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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

Rie Minister

Another pin-prick, of
which you should be
aware

19 February 1990

CDD 23/2

The Rt Hon Douglas Hurd CBE MP
Secretary of State for Foreign and Commonwealth Affairs
Downing Street
LONDON S W 1

Jean Donplas:

IRELAND/REPUBLIC OF IRELAND

Irish Attorney-
General.

I enclose a copy of a letter I have received from John Murray saying, predictably, that he will no longer be able to allow the endorsement of warrants referring to "the Republic of Ireland" following the comments of Walsh and McCarthy JJ in the Ellis case. This is infuriating, but it is not his fault: it is that of his father-in-law (Mr Justice Walsh).

Being rather embarrassed, and sensitive to our difficulties, he proposes the solution that warrants and supporting documentation emanating from England, Wales and Scotland should refer to "Ireland" and those emanating from Northern Ireland should refer only to the relevant city or county.

I do not find this option very attractive. The introduction of a distinction between Northern Ireland documentation and other UK documentation seems liable to be misunderstood in at least two different ways. Some, perhaps including the Irish courts, will see it as a "conscious and deliberate practice" by the Northern Ireland authorities not to comply with the Supreme Court's dicta: others, more mischievously, may see it as recognition by the Northern Ireland authorities that Northern Ireland is indeed part of "Ireland" and the designation of a country therefore inappropriate when referring to an address in the Republic.



I understand from correspondence and discussions between officials that the FCO would prefer to delay a decision upon this matter until the implications of the Supreme Court dicta in other areas of the relationship between our two Governments have been fully assessed. I also understand that this may take some time, as they would wish to wait until the Supreme Court has delivered its judgments in the McGimpsey case, as these may have a bearing on future practice in other areas. The judgments are not expected to be given until some time in March.

I need to send an early substantive reply to John Murray's letter. It seems to me that a decision to use Ireland in addresses on warrants need not affect the way in which we address the Republic in other documents. A case involving an address in the Republic could arise at any moment, and it is quite clear that those warrants will not be endorsed if the address upon those warrants is given as the Republic of Ireland. Any delay in deciding this matter could therefore have considerable adverse effects on our extradition arrangements with the Republic. The substance is more important than the form, and the return of fugitive offenders more important than the nomenclature whereby the requested state is addressed.

I would like to reply to John Murray before the end of next week informing him that in future on all warrants from the United Kingdom where the person named in the warrant has an address in the Republic the address will be shown as Ireland. I would therefore be grateful for your early confirmation that this is acceptable.

I am copying this letter to Peter Brooke.

*James M.,
S. K. H. K.*



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(Attorney General's Office)
BAILE ÁTHA CLIATH
(Dublin 2)

Sir Patrick Mayhew, Q.C., M.P.,
Attorney General,
Royal Courts of Justice,
London WC2A 2LL.
United Kingdom.

2nd February, 1990



Dear Patrick,

I refer to the decision in the Ellis case in which the Supreme Court dealt with the use of the name of the State by other countries, with particular reference to the United Kingdom, in their warrants and other documentation supporting a request for extradition.

You will recall that this matter was mentioned briefly in our recent telephone conversation. Since you have copies of the judgements delivered in this case it is not necessary for me to refer to them except to say that I must have full regard to the decision of the Court, in particular as expressed in the judgments of Walsh J. and McCarthy J., when dealing with requests for extradition. Therefore it will not be possible for me to allow the endorsement of any warrant which offended against the principle of the Supreme Court decision.

I appreciate your concern, which you expressed in our telephone conversation, that there might be sensitivity regarding this matter in some quarters in Northern Ireland. I would not see the omission of the name of the State from all warrants and supporting documentation

as meeting the position with which we are now faced as a result of the Supreme Court decision. The omission of the name of the State, Ireland, from all warrants and supporting documentation could be interpreted as 'a conscious and deliberate practice' intended to avoid giving the State its constitutionally designated name.

However, having regard to your concerns I would suggest that the following approach be adopted. All warrants and supporting documentation emanating from England, Wales and Scotland would refer to 'Ireland' in lieu of 'Republic of Ireland' as used heretofore. All warrants and supporting documentation emanating from Northern Ireland would omit the name of the State and refer only to the city or county, as appropriate. It might be suggested that such a practice in relation to warrants from Northern Ireland could similarly be regarded as objectionable by the Courts. However, since warrants from most parts of the United Kingdom would show that the United Kingdom authorities had no objection to using the constitutionally designated name of the State I feel that such a contention would successfully be rebutted.

The approach which I have suggested and which is designed to overcome the difficulties which you have expressed is, I feel, a balanced one, and although it is usually difficult to anticipate the Courts with certainty I am confident that such an approach would be sufficient to meet the position adopted by the Supreme Court in the Ellis case.

With best wishes,
Yours sincerely,
John

