

Ireland, Supreme Court, Dundon v Governor of Cloverhill Prison [2005] IESC 83, [2006] 1 IR 518, 19 December 2005

Deciding bodies and decisions

Irish Supreme Court, Case [2005] IESC 83 of 19 December 2005

Area of law
Criminal Law

Subject matter
European Arrest Warrant Framework Decision – time limits - Right to liberty (Habeas corpus)

Summary Facts Of The Case

A European Arrest Warrant (EAW) was issued for the arrest of Thomas Dundon for the offence of murder by the Thames Magistrates Court in the United Kingdom (the issuing authority). Mr Dundon was arrested in Limerick, Ireland and appeared before the High Court where a date was fixed for a hearing regarding the decision to execute the EAW. That hearing was adjourned four separate times, in particular to obtain undertakings from the issuing authority. On 14 May 2004 the High Court ordered that Mr Dundon be surrendered. Mr Dundon appealed that order to the Supreme Court which rejected his appeal. On the same day, Mr Dundon issued further proceedings arguing that his detention was unlawful due to the fact that time limits contained in Article 17 EAW FD had not been respected having regard to the various adjournments and appeals. That application was rejected by O’Sullivan J in the High Court and Mr Dundon appealed the issue to the Supreme Court.

Relation to the scope of the Charter

Charter Art. 6 - Right to liberty and security

Passing mention of the Charter only occurs in citations of provisions of the EAW FD. However, the

judgment is relevant to the role of fundamental rights in the operation of the EAW FD, techniques of interpretation and judicial dialogue (conform interpretation and inability to make a preliminary reference) and to the interaction of legal orders (refusal based on Irish Constitutional provisions).

Relation between the Charter and EHCR

There is no explicit discussion of the various sources of fundamental rights, the application being rejected on the simple ground that a failure to respect time limits does not, in and of itself, automatically lead to release. No other specific grounds for release appear to have been advanced by the applicant.

Impact on Jurisprudence

Judgments were delivered by three of the judges of the Supreme Court – Denham, Geoghan and Fennelly JJ - rejecting the applicants appeal. Murray CJ and Hardiman J concurred.

Denham J began with an overview of the implementation of the EAW FD and in particular provisions with respect to time limits contained in Article 17 EAW FD in a number of Member States, notably Belgium, the Netherlands and the United Kingdom, before proceeding to analyse the implementation of Article 17 EAW FD by s 13 of the 2003 Act. She noted that in some Member States (Belgium in particular) failure to comply with the time limits resulted in automatic release, whereas in the Netherlands and the UK this was subject to judicial discretion (in the case of the UK by an extension of the time limits in the interests of justice). The Irish implementing legislation contained no such obligation with respect to the Article 17 time limits, the only obligation being to inform Eurojust and the issuing Member State of any delay and the reasons for such a delay. She also noted that the Framework Decision was subject to the rule of conform interpretation as outlined in *Pupino*, despite it being a third pillar instrument. While time limits existed there was nothing to suggest that their non-respect would lead to automatic release. Denham J noted that such time limits must also take into account the needs of justice and in particular due process.

Geoghan J provided the principal judgment with which Fennelly, Hardiman JJ and Murray CJ concurred. He found that Article 17 EAW FD was intended to provide internal discipline for member states and did not, in and of itself, create justiciable rights for individuals. Thus the only obligation contained in Article 17 EAW FD was to inform Eurojust and the issuing authority. In any event, even if such rights were created by Article 17 EAW FD, he found that release could not be ordered if the delay was due to actions of the applicant. To allow otherwise in light of the possibility of appeals and adjournments in all European judicial systems, would frustrate the operation of the EAW FD such as to make it virtually inoperable. Finally, he found that while release should not be ordered simply because the time limits were exceeded, that did not prevent application for release based on fundamental rights if such a situation existed (this does not appear to have been argued in the current case where the applicant relied on the simple fact of the time limits being exceeded).

Fennelly J largely concurred with the judgment of Geoghan J and added some considerations

regarding the interpretation of the EAW FD, the 2003 Act and the role of fundamental rights. Noting the Court of Justice's judgment in *Pupino* he found that the 2003 Act should be interpreted in accordance with the principle of conform interpretation, but not to the extent that such an interpretation would result in a *contra legum* outcome. This duty of conform interpretation applied regardless of the fact that a preliminary reference was not possible due to Ireland's failure to make the appropriate declaration under the then Article 35 TEU. He then found that the EAW FD was ambiguous regarding the role of fundamental rights with Article 1(3) being the only substantive provision mentioning fundamental rights. At the same time various, specific fundamental rights were mentioned in the recitals. However, the 2003 Act was not ambiguous; an EAW could be refused for non-compliance with fundamental rights, including those found in the Irish Constitution (s 37, 2003 Act) and for non-compliance with the EAW FD *including its recitals*(s 13, 2003 Act). Therefore, despite the existence of the duty of conform interpretation, refusal to surrender must therefore be possible on fundamental grounds under the 2003 Act, any other interpretation being *contra legum*.

Sources - EU and national law

EU Law

Framework Decision 2002/584/EU on the European Arrest Warrant (EAW FD)

National Law

Article 40.4 Bunreacht na hÉireann (Constitution of Ireland) - Right to liberty, Habeas Corpus

European Arrest Warrant Act 2003 (2003 Act)

Sources - CJEU Case Law

Case C-105/03 *Criminal Proceedings against Maria Pupino* EU:C:2005:386
