Neutral Citation No. [2005] IEHC 12

THE HIGH COURT

JUDICIAL REVIEW

[2004 No. 1083 JR]

BETWEEN

NIKOLIN ARRA

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON, JUDGE BRADY, JUDGE COUGHLIN, THE COMMISSIONER OF AN GARDA SÍOCHÁNA
THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Ryan delivered the 26th day of January, 2005.

Introduction

This is an application for judicial review pursuant to leave granted by the Court (Mr. Justice Clarke) on the 26th November, 2004. The reliefs sought are recited as follows in the order of this Court:-

1. A declaration that the detention of the applicant at Cloverhill Prison is unlawful.
2. A declaration that the applicant is not detained pursuant to s. 9 (8)(f) of the Refugee Act, 1996.
3. A declaration that the applicant has made reasonable efforts to establish his true identity.
4. [A declaration] that the applicant has done all that is required to establish his identity in the circumstances pursuant to the provisions of the Refugee Act, 1996.
5. A declaration that s. 9 (8)(c) and (f) as applied by s. (9)(10)(b)(i) of the Refugee Act, 1996 are incompatible with the provisions of Bunreacht na hEireann.
6. A declaration pursuant to s. 5 (1) of the European Convention on Human Rights Act, 2003 that s. 9(a)(c)(f) as applied by s.(9)(10)(b)(i) of the Refugee Act, 1996 are incompatible with the State's obligations under the European Convention on Human Rights.
7. Bail pending the determination of _____ the within proceedings.
8. Such further or other order as to this Honourable Court shall seem meet.
9. An order providing for Costs.

The Facts

The facts of the case are undisputed in all important respects. The applicant was arrested by Detective Garda John Kingston on the 1st October, 2004, in Dublin. The Garda was with a colleague in Parnell Street when he saw the applicant in company with a man who was the subject of a deportation order

and who had been deported on three occasions. When the applicant was asked for identification, he produced a FAS Safepass card in the name Nikola Veguela and a social welfare card in the same name. He said he was Italian. He agreed to bring the Gardai to his apartment nearby to show them his identity card. On the way to the apartment, Mr. Arra tried to get away and Garda Kingston arrested him under s. 12 of the Immigration Act, 2004. The applicant was brought to Store Street Garda Station where he was questioned under caution. He then told the Gardai that he was Nikolin Arra, an Albanian, and that he had been in the State for approximately two to three weeks. He came to Ireland by truck but did not know through which port he entered. He was then released from custody under s. 12 and the Garda then refused him leave to land pursuant to the Immigration Act, 2004 on the ground:-

> *"That the non-national is not in possession of a valid passport or other equivalent document issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality."*

Mr Arra was then arrested under s. 5(2)(a) of the Immigration Act, 2003 and he was conveyed to Cloverhill Prison.
The next relevant development was that the applicant applied for a declaration as a refugee in Ireland in accordance with s. 17 of the Refugee Act, 1996 (as amended). That application was made on the 2nd October, 2004.
It should be mentioned here that the grounding affidavit for this application is sworn by the applicant's solicitor in which it is stated that he:

> *"Arrived in Ireland on 25th September, 2004 to join his wife Dila Arra and his Irish child, who was born on the 10th May, 2004. It appears that he did not know the exact whereabouts of his wife and child upon his arrival; and set to looking for them."*

An application was then brought under Article 40.4 of the Constitution and pursuant thereto an Order was made by this Court on consent on the 7th October, 2004, for the release of the applicant from detention. Following his release, the applicant was arrested by Detective Garda Kingston under s. 9 (8) of the Refugee Act, 1996 on the grounds that he had not made reasonable efforts to establish his true identity and that he was in possession of forged identity documents. He was brought before the District Court sitting at Clover Hill on the 8th October, 2004. This case is concerned with the lawfulness of his detention following the 8th October, 2004. The events which I have set out above are the backdrop to the application now before the Court.

Events from 8th October, 2004 to 26th November, 2004.

