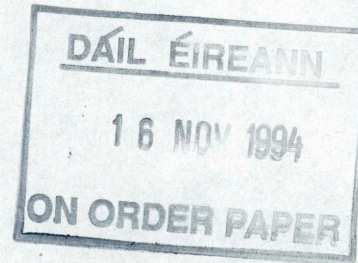


Re: Extradition Request -
John Gerard Brendan Smyth



Taoiseach,

I set out below details of the handling of the case in this Office.

1. At no stage was I made aware, in any manner, of the receipt or existence of this request until recent weeks.
2. There is nothing unusual about that. 12,000 items of post are currently coming into this Office annually and a very large number of additional matters are also raised with us by telephone. A large proportion of these will be dealt with by my staff without the necessity for reference to me. What comes to me and what does not is decided on the professional judgment of the Legal Assistant who has responsibility for the relevant file. I am bound to say that their decisions in this regard are usually right.
3. Where matters do require my personal decision (and extradition is one of these) the form in which it is placed before me depends upon its nature. Usually, however, a submission is prepared by the relevant Legal Assistant who examines the documentation for flaws, identifies the issues which I have to consider and sets out the law which is relevant to the decision which I have to make. Where that law is case law rather than statute the previous decisions of the Courts have to be analysed and, usually, reconciled with or distinguished from each other. I frequently receive submissions from the Legal Assistants running to 20 pages or more.

Until the preparatory work has been completed a case, whether extradition or not, cannot usefully be placed before me. I would point out that this is I believe the norm in every other Government Department as well as this Office.

4. The procedure just described I am assured has always applied to extradition cases, and there was no departure in the present case from the manner in which extradition cases have been dealt with over the past twenty or thirty years under successive Attorneys General, or from the administrative procedure which was established to deal with extradition requests following the enactment of the 1987 Act which conferred additional functions on the Attorney General.
5. The request came to this Office in the usual form, viz., the Gardai transmitted photocopies of the 9 warrants which they had received from the R.U.C., and the Attorney Generals Office, London, transmitted the documentation, certified by their Attorney General in a covering letter to me, by fax addressed to a member of my professional staff. (The originals arrived a week or so later, in an envelope addressed to that officer.)
6. The case was dealt with by the officer who deals with the great majority of extradition cases (and until quite recently dealt with them all), and who had dealt with the Bill which became the 1987 Act.
7. I have personally inspected the file in this case and all of the relevant papers. This file was not buried, hidden or left unattended. The officer worked on the case in intervals between more urgent matters (see paragraph 8 below). It is also worth noting that the output of my Office, in legislative terms has increased by 40% since this ^{govt.} ~~govt~~ came to office. Work on this file had to be interrupted at different times to attend to priority work including legislation as directed by Government. There

were also several legal issues to be considered, of which the most important was the meaning and effect of the prohibition in paragraph (bbb) of section 50 (inserted by the 1987 Act) of the prohibition on extradition where

"by reason of the lapse of time since the commission of the offence specified in the warrant.....and other exceptional circumstances, it would, having regard to all the circumstances, be unjust, oppressive or invidious to deliver him up....".

This provision (which owes its present form to an amendment introduced by Deputy Sean Barrett) had never had to be applied until this case. My interpretation of its meaning and effect would establish the criteria which would be applied in this Office to future requests, whether for simple burglary or for serious subversive offences.

With the continuous pressure of other, more urgent cases the work on the case had not been completed before the officer was informed by the official in the Attorney General's Office, London, who dealt with extradition cases that it was anticipated that there would be a voluntary return to Northern Ireland by Fr. Smyth and that it was therefore not necessary to proceed with the extradition request.

8. An obvious question is, was not this an urgent case and why was it not given priority over other cases even if they too were urgent? The explanation which I have received for the level of priority that was given to this case is as follows.

- In the first place the 9 alleged offences had been

committed between 29 and 5 years before, against four children in the same extended family. The facts supplied by the United Kingdom authorities were that the offences had ceased some 22 years, 17 years, 8 years and 6 years, respectively, before the request.

