

THE SUPREME COURT

[Appeal No: 01/2008]

**Denham J.
Macken J.
Finnegan J.**

Between/

The Minister for Justice, Equality and Law Reform

Applicant/Respondent

and

Michael Murphy

Respondent/Appellant

Judgment delivered the 19th day of March, 2010 by Denham J.

1. At issue in this case is whether a hospital order with a restriction order attached in a European arrest warrant, is a "detention order" within the meaning of s.10(d) of the European Arrest Warrant Act, 2003.
2. This is an appeal by Michael Murphy, the respondent/appellant, referred to in this judgment as "the appellant", from the decision of the High Court (Peart J.) delivered on the 19th day of December, 2007, and the order made for his surrender to the United Kingdom pursuant to s.16 of the European Arrest Warrant Act, 2003.
3. The appellant is sought by the United Kingdom on a European arrest warrant, referred to in this judgment as a "EAW". The EAW is grounded on a warrant of arrest dated the 22nd March, 2007, issued by Bury Magistrates' Court in relation to a convicted mental patient who has escaped from lawful custody and is liable to be retaken in accordance with section 138 of the Mental Health Act, 1983.
4. The EAW relates to two offences, rape and assault occasioning actual bodily harm. The appellant is alleged to be unlawfully at large after conviction for the offences of rape and sexual assault occasioning actual bodily harm. The warrant was issued with a view to his arrest in the State and extradition to the United Kingdom "for the purpose of serving a sentence of imprisonment or another form of detention imposed in respect of the offences".
5. It is stated on the EAW that the appellant was convicted of the offences of rape and assault occasioning actual bodily harm on a named person on the 21st July, 1993. He was convicted of the offences on the 20th December, 1993. On the 1st August, 1994, at the Central Criminal Court in London, he was sentenced to a hospital order with special restrictions under sections 37 and 41 of the Mental Health Act, 1983.

6. The essential issue in the High Court was whether, by reference to the intent and objectives of the Framework Decision, and the European Arrest Warrant Act, 2003, as amended, referred to in this judgment as "the Act of 2003", by which effect is given to the Framework Decision in this jurisdiction, the hospital order with restrictions attached, which is for an indefinite duration, subject to powers of review by the Mental Health Tribunal, is or is not a "detention order" within the meaning of s.10(d) of the Act of 2003.

7. In the High Court the learned trial judge held:-

"I am satisfied, and there is no room for a controversy in this respect at least, that the Hospital Order and restrictions is not regarded as a sentence of imprisonment under the law of the United Kingdom. That much is clear. Equally clear in my view is that it constitutes an order for the detention of the respondent, if one adopts a literal meaning of the word "detention". However, as Ms Donnelly has stated, it cannot be the case that every form of detention or deprivation of liberty comes within the meaning of a detention order under the Framework Decision and the Act. By way of a simple example, a person who has been made the subject of a detention order solely in a mental health context, and who escapes from that detention, could not be sought to be surrendered by means of a European arrest warrant. That would seem to be clear, and that only a detention imposed or capable of being imposed following a conviction for a criminal offence has the capacity to be a detention for the purpose of the Framework Decision and the Act."

8. The learned High Court judge considered s.10(d) of the Act of 2003 and Articles 1 and 2 of the Framework Decision. The learned High Court judge held that insofar as there may be a perceived ambiguity between the texts of Articles 1 and 2 of the Framework Decision he was assisted by referring to the French, German and Italian texts of the same articles, where there was use of the indefinite article in relation to a detention order in each case. The learned High Court judge held:-

"This confirms for me that the intention of the Framework Decision is that the phrase "detention order" is not to be confined to a detention order imposed as a form of sentence, such as where in this jurisdiction a young person can be ordered to be detained in St Patrick's Institution as a form of sentence of imprisonment. If one removes the adjective "custodial" from the "detention order" it is clear that its meaning is wider than a custodial detention order, and can embrace a detention order such

as the hospital order with restrictions which was imposed upon the respondent following his conviction after a trial."

And he concluded:-

"It is therefore possible for this court to give an interpretation to the provisions of section 10 (d) of the Act which is in conformity with the objectives and intent of the Framework Decision, and which is not *contra legem*. It is that interpretation which must be given in those circumstances, rather than one which would exclude the respondent from being a person in respect of whom a European arrest warrant may be issued, thereby preventing his surrender."