On the 8th October, 2004, Detective Garda Kingston applied to the District Judge at Clover Hill Court to detain the applicant. His application was based on an Information dated 7th October, 2004. In the Information, the Garda set out fully the grounds for his application under s. 9(8). The Garda was seeking an order committing the applicant to a place of detention for a period not exceeding 21 days under s. 9(10)(b)(i) of the Refugee Act, 1996. He sought to satisfy the Court that there were two grounds for the detention of the applicant. First, the Garda contended that Mr. Arra had not made reasonable efforts to establish his true identity. Secondly, he maintained that the applicant was in possession of forged identity documents. He relied on the facts as set out above and, in addition, the inference that he said should be drawn from the information to the effect that the applicant was still in possession of a forged Italian identity card. The applicant had told the Gardaí he was in possession of such a card and inquiries established that an Italian identity card was produced for the purpose of obtaining the social welfare card which was in the applicant's possession. There was of course the question of when the applicant had arrived in the country. His solicitor says, obviously on instructions and only on the basis of instructions given by the applicant, that he arrived in Ireland on September 25, 2004. Detective Garda Kingston says that Mr. Arra put his arrival in the State at some two to three weeks prior to the 1st October, 2004, (he says that the time three to four weeks stated in the Information is a mistake). If the applicant is the person who applied for and obtained the two cards which were in his possession on the 1st October, 2004, it is clear that he must have been in the State for a great deal longer period. The PPS card was issued on the 4th January, 2001, at Dun Laoghaire and the FAS Safepass on the 23rd February, 2002, at the Montrose Hotel in Stillorgan.

These matters were before Judge Brady at the District Court sitting at Cloverhill on the 8th October, 2004. The District Judge made an order committing the applicant to Cloverhill Prison pursuant to s. 9(8) of the Refugee Act, 1996 until the 29th October, 2004, being a period not exceeding 21 days. The summons commanded the authorities at the prison to produce the applicant in Court on the 29th October, 2004. The Court order of the 8th October, 2004, recites the fact that the Judge is satisfied that s. 9(8)(c) and (f) apply as is expressly accepted by the applicant in his solicitor's affidavit at paragraph 7.

The applicant was brought back before the court on the 29th October 2004. The order on this occasion does not rely on paragraph (f) of s. 9(8) of the 1996 Act. A line is drawn through the recital of the ground based on that paragraph. It seems clear therefore that the Judge was relying on that occasion on the terms of section 9(8)(c) having been satisfied and not on (f). He ordered the detention of the applicant until the 12th November, 2004. According to the applicant's solicitor, Mr. Pendred, the reason why the matter was put back to the 12th November was *"for both sides to take steps*

regarding the applicant's identity." He goes on to say that on the 15th November 2004 his office sent Garda Kingston *"details of the true identity of the applicant."* The letter enclosed copy documents and said that if the Garda wished to see the originals he would be facilitated. The documents appeared to be a certificate of education, a marriage certificate and a small number of other documents which it is hard to categorise but which included a document referring to the existence of a blood feud involving the applicant's family. When the matter came before the Court on the 18th November, 2004, it was apparently agreed that the applicant's detention should be continued to enable Detective Garda Kingston to inspect the original documents.

The matter was again in Court on the 24th November, 2004. Judge Coughlin was sitting. On this occasion, the Judge was satisfied that paragraphs (c) and (f) applied and directed the detention of the applicant on this basis. He came to this conclusion notwithstanding the submission made by Mr. Pendred on behalf of the applicant that it was not open to the learned Judge to find that paragraph (f) applied in view of the previous order made by Judge Brady in which he did not find that paragraph (f) applied to the case.

Following the order made by Judge Coughlin on the 24th November, 2004, the applicant instituted proceedings for Judicial Review by notice of motion and grounding materials dated 26th November, 2004. Leave was granted on that day as described above.

Section 9 of the Refugee Act, 1996, as amended by section 7 Immigration Act, 2003.

Some parts of this section should be set out in full:-

> "9.(1) Subject to the subsequent provisions of this section, an applicant, being a person referred to in section 8(1)(a), shall be given leave to enter the State by the immigration officer concerned.

