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IN THE COUNTY COURT FOR THE DIVISION OF BELFAST

BY THE RECORDER OF BELFAST

IN THE MATTER OF AN APPLICATION UNDER THE EXTRADITION ACT 2003 ("The 2003 Act")

Between

The Federal Public Prosecutor Germany

Applicant

And

Roisin McAliskey

1. This is a request by the Federal Public Prosecutor Germany (the Applicant) for the extradition of Roisin McAliskey (Ms McAliskey) who currently lives in Coalisland, Northern Ireland, and who is alleged to have committed the crime of attempted murder in the circumstances which I will set out below. A request was made under the provisions of the 2003 Act and comes before me as "the appropriate Judge" for extradition proceedings in Northern Ireland under Section 139(1) of the 2003 Act.

2. The Applicant issued a warrant under Part I of the 2003 Act on 12 October 2006 for the arrest of Ms McAliskey, and on 29 November 2006 the Serious Organised Crime Agency, which had been designated by the Secretary of State (for the purposes of Part I of the 2003 Act) certified that the warrant was issued by a judicial authority of a Category 1 territory which has the function of issuing arrest warrants. That certificate also confirmed that by virtue of Section 1 of that enactment, the Secretary of State had designated Germany for the purposes of Part I of the 2003 Act.

3. The warrant was executed by the Police Service of Northern Ireland on 21 May 2007 when Ms McAliskey was arrested. On the same day she was brought before this Court pursuant to Section 4(3) of the 2003 Act. At that hearing Ms McAliskey confirmed that she was the person in respect of whom the Warrant was issued. The Court, without objection from the Applicant, granted bail to Ms McAliskey.

The 2003 Act

4. By Section 10 of the 2003 Act if a person in respect of whom a Part I Warrant is issued appears before 'the appropriate judge', the judge must decide "whether the offence specified in the Part I Warrant is an extradition offence." In the event it was agreed at the hearing on 21 May 2007 on behalf of Ms McAliskey that the alleged offence of attempted murder is an extradition offence. This was confirmed at the later substantive hearing. The decision being that for the Court I confirm the offence for which the extradition is sought is an extraditable offence. In those circumstances under Section 10(4) of the 2003 Act the judge is obliged to proceed under Section 11 of the 2003 Act.

5. The relevant part of Section 11 for the purposes of these proceedings provides as follows:-

> "11 Bars to extradition
>
> (i) If the judge is required to proceed under this section he must decide whether the person's extradition to the Category 1 territory is barred by reason of –
>
> (c) The passage of time.
>
> (ii) Sections 12-19 apply to the interpretation of sub-section (1)
>
> (iii) If the judge decides that any of the questions in sub-section (1) are in the affirmative he must order the person's discharge.
>
> (iv) If the judge decides those questions are in the negative and the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under Section 21."

6. For the purposes of these proceedings the next relevant section is Section 14 which provides:-

> "14. Passage of Time
>
> A person's extradition to a Category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence or since he is alleged to have become unlawfully at large (as the case may be)."

7. Section 21 of the 2003 Act provides as follows:-

> "21. Human Rights
>
> (i) If the judge is required to proceed under this section (by virtue of Section 11 or 20) he must decide whether the person's extradition would be compatible with the

Convention rights within the meaning of the Human Rights Act 1998(c.42).

(ii) If the judge decides the question in sub-section (1) in the negative he must order the person's discharge.

(iii) If the judge decides that question in the affirmative he must order the person to be extradited to the Category 1 territory in which the warrant has issued."

8. The next relevant section for the purposes of these proceedings is Section 25 of the 2003 Order which provides as follows:-

" 25 Physical or mental condition

(i) This section applies if at any time in the extradition hearing it appears to the judge that the condition in sub-section (2) is satisfied.

(ii) The condition is that the physical or mental condition of the person in respective of whom the Part I Warrant is issued is such that it would be unjust or oppressive to extradite him.

(iii) The judge must -

(a) Order the person's discharge, or
(b) Adjourn the extradition hearing until it appears to him that the condition in sub-section (2) is no longer satisfied."

