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LEATHAN MIONTUAIRISCE

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OIFIG AN ARD-AIGHNE

*Final Version
Rec'd from
HGO.*

Request for the extradition of Patrick Ryan

cc: PSM/PSS

Dep. Sec.

Mr Gallagher

Counsellors

Legal Adviser

#-1 Sec^t.

Emb. London

" Wash.

Carlowa

J

13/12

1. The Attorney General yesterday afternoon advised the Commissioner of the Garda Siochana that warrants received by the Garda Siochana from the Metropolitan Police in London for the arrest of Patrick Ryan should not be endorsed for execution in the State. The Attorney General subsequently informed the Taoiseach of the advice given by him to the Commissioner.
2. It is a long standing practice that the Attorney General does not issue statements about the performance of his duties, and there are sound reasons in the public interest why this should normally be so. The Attorney General would prefer not to have to depart from that practice.

However, the situation which has arisen - or, more accurately, has been created - in the present case is quite unique, and the Attorney General has reluctantly come to the conclusion that it would be less undesirable to depart from practice than to allow speculation to replace fact about a matter of very considerable public

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importance. He is therefore issuing this statement summarising the circumstances relevant to his decision, so that there should be no doubt in the minds of anyone, in this country or elsewhere, as to the facts of this case.

3. At 10.50 on the night of Friday, 25 November, 1988 Patrick Ryan arrived in this jurisdiction aboard a Belgian military aircraft having been released from custody in Belgium after an extradition request from the British authorities had been refused by the Belgian authorities. In the early hours of Saturday, 26 November, four warrants, issued in London in respect of Patrick Ryan, were received by the Garda Commissioner from the Metropolitan Police. In the four hours between Patrick Ryan's arrival and the receipt of these warrants the District Court was not asked to issue a provisional arrest warrant (and it is during that period, and no other, that the law would have allowed a provisional warrant to be issued) for legal considerations, which are not relevant to this decision. Replacement

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documentation, correcting certain defects, was received from the British authorities on Sunday, 27 November.

4. Consideration of this case involved questions of law and questions of fact. The questions of law included matters of English law, Belgian law, and complex legal issues concerning the law of conspiracy, the extraterritoriality of offences in English law and in Irish law, corresponding offences, and other matters. The questions of fact included the confidential material which had been supplied to the Attorney General by the British Attorney General on Friday evening, 25 November.
5. The necessary consideration and examination of these issues by the Attorney General, with his legal advisers, commenced without delay and continued as expeditiously as was consistent with the care required in such matters.
6. On Thursday evening 1 December further information and clarification was sought from

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the British Attorney General concerning the material which he had furnished. This was supplied late the following evening, Friday 2 December.

7. Between the Monday and the Thursday certain material published in Britain, in newspapers and on radio and television, came to the attention of the Attorney General. He also became aware of the nature of references to the case made in the British Parliament. These matters are more specifically referred to later in this statement.
8. The Extradition (Amendment) Act, 1987 requires the Attorney General to direct that a warrant for the extradition of a person from the State shall not be endorsed unless, having considered such information as he deems appropriate, he is of opinion that there is a clear intention to prosecute that person, founded on the existence of sufficient evidence.

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Even before the passing of the 1987 Act it was part of Irish law that any application for extradition should be founded on an intention to prosecute based on a sufficiency of then-existing evidence, and that otherwise extradition proceedings would be an abuse of the process of the Court. Before the passing of the Act therefore it would have been improper for the Attorney General to initiate or permit the initiation of proceedings for extradition if he became aware that the then intention of the requesting country was not to prosecute but was, for example, to obtain the person for questioning. The existence of such a state of affairs would not normally have been apparent to the Attorney General, and the 1987 Act now requires that he obtain sufficient information to satisfy himself regarding these matters and, if not so satisfied, to direct that the warrant shall not be endorsed by the Garda Commissioner.

9. Independent of the provisions of the Extradition (Amendment) Act, 1987 the Attorney General must ensure that a proposed extradition application to

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the Courts complies with all other requirements of the law and Constitution of the State. These include for example such matters as that the offences charged are offences known to the law, and correspond with offences under Irish law, and that the supporting legal documentation is correct and in order. He must also be satisfied that the proceedings do not otherwise infringe the requirements of law or the Constitution or involve an abuse of the legal process. The Attorney General is designated by the Constitution as the chief law officer of the State and is the guardian of the public interest. It is he who bears ultimate responsibility for the initiation and conduct of extradition proceedings.

10. In the present case the extradition documents concerned four offences, specified in four separate warrants. In respect of the charges in two of the warrants the Attorney General, having considered such information as he deemed appropriate, has formed the opinion that there is, on the part of the relevant prosecuting

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authority, a clear intention to prosecute and that such intention is founded on the existence of sufficient evidence. In the light of what follows he has not found it necessary to reach any final conclusion in regard to the charges in the other two warrants.

11. Before referring to the matters which have been published in Britain concerning the case, it is necessary to record that this is not the first occasion when material has been published in Britain concerning a pending extradition case, although in no previous instance have the prejudicial statements attained the pitch and extent of those in the present case.

Earlier this year the Attorney General had cause for serious concern arising from reports on British television of the events surrounding the execution of certain extradition warrants and the charges to which they related.

British television news reports showed the scenes of the aftermath of a number of explosions which had occurred in Britain previously and linked

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them to the charges on the warrants. It was clear that these reports were based, at least in part, on information that had come from official sources. The Attorney General was extremely concerned at these developments, which he considered to be highly improper and potentially damaging to the integrity of the extradition process. He therefore telephoned the British Attorney General, Sir Patrick Mayhew, on the same day and raised these specific matters. The Attorney General does not propose to go into the details of what was said. However, he thinks it proper, and necessary, to say that he drew the British Attorney General's attention to the objectionable nature of any prejudicial material being published in connection with a pending application for extradition and prior to trial and to the fact that this was a matter which he is obliged to take into account when exercising his responsibilities arising from a request for extradition.