(2) Subject to the subsequent provisions of this section, a person to whom leave to enter the State is given under subsection (1) or an applicant, being a person referred to in s. 8(1)9(c), shall be entitled to remain in the State until –

> (a) [the date on which his or her application is transferred to a convention country pursuant to section 22 or to a safe third country (within the meaning of that section), or
> (b) the date on which his or her application is withdrawn or deemed to be withdrawn under this section or section 11, or]
> (c) the date on which notice is sent that the Minister has refused to give him or her a declaration.

(8) Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that an applicant –
(a) poses a threat to national security or public order in the State,
(b) has committed a serious non-political crime outside the State,
(c) has not made reasonable efforts to establish his or her true identity,
(d) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to section 22 [or a safe third country (within the meaning of that section),
(e) intends to leave the State and enter another state without lawful authority, or
(f) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents,
he or she may detail the person in a prescribed place (referred to subsequently in this Act as "a place of detention").

(10) (a) A person detained pursuant to subsection (8) shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained.
(b) Where a person is brought before a judge of the District Court pursuant to paragraph (a), the judge may –
(i) subject to paragraph (c), and if satisfied that one or more of the paragraphs of subsection (8) applied in relation to the person, commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention, or
(ii) without prejudice to paragraph (c), release the person and the judge may make such release subject to such conditions as he or she considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of

the following conditions:

(I) that the person resides or remains in a particular district or place in the State,

(II) that he or she reports to a specified Garda Síochána station or immigration officer at specified intervals,

(III) that he or she surrenders any passport or travel document in his or her possession.

(c) If, at any time during the detention of a person pursuant to this section, an immigration officer or a member of the Garda Síochána is of opinion that none of the paragraphs of subsection (8) applies in relation to the person, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district where the person is being detained and if the judge is satisfied that none of the paragraphs of subsection (8) applies in relation to the person, the judge shall release the person.

(d) Where a person is released from a place of detention subject to one or more of the conditions referred to in subsection (1)(b)(ii), a judge of the District Court assigned to the District Court district in which the person resides may, on the application of the person, an immigration officer or a member of the Garda Síochána, if he or she considers it appropriate to do so, vary (whether by the alteration, addition or revocation of a condition) a condition.

(14) (a) Where a judge of the District Court commits a person to a place

of detention under subsection (10)(b) or (13)(b), a judge of the District Court assigned to the District Court district in which the person is being detained may, if satisfied that one or more of the paragraphs of subsection (8) applied in relation to the person, commit him or her for further periods (each period being a period not exceeding

[21 days]) pending the determination of the person's application under s. 8.

Arguments

The order for detention of the applicant made on the 24th November, 2004, is the order that is challenged in these proceedings. It is not in dispute that the learned Judge on that occasion was satisfied that paragraphs (c) and (f) of s. 9(8) applied and he so recited in the order directing the detention of the applicant.

The first challenge in the applicant's submissions is to the decision of the Judge to order detention on ground (f) as well as (c). It is submitted that he had no jurisdiction to do so because his colleague had previously not been satisfied on ground (f):-

> *"Judge Coughlin appears to have held that each renewal application was a fresh application and that new grounds could be added for more detention."*

The question arises therefore as to the interpretation of s. 9 of the Act. It seems to me to be quite clear that s. 9(14)(a) envisages a separate and distinct hearing in the District Court whenever there is an application to commit an applicant for a further period of detention under the section. The prerequisite to the making of an order is that the Judge is satisfied as to one or more of (a) to (f) of sub-s. (8). There can be no question in my view of *res judicata*, contrary to what is submitted on behalf of the applicant.

If this section were to be read otherwise and in the sense contended for by the applicant, it would lead not alone to illogicality and perhaps even absurdity, but also to the gravest potential for injustice and it would also be quite inconsistent with the terms of the section. The section is not providing for an order for detention which is then renewed on a routine basis and without further serious inquiry. That would be unjust and unreasonable and could scarcely survive a challenge to its validity, having regard to the provisions of the Constitution. It would also be quite inconsistent with s. 9(10)(*c*) which expressly envisages an alteration of the circumstances giving rise to the detention of an applicant and imposing a duty on the relevant immigration officer or Garda to come back to the District Court so that the applicant may be released.

