



AN CHÚIRT ACHOMHAIRC
THE COURT OF APPEAL

APPROVED - NO REDACTION NEEDED

Court of Appeal Record Number: 2025 306
High Court Record Number: 2023 63 EXT
Neutral Citation Number: [2026] IECA 106

Meenan J.
McDonald J.
Collins J.

BETWEEN/

ATTORNEY GENERAL

APPLICANT/APPELLANT

- AND -

JOHN JOSEPH DRISLANE

RESPONDENT

JUDGMENT of Mr. Justice Anthony M. Collins delivered on the
16th day of June 2026

I. Scope

1. In this appeal, the Court is required to interpret s. 18 of the Extradition Act 1965.

II. Background

2. Paragraphs 6 to 14 and 17 to 19 of the High Court judgment of 14 October 2025 (McGrath J. [2025] IEHC 550), by which it refused the Attorney General's ('the appellant') application pursuant to s. 29(1) of the Act of 1965 to commit John Joseph Drislane ('the respondent') to prison to await the appellant's order for his extradition to the United States of America set out all of the facts as may be relevant to this appeal.

3. The respondent was charged with three revenue offences in the U.S. District Court. On 15 January 2004 he was released on a personal own recognisance in the sum of US\$20,000. He pleaded guilty to the aforesaid offences on 14 June 2004 and was remanded on continuing bail for sentence on 22 September 2004. After encountering difficulties in contacting the respondent, on 10 July 2006 the U.S. District Court issued a bench warrant for his arrest. On 6 January 2008 the respondent failed to attend a pre-trial conference at which his presence was required under the terms of his recognisance. On 10 February 2011, a Grand Jury returned an indictment charging the respondent with having unlawfully, wilfully and knowingly failed to attend a conference before the U.S. District Court as required by the conditions of his release, on foot of which a warrant was issued for his arrest to answer a charge of "*failure to appear*" in violation of Title 18, United States Code, Section 3146.

4. On 2 October 2018, the United States of America requested the respondent's extradition pursuant to the Treaty on Extradition between the United States of America and Ireland signed on 13 July 1983 and the Instrument contemplated by Art. 3(2) of the Agreement on Extradition between the United States of America and the European Union signed on 25 June 2003 on all of the four charges against him. The Minister for Justice and Equality having notified the U.S. authorities that s. 13 of the Act of 1965 precluded extradition for revenue offences, on 22 September 2022 the appellant received a modified request under the aforesaid instruments requesting the respondent's extradition on the "*failure to appear*" charge.

5. The Minister for Justice and Equality certified receipt of that request in accordance with Part II of the Act of 1965 on 13 March 2023. The High Court issued a warrant for the respondent's arrest on 24 April 2023. That warrant was duly executed on 18 March 2024. The respondent was brought before the High Court on the following day. He caused to have filed a Notice of Objection on 13 May 2024 which pleads, *inter alia*, that s. 18 of the Act of 1965 precludes his surrender.

6. The judgment under appeal accepts that correspondence had been established between the conduct alleged against the respondent in the United States of America contrary to Title 18, United States Code, Section 3146 and that criminalised by s. 13(1) of the Criminal Justice Act 1984. Addressing the objection grounded upon the rule of specialty, the High Court held there was

no evidence of any risk that, in the event of his surrender, the respondent might be punished for offences for which he had not been charged or for unindicted bad conduct, thereby not coming within the circumstances in which the Supreme Court had declined extradition in *Attorney General v Burns* (Unreported, 6 December 2004).

7. The High Court observed that s. 18 of the Act of 1965 contains a mandatory prohibition, such that extradition must be refused if a prosecution is time barred in Ireland or in the requesting state. The offence in respect of which the respondent's extradition was sought was prosecuted within five years of the alleged date of commission, being the time allowed under U.S. law. It identified the net issue before it as whether the respondent, if charged with the corresponding offence in similar circumstances in Ireland, would be "*immune by reason of lapse of time from prosecution or punishment*".