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12. The Attorney General viewed the publication of the material in that case with such concern that he requested the Garda Commissioner and others to conduct enquiries as to the source from which the information had come. As a result of the enquiries he concluded that the information had come from official sources in London. (It should be said that there is no question of the Crown Prosecution Service being the source.) While the Attorney General was satisfied that the television reports in question, although prejudicial, were not such as materially to affect the due process of law, he was deeply disturbed that that process could be put at risk by the publication of such material and therefore he brought his concerns to the attention of the British Attorney General on the day in question.

13. In the present case also matter has been published in Britain which the Attorney General has been obliged to consider. Before reaching a conclusion with regard to these matters the Attorney General directed that a full report be

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prepared for his consideration on the widespread publicity given to this case in Britain. Such a report was prepared and was submitted to the Attorney General. With the assistance of this report and other information available to him the Attorney General has had the opportunity of examining the depth and breadth of the material published in Britain to an extent probably not possible for most people.

14. The material in question consists of references to Patrick Ryan which have appeared in newspapers, particularly newspapers with a large circulation, and on radio and television, over a protracted period. They consisted, inter alia, of attacks on Patrick Ryan's general character, often expressed in intemperate language and frequently in the form of extravagantly-worded headlines, and also assertions of his guilt of the offences comprised in the warrants - and, indeed, assertions of his guilt of other offences in respect of which no charges have been brought.

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Many of these statements were expressed in a form which would lead the public to believe that they came, directly or indirectly, from sources who were in possession of facts which conclusively established their truth. It is also clearly apparent that a wide range of reports contained or were based on information which could only have originated from some official source.

15. An equally serious matter is the making of certain statements in the House of Commons. The tone, tenor and contents of much of what was said carried an assumption or inference of guilt on the part of the person named in the warrants issued by the Court in London. Many members scrupulously avoided saying anything prejudicial. The prejudicial statements were, perhaps, epitomised by the making of a direct attribution of guilt by one backbench member on the very first day on which the matter was mentioned and subsequently by the hostile reception received by another member

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from a significant number of backbenchers because he qualified the word "terrorist" with the word 'alleged'. The House of Commons proceedings were widely and fully reported in the media. They raised the case to a unique status and can only have intensified the impact and lasting effect on members of the public of what was being published in the written and broadcasting media. Further, the statements in the House of Commons must, because of their origin, carry particular weight with potential jurors.

16. That being so, the Attorney General has had to consider whether it is open to him to ignore the effect of these statements on members of a jury which would try Patrick Ryan if he were extradited to Britain. He has concluded that he cannot ignore it.

Every citizen has a constitutional right to a fair trial. The Supreme Court has made it clear that the Extradition Act 1965 ought not to be operated in such a manner as to violate the constitutional rights of those affected by its

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operation, and that even where the expressed statutory requirements have been fulfilled the Act may not be administered or applied in a way which would infringe such constitutional rights. The right to a fair trial includes a right to protection against the creation of prejudice or animosity in the minds of potential jurors such as would effectively deprive a person of the right to a non-biased trial. The presumption of innocence is not a procedural rule governing the onus of proof at a trial. It is a fundamental principle of substantive law.

Any decision to prosecute implies no more than that there is an issue to be tried as to whether the person charged is guilty or not guilty.

17. In the opinion of the Attorney General the effect of the material which has been published has, manifestly and inescapably, been to create such prejudice and hostility to Patrick Ryan that, were he to be extradited to Britain, it would not be possible for a jury to approach the issue of his guilt or innocence free from bias. Having

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regard to the extreme nature and extent of the prejudicial material published the Attorney General has had to conclude that this prejudice is irredeemable. No direction to the jury by the trial judge to ignore the prejudicial matter to which they have been exposed could be effective in removing the bias which has been created.

18. That being so, the Attorney General is of opinion that it would be improper, and an abuse of the process of the courts, to initiate extradition proceedings in this case. The initiation of such proceedings, in the face of the objective evidence before the Attorney General in the case would be to operate legislation in a manner which would violate the constitutional and fundamental rights of the person affected by its operation.

The due process of law is intended to do justice in each individual case. It would be against the public interest to abandon that principle for the sake of broader policy considerations.

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19. The Attorney General wishes to emphasise that his decision does not involve the formation by him of any view on the system of justice of the requesting State. The question of a fair trial arises only because of the unique circumstances of this particular case and the issue concerns only the capacity of any system of trial by jury, however fair the system might be, to provide a fair trial in those circumstances.

The Attorney General expects, and hopes, that the case will remain a unique one and that the particular circumstances that required him to arrive at this decision will not be repeated.

The process of extradition is, and remains, part of the law of the State. It has and will continue to be used.

20. This, however, does not end the matter. The charges which have been brought against Patrick Ryan are of a most serious kind, and they should be investigated by a court. The Criminal Law

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(Jurisdiction) Act, 1976 provides a means whereby certain serious offences committed outside this jurisdiction may be tried here. Such a trial may, under Irish law, take place before a court of three judges without a jury. Heavy penalties are prescribed by Irish law for those offences.

The Attorney General has requested the British Attorney General to have the evidence available to the British prosecuting authorities in this case examined with a view to the identification of all charges which could be tried in this jurisdiction.

Office of the Attorney General

Dublin

13 December, 1988