It seems to me that the section clearly envisages a separate hearing in the District Court on each occasion when a detention order or a further detention order is sought. The Judge hearing the application must be satisfied that one or more of the matters specified in subsection (8) applies and that the person should be detained. It follows that Judge Coughlin was not wrong to interpret the section in a way which entitled him to look afresh and come to the conclusion that another paragraph of sub-s. (8) applied in addition to (c).

The next submission made by the applicant is that paragraph (c) of sub-s. (8)

does not apply because the applicant has in fact made reasonable efforts to establish his identity. His case in this respect is that he has produced to the Garda and to the Court a number of documents which clear up any question as to who he is. It has to be born in mind that this court in a Judicial Review application is not hearing an appeal from the District Court. The Judge of that Court is obliged to hear the evidence and come to a conclusion in accordance with the terms of the legislation. Once there is evidence before that court on which it is entitled to act, this court will not intervene to substitute its view for the court which heard the evidence and considered the matter in accordance with law. It is not contended by the applicant that there was no evidence before the District Court which would entitle the Judge to come to the conclusion that he did. The matter is put in a different way or a number of different ways.

Complaint is made of the position adopted by the arresting Garda. He was given certain documents by the applicant's solicitor. He was given copies first and, it will be recalled from the earlier recitation of the facts here, he subsequently was given the originals and the Court hearing was adjourned so that he could consider them. The Detective Garda took the view that these documents were not in any sense official and that they did not establish the applicant's identity and nor did their production suggest that he had made reasonable efforts to establish his true identity. This was a position which he was entirely free to take up and is a legitimate point of view, whether it is objectively thought to be correct or justified or not. It was a matter entirely for the District Judge to consider that submission or opinion in the exercise of his judgment under the subsection. Having seen the copy documents which are exhibited, I am bound to say that I regard them as anything but clear evidence of the identity of the applicant.

I may say in passing that I accept the submission by Counsel for the respondents that there is some obligation on an applicant to assist in the processing of his application and in the procedures under s. 9. He is not *"a passive participant in that process."* (See Illegal Immigrants (Trafficking) Bill, 1999 – (2000) 2 I.R. 360 at 395). Furthermore, I note the comment by Hardiman J. in *G.K. v Minister for Justice* that *"it is preferable that explanations of this kind should be put before the court on an affidavit of the applicants or one of them rather than by their solicitor on a hearsay basis."* (2002) 2 I.R. 418 at 425. It is scarcely appropriate for an applicant to treat the process of dealing with his application as if it were a criminal investigation and trial, in which it is in his interest to remain silent and to leave the authorities to make the best of whatever documentary material is available to them. It seems to me that it would be very difficult to see how the documents that were produced in this case by the applicant's solicitor could properly be understood without some explanation. Moreover, if it is an applicant's contention that he or she is unable to produce documents to establish identity, that is itself a material fact which goes to the efforts made

by him or her and directly impacts upon the decision under paragraph (c). In other words, if there is some particular reason why the applicant finds it difficult or impossible to produce documents of identity, that is something which can be explained. In making these comments, I am not shifting the onus of establishing the existence of the factual basis for findings pursuant to sub-s. (8) from the State to the applicant. The onus rests of course on the Garda or Immigration Official to establish the ground for an application based on one or more of the paragraphs in sub-s. (8). Nevertheless, I think it is right to point out the difference between an applicant for a declaration under the Refugee Act and a suspect in a criminal investigation.

In the applicant's submissions, it is suggested that a person who is in detention may have difficulty in procuring relevant documents to establish his or her identity. No doubt this may be true in many cases. But it does not follow that this must be assumed to be the position in every case. No such submission as to any particular difficulty has been made to the District Court in this case but it is of course open to the applicant to do so.