Grounds of Appeal

9. Fourteen grounds of appeal were filed on behalf of the appellant. However, there is a single issue on this appeal and it is whether a hospital order with a restriction order attached is a "detention order" within the meaning of s.10(d) of the Act of 2003.

Law

10. The relevant wording of section 10(d) of the Act of 2003, as inserted by the Criminal Justice (Terrorist Offences) Act, 2005, is as follows:-

"10.—Where a judicial authority in an issuing state duly issues a European arrest warrant in respect of a person—

- (a) ...
- (b) ...
- (c) ...
- (d) on whom a sentence of imprisonment or detention has been imposed in respect of an offence to which the European arrest warrant relates, ...

that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state."

[Emphasis added]

11. Article 1(1) of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, referred to in this judgment as "the Framework Decision" states:-

"The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of

a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order."
[Emphasis added]

And Article 2(1) states:-

"A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months."
[Emphasis added]

Principle of Conforming Interpretation

12. The Court in interpreting the Irish legislation giving effect to the Framework Decision must do so as far as possible in light of the wording and purposes of the Framework Decision in order to attain the result it pursues: (Case C-105/03) **Pupino** [2005] E.C.R. 1-05285. As Murray C.J. stated in **Minister for Justice, Equality and Law Reform v. Altaravicius** [2006] 3 I.R. 148 at p.156:-

"When applying and interpreting national provisions giving effect to a Framework Decision the courts "must do so as far as possible in the light of the wording and purpose of the Framework Decision in order to attain the result which it pursues" (see criminal proceedings against **Pupino** Case C-105/03 [2005] E.C.R. 1-05285). The principle of conforming interpretation is limited, as the Court of Justice has pointed out in *Pupino* and other cases, to the extent that it is possible to give such an interpretation. It does not require a national court to interpret national legislation *contra legem*. If national legislation, having been interpreted as far as possible in conformity with community legislation to which it purports to give effect, but still falls short of what is required by the latter, a national court must, as a general principle, apply that legislation as interpreted although there may be other consequences for a member state which has failed to fully implement a directive or framework decision."

Submissions

13. Mr Feichin McDonagh, S.C., counsel for the appellant, informed the Court that there was a single issue on the appeal. The issue was whether the order of the United Kingdom comes within s.10(d) of the Act of 2003. Thus it was a matter of statutory interpretation. Counsel accepted that the principle of conforming

interpretation must apply but, he submitted, that this was not helpful as the Framework Decision does not refer to detention for mental health reasons. Counsel explained that a hospital order provides for detention while a restriction order provides a mechanism for the temporary release of a person on a hospital order. Thus the hospital order is the order providing for the detention of the appellant.

Counsel informed the Court that the appellant has been convicted in this jurisdiction on rape charges and has been given sentences of imprisonment for life. He is in prison on these and other sentences.

Counsel brought the Court through the papers in the case and made many submissions arguing that the case did not come within s.10(d) of the Act of 2003. He submitted, *inter alia*, that the language of the law does not fit a hospital order. That the appellant could not complete his hospital order.

Counsel submitted also that there could be no reciprocity. If a person were in the Central Mental Hospital after a trial they would not have been found guilty, they would have been found not guilty by reason of insanity: s.5 Criminal Justice Insanity Act, 2006. Thus there would be no conviction in Ireland. If that person had escaped to the United Kingdom he could not be returned on a European arrest warrant on such a detention order, hence, it was submitted, there would not be reciprocity.

Counsel submitted further that the Framework Decision dealt with punishment, and argued that a person is sentenced as a punishment. If one crosses that "bright line" one is in a grey area into mental health issues. Counsel pointed out that mental health systems are different in each Member State.

Counsel submitted that the essence of the order in the United Kingdom was for protecting public safety – not a punishment. Counsel drew attention to several sections in the Act of 2003 and argued that the language is hard to tally with a mental health situation.