9. Outwith the statutory considerations in relation to the Court's powers to refuse the extradition of a requested person, the defence in this matter also argue that the Court has a general and inherent power to protect its process from abuse, and arising from that duty that it has an implied or residual jurisdiction to stay an extradition request for abuse of the Court's process.

The Framework Decision

10. On 13 June 2002 the Council of the European Union entered into a Framework Decision addressing the question of extradition and the proposed amendments to the process for the extradition of any person from a signatory to the Treaty. The proposed change arose from a declared "high level of confidence between Member States" as to their criminal law processes, and arising from that confidence a wish to tackle what was in their eyes the unacceptable time taken in the extradition process.

11. In Recital (5) to the Framework Decision the objective of the decision and the subsequent legislation within Member States was set out in the following terms.

> "(5) 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….. Traditional co-operation relations which have prevailed up until 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."

12. In Recital (8) the Decision states:-

> "(8) Decisions on the execution of the European Arrest Warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender."

13. The 2003 Act represents the acceptance of the extradition scheme in the Framework Decision, but by its terms it also affords protection to requested persons within the jurisdiction of the United Kingdom. It was argued by Mr Maguire QC on behalf of the applicant that with this new approach previous case law interpreting and defining protections afforded in earlier legislation relating to extradition proceedings should now be replaced by reference to the stated objectives of the 2003 Act. The consequence could therefore be that either they no longer carried any weight with the Court, or at best required to be informed by this new approach.

14. I am unable to accept this argument. The Court distinguishes between process and protection. Therefore I believe my approach should:-

(a) To first reflect the facts in the instant case and to apply those to the legal tests defining my powers and discretions, if any: and

(b) If the specific protections are couched in the same terms (or in terms which effectively encapsulate the same principles) as in the previous legal protections, then such previous jurisprudence should be given due consideration and weight. If, on the other hand, there is a change in the scope or conditions attached to any previous protection as compared to the terms of the protection in the 2003 Order, then clearly one would need a new approach, which on proper occasion could reflect the new dispensation.

The Progress of this hearing

15. By direction of the Court the parties were afforded the opportunity to file skeleton arguments and to lodge affidavits setting out the evidence upon which they wished to either seek a bar to the extradition or to seek the extradition itself. I have already acknowledged that both parties carried out this task as expeditiously as was possible given the complexity to the background to this matter to which I will refer in more detail later in this ruling. Nevertheless problems did arise.

16. The court had fixed a date for hearing on the basis of its obligation to have matters decided as soon as possible – always of course on the basis that both parties have the opportunity of a fair hearing. One of the major areas for which evidence was filed was in relation to the medical history and present medical condition of Ms McAliskey. Her legal representatives sought medical reports from experts, most particularly in relation to mental and emotional difficulties from which she has suffered and, by common consent of the experts on both sides, continues to suffer. In addition there are physical medical issues also to be considered. On receipt of those reports they were served on the Applicant's legal representatives who in turn sought a medical expert report from Dr Tom Fahey. This report was then filed and served.

17. As regards the historic position relating to Ms McAliskey's health there was little difference in the reports for both parties between the recital of the symptomology from which Ms McAliskey suffered and the diagnosis of that symptomology. In relation to her present condition again there was a relatively common area of agreement, with perhaps some differences in emphasis - but not sufficient to prevent the court taking a view as to what that condition may now be.

18. The evidence on Ms McAliskey' previous medical conditions and her present position was supplemented by evidence from Ms McAliskey's previous solicitor (Ms Gareth Pierce), by evidence from her mother (Mrs Bernadette McAliskey), and from other persons who have been and are engaged with her in various forms of therapy.

19. A difference arose between the experts for Ms McAliskey and the Applicant in their prognosis as to the effect on Ms McAliskey being extradited to Germany, and the potential effect on her conditions as a result of having to stand trial in Germany. For that reason it would have been necessary for the Court to hear the authors of the medical reports, but this was not possible within the timescale set by the court since Dr Fahey was not available. Indeed he would not be available until a date in December.

20. In addition to this "outstanding" medical evidence, there were one or two other matters on which further evidence was to be gathered, particularly by the Applicant. This related to some of the steps that had been taken in relation to the prosecution of these proceedings by the Applicant, and the reasons for the passage of time.

21. Notwithstanding the above problems, the Court felt it possible to proceed to deal with one of the Bars argued on behalf of Ms McAliskey, namely under Section 11(1)(c) and Section 14. Even in this regard the court has confined its consideration to what I have described as the second limb of Section 14, namely - whether the extradition should be barred by reason of the passage of time if it appeared to the court that it would be "oppressive" to extradite Ms McAliskey by reason of the passage of time since she is alleged to have committed the extradition offence. If the court were to conclude that such a Bar did exist then that would conclude the proceedings without the requirement of considering the other Bars.

22. The legal representatives of Ms McAliskey agreed with this step, although Mr Maguire asked me to note that he was not consenting to that approach. Nevertheless whatever else can be said, these proceedings relate to offences which

- occurred some 11 years ago,
- where there have been previous proceedings,
- where the health of Ms McAliskey is accepted by all to be at best fragile; and
- where these proceedings, even on the evidence of Mr Fahey, are having a detrimental affect upon her.

Married with the obligation of the court to proceed with all alacrity, the court decided to take this step. In doing so I have ignored the prognosis in relation to the effect of the extradition and/or the standing of trial on Ms McAliskey's health, limiting myself to the effect of the passage of time to date on inter alia its effect to this date on her health. I also ignore for the purposes of this ruling any argument of "fault" on the part of the Applicant, a factor which, if proved to my satisfaction, could on the authorities be taken into account by the Court in the exercise of its powers under Sections 11(1)(c) and 14. Instead the court proceeds on the basis that the Act's provision relates to the "passage of time", notwithstanding the reason for that passage of time.

Legal framework in respect of second limb Section 14

23. I have considered all of the authorities lodged by the parties as the basis from which I should approach my decision as to whether or not to extradite Ms McAliskey would be oppressive within the provisions of Section 14 of the 2003 Act. I am satisfied that I should take as my starting point the principles set down by Lord Diplock in Kakis –v- Government of the Republic of Cyprus [1978]1WLR779. While this referred to the provisions of Section 8(3) of the

Fugitive Offenders Act 1967, the terms of that Act are to all intents and purposes those of the 2003 Act. Section 8(3) stated:-

> "If it appears to the court that (b) by reason of the passage of time since he has alleged to have committed it (that is the offence of which he is accused) …. it would, having regard to all of the circumstances, be unjust or oppressive to return him."

24. In addressing section 8(3) Lord Diplock said:-

> " 'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration: but there is room for overlapping, and between them they would cover all cases where to return him would not be fair."

25. I am reinforced in my view that I should take this as my basic legal tenet by the fact that it was adopted as the approach in Kociukow, a case heard in 2006 in respect of the provisions of Section 14 of the 2003 Act.

26. A similar approach was adopted by Sedley J in The Matter of Arthur Ashley-Riddle DC 22 November 1993. In this case the court were considering the provisions of Section 11(3) of the Extradition Act 1989 which provides:-

> "Without prejudice to any jurisdiction of the High Court apart from this section, the court shall order the applicant's discharge if it appears to the court in relation to the offence, or each of the offences, in respect of which the applicant's return is sought, that –
>
> > (b) by reason of the passage of time since he is alleged to have committed it …. it would, having regard to all the circumstances, be unjust or oppressive to return him."

27. This section effectively reproduces the provisions of the 1967 Act, and the provisions of Section 14 of the 2003 Act. In his judgment Sedley J stated:-

> "Section 11(3)(b), it should be remembered, is neither a limitation clause nor a disciplinary measure. Its focus is on the person sought and the effect on him or her of whatever delay there has been. Thus excusable delay, if its effect meets the statutory test, may require discharge: and inexcusable delay, if its impact on the person sought is not within the mischief aimed at, may fail to do so. Whether in either case the result would depend in part on "all the circumstances", and these may undoubtedly include any good reasons or want of good

reasons for lapse of time, and whether any bad reasons had been the fault of the person sought or the requesting state….