A further point made in the course of argument by counsel for the applicant is that the section is wholly imprecise in that there is no specific set of requirements which must be satisfied under, for instance, paragraph (c). He contends that there should be some definitive list of documents that are acceptable so that an applicant would be able to know precisely what was required of him or her in order to avoid a finding under that paragraph that he or she had not made reasonable efforts to establish his or her true identity. I do not agree. It seems to me that to specify particular documents would be to ignore the very points that the applicant relies on in his argument. Where difficulties of obtaining documents are pointed out and the UNHCR is quoted in the written submissions, that is to illustrate obstacles which might present themselves to a person trying to produce identification. A more flexible approach is therefore called for and that is what, in my view, is contained in the paragraph under consideration. A person may be detained by an Immigration Officer or member of the Garda Siochána who, with reasonable cause suspects that an applicant has not made reasonable efforts to establish his or her true identity and he or she must be brought *"as soon as practicable"* before a Judge of the District Court. There is then a judicial determination of the question whether at that time the person has made reasonable efforts within the meaning of the paragraph. When the applicant next comes before the court, another determination has to be made by the sitting Judge as to whether one or more of the requirements in sub-s. (8) is applicable.

The applicant contends that the detention provisions of section 9 are invalid having regard to the provisions of the Constitution. It is said that the applicant has not been charged with a criminal offence, a fact which is not in dispute.

> *"The detention of this applicant is not criminal in character. The detention is preventative in nature. This is shown by the categories of detention permitted by s. 9(8) of the Act of 1996. Preventative detention is unconstitutional; saving the most exceptional of circumstances: see the Illegal Immigrants (Trafficking) Bill, 1996 [2000] 2 I.R. 360 at 407 – 412. It is submitted that the detention in that case was less draconian than under s. 9(10) of the Act of 1996. In the earlier case, the Supreme Court was considering a detention with a time limit of eight weeks in total at a time when the detainee, a failed asylum seeker, no longer had the right to be in the State."*

This quotation from the applicant's written submissions summarises the contention on the question of constitutionality. In a later passage, it is submitted:-

> *"In this case the applicant is entitled to be present within the State, but is effectively in indefinite detention. This detention can continue until the determination of the asylum application. It is submitted that notwithstanding the wording of s. 9 the detention is only lawful if it continues for the shortest time as is practicable."*

The respondents' submissions in reply can be summarised as follows:-

(a) If the detention in this case is to be considered as preventative detention, it does not follow that it is unconstitutional:- The Illegal Immigrants (Trafficking) Bill, 1999 [2000] 2 I.R. 360. Whether it is permissible depends on the circumstances and the nature of the detention.

(b) Detention for different purposes is permissible under a variety of statutory provisions including the Health Act, 1947; The Mental Treatment Act, 1945; The Children Act, 2001; The Refugee Act, 1996; The Immigration Act, 1999; The Immigration Act, 2003. In addition, there can be detention for the purpose of extradition.

(c) The State has an inherent power to expel or deport non-nationals: see *A.O. and D.L. v Minister for Justice, Equality and Law Reform* [2003] 3 I.R. 1.

(d) "The State must have very wide powers in the interest of the common good to control aliens at their entry into the State, their departure and their activities within the State" – Pok Sun Shum v. Ireland [1986] I.L.R.M. 593 at 599. This passage was expressly approved by the Supreme Court in *A.O.* and *D.L.*

(e) The sole basis on which the applicant is permitted to remain in the State is to enable his application for a declaration of refugee status to be determined. The provisions of s. 9 of the Refugee Act, 1996 balance the right of the applicant to have his application for refugee status determined with the constitutional imperative that the Minister protect the borders of the State, protect the common travel area with the United Kingdom and the