8. The High Court observed that whilst the Act of 1965 does not define "*immunity*", that concept applies to situations where a person is, for a specific reason, exempt from a liability to which others are subject. It held that once a person raises the time limitation in s. 13(6) of the Act of 1984 s/he cannot be charged or summonsed for an offence under s. 13(1). As a matter of reality, that lapse of time exempts the respondent from prosecution for that offence. He was thus not required to show that such a prosecution would be void *ab initio*.

9. The word ‘*immunity*’ in s. 18 of the Act of 1965 had to be interpreted in the overall context in which it appeared. Unlike the position in many other states, the High Court observed that a person can only become exempt from criminal liability due to the passage of time in Ireland where a limitation period for prosecution has passed and where an accused invokes that limitation period. That is the mechanism under the law of Ireland that gives effect to a person becoming exempt from liability owing to the passage of time. Paragraph 70 of the judgment under appeal held that:

To accept the argument raised by the Attorney General in this regard would in effect render s.18 (insofar as it applies to a prohibition on surrender where exemption from prosecution and punishment would be available to a defendant if prosecuted in Ireland in similar circumstances) of no effect. The intention of s.18 was to prohibit extradition where a person would, owing to the passage of time, be exempt from criminal liability for his actions in either State. The legislature cannot have intended s.18 to have no effect where a person would, if prosecuted in Ireland in the same circumstances, in reality be exempt from liability from prosecution or punishment.

10. The High Court proceeded to dismiss the application for the respondent’s extradition.

11. By Notice of Appeal received in the Office on 12 December 2025, the appellant identified the issue of law to be determined as the meaning of s. 18 of the Act of 1965 and the exercise to be undertaken in assessing its application in a given set of circumstances. The respondent’s Notice of 21 January 2026 joined issue and cross-appealed the High Court’s determination that his extradition would not breach the rule of specialty. At the hearing of 15 May 2026, the parties agreed that since this Court’s

interpretation of s. 18 of the Act of 1965 could decide the appeal, they would address that issue first. Having heard argument, the Court rose and later returned to announce that it dismissed the appeal, would deliver its reasons in writing at a date to be announced and thereafter hear any applications for appropriate ancillary orders.

III. Ruling

12. Section 18 of the Act of 1965 provides that “[e]xtradition shall not be granted when the person claimed has, according to the law of either the requesting country or the State, become immune by reason of lapse of time from prosecution or punishment.” In interpreting that provision, I am guided by the approach the Supreme Court endorsed in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála* [2024] 2 I.R. 222, 268 – 273 per Murray J. In *A, B and C v Minister for Foreign Affairs and Trade* [2023] 1 I.L.R.M. 335, 359 that same judge summarised the position as follows:

...the cases ... have put beyond doubt that language, context and purpose are potentially in play in every exercise in statutory interpretation, none ever operating to the complete exclusion of the other. The starting point in the construction of a statute is the language used in the provision under consideration, but the words used in that section must still be construed having regard to the relationship of the provision in question to the statute as a whole, the location of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute. The court must thus ascertain the meaning of the section by reference to its language, place, function and context, the plain and ordinary meaning of the language being the predominant factor in identifying the effect of the provision but the others always being potentially relevant to elucidating, expanding,

contracting or contextualising the apparent meaning of those words.

13. The opening statement in s. 18 of the Act of 1965, that extradition shall not be granted in the circumstances described therein, prohibits extradition that would otherwise occur, *i.e.* the section comes into operation once other pertinent requirements of the Act of 1965, such as correspondence, are met. Contrary to the appellant's submissions, that part of s. 18 does not require the *Oireachtas* to enact a provision equivalent to s. 10(3) of the Act of 1965 to establish correspondence, since that is a precondition for any recourse to s. 18 thereof.

14. The immunity by reason of lapse of time to which s. 18 refers must be anchored in the law of either the requesting country or of the State. It is sufficient that immunity is afforded under one of the two legal orders engaged by the extradition. The laws of the requesting state and of the State are thus equally capable of application in that context. It follows that the appellant's argument, that since Ireland has no jurisdiction to prosecute the respondent for failing to comply with court orders issued in the United States of America, the respondent's position under the law of Ireland is irrelevant, is incorrect, the respondent being entitled to rely upon the position under the law of both Ireland and the United States of America without reference to the other legal system.