The dichotomy of injustice and oppression in Section 11(3) is described by Lord Diplock in Kakis at page 782-783. The former relates to the trial process itself, thereby postulating that events may have conspired to inject unfairness into a trial which, on the principles of comity, this Court will always assume to be one which will be fairly conducted. The latter relates to the hardship which removal may now cause because of the passage of time."

27. And finally in this context I note and adopt the approach set out in Kakis by Lord Scarman at page 790 when he states:

> "It is not permissible, in my judgment, to consider the passage of time divorced from the course of events which it allows to develop. For the purposes of this jurisdiction, time is not an obstruction but the necessary cradle of events, the impact of which upon the applicant has to be assessed."

28. I then turn to a separate concept to be considered by the court in dealing with the passage of time. This relates to the argument that inaction gives rise to an expectation on the part of the person for whom extradition is eventually sought, that proceedings will not be instituted. In Kakis at page 790 Lord Scarman refers to this aspect when he states:-

> "The oppressiveness in returning him for trial would arise because during the years that have elapsed since the end of July 1974 events have conspired to induce in Mr Kakis a sense of security from prosecution. Yet during these years he has not led the life of a fugitive from justice. On the contrary he has settled in this country openly and – as it must have appeared to him – with the assent of, or at the very least without objection by, the authorities in Cyprus".

29. And in Hunt –v- the Court of First Instance, Antwerp, Belgium [2006] EWHC 165 (Admin) at paragraph 25 Numan J refers to "the subject may be lulled into a sense of security" in the context of the passage of time.

30. And finally two additional legal matters which I record as having guided me in my approach.

    (a) If the Court were to decide that it is oppressive for Ms McAliskey to be returned, then there is no discretion on the part of the Court. In such circumstances the provisions of section 14 confirm that the Court **must** order that she be not extradited: and

(b) The burden and standard of proof is referred to in Kociukow by Jack J in the following terms:

> "9. Section 206 of the 2003 Act is entitled "Burden and Standard of Proof". It provides that any question as to the burden or standard of proof must be decided as if the proceedings were proceedings for an offence with the person sought to be extradited being the person accused, and the extraditing territory being the prosecution. That means that the court must proceed as if the accused was being prosecuted before an English Court with the extraditing state as the prosecutor. It is not obvious how this should be applied to issues arising under Sections 11(1)(c) and 14. In my view there is an analogy with an application to stay proceedings on the ground of abuse of process arising from the passage of time. There the burden is on the accused and the standard of proof is the balance of probabilities. That was the position on the previous law relating to extradition and the passage of time. I refer to Union of India – v- Narang [1978] AC 247 at 293 per Lord Keith. So, in my judgment, that is the basis on which the applicant's case is to be decided."

31. Therefore I require to decide whether on the balance of probabilities Ms McAliskey has persuaded me that it would be oppressive by reason of the passage of time to order her extradition to Germany.

Evidence relevant to this aspect of the application

32. The Applicant alleges that Ms McAliskey was a member of a PIRA Active Service Unit which on 28 June 1996 fired three mortar grenades from a mortar battery installed on an open floor of a transit van in the direction of the British Army Quebec Barracks at Osnabruck, Germany. While no-one was killed or injured in this attack, substantial damage was done to property at the base and in surrounding houses and the capacity for someone to be so injured or killed was clearly present. There is no statue of limitation in relation to criminal offending, and it is a legitimate expectation on the part of any community subjected to any such attack that those responsible should be brought to justice.

