GOVERNOR OF THE DÓCHAS CENTRE

DEFENDANT

**JUDGMENT of Mr. Justice Binchy delivered on the 17th day of February, 2017.**

1. The applicant has brought forward an application for an inquiry into the lawfulness of her detention pursuant to Article 40.4.2 of the Constitution. The applicant is detained at the Dóchas Centre, Mountjoy Prison, pursuant to a warrant of detention addressed to the Governor of Mountjoy Prison dated 9th January, 2017. On 6th February 2017, I held the applicant's detention to be in accordance with law this judgment contains the reasons for my decision.

2. The applicant challenges the lawfulness of her detention on three grounds:-

(i) that she is being detained in a prison not mandated by law as a prescribed place of detention in respect of a person detained pursuant to s. 5 of the Immigration Act 1999;

(ii) that the warrant in question authorising the detention of the applicant is addressed to a person other than the Governor of the place where she is detained, i.e. it is addressed to the Governor of Mountjoy rather than to the Governor of the Dóchas Centre; and that the warrant authorising her detention is bad on its face having regard to the decision of the Supreme Court in the case of *Ejerenwa v. Governor of Cloverhill Prison* (Unreported, Supreme Court 28th October, 2011,

(iii) that having regard to the decision of the High Court in the matter of *B.F.O v. Governor of Dóchas Centre* [2005] 2 I.R. 1, there cannot be said to be a concluded intention to deport the applicant in circumstances where she has an application for residency in being and awaiting a decision from the Minister.

3. The applicant is the subject of a deportation order made by the respondent on the 21st September, 2011. The applicant did not comply with that order. On 9th January, 2017, the applicant was arrested in her home at 38 Rinucinni, Portlaoise, Co. Laois. A warrant for the detention of the applicant was completed by Detective Garda Michael Neville pursuant to s. 5 of the Immigration Act, 1999 (as amended) and pursuant to the Immigration Act, 1999 (Deportation) Regulations, 2005 (SI No. 55 of 2005). The warrant of detention was addressed to the Governor of Mountjoy Prison. The applicant was then brought to the Mountjoy Prison Campus and delivered in to the custody of Governor Mary O'Connor, the Governor of the Dóchas Prison, Mountjoy.

4. On 30th January, 2017, the solicitors for the applicant submitted an application on her behalf to the Irish Naturalisation and Immigration Service pursuant to Regulation 5(2) of the European Communities (Free Movement of Persons) Regulations, 2015 ("the 2015 Regulations") whereby she applied to be treated as a family member of a European Union citizen on the basis of her dependence of an EU citizen in the State (in his case her aunt). A copy of that application was exhibited to the affidavit sworn by Lauren Martin, solicitor for the applicant, in these proceedings.

**Status of Dóchas Centre***Submissions of applicant*

5. Central to the applicant's claim in relation to points (i) and (ii) above is the status of the Dóchas Centre. The applicant maintains that this is an independent prison facility under the authority of its own governor and that it is not one and the same as Mountjoy Prison.

6. The application is grounded upon the affidavit of the applicant's solicitor, Ms. Lauren Martin, sworn 1st February, 2017. While acknowledging that the Dóchas Centre is on what is known as the Mountjoy "campus", Ms. Martin avers that the Dóchas Centre is a separate entity, with its own governor and is recognised as such by the Irish Prison Service. She avers that within the Mountjoy campus there are two other institutions namely the Glengarriff Parade Training Unit (the "Training Unit") and St. Patrick's Institution, each of which is recognised as a separate institution within the campus.

7. She further avers that a person, such as the applicant, who is detained under s. 5 of the Immigration Act 1999, may only be detained in a prescribed place of detention and that such places of detention are identified in the second schedule of S.I. No. 55/2005 – Immigration Act 1999 (Deportation) Regulations 2005. While Mountjoy Prison, St. Patrick's Institution and the Training Unit are all prescribed in the schedule to those regulations, there is no reference to the Dóchas Centre.

8. Counsel for the applicant produced to the Court a number of printouts from various websites which, it is submitted, give credence to the view that the Dóchas Centre is an entity separate from Mountjoy Prison. For example:-

(i) A printout from the website of the Office of the Inspector of Prisons refers separately to Mountjoy Prison, The Dóchas Centre and the Training Unit. Mountjoy Prison is described as a committal prison for adult male prisoners and the Dóchas Centre is described as a committal prison for female prisoners. There is nothing to indicate that the Dóchas Centre forms part of Mountjoy Prison.

(ii) A printout from the website of the Irish Prison Service website refers to Mountjoy Prison campus as comprising Mountjoy Prison, Dóchas Centre, St. Patrick's Institution and the Training Unit.

(iii) A printout from the website of the Irish Prison Service website describes the Dóchas Centre as being a closed medium security prison for females, without any reference to Mountjoy Prison.

(iv) A printout from the website of the Irish Penal Reform Trust refers to the Mountjoy campus as comprising Mountjoy Prison, Dóchas Centre and St. Patrick's Institution.

(v) There is a separate interim report on the Dóchas Centre dated October, 2013 prepared by the then inspector of prisons, Judge Michael Reilly.

(vi) The previous inspector of prisons, Mr. Justice Kinlen prepared a report entitled Mountjoy Prison and Dóchas Centre in 2005.

All of the above, it is submitted, indicates that there is a clear distinction between Mountjoy Prison and Dóchas Centre, and demonstrates that, for legal purposes, they are separate entities.

9. The governor with responsibility for the Dóchas Centre, Ms. Mary O'Connor, swore an affidavit addressing the status of the Dóchas centre dated 3rd February, 2017. She was cross-examined on this affidavit by counsel for the applicant. In the course of cross-examination, Governor O'Connor agreed that her job title is Governor of the Dóchas Centre. It is submitted on behalf of the applicant that this supports the proposition that the Dóchas Centre is a separate prison under the administration of its own governor.

#### **Submissions on behalf of the respondent**

10. The respondent relies upon the affidavit of Governor Mary O'Connor referred to above. In her affidavit, Governor O'Connor describes herself as being employed in Mountjoy Prison, Dublin 7. She says that she is currently assigned to and has particular responsibility for the Dóchas Centre, which she states is the part of Mountjoy Prison, within which female prisoners are detained. This part of the prison is also sometimes referred to as Mountjoy women's prison.

11. Governor O'Connor avers that Governor Brian Murphy is the governor of the Mountjoy campus, which encompasses three separate prisons, namely Mountjoy Prison, the Training Unit and St. Patrick's Institution. Another governor, Governor Lawton is a prison governor of the rank G2 who also has responsibility for the Mountjoy campus. Governor O'Connor and another governor, Governor Gregory Garland, are governors of the rank G3 and Governor O'Connor avers that she and Governor Garland are the governors with responsibility for Mountjoy Prison (including the Dóchas Centre). Governor Garland has responsibility for the day to day administration of the men's part of Mountjoy Prison and Governor O'Connor has responsibility for the day to day administration of the Dóchas Centre. Each of them report to Governor Lawton who has overall responsibility for Mountjoy Prison. She avers that the Training Unit and St. Patrick's Institution are separate prisons. Therefore, while Governor O'Connor may be called upon to assume the duties of Governor Garland, and vice versa (and this does happen, for example, during periods of leave) without any change in the terms of their employment, their duties do not include any responsibility for the Training Unit or St. Patrick's Institution.

12. Governor O'Connor avers that the general office of Mountjoy Prison deals with both the men's prison and the Dóchas Centre and committal warrants for both parts of the prison are made out to the Governor of Mountjoy Prison and transmitted to the same general office.

13. In her evidence in chief, Governor O'Connor stated that employees generally are interchangeable as between the men's and women's prisons, but not as between those prisons and St. Patrick's Institution or, the Training Unit, which are separate prisons, separately governed. She explained that while female prisoners are brought directly to the Dóchas Centre, administratively the warrants authorising their detention are brought to the general office. All prisoners, both male and female are processed centrally through the same office, but prisoners in the Training Unit and St. Patrick's Institution are processed separately.

14. Counsel also referred to a direction issued by the Minister for Justice pursuant to s. 17(3) of the Criminal Justice Administration Act 1914, dated 4th July, 2015 (the "Ministerial direction"). This order designates where prisoners, male or female, shall be committed whether on remand, pending trial or under sentence, throughout the State. There is no reference at all in this order to the Dóchas Centre. Counsel for the respondent submits that this makes it very clear that as far as the State is concerned the Dóchas Centre does not exist or operate separately and distinctly from Mountjoy Prison, as it is clear from this statutory instrument that female prisoners committed to prison on remand, or pending trial, or under sentence, are to be committed to Mountjoy Prison, and since there is no separate reference to the Dóchas Centre, this must mean that the State considers the Dóchas Centre to form part of Mountjoy Prison.

#### **Decision on status of Dóchas Centre**

15. In support of this application, the applicant has produced materials, which to a large extent are prepared for information purposes only and are not prepared as legal documents or intended to be relied upon as documents with legal consequences. Some of the documents could be used to support the argument either way. For example, the report of Judge Reilly states that the Dóchas Centre is part of the Mountjoy Prison campus. The report of Judge Kinlen while referring on the cover page to each of Mountjoy Prison and the Dóchas Centre, immediately underneath that is entitled "revisit to Mountjoy Prison". This report also states that:

*"Mountjoy Prison is located on the North Circular Road at Phibsborough, Dublin 7 and the women's prison known as the Dóchas Centre is located within the Mountjoy complex. The overall governor has the responsibility of both the male prisoners' prison and the female prisoners' prison with the various governor grades reporting to him. The Dóchas Centre is managed by a female governor."*

16. Dr. Mary Rogan in her book "Prison law" states at para. 8.03:

*"Women are imprisoned in Ireland in two places – the Dóchas Centre, part of the Mountjoy complex ..."*

17. The only document of an official or legal nature upon which the applicant relies is S.I. no. 55/2005, which prescribes the places of detention of persons detained in custody with a view to deportation. While it is submitted on behalf of the applicant that the failure to refer to the Dóchas Centre in these regulations is supportive of her case, this can only be so if the Dóchas Centre is not considered to be part of Mountjoy Prison.

18. Prisons do not have a separate legal personas. Their identity is defined for legal purposes by their governor. While Governor O'Connor is described, for administrative purposes, as the Governor of Dóchas, it is clear from her evidence that her duties are interchangeable with those of Governor Garland, who is generally in charge of the men's prison in the Mountjoy complex. In turn, each of them reports to Governor Lawton, who has overall responsibility for Mountjoy Prison, and who is also a grade above of each of Governors O'Connor and Garland in terms of seniority.

19. I am satisfied from the evidence of Governor O'Connor that for legal purposes, the Dóchas Centre forms part of Mountjoy Prison.

For obvious reasons, male and female prisoners are detained in separate facilities within the prison, and this has always been the case; as a matter of *nomenclature* what was formerly known as the women's prison in Mountjoy is now known as the Dóchas Centre. For administrative purposes, the men's prison and the Dóchas Centre each have separate governors, but they in turn report to a governor who has overall responsibility for Mountjoy Prison. This appears to be in contrast to the Training Unit and St. Patrick's Institution which, while within the Mountjoy complex, are different centres, and administered separately, and are considered to be separate prisons, as reflected by the references to those prisons in S.I. 55/2005 and the Ministerial direction. As far as the Dóchas Centre is concerned, I think that the description of it from a legal standpoint is accurately reflected in the passage from the report of Mr. Justice Kinlen referred to above. From an official point of view this is also reflected in the Ministerial direction, in that the absence of any reference to it suggests that it must be a part of Mountjoy Prison, rather than a separate prison in its own right. If the status of the Dóchas Centre is as contended for by the applicant, female prisoners could not be detained there or anywhere else, within the Mountjoy complex. It follows from the above that this application must fail on each of the first two grounds upon which it is advanced i.e. the applicant has not established that she is being detained in a prison not mandated by law as a prescribed place of detention in respect of a person detained pursuant to s. 5 of the Act, 1999, and nor has she established that the warrant authorising her detention is bad on its face by reason of it being addressed to a person other than the Governor of the place where she is detained.

20. The applicant also relies upon the case of *B.F.O. v. Governor of Dóchas Centre* [2005] 2 I.R. 1, in which Finlay Geoghegan J. held that the power of detention under s. 5(1) of the Act of 1999 may only be exercised for the purposes of ensuring deportation, and that it is a precondition to the valid exercise of that power that there exists a definite or concluded intention to deport the applicant concerned.

21. In this case, the clear evidence of that intention is the deportation order of 21st September, 2011. While it was submitted on behalf of the applicant that she should be entitled to remain in the State pending the determination of her application under Regulation 5(2) of the 2015 Regulations, that question was, coincidentally, addressed by Keane J. in a decision handed down almost contemporaneously with this application on 3rd February, 2017 in the case of *C.A. v. Governor of Cloverhill Prison* [2017] IEHC 48. In that case, as in this, the applicant had applied, under Regulation 5(2) of the 2015 Regulations for a decision that he be treated as a permitted family member as a citizen of the European Union. Accordingly, the applicant argued that he was entitled to remain in the State pending the determination of his application, with the consequence that the deportation order previously made against him could not and should not be enforced and, thus, his detention, which was solely to facilitate his deportation, was unlawful. This is precisely the same ground as Ground No. (3) upon which the applicant relies in these proceedings.

22. In *C.A.*, the applicant also relied upon the decision of Finlay Geoghegan J. in *B.F.O.* However, Keane J. considered that the position of the applicant in *B.F.O.* was different in a fundamental respect because in that case the respondent conceded that the applicant could not be deported from the State until the Minister had made a decision on her application for residence as the mother of an Irish born son. As a result of that concession, Finlay Geoghegan J. concluded that there was not at any time subsequent to the application for residency based upon the birth of her Irish born son, a final or concluded intention to deport the applicant. There was no equivalent concession on the part of the respondent in *C.A.* or in this case.

23. As in the case of *C.A.*, the applicant in this case relies upon her application for permission to remain as a permitted family member of a European Union citizen under the 2015 Regulations and submits that pending a decision upon that application, the respondent can no longer have a concluded intention to deport her. In *C.A.* having reviewed the 2015 Regulations, Keane J. concluded that nothing in those regulations could be construed as conferring any permission upon an applicant, who has applied to be treated as a permitted family member of a European Union citizen, to remain in the State pending the making of that decision. Accordingly, having distinguished *B.F.O.* on its facts, and having found nothing in the 2015 Regulations permitting the applicant to remain in the State pending the outcome of his application, Keane J. concluded that there remained a settled intention on the part of the respondent to deport the applicant, as a consequence of which he found the applicants' detention to be lawful.

24. It is not disputed that, for this purpose, the facts of *C.A.* and the applicant in these proceedings are on all fours. Moreover, the applicant concedes that I am bound to follow the decision of Keane J. in *C.A.*

25. For all of the above reasons I find the applicant's detention lawful.