



Cúirt Uachtarach na hÉireann Supreme Court of Ireland

Minister for Justice & Equality v. Farah Damji

On appeal from: [\[2022\] IEHC 72](#)

Headline

The Supreme Court today has affirmed the order of the High Court, holding that the appellant has not established that there is a real risk that her constitutional or Article 3 ECHR rights would be infringed if extradited to the UK.

Composition of the Court

MacMenamin J., Charleton J., Baker J., Woulfe J., Murray J.

Judgment

MacMenamin J. writing for the Court.

Background to the Appeal

The appellant was convicted and sentenced for stalking-based offences in the UK. She was released on licence but breached the conditions of this licence and was prosecuted for the breach. She absconded to this State before the trial concluded. An EAW was issued by the British authorities, and she was arrested and detained here for some months before being released on bail.

The appellant contested the EAW in the High Court on the grounds that extraditing her would create a real risk of inhuman or degrading treatment, thus violating s. 37(1)(c)(iii) of the European Arrest Warrant Act, 2003 (as amended). She contended that there are mental health treatment deficiencies in UK prisons, and that as someone with complex mental health needs, she would not be able to access the specific therapy she requires. She argued that, as a consequence, this would amount to inhuman and degrading treatment.

Assessing the psychiatric reports and other evidence before him, the High Court judge was satisfied that surrender would not be incompatible with the ECHR nor with the Constitution.

The appellant appealed directly to the Supreme Court and was granted leave.

Reasons for the Judgment

MacMenamin J. first sets out the relevant legal framework, including Articles 40.3.1 and 40.3.2 of the Constitution, Article 3 ECHR and s. 37 of the EAW Act 2003. He notes the evidential burden in s.4A of the EAW Act, whereby the onus is on objectors to adduce evidence to rebut the presumption that issuing states will comply with the relevant Agreement **[11-15]**. He sets out the psychiatric reports adduced in evidence, noting that one report recommends psychodynamic psychotherapy for the appellant, a therapy that is difficult to access both in and out of prison **[74]**. He notes further that there is no great consensus amongst the mental health professionals as to the appellant's diagnosis nor the recommended course of treatment **[82]**. He observes that treatment is recommended for 2-3 years, and that the appellant is due only to serve a short time for her remaining sentence in the UK **[80]**.

MacMenamin J. makes clear that the appellant must clear a "substantial threshold" to prove, in evidence, that there is a real risk of her constitutional or Convention rights being infringed **[84]**. He holds that there is no constitutional authority for an absolute duty on prison authorities to provide the best medical treatment, irrespective of circumstances, to a prisoner. The constitutional obligation, is rather, to provide medical treatment which would be as good as reasonably possible, in all the circumstances of the case (*The State v. Frawley*) **[87]**.

MacMenamin J. turns to two Irish authorities which had previously considered EAWs in the context of Article 3 objections. In *Minister for Justice v. Rettinger* the Court emphasised the need for an objector to adduce evidence capable of grounding a conclusion that, if surrendered, there would be a real risk of treatment contrary to Article 3. In *Attorney General v. Davis*, the Court reiterated the need to measure risk by conducting a fact-specific inquiry, partly against known facts, and partly against future events **[94-96]**.

MacMenamin J. next considers CJEU authorities, before moving to consider the ECtHR authorities. He points out that in *N v. United Kingdom*, the ECtHR made clear that it would intervene only in

exceptional cases. *Wenner v. Germany* showed that detainees ought to receive medical care at a level comparable to that which the state provides to people at liberty. *Paposhvili v. Belgium* represented an evolution of the law, wherein the removal of a person where there was a real risk of being exposed to a serious decline in health, could reach the threshold so as to violate Article 3. *Rooman v Belgium* highlighted that a lack of appropriate medical care for persons in custody could engage Article 3; the Court held that it was not enough that the medical problem be diagnosed, the state would have to ensure that proper treatment for the problem be provided **[96-108]**.

Bearing the authorities in mind, MacMenamin J. finds that the evidence in this case falls short of establishing a serious risk that, for the apparently short period of her remaining sentence, the appellant would be denied rights to protection against inhuman and degrading treatment, when the treatment recommended by one of the medical experts is not apparently available to the community at large **[109]**.

MacMenamin J. offers a contrast between the evidence adduced in this case and that adduced in *Love v United States*, an English case. In that case there was consistent, clear evidence from two experts. They were largely in agreement. The court could conclude that the evidence was not conjecture, and that extradition might have a serious adverse effect on the objector's health. In this case, he finds that there are differences in diagnosis and suggested treatment. The treatment the appellant argues is needed is not easily available, even to the public at large. She does not have a life-threatening condition. She faces a short sentence **[112-116]**.

This Court concludes that there is no basis for finding the High Court judge erred in his findings and upholds the order of the High Court.

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Case history

22nd March 2022
[\[2022\] IESCDT 26](#)
[\[2022\] IEHC 72](#)

Oral submissions made before the Court
Supreme Court Determination granting leave
Judgment of the High Court