33. Following the incident the German authorities carried out a full investigation which led to an application to have Ms McAliskey extradited. On 20 November 1996 Ms McAliskey, then aged 25, was arrested and detained for seven days at Castlereagh Police Station where she underwent intensive interrogation. A provisional arrest request was made by Germany to the UK authorities on 24 November and when Ms McAliskey was released by the

then RUC, she was immediately arrested on the German Extradition Warrant. On 26 November 1996, seven days after her arrest, she was taken from Belfast to London and on 27 November was produced at Bow Street Magistrates' Court for her first appearance. She was then remanded for a period of some five months whilst the extradition proceedings proceeded. In May 1997 she was granted High Court bail owing to her medical condition, with serious concerns about her mental and physical wellbeing, including concerns about developments in her pregnancy. On 23 May she was transferred from HMP Holloway to a delivery suite at Wittington Hospital where she remained for two weeks.

34. On 2 June 1997 Ms McAliskey was admitted to Modsley Psychiatric Facility on the recommendation of the Wittington Hospital, and from there in late June she was transferred and treated at the Mother and Baby Psychiatric Unit at the Bethlehem Hospital for "major depressive disorder of intermitted suicidal ideation and Post Traumatic Stress Disorder".

35. The next substantive development was in March 1998. Bow Street Magistrates' Court had ruled that Ms McAliskey should be extradited to Germany. Under the then process the matter reverted to the Home Secretary, Mr Jack Straw. He was furnished with detailed medical reports as to the medical condition of Ms McAliskey, both as to her mental and to her physical health. On 10th March 1998 the Home Secretary stated in the House of Commons that, based on the medical reports that he had received, he was refusing to extradite Ms McAliskey to Germany. When asked if Ms McAliskey would be prosecuted in the United Kingdom for these offences, the Home Secretary pointed out the legislative provisions under the 1983 Act, which included a right on the part of the Requesting State to ask for such a step to be taken. Given that the decision of the Home Secretary had just been communicated to the Requesting State no such request had been made at that time.

36. In the event we now know that Germany did ask the United Kingdom authorities to carry out a prosecution in the United Kingdom, and that was investigated by the UK authorities over the period of the next two years. However I record that at no stage was any reference made about such an enquiry to Ms McAliskey or her legal advisers. They were never advised that Germany had asked for this step to be taken, nor were they approached at any stage in relation to any of the enquiries. During this period therefore Ms McAliskey understood that no further proceedings were being contemplated, or would be contemplated. She had been advised by her legal advisers that this was the position not least, on the evidence of Ms Pierce, that the grounds for the refusal had been the mental and physical condition of Ms McAliskey which had existed for many years, and had reached such a crisis point in 1996/1998, that the decision not to extradite her had been taken.

37. In the event, purely by a press enquiry, it was learnt that the Attorney General was to make a statement in the House of Commons, which he duly did on the 18th July 2000 advising that, based on the evidence that had been received and investigated, there were no grounds for instituting proceedings against Ms McAliskey in the United Kingdom. Ms Pierce and Mrs McAliskey gave evidence that they considered this decision if anything reinforced the position which they had hitherto considered to be the case, namely that no further steps would be taken. That reinforcement came in the form of an objective appraisal of the evidence leading to a conclusion that there was no case to place before a jury in the United Kingdom. In the mind of Ms McAliskey this meant that not only was she not to be extradited because of her mental and physical condition, but also because there was inadequate evidence to substantiate the charge against her in the English Courts.

38. To all outward considerations no further steps were taken from 18 July 2000 until the European Arrest Warrant before the court today which was issued on 10 October 2006. As stated Ms McAliskey was then arrested on foot of this warrant on 21 May 2007. We do however know from the papers that in fact there had been an application earlier in 2006 for a Warrant under the 2003 Act, but that due to issues in the form of that warrant it was never proceeded with. All of this was totally unknown to Ms McAliskey. Therefore for a period of in excess of six years she was firmly of the expectation that the matter had concluded for the reasons that I have set out above. For the vast percentage of the time from the Home Secretary's statement she has lived and worked in Northern Ireland. After the statement there was a stay in hospital in England, followed by further period when she received treatment and therapy in Donegal in the Republic of Ireland.