14. Mr. Micheál P. O'Higgins S.C., counsel for the Minister for Justice, Equality and Law Reform, addressed the issue as to whether the hospital order came within the Act of 2003. He stated, *inter alia*, that it was common case that the hospital order can only be made by a court exercising a criminal jurisdiction, that the hospital order came after a full criminal trial. As to section 10(d) of the Act of 2003, counsel argued that the words should be read literally, and in the context of the Framework Decision, as having a broad meaning. He submitted that s.10(d) of the Act of 2003 includes orders made in a criminal process which restricts the liberty of a convicted person. Counsel urged the Court not to attempt to construe the law of the United Kingdom. He submitted that the Court should apply principles of mutual respect and recognition. He submitted that the hospital order comes within section 10(d) of the Act of 2003, that the Oireachtas chose the words "or detention" and that by such addition to the section it must mean that the legislature intended that the process would be construed more broadly. He submitted that the Court should construe the section as "... sentence of ... detention" and that the hospital order comes within such a construction. Counsel submitted that a sentence of detention means a measure imposed by a competent court imposing a criminal jurisdiction, depriving a person of liberty, as a consequence of a conviction, and that the hospital order in this case is a sentence of detention pursuant to section 10(d).

European arrest warrant

15. The appellant has been convicted in the United Kingdom of the offences of rape and assault occasioning actual bodily harm. The EAW was grounded on a warrant of arrest dated 22 March 2007 issued by Bury Magistrates' Court, which states it is:

"... in relation to being a convicted mental patient who has escaped from lawful custody and is liable to be retaken in accordance with section 138 of the Mental Health Act 1983."

16. The EAW describes the person sought as "convicted".
17. The offences of rape and assault occasioning actual bodily harm are described.

As to these offences, the EAW states:-

"The person in respect of whom this warrant is issued is alleged to be unlawfully at large after conviction for the extradition offences of rape and assault occasioning actual bodily harm detailed in the warrant. The warrant is issued with a view to his arrest and extradition to the United Kingdom for the purpose of serving a sentence of imprisonment or another form of detention imposed in respect of the offences."

18. The EAW then provides:-

"(c) The sentence imposed was:

Rape;

The requested person was made the subject of a Hospital Order under section 37 of the Mental Health Act 1983 with indefinite special restrictions under section 41 of the Mental Health Act 1983."

A description is given also as to the offence of assault occasioning actual bodily harm.

19. A description is given on the EAW of the circumstances in which the offences were committed. This commences as follows:-

"The defendant, Michael Joseph Murphy, was convicted of offences of rape and assault occasioning actual bodily harm on Vaunda Hoscick. The offences took place on 21 July 1993. He was convicted of the offences on 20 December 1993. On 1 August 1994 at the Central Criminal Court London he was sentenced to a hospital order with special restrictions under sections 37 and 41 of the Mental Health Act 1983." [Emphasis added]

20. The EAW at paragraph II(f), includes the following:-

"Section 37 of the Mental Health Act 1983 provides that where a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence the sentence for which is fixed by law, the court may by order authorise the offender's admission to and detention in, such hospital as may be specified in the order if it is satisfied, on the written or oral evidence of two registered medical practitioners that the offender is suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment and that either the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and, in the case of psychopathic

disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition, and the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender that the most suitable method of disposing of the case is by means of an order under Section 37.

Section 41 of the Mental Health Act 1983 provides that where a hospital order is made in respect of an offender by the Crown Court and it appears to the court having regard to the nature of the offences, that the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may further order that the offender shall be subject to the special restrictions set out in this section either without limit of time or during such period as may be specified in the order. An order under this section is known as "a restriction order". Under the Section the patient shall continue to be detained by virtue of the relevant hospital order until he is duly discharged. The power to order the discharge of the patient can only be exercised with the consent of the Secretary of State. While a person is subject of a restriction order, medical examinations must take place at least annually and a report submitted to the Secretary of State."

Affidavit

21. In an affidavit Jason Elliott, a practising barrister of criminal law and public law in England, deposed that the appellant was convicted on the 20th December, 1993, of the offences of rape and assault occasioning actual bodily harm at the Central Criminal Court in London. Further, on the 1st August, 1994, he was sentenced to a hospital order with special restriction under sections 37 and 41 of the Mental Health Act, 1983. He recites the terms of s.37(8) as:-

"Where an order is made under this section, the court shall not—

- (a) pass sentence of imprisonment or impose a fine or make a community order (within the meaning of Part 12 of the Criminal Justice Act 2003) in respect of the offence,
- (b) if the order under this section is a hospital order, make a referral order (within the meaning of the Powers of Criminal Courts (Sentencing) Act 2000) in respect of the offence,
- (c) make in respect of the offender a supervision order (within the meaning of that Act) or an order under section 150 of that Act (binding over of parent or guardian).

but the court may make any other order which it has power to make apart from this section; and for the purposes of this subsection "sentence of imprisonment" includes any sentence or order for detention."