- There was nothing to suggest that offences were continuing, or were likely to continue, either here or in Northern Ireland. (The only complaint in this jurisdiction, which was made only in the past week, apparently alleges an offence committed in the 'seventies, while some additional cases which subsequently came to light in Northern Ireland had occurred in the period 1970 - 1977.)
- Nor did the United Kingdom authorities suggest that the case was an urgent one - in contrast to other cases where they make it clear if they consider the case to be urgent or important.
- The sole enquiry made by the R.U.C. was sent to the Gardai (who forwarded it to the Chief State Solicitors Office) only on 2 December, 1993 (after this Office had been informed in late November by the Attorney General's Office, London, that Fr. Smyth would be returning voluntarily); the R.U.C. asked to be told "in due course" whether the warrants had been endorsed. This does not suggest urgency.
- No reference at all to the case was made in the many telephone conversations between this Office and the Attorney General's Office, London, which took place on other cases during the summer of 1993; the first

reference, the Offices believe, was in the autumn - September or October. Both it and any other reference (there may have been three in all) were, as the Attorney General's Office, London, agree, of the kind that is the norm in regard to any extradition case that is on hand. These contacts took the form of telephone discussions which ranged over a list of the various cases and other matters which were current and did not amount to a complaint about 'delay'. There was no written communication subsequent to the original request for extradition - even though the Office regularly receives faxed letters on extradition cases from that Office.

9. In addition to the above particular reasons given in the Smyth case, certain general points have to be understood relating to extradition.
- No two extradition cases are the same; some may be routine, some may be very complex. In every case, however, sufficient time and care must be allowed in order to ensure that the full protection of the extradition code is afforded to the person whose extradition is sought.
 - The work of processing an extradition request may require, at official level, clarification on many issues, e.g., rectification of documents, and/or elaboration on facts and/or clarification on the law of the requesting country. In some cases protracted correspondence and telephone contacts may be necessary and in other cases court procedures may be necessary in the requesting country in order to rectify defects.

- In very many cases the contact with this Office preceed the issue of warrants and this enables my officials to advise the requesting country in advance of the preparation of warrants and the other documentation and the initiation of procedures in the requesting country as to what will be needed in order to meet the terms of our extradition legislation. This procedure as you will appreciate greatly facilitates a streamlined response to the warrants when they are received after advice has been sought, given and complied with.

- In the case of Fr. Brendan Smyth this did not happen. It would appear from newspaper reports that the R.U.C. spent two years preparing the warrants. They did not consult with my Office on the case or alert this Office as to the process which was underway. Accordingly we did not have the opportunity before receiving the warrants of considering the serious and fundamental issue in Irish law which arose. Perhaps the R.U.C. did not take account of the fact that we had by the terms of the 1987 Extradition Act given statutory force to the general principle that "Justice delayed is justice denied" by providing an accused whose extradition is sought with such a plea which can be raised to defeat a request for extradition.

The result of all this meant that when the request came to this Office it had to be vetted fully and the consequences of the amendment of the extradition code by the 1987 Act had to be addressed for the first time.

10. It is, I am sure, unnecessary to stress that the preparation and evaluation of any extradition matter in

this Office is conducted on the assumption (which is almost invariably well founded) that the case will be hotly contested on every possible point in each court in turn (District Court, High Court and Supreme Court) and that the level of proof demanded of the State is very high, so that a citizen's rights are fully protected.

11. I would like to set out some examples of cases where this Office is in co-operation with foreign jurisdictions at a stage prior to the issue of warrants in that jurisdiction.

[A] Denmark Child abduction - received August, 1994.
In the same month the Gardai faxed this Office's advices as to what would be required before the application could be made.
[Nothing heard from Denmark to date.]

[B] France - Mishandling trustee funds, received May, 1994.
Counsel's opinion obtained June, 1994.
Letter sent via Foreign Affairs, July, 1994 setting out our requirements.
[Nothing heard since.]