borders of the European Union.
(f) Article 5 of the Convention recognises the need to detain in circumstances such as the present where the detention is for *"the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or is a person against whom action is being taken with a view to deportation or extradition."*
(g) The detention of the applicant is in accordance with law and is not arbitrary. The applicant has been given the opportunity to cross-examine the Garda and to make submissions on a number of occasions in the District Court. On each occasion the respective District Judge was satisfied that one or more of the paragraphs in s. 9(8) applied and the applicant was detained for a further period in accordance with law.
It seems to me that the section does indeed seek to achieve a balance between the interests of a person applying for a declaration under s. 17 of the Refugee Act, 1996 and the rights of the State to exercise control over the flow of immigrants into the State in the interest of the common good. The entitlement of the State to protect its borders and to control entry is confirmed by the highest legal authority in a series of judgments binding on this court. It is legitimate to seek to establish the identity of an applicant and I do not find anything offensive in the terms of sub-s. (c) in this regard. Looking at the section as a whole, a number of provisions may be mentioned. The applicant is given the right to remain in the State until or his or her application is determined. The right of the State to protect itself is recognised by the provisions of sub-s. (8). When that subsection is invoked, the applicant has to be brought before the District Court as soon as practicable. An order for detention is limited to a maximum period of 21 days. At that point, there must be another hearing or the applicant must be released. If at any time during the period of detention of the applicant, the situation changes so that the sub-s. (8) circumstances no longer apply, the person must be brought back before the District Court for the purpose of being released. The District Court is not obliged to direct the detention of the applicant but has a discretion under subsection (10). Instead of detention, conditions may be imposed on the applicant and those conditions may be varied from time to time. There is as I have indicated above an entirely separate hearing each time an applicant is brought before the court when a further order is sought for his or her detention for up to 21 days. These features seem to me to seek to provide the protection of the courts for an applicant in respect of whom the provisions of subs. (8) or one or more of them apply.
As to the hearing which takes place in the District Court, it is of course open to an applicant through his legal representative to point to deficiencies in the evidence or the case made by the Garda or Immigration Officer. An applicant may or may not give evidence at the hearing. The Garda or Immigration Officer may be cross-examined and submissions may be made.

There is nothing to prevent a new case being made if a further application for detention is made. The case may be made to the Judge that the cumulative periods of detention of the applicant are excessive, notwithstanding the need to process the application for a declaration and the State can be called upon to tell the court how the application is progressing. These elements seem to me to amount to satisfactory protections of the applicant.

A further submission was made that s. 9 is in breach of the European Convention on Human Rights and that a declaration under the Convention Act should be made. I have previously quoted the exception to Article 5. In this respect, the submission made on behalf of the applicant is that he is lawfully in the State and that Article 5 (f) must be given a strict interpretation.

> *"The exception is designed to protect the detention of a person who has been refused entry to the State and can be held for the purposes of his or her removal from the State in that context. In this case, that would mean detention under s. 5 of the Immigration Act, 2003 pursuant to a refusal of leave to land. Such is permitted by Article 5(f). Detention following leave to land is not covered. This interpretation is the only interpretation that is available on the principles applicable."*

In my opinion, this is a much too technical interpretation of a document embodying principles of protection of rights. The Convention is not to be read as if it were a revenue statute or a criminal provision. I note the decision in *Chalal v. U.K.* [1996] 23 E.H.R.R. 413 where the applicant was detained for the purposes of deportation for a period of six years from August 1990. It gives some indication of the flexible approach that can be taken by the Court in cases of deportation but I do not think it has any particular relevance in this case.

It seems to me overall, having regard both to the Constitution and the Convention, that section 9 in general and subsection (8) in particular are a reasonable statutory scheme taking account of the different interests that have to be balanced. To take an example which is different from the circumstances of this case, if a person in the State were to be reasonably suspected of posing a threat to national security or public order or of having committed a serious non-political crime outside the State, which are provided for by subsections (a) and (b), it could scarcely be argued that the State was not entitled to apply for the detention of such an applicant. It is surely in the interest of the applicant that his or her situation be established and the State has to be able to protect itself while that process is going on. If one adds to that the requirement of an early appearance in Court, then it seems to me that the rights of an applicant are satisfactorily respected.

In the result, the applicant is in my view not entitled to any of the reliefs sought in this application for judicial review. His detention at the material

time was lawful in that it was in accordance with the relevant legislation, namely, section 9 (8) of the Refugee Act, 1996 as amended. The particular paragraphs of that subsection under which he was detained were (c) and (f). There was evidence before the District Court warranting a finding that those paragraphs applied. The section is not invalid having regard to the Constitution and neither is it in breach of the European Convention on Human Rights.

As to the continued detention of the applicant, this arises not by way of continuation of a previous order or finding of the District Court but on foot of a new application on each occasion. It is open to the applicant on any detention application to raise issues afresh or again and the remedy of Judicial Review is of course available to him in respect of any such decision if the Judge falls into error. He can also complain in the District Court on any such hearing that the cumulative period of his detention under the various orders of the court is excessive and that is a matter which will have to be considered by the Judge hearing the application.

For these reasons, the application for judicial review fails.