Section 40 states that:-

- "(1) A hospital order shall be sufficient authority—
- (a) for a constable, an approved social worker or any other person directed to do so by the court to convey the patient to the hospital specified in the order within a period of 28 days; and
 - (b) for the managers of the hospital to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Act."
- [Emphasis added]

The deponent then sets out some further law from the United Kingdom. This includes at paragraph 4.5:-

"In determining whether to make a restriction order the sentencer has to choose to make an order without restriction, which might lead to the offender being released in a few months, and an order with restriction which might lead to the offender being detained for a long time, possibly longer than he would have spent in prison had he been sentenced to imprisonment."

22. Further, he deposes that the effects of restriction orders pursuant to s.41 of the Mental Health Act, 1983 were explained by Mustill L.J. in **R. v. Birch** (1989) 11 Cr App R (S) 202 (CA), as follows:-

"No longer is the offender regarded as a patient whose interests are paramount... Instead, the interests of public safety are regarded by transferring the responsibility for discharge from the Responsible Medical Officer (RMO) and the hospital... to the Secretary of State and the Mental Health Review Tribunal. A patient who has been subject to a restriction order is likely to be detained in hospital for much longer than one who is not, and will have fewer opportunities for leave of absence."

23. In answer to specific questions Jason Elliott states a number of conclusions, including the following. The hospital order is not a sentence of imprisonment.

Although it is not a sentence of imprisonment it will be recorded as an offender's antecedent.

24. However, the wording of the law in the United Kingdom is not a matter to be construed by this Court. This Court will consider the facts of the case and apply Irish law to the matter.

Construction of section 10(d)

25. The essential issue is whether the hospital order comes within the Act of 2003 and the Framework Decision, whether this type of detention is one for which an order for surrender may be made under Irish law. This requires the construing of s.10(d) of the Act of 2003.

26. Section 10 has been set out previously in this judgment, it requires that where a judicial authority in an issuing state issues a European arrest warrant in respect of a person, that person shall, subject to the provisions of the Act and the Framework Decision, be arrested and surrendered to an issuing state.

27. One of the provisions set down in s.10(d), is that the person sought is one:-

"(d) on whom a sentence of imprisonment or detention has been imposed in that state ...
[Emphasis added]

28. The above words of s.10(d) require to be considered. They fall to be construed as far as possible in light of the wording and purposes of the Framework Decision, pursuant to Case C-105/03) **Pupino** [2005] E.C.R. 1-05285.

29. The Framework Decision is of assistance. The second recital refers to the "programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions ..." which addressed the matter of mutual enforcement of arrest warrants. It is clear that the basis of this Framework Decision is mutual recognition of criminal decisions. A decision in a criminal matter by a judicial authority may be the foundation for an EAW. However, a decision in another area, such as a civil court, could not.

30. This may be seen also in Recital 5, where it is stated:-

"The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or

prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice."

[Emphasis added]

Thus the system envisaged in the Framework Decision relates to the surrender of sentenced persons or to persons for prosecution – in criminal matters. The European arrest warrant procedure may be brought in relation to a criminal process.

31. This grounding in the criminal process may be seen in the Framework Decision.

Article 1(1) states as follows:-

"The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order."

[Emphasis added]

Thus an EAW may apply to a proposed prosecution, which is not the situation in this case. Or, an EAW may be obtained where there has been a "custodial sentence or detention order". The situation which it is submitted arises in this case is that of a detention order. It is submitted that there has been such a detention order in relation to the appellant.

32. Article 2(1) is helpful. It states:-

"A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months."

[Emphasis added]

Again there is the duality – an EAW may be sought for a prosecution or it may be sought where sentence has been passed, i.e. within a criminal process. When referring to the situation where sentence has been passed there is reference to "where a sentence

has been passed or a detention order has been made", both are then qualified by the phrase "for sentences of at least four months". Thus there is a belt and braces approach to the description, in that reference is made to a situation where a sentence has been passed or a detention order made, for a sentence of at least four months.

33. Article 5 refers to guarantees to be given by the issuing Member State in particular cases. It states:-

"The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

..."

[Emphasis added]

Thus expressly addressed, *inter alia*, are protections arising in relation to a lifetime detention order.