[C] Germany Auto-theft/Fraud, received August, 1993.
Counsel's opinion obtained September, 1993.
Letter sent to Germany via Foreign Affairs setting out our requirements December '93.
[Nothing heard since.]

[D] Northern Ireland. Fraud - request to this Office for advice July, 1993.

Advice sent December, 1993.

Further letter to U.K. January, 1994.

Reply from U.K. March, 1994.

Drafts from U.K. plus questions addressed to us April, 1994.

Reply May, 1994.

Counsel's opinion sought by us May, 1994.

Advice negative.

Second opinion from Counsel sought.

Advice awaited October, 1994.

12. Nobody in any of the countries mentioned has suggested that these delays are abnormal. In every case the fundamental principles must be respected - that a person accused is innocent until proven guilty and that he can and will receive a fair trial. The extradition legislation has express safeguards to protect persons from being extradited unless a number of legal requirements are met and there is a high degree of certainty that there is a sufficient case against him. In addition to the protections in the Acts, the Supreme Court has added its own criteria for refusing extradition - e.g., that the person will be ill-treated by prison officers despite the efforts of the authorities.
13. When one considers the cry for speed in considering cases such as this, one should reflect on the consequences of "haste" which, I think, is illustrated by recalling the cases of Dominic McGlinchey and the case of Trimbole, both of which I believe (with the full benefit of hindsight) were handled in a way which damaged the perception of the extradition code, both legally and politically.

McGlinchey (a) He was arrested in this jurisdiction

having been caught red-handed committing a number of serious offences.

- (b) He was not prosecuted here for those offences but was immediately extradited to Northern Ireland on foot of previously made District Court orders.
- (c) The expedition applied to the case saw the Supreme Court convene at the request of the Attorney General on a bank holiday.
- (d) His extradition was authorised by the Supreme Court and duly effected.
- (e) He was eventually acquitted in Northern Ireland of the charges for which he was extradited.
- (f) The Irish authorities then had to apply to have him extradited from Northern Ireland to face the charges which led to his arrest in this jurisdiction.

Trimbole.

This major international criminal was prematurely arrested by the Gardai who wished to ensure his availability for extradition on foot of an agreement which was in course of negotiation with the Australian authorities. The agreement was duly

made and Trimbole was re-arrested under it but the extradition proceedings failed because they had been 'tainted' by the earlier, unlawful arrest.

14. There have been attempts to contrast the speed with which this Office moved in the conduct of the X Case with the speed with which it has moved in the case of Fr. Brendan Smyth. Such a comparison is quite fundamentally flawed. There is no analogy between the circumstances of the two cases or the two types of case and they and the principles applying to them are totally different from each other.

The X Case was brought to my attention by the Director of Public Prosecutions as a matter of urgency (hours, not days, were involved) and had (as the Supreme Court found) to be treated as one of urgency having regard to the imminent threat to life of the unborn whose right to life was guaranteed by Article 40.3.3° of the Constitution.

To contend that the Fr. Brendan Smyth extradition case should have received the same speed of treatment as the X Case is tantamount to saying that the same principles should apply to

- (a) an application for an injunction to restrain an immediate threat by a developer to demolish illegally an irreplaceable building of public interest, and
- (b) an application for planning permission which will involve the demolition of a number of buildings and the redevelopment of the site by the erection of a

new scheme of development.

It is self evident that each type of case has a different degree of urgency and a different set of principles involved in relation to the concept of the "due process of law".

15. In the light of all of those factors I cannot say that the belief that the case was not an urgent one which required special priority over other files in this Office requiring urgent attention, ought to be regarded as unreasonable. In my opinion it would be a harsh judgment, made with the benefit of hindsight, to attach blame to the manner in which the case was dealt with in view of those factors and the complexity of the legal issues which had to be resolved.
16. Finally, in view of certain innuendos that have been made I have been assured by the official dealing with the case that there was no contact of any kind from or with any political or other source concerning the case.
17. As I already explained to you I have arranged that in future I shall be informed immediately of the receipt of extradition requests in the office and will receive a written summary of the subject matter of the request before the real work of examining the documents and substantive issues commences.

9 November, 1994