39. Before turning to the question of her health and her attempts at recovery from the conditions which led the Home Secretary to take the decision he did, I will first address this passage of time and the question as to whether it acted in such a manner such as to give rise to an expectation in the mind of Ms McAliskey – a sense of security - that no further prosecution would take place. In ordinary language - was she lulled into a sense of security that no such proceedings would take place? As I have said the decision not to extradite her was made by the Home Secretary in 1998 nearly nine years before she was arrested on foot of this Warrant. On only one occasion throughout that time was she made aware that the German Authorities were attempting to have her tried in respect of the alleged offences. That was in July 2000 when the Attorney General confirmed that no proceedings would be taken in the United Kingdom. Since then there has been no indication that these decisions did not represent an end to the matter. I believe that most ordinary people, standing back and looking at the sequence of events I have set out would come to the conclusion that anyone in the position of Ms McAliskey would have concluded that the matter was behind her. Whilst the standard of proof she is required to discharge is "the balance of probabilities", I am firmly convinced

that she held such a belief, that it was a bona fide belief, and one which it was reasonable for her to have held. I am therefore satisfied that I should place considerable weight on this factor when considering whether it would now be oppressive to extradite Ms McAliskey to Germany.

40. I now turn finally to the factual background to the medical history of Ms McAliskey. At the outset of the hearing I indicated that many of the issues were personal and private. I note that when the Home Secretary made his statement in 1998 he refused, on being questioned in the House of Commons, to disclose the medical evidence upon which he made his decision. He did that on the basis that the information was "confidential".

41. There is of course a tension between that interest and the obligation of the Court to give reasons and to do so in open court. This application raises serious matters in respect of an extremely serious offence. There is a public interest in knowing the reasons for the Court's decisions. I have therefore decided that in balancing the rights of the public and those of Ms McAliskey (and her children) I should set out in general terms the circumstances which I have considered, but not the detail of her symptoms and the diagnoses. I will also comment on the weight I have given considerations arising from her mental and physical conditions.

42. I confirm that I have read all of the medical reports that were at the disposal of the Home Secretary, the medicals that were obtained in the intervening period, and those filed for the purposes of these proceedings by the experts on behalf of the Applicant and on behalf of Ms McAliskey.

43. As I have stated there is a wide range of agreement between all of the reports as to the mental and physical health of Ms McAliskey since a very early age right up to and throughout the period of her detention on the first application, and in respect of her progress since 1998. Dr Fahy on behalf of the Applicant had access to all medical reports furnished to the Home Secretary in 1997, and the medical notes and records of Ms McAliskey. He also had a personal consultation with Ms McAliskey, and it is clear from his report that he believed that he was in a position to comment both on the historical position and the present position.

44. There have been a number of incidents in the life of Ms McAliskey that have brought about adverse impacts on both her physical and mental well being.

(1) At the age of 8 her family was forced to evacuate their home due to death threats:

(2) At the age of 9 Ms McAliskey witnessed a murderous attack on her parents, and suffered the traumatic consequences in the immediate

aftermath of that attack and the medium and long term impact on the recovery of her parents and their future lives.

(3) While Ms McAliskey sought to move on in terms of her education and career aspirations, she required to receive attention and treatment arising from that event. In 1994 and 1995 she was treated for panic attacks and her symptomology and treatment are referred to in detail in Dr Kennedy's report of July 2000 at page 6 under the headings "Past Medical History 1" and "Past Psychiatric History 1". Dr Fahey, retained on behalf of the Requesting State, says at page 23 of his report

> "During her childhood and early adult life Ms McAliskey continued to suffer some significant psychiatric symptoms, including recurrent panic attacks and associated symptoms of hyperventilation … Prior to 1997, these symptoms met diagnostic criteria for Panic Disorder at least on an intermittent basis."

(4) There then followed the events of 1996-1998 surrounding her arrest and remand in various penal and medical institutions over a period of some 18 months. The course of events during that time has been set out by me above, and the events within that period have also been set out in the various medical reports and affidavits that I have received. They have also been referred to in the evidence of Mrs McAliskey and Ms Pierce, who were available for cross-examination.

(5) It is worth reporting that it was confirmed to the then Home Secretary, Mr Jack Straw, that when she was arrested she was "vulnerable as a result of early childhood experiences, to a subsequent re-activation of post traumatic symptoms" – Professor Jeremy Coid at pages 13/14 of his report of 27 February 1998.

(6) The extensive reports furnished to the then Home Secretary confirmed the diagnosis of post traumatic stress disorder – a diagnosis related to the two traumatic events I have described, the attempted assassination of her parents and her arrest and detention on the first extradition application. In December 1997 a report from Professor R Kumar and Dr F de Zulueta to the Home Secretary stated that Ms McAliskey had then been suffering from the following psychiatric illnesses:-

> "(a) Major depressive disorder, which is only partially remitted and which persists with varying intensity despite intensive supportive care during the past 6 months;
>
> (b) Post traumatic stress disorder, which has its origins in the attempted assassination of her parents in 1981, her experience of

interrogation and imprisonment in Northern Ireland in 1996, and subsequently Holloway Prison:

(c) While at Bethlehem she has developed handicapping phobic symptoms and is essentially unable to leave the hospital without experiencing disabling anxiety and panic."

(7) These symptoms were compounded by her pregnancy with her first child, her concerns for her unborn child during the period of these detentions, and the difficult physical problems surrounding the birth of the child.

(8) Regular sessions of psychotherapy were undertaken. Whilst then in custody Ms McAliskey at the outset engaged with that work, but there were ongoing problems of recounting events and a reluctance to take the medication which was then prescribed. However her condition deteriorated to a point that she herself understood the necessity of engaging with those seeking to help her, and the taking of medication.

(9) In his conclusions to his report to the Home Secretary Professor Coid stated that

"It is likely that she will continue to suffer from a chronic mild depression and with a tendency to severe anxiety when under stress and with some symptoms of PTSD. She should attain a moderate level of adjustment within the social environment of her home town where she is surrounded by others with whom she can identify, and whom she perceives as identifying with and understanding her symptoms, and where her social status may be enhanced as a result of these symptoms and her experiences in prison custody."

(10) Professor Kumar and Dr Zuleuta also addressed the question of the future in their report at page 3. There they state

"Even if extradition were to be avoided she would still require intensive psychiatric treatment along the lines she has received while being a patient with us. The likelihood of such treatment succeeding will be far greater if it can be provided in, or close to her home environment in Northern Ireland. The likely minimum duration of treatment will be at least 6 months followed by further rehabilitation.

If however the decision is to extradite Ms McAliskey to Germany then we hope this can be done rapidly and adequate provision be made to deal with the serious concerns for her health and safety as we have outlined above. If there is to be a delay before possible extradition then we would urge that Ms McAliskey be transferred back to Northern Ireland to continue treatment there in the interim period."

45. Therefore when the Home Secretary came to make his decision it was based on the then medical condition of Ms McAliskey, and the advices that he had received from a number of sources – advice which was consistent both in terms of diagnosis and the best way forward in terms of rehabilitation from that condition. Inherent in the reports as I have set them out was her return to Northern Ireland to an environment in which, hopefully, her condition could be best treated, and support provided. Even then it was acknowledged that a period of further intensive treatment would be required.

46. After the Home Secretary made his decision, Ms McAliskey remained in hospital for a time and then transferred back, as I have stated above, for a period of intensive treatment. This was undertaken in Letterkenney, Co. Donegal. She returned to Northern Ireland in and about 1999.

47. She then embarked on a period of further educational qualification, and to look after her young child. She continued voluntary work which she had been carrying out prior to her arrest in 1996. In 2001 her daughter started primary school and she herself was then free to take on further educational training, leading in due course to part-time employment with one of the Trusts and an educational facility dealing with young people and multi-ability classes. In 2005 her second child was born. Again there were considerable physical difficulties requiring re-admission to hospital.

48. However throughout this period her symptomology continued, albeit that she was making progress. She still required assistance, and indeed in 2003 was seen again by Dr HG Kennedy who advises that there were at that time continuing symptomology of panic attacks, including restrictions on her movements and nightmares. She was also seen by a number of counsellors who gave evidence and were available for cross-examination. This followed the path of recovery identified by the experts at the time of the decision of the Home Secretary - namely that the profile of recovery would be an intensive period of further treatment (carried out in hospital and then in Donegal) and continuing support and assistance.