34. The purpose of the Framework Decision is to improve the extradition process between Member States on a foundation of mutual respect and judicial cooperation. It envisages extradition of persons to be prosecuted or persons who

have been prosecuted and who are sought subsequent to a conviction on a custodial sentence or detention order.

35. The Framework Decision envisages that a European arrest warrant may issue where a detention order has been made within the context of a criminal conviction. Specific guarantees are given in relation to certain situations, such as a decision *in absentia*. Also, Article 5(2) refers to a lifetime detention order and a condition that the issuing Member State has a provision for review. This was specifically addressed in the warrant and was not an issue in this case.

36. The Oireachtas was equally clear in its wording of s.10(d) of the Act of 2003. It mandates extradition (subject to the terms of the Act) for a person "on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the European arrest warrant relates." On the face of s.10(d) it includes a detention order in respect of an offence to which an EAW relates.

37. There are safeguards in the Act of 2003 in relation to requests arising on a detention order. These include that it must relate to an offence to which the Act of 2003 relates; it arises only in relation to determinations in court in a criminal legal process in an extraditable offence; and also, for example, the requirements in the Act of 2003 establish that an EAW shall, as far as practicable, be in the form set out in the Annex to the Framework Decision.

38. A detention order arising outside the criminal process, or not relating to extraditable offences, could not be the subject of a detention order enforceable under the Act of 2003. I would affirm the statement of the learned High Court judge that a person who has been made the subject of a detention order solely in a mental health context, and who escapes from that detention, could not be sought to be surrendered by means of an EAW.

39. Similarly, I would distinguish the situation addressed in **The People (Attorney General) v. O'Callaghan** [1966] I.R. 501. That case arose on a bail motion where a prisoner had been returned for trial. The issue was whether the applicant could be held in preventative detention prior to his trial; it was submitted that if he were released on bail he might commit further offences. Walsh J. held that such detention would be a form of preventative justice which has no place in our legal system and is alien to the purposes of bail. The facts and issues of that case are entirely different to the situation addressed in this warrant where there have been convictions for serious offences and for which the appellant has been ordered to be detained.

40. Sentencing is a complex matter. All the facts and circumstances of a case require to be considered by a court, and then the court applies the law as appropriate. This may involve aspects of retribution, deterrence, protection, reparation and/or rehabilitation. A sentencing court considers the offence, the offender, the victim, all the circumstances of the case, and makes a decision according to the law. The law relating to sentencing is not identical in all Member States. In this case the law of the United Kingdom enables a sentence to be one of detention by way of a hospital order. Such a detention order apparently involves elements of protection for society.

41. The Framework Decision specifically provides for an EAW in respect of a person on whom a detention order has been imposed in respect of an offence to which an EAW relates.

42. The legal systems of each of the Member States are different. However, that is not a reason to refuse a request for surrender. It is not for this Court to interpret or apply the law of the United Kingdom. This Court has the duty to apply the law of Ireland, which in this case is s.10(d) of the Act of 2003.

43. Taking a literal interpretation of s.10(d), it states that it applies to a person on whom "a sentence of imprisonment or detention has been imposed". The word "sentence" governs the phrase and applies to both "imprisonment" and "detention". Thus it clearly arises in criminal proceedings and covers a sentence of detention. There is no ambiguity.

44. Such a literal and broad approach is consistent with the Framework Decision which recited its purpose as applying to "executing a custodial sentence or detention order". It is clear from the terms of the Framework Decision, which have been set out earlier in this judgment, that it applies to a custodial sentence or to a detention order in the framework of a criminal process.

45. A literal approach to the clear words of s.10(d) of the Act of 2003 means that it includes a detention order. However, a detention order is limited by the terms of the Act of 2003 and the Framework Decision. Thus, for example, it applies only to a detention order which relates to extraditable offences and which have been the subject of the criminal process in the requesting country.

46. Article 5 of the Framework Decision has been set out earlier in this judgment, where the reference to "custodial life sentence or lifetime detention order" is underlined. Counsel for the Minister referred the Court to "Proposals for a Council Framework Decision on the European Arrest Warrant and Surrender Procedures between Member States" presented by the European Commission on the 25th day of September 2001 where the Commission set out an explanation of what was proposed to be introduced in the Framework Decision, together with a commentary. The Commission stated that the definition of detention order is taken from the 1957 Convention, being the European Extradition Convention of the 13th December, 1957. Article 25 of that Convention provided:-

"For the purpose of this Convention, the expression 'detention order' means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence."