15. The immunity an individual may rely upon under s. 18 of the Act of 1965 is qualified in that it must be by reason of lapse of time. The effect of the appellant's submissions is that under the law of

Ireland lapse of time does not confer immunity from prosecution. Drawing an analogy with the position under s. 10(4) of the Petty Sessions (Ireland) Act 1851, s. 13(6) of the 1984 Act, as inserted by s. 23(b) of the Criminal Justice Act 2007, provides for a defence that an accused person may rely upon in the event that he or she is prosecuted. Immunity prevents a person from being proceeded against in all circumstances. It does not apply in those situations where an accused person may raise a time point by way of a defence to a criminal charge.

16. Section 13(6) of the 1984 Act provides that “*summary proceedings for an offence under this section may be instituted within 12 months from the date on which the offence was committed.*” That provision logically operates to prohibit the institution of proceedings 12 months after the date on which that offence was committed. The language of s. 13(6) thus appears closer to a limitation period than that used in s. 10(4) of the Petty Sessions (Ireland) Act 1851, where the relevant time limits do not run from the date of the commission of an offence but rather govern the time within which a valid complaint must be made. The analogy that the appellant seeks to draw between the latter provision and s. 13(6) of the Act of 1984 is thus not made out.

17. In its ordinary meaning, “*immunity*” refers to both an exemption from, and resistance to, a thing. In its first sense, immunity comprises concepts of invulnerability, exoneration, exemption, amnesty and freedom. Those concepts do not necessarily imply that immunity is a state that operates solely in order to prohibit any step being taken to prosecute an individual.

Immunity is equally capable of entitling a person to claim invulnerability, rely on an exemption, enjoy a freedom or, as here, assert an immunity. A person's immunity from prosecution by reason of lapse of time thus exists irrespective of whether he or she is called upon to assert it. The argument that a person is not immune from prosecution under s. 13(1) of the Act of 1984 because, in order to obtain that immunity, they must await prosecution and thereafter make out a defence under s. 13(6) thereof, also fails to account for the fact that a person who waives an immunity (the only example to which the Court was referred) does not cease to be immune but has instead surrendered the benefit of that state.

18. Section 18 of the Act of 1965 confers immunity from prosecution or punishment. Even were one to accept the interpretation of that provision for which the appellant contends, a person prosecuted notwithstanding an immunity by reason of lapse of time is also immune from punishment. This further undermines the argument that a person is not immune from prosecution by reason of lapse of time where he or she must raise that issue by way of defence to a prosecution since it would appear that individual is in any event entitled to the protection of s. 18 of the Act of 1965 on the ground that he or she is immune from punishment.

19. This analysis of the text of s. 18 of the Act of 1965 leads me to conclude that the respondent's extradition to the United States of America cannot proceed since he is, according to the law of Ireland, immune by reason of lapse of time from prosecution or punishment for an offence contrary to s. 13(1) of the 1984 Act.

20. An examination of the context of the enactment of the Act of 1965 and the objective it pursues does not alter that conclusion. It is impossible to overlook the absence of any statute of limitation for the prosecution of indictable offences in the State, which contrasts with the position in the United States of America. The interpretation for which the appellant contends would result in a situation whereby no person who seeks to resist extradition from Ireland could rely upon s. 18 of the Act of 1965. It is well established that the interpretation of statutes is governed by the maxim that the legislature does not act in vain (*e.g. Cork Co. Co. v Whillock* [1993] 1 I.R. 231 at 238 *per* Egan J.). An interpretation of s. 18 of the Act of 1965 that would render it purposeless operates contrary to that maxim. It is reasonable to conclude that, when it enacted the provision under consideration, the *Oireachtas* sought to address circumstances where extradition from Ireland was sought for summary, and therefore minor, offences that could not be prosecuted in the State due to the lapse of time, whilst allowing persons to resist extradition by reference to any limitation statutes as might apply in the laws of the requesting state.

21. