THE HIGH COURT

[RECORD NO. 2016 20 EXT]

[RECORD NO. 2016 72 EXT]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

R.O. (NO. 5)

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 2nd day of November, 2018

1. This judgment must be read in conjunction with the earlier judgments delivered on the 2nd day of November, 2017 and the 26th February, 2018. This Court made a preliminary reference to the Court of Justice of the European Union (CJEU) in respect of matters arising out of the triggering by the United Kingdom of Great Britain and Northern Ireland of Article 50 T.E.U. ("the Brexit point").

2. The CJEU held that Article 50 T.E.U. must be interpreted as meaning that mere notification by a Member State of its intention to withdraw from the European Union in accordance with that article does not have the consequence that, in the event that Member State issues a European Arrest Warrant (EAW) with respect to an individual, the executing Member State must refuse to execute that EAW or postpone its execution pending clarification of the law that will be applicable in the issuing Member State after its withdrawal from the European Union. The CJEU also held that in the absence of substantial grounds to believe that the person who is the subject of the EAW is at risk of being deprived of rights recognised by the Charter of Fundamental Rights of the European Union and Council Framework Decision 2002/584/JHA of 13th June, 2002 in the European Arrest Warrant ("the 2002 Framework Decision") and the surrender procedures between member states, as amended by Council Framework Decision 2009/299/JHA of 26th February, 2009 ("the 2009 Framework Decision"), following the withdrawal from the EU of the issuing Member State, the executing Member State cannot refuse to execute that EAW while the issuing Member State remains a member of the European Union.

3. At the resumed hearing of this matter, subsequent to the judgment of the CJEU, there was no further argument on the Brexit point. Both parties proceeded, understandably in light of the judgment, on the basis that the central issue that the Court had to decide remained whether this respondent would be subject to inhuman and degrading treatment should R.O. be surrendered to the United Kingdom because of the prison conditions in Maghaberry Prison.

4. This Court has dealt with the applicable law in its earlier judgments and it will not repeat the principles set out therein. Since the judgment of the 26th February, 2018, the Court received further information from the issuing judicial authority in relation to these matters. The Court heard submissions from the parties in relation to those matters prior to the referral to the CJEU and of course subsequent to the CJEU's decision.

5. Counsel for the respondent submitted that this Court had already held that there were specific deficiencies in Maghaberry Prison, which raised a real risk of a breach of R.O.'s right under Article 3 of the ECHR to be free from inhuman and degrading treatment. She submitted that the Court asked for information that was specific and precise as to R.O.'s circumstances and how R.O. would be treated. Counsel submitted that on close examination of the August 2017 report of the UK National Prevented Mechanism (N.P.M.), it revealed major shortcomings in the care of vulnerable men. In particular, she referred to the programme of Supporting Prisoners At Risk (S.P.A.R.). She referred to the finding that the quality of these S.P.A.R.'s remained poor and did not provide an assurance that the men concerned had been adequately cared for. The N.P.M. stated that the staff seemed more concerned with meeting the letter of the process, rather than its spirit, and the response to self-harm or its threat. There was a view that these S.P.A.R. care plans were insufficiently individualised and lacked sufficient healthcare information.

6. Counsel submitted that the combined risk presented by the respondent had not been considered by the issuing state. She also said that the information transmitted from the issuing judicial authority did not identify the regime that would be available to R.O.. There had been a disregard in the reply as to the risk in relation to the particular offence.

7. At the hearing on 8th October, 2018, counsel for the respondent referred to a number of articles taken from the B.B.C.'s website in the main. These referred to a death in custody that sadly had taken place on the 30th August, 2018. This was a man who died the day before he was due in court on a charge of possessing cannabis resin. He had taken his own life in Maghaberry Prison. This was a man who had learning difficulties and suffered from Attention Deficit Hyperactivity Disorder. They also referred to an earlier death that had taken place apparently in July of a prisoner. There are no indications as to how that death occurred whether it was by self-harm or otherwise.

8. Counsel also referred to a timeline of reports and enquiries that R.O. solicitor had produced about Maghaberry Prison. There was some dispute about the content of the timeline. It referred to the number of suicides at the prison reaching four in a year, which apparently referred to 2016. There was also a reference to a report of a man taking his life which appeared under the heading of "April of 2018". However, I am satisfied that there was an investigation into that matter and April 2018 was referring to the date of the report from the Prisoner Ombudsman. However, the Prisoner Ombudsman found that there were inadequate handover notes to staff arriving for the night shift which was regrettably a recurring finding. That report shows that the mother of the deceased had been told that her son would be assessed continually and staff working the night shift would be informed of concerns about his wellbeing. None of those preventative measures were put in place.

9. It is important to note what has been sent to this Court by the issuing judicial authority, Judge Fiona Bagnall, who is the presiding District Judge of the Magistrate's Court. She states that in relation to the risks posed to R.O. as a result of the offences for which R.O. is charged and any threats to R.O. safety upon committal, that the Northern Ireland Prison Service (N.I.P.S.) has well-tested and proven procedures and contingencies in place. These procedures and contingencies can manage those individuals, such as R.O., who are committed into Maghaberry Prison where there is information and/or intelligence that suggests that they may be under threat from an individual, a number of individuals or indeed a specified grouping. In such cases, immediate and bespoke custom management measures are implemented. She stated that Maghaberry Prison has a well-documented history of being able to safely manage prisoners in this regard. It is stated that the same committal process is completed in all committals, asking the same questions. The

responses to these questions will trigger actions – but in this case if threat assessments are present before then these will have already been acted on.

10. In my view, that is a clear indication from the issuing judicial authority that where there are specific threats notified in advance that those are acted upon even prior to the actual committal process. The information provided shows that N.I.P.S. have robust and comprehensive information sharing processes and protocols in place with the Police Service of Northern Ireland (P.S.N.I.). This allows for up to date information regarding threats to be made immediately available. P.S.N.I. in turn liaise with An Garda Síochána regarding interjurisdictional information regarding threats. If a prisoner's risk is deemed to be of a level that would preclude R.O. being held in the general population, then alternatives are put in place forthwith. If after assessing all the relevant information, the assessment that serious concerns exist then a new committal may be held in an area separate from the general population as soon as R.O. arrives in custody.

11. The reply from the issuing judicial authority also shows that an individual committed to prison absent any information or intelligence being present or self-reported will pass from the committal unit through to one of the larger residential units. Prisoners can apply for specialist landings which are criteria based. It is also stated that dynamic risk assessments are completed by staff in all daily tasks. The information from the issuing judicial authority states that while individual concerns or risks may be attached to specific individuals, there are no collective risks associated with particular index offences. It is their view that this is evidenced through the fact that many individuals who are charged with offences such as those with which R.O. is charged, and other serious offences can freely associate within the prison, move freely within the prison confines (majority are unescorted movements) and can avail of education/vocational training as well as regular access to the gymnasium. It is also stated that while prisons can experience incidents for a myriad of reasons, of late incidents within the prison estate have been at a long-term low.

12. It is important at this point to note that the respondent has not provided any specific information about the situation in Maghaberry as regards threats or risks to prisoners who are facing charges of a sexual nature or who have been convicted of them, where those risks or threats arise solely from the nature of those offences. In other words, there is no evidence to support the view that the approach of the Northern Ireland authorities, which is not to assign risk to specific offences, has in fact created a real risk of inhuman and degrading treatment to prisoners. Furthermore, the respondent has not produced any evidence to show that the approach is entirely and wholly at odds with accepted prison management practices in other parts of the United Kingdom, Europe, or indeed globally. To that extent, I do not accept that there is a real risk to the respondent arising out of that approach by the Northern Ireland Prison Service.

13. In any event, the respondent is a person at a specific risk because of threats that have been made to R.O.. Therefore, an individualised approach based on those level of threats will be provided to R.O.. I have no doubt that Maghaberry Prison and N.I.P.S. generally have a long history of dealing with such threats and that the relevant protocols will be put in place for this respondent should R.O. be surrendered. In the context of risk assessment, I do not accept that this Court, as an executing judicial authority, can insist upon an individualised plan prior to surrender. In reality such a plan can only be drawn up at or about the moment of committal, as the risk can be properly identified at that time. For example, the presence of factions or other persons who pose or who may pose a specific threat to R.O. can only be identified at a given time in the prison population. Other prisoners, with whom R.O. may be able to freely associate, may also only be identified at the moment of committal. What is important is that there is a procedure in place for the assessment of risk and that the procedure will be applied to obviate the risk to R.O. insofar as that is possible.

14. The issuing judicial authority has also set out in detail the various measures that are put in place to ensure that individuals who are recorded as enemies will not share an accommodation block, attend appointments in the same location or access the visits hall at the same time. This also ensures family members and friends of known enemies do not come into contact within the prison environs. Similarly, when a vulnerable prisoner is required to attend court, measures are put in place to keep R.O. apart from others on the journey to court and on returning to the prison. All courts are able to provide a separate holding area while under the supervision of staff. In severe cases an individual's safety can be guaranteed by housing in the Care and Supervision Unit (C.S.U.). The prison has a multi-layered computer system which is used to record and make immediately available to staff all prisoner details which include healthcare mark or self-harm history relationships etc.. The system generates automatic cross – references which prevent individuals who are to be kept apart from coming into contact with each other. Furthermore, there is a mandatory cell-sharing risk assessment policy. If a new risk or threat emerges, there are immediate custody management plans which can be implemented as described above in order to seek to identify appropriate risk reduction methods.

15. The issuing judicial authority has stated in answer to the question as to how N.I.P.S. will assess the respondent's vulnerability upon committal by stating that prisoners can present as vulnerable for a variety of reasons – their alleged offence, mental health issues, bullying or for reasons that are related to matters outside prison. It is stated that all prisoners are assessed immediately upon committal both by specialised reception officers and healthcare professionals who are trained to identify and respond to individuals experiencing vulnerabilities.

16. It is also stated that any prisoner assessed to be vulnerable and at risk will be provided with immediate support under their supporting prisoners at risk policy and procedures. There is a suicide and self-harm prevention policy. It is said that Maghaberry Prison has several areas where the small numbers of those deemed vulnerable and at risk are managed by specially selected staff who have first-hand knowledge of the issues affecting those in their care and are able to deal with any issues that arise. The prisoner safety and support team take on the cases of vulnerable and at risk prisoners when referred, within a multidisciplinary approach tailored to the particular individual needs risk and vulnerability of the prisoner. The prison has in place an anti-bullying process that allows staff to closely monitor such matters. There is a reference again that vulnerable and at risk prisoners are housed in the care and supervision unit only in exceptional circumstances. By its nature that restricts opportunities for interaction with others. All C.S.U. referrals are subject to regular and ongoing reviews and oversight that will assess the suitability of further restriction.

17. The issuing judicial authority has also indicated that the prisoner safety and support team will support any prisoner who presents as vulnerable, and who is referred to them. That team has won a number of prestigious awards for the caring and effective management of the most vulnerable prisoners within N.I.P.S. care. In addition to that, a wide range of interventions are also listed.

18. It is said that if R.O. presents at risk of self-harm or suicide, R.O. will be managed in conjunction with the N.I.P.S. policy of suicide and self-harm prevention. He will be able to access all means of support and will be subject to case management under the S.P.A.R. system. The issuing judicial authority gives example of N.I.P.S. good practice/support for vulnerable people.

19. In terms of R.O.'s healthcare, it is stated that the provision of healthcare in the prison is the responsibility of the South Eastern Health and Social Care Trust as delegated by the Department of Health. Various processes in terms of assessment on committal and subsequent healthcare is indicated in the response. Again examples are given in relation to their care of particular individuals.

20. The issuing judicial authority has also said that it is hoped that the High Court will be reassured by the fact that the N.I.P.S. is a public authority pursuant to s. 6 of the Human Rights Act 1998. N.I.P.S. has a legal obligation to ensure that there is no breach of convention rights within this area of operation. It is said that there have been multiple challenges to the convention compliance of the conditions in Northern Ireland prisons. On the infrequent occasions where there has been an adverse finding, remedial action has been taken. Prisoners who claim their convention rights are being breached by the condition of their detention have access to free legal aid. N.I.P.S. is open to constant supervision by the High Court of Justice in Northern Ireland. There have been no findings by the High Court in Northern Ireland of a systemic breach of Article 3 ECHR. The question of prisoner welfare is also subject to external oversight through the mechanism of the Prisoner Ombudsman, the Criminal Justice Inspectorate. These bodies publish annual reports. There has been no finding of systemic breach of convention rights in the N.I.P.S..

Determination

21. I am satisfied from the detailed response that has been given to me by the issuing judicial authority that, what initially had appeared to be systemic and generalised deficiencies within N.I.P.S. which could have amounted to a real risk that vulnerable prisoners could be subjected to inhuman and degrading treatment contrary to Article 3 of the E.C.H.R., does not give rise to and real and substantial risk that this particular respondent will be subjected to such a risk. The issuing judicial authority has explained in comprehensive detail the processes of risk assessment, and prevention if required that, this respondent will be subjected to on committal. I am satisfied that the threats to R.O.'s life that have been made will trigger an appropriate inquiry and an appropriate response as required. I am satisfied, as stated above, that Maghaberry's more recent record is one of significant improvement.

22. Insofar as R.O's status as a prisoner being surrendered to face a charge of rape is concerned, it is clear that this will be taken into account in the context of a specific risk assessment to R.O.. I have no evidence that the general approach adopted by N.I.P.S. in conducting their assessment of risk to the person rather than by risk because of certain offences, is contraindicated or would give rise to a real risk of inhuman and degrading treatment. A major concern of this Court, was R.O.'s vulnerability arising out of the previous attempt at self-harm that was indicated in a psychiatric report. I am satisfied that N.I.P.S. has put in place significant protocols to ensure the safety of prisoners in that regard. It is of note that the information that has been placed before me shows that there has been an improvement in protection in more recent years as compared to earlier years. It is probably a crude measure of success to identify only deaths in custody, but that simplistic approach shows that there has been no deaths in custody in 2017 and in the first six months of 2018. That may indicate some measure of improvement. Of course, every death in custody is a tragedy for the prisoner and their family and is far from the ideal position where no deaths would take place. In my view however, the more recent sad death of a prisoner does not of itself establish substantial grounds to believe that there is a real risk of inhuman and degrading treatment to the respondent.

23. The Court is also satisfied that, there is a robust inspectorate system for the prisons in Northern Ireland. N.I.P.S. has also shown that it responds to those reports. There is also oversight through the courts in Northern Ireland and again the information is that where adverse findings have been made, real action has been taken. On its own that would not be decisive but it is a factor that I can take into account with the other information that I have received. In the circumstances, having carried out a specific and precise assessment of the risks associated to this respondent, I am satisfied that there are no substantial grounds for believing that this respondent is at real risk of inhuman and degrading treatment should R.O. be surrendered to the United Kingdom of Great Britain and Northern Ireland.

24. I may therefore make an order for R.O's surrender to the U.K. in respect of both of the E.A.W.s on which R.O. is sought.