49. As I have stated above I am firmly convinced that the entire foundation of this progress in her mental condition was the expectation that the allegations against her in relation to events in Germany had concluded and she was able to take up her life again. She did so in terms of tackling her medical problems: in terms of her re-engaging with education and employment: and significantly the decision to have a second child. All these factors create the cradle of facts referred to by Lord Scarman in Kakis which should inform the court as to whether or not to extradite Ms McAliskey to Germany.

50. I also record for completeness that all of the doctors confirm a deterioration in Ms McAliskey's condition since the issue of the present Warrant, even though there

are differences between the experts retained on her behalf and Dr Fahey on behalf of the Applicant as to the degree of that deterioration to date, and the degree of the accepted further deterioration that would follow both from the decision to extradite her and the trial process. As I stated at the outset I have not engaged in that task given the fact that this evidence has not been the subject of examination and cross-examination. However it remains a fact as to Ms McAliskey's present position.

51. Over and above the evidence of the medical experts I have had the benefit of reading the affidavit of Ms McAliskey. I acknowledge that I have not heard her personally, nor was she available for cross-examination. This was due to the receipt of a medical report that argued against her attendance at the hearing, advice I accepted. I am satisfied, however, that the contents of the affidavit reflect the contents of objective medical notes and records, and the objective findings of the various experts.

52. I also heard from Mrs McAliskey and Ms Pierce who represented Ms McAliskey during the first extradition proceedings, who also spoke to her again for the purposes of these proceedings. Both were available for cross-examination. Whilst the court places great weight on the diagnoses and opinions of the doctors in this matter, it is as legitimate for the Court to take into account the views of both these witnesses. Ms Pierce was in a unique position to comment on the state of Ms McAliskey's mind as she found it at the time of the earlier proceedings, and the way in which she reacted to the enquiries which she, Ms Pierce, required to make in order to properly present the case on her behalf against extradition. As one would expect Mrs Bernadette McAliskey is in an even more unique position - a position again to draw comparison in respect of the reaction of her daughter to the events in 1996/7 and her reaction to this particular request.

53. I record that I was struck on a number of occasions by the references and language used by both ladies in their description of the reactions of Ms McAliskey to these two events. Each referred to a withdrawal into a sense of detachment from events that were happening around her. This reflects the findings and prognoses of the experts.

CONCLUSIONS

54. I have already determined that Ms McAliskey believed from 1998 that the threat of extradition was behind her, a fact confirmed in her mind by the statement of the Attorney-General in 2000. I have determined that I am satisfied that this was a reasonable belief for her to hold (a) in the context of the decision of the Home Secretary, and the basis of that decision and (b) in the absence of any indication from any quarter that the possibility of a re-activation of the proceedings was still in the minds of the German authorities. I confirm that I have placed considerable weight on this factor in my decision.

55. I have also placed weight on the basis of the Home Secretary's decision that Ms McAliskey's health precluded her from being extradited, and the need for treatment that was envisaged to be long term and in her home environment.

56. I also place weight on the fact that Ms McAliskey believed, in my view fairly and reasonably, that she had been afforded the opportunity to rebuild her life, as part of the process of tackling of her mental problems. That she did across the wide ambit of all the activities and relationships that formed part of her life. The most telling of these was the decision to have a second child. The statement of the Attorney-General could only have reinforced that belief, and given her confidence that her future lay in her hands.

57. The sense of security arising from the passage of time on its own could allow the Court to decide this matter under Section 11 and Section 14, but any combination with either or both of the other two factors of her health and her advancement in life reinforce my decision.

58. Finally effect already on her health, together with the threat to her future health, whatever the degree, could also be taken into account when considering the question of 'oppression'.

59. I therefore determine for the reasons I have set out that Ms McAliskey has satisfied me that it would be oppressive to extradite her, and I refuse the application.

60. Finally in that event I would rule that there is no requirement for any further steps to be taken in these proceedings.