This is not, of course, a binding authority on the Court in relation to s.10(d) of the Act of 2003, but it is helpful. Indeed, in a case of the Supreme Court of Finland, on an EAW, counsel for the government in that case referred also to Article 25 of the 1957 Convention on Extradition.

47. The case referred to above was that of the Supreme Court of Finland, **KKO 2005 139**, Case Book Number R2005/1074, Presentation Date: 15 December 2005, Issue Date 21 December 2005, File Number 3198.

The facts include the following matters. A was sentenced to forensic psychiatric care for assault by the District Court of Stockholm. Its appropriateness was to be reassessed every six months. The competent authority of Sweden issued an arrest warrant for A. The arrest warrant was an extradition warrant for the purpose of enforcing detention in the sense of the Act on Extradition between Finland and the other Member States of European Union. A, as a citizen of Finland, requested to serve the detention in Finland. On the ground that A had requested to serve his detention in Finland, and since the detention was to be enforced in Finland, the extradition was refused. However, the court considered the issue of detention under the Framework Decision. It held:-

"Is this a case of detention according to the EU Extradition Act?"

6. The EU Extradition Act is based on the Framework Decision of the Council on the European Arrest Warrant and the Surrender Procedures between the Member States (2002/584/JHA, hereinafter referred to as "Framework Decision"). According to Article 1, paragraph 1 of the Framework Decision, a European arrest warrant means a legal decision which has been issued by a Member State for the purpose of apprehending the requested person and extraditing him/her by another Member State for prosecution or for the enforcement of a custodial sentence or a detention order. According to Article 2, paragraph 1 of the Framework Decision, a European arrest warrant may be issued if

a sentence or a decision regarding a detention order has been issued, in the case of sanctions whose minimum duration is four months.

7. As is pointed out in the reasoning of the government proposal (HE 88/2003 vp p. 17), the Framework Decision does not employ the term "detention" used in the EU Extradition Act but rather "custodial sentence" or "detention order." According to the reasoning of the government proposal, the term "detention" can be used to cover both of these terms, however. In addition, the reasoning mentions that the terms are clarified in Article 25 of the 1957 European Convention (SopS 32/1971) on the Extradition, which contains the definition of a detention order. According to the definition, the expression "detention order" means any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence.
8. A was sentenced to the sanction mentioned in paragraph 1 for offences imputed to him. The sanction is a sentencing measure imposed by a criminal court instead of a prison sentence. A sanction of that kind is a custodial sentence or a detention order in the sense of the Framework Decision. In its judgment of 16 June 2005 in the preliminary ruling in case C-105/03 Pupino, the Court of Justice of the European Communities (Grand Chamber) ruled that the principle of uniform interpretation, which is applied to directives, is also applicable to the Framework Decision. When applying national law, a national court thus has to interpret national law, so far as possible, in the light of the wording and purpose of the Framework Decision. Since the arrest warrant involves extradition for the enforcement of a sanction in the sense of the Framework Decision, the EU Extradition Act has to be interpreted to allow the inclusion of detention in the sense of that Act, which is the purpose of the extradition request.

Appraisal of the conditions concerning the severity of the sanction and the criminality of the act

9. According to Section 2, paragraph 2 of the EU Extradition Act, if someone has been sentenced to detention, the extradition is granted if the imposed sanction involves at least four months of detention and the act is, or would be, an offence under Finnish law if committed in Finland under comparable circumstances.
10. A was sentenced to at least four months of detention. The act is an offence under Finnish law if committed under comparable circumstances. The conditions set out in Section 2, paragraph 2, of the EU Extradition Act for the extradition of A are thus met."

While this case is, of course, not a binding precedent, it illustrates an analysis of the Framework Decision similar to that which I have made and applied in this case. It also illustrates the benefit which would be obtained for the Member States if there was a centralised site where judgments of the courts of Member States on European arrest warrants would be available. Similar issues must arise constantly before the courts of the Member States and it would be of assistance to see the interpretation of the Framework Decision given by the courts of other Member States.

Conclusion

48. I would define a detention order under s.10(d) as any order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence. In this case the detention order was made by a criminal court after conviction, for the extraditable offences of rape and assault occasioning bodily harm, instead of a prison sentence. Thus I am satisfied that s.10(d) of the Act of 2003 applies to the detention order in this case. Consequently, for the reasons given, I would affirm the order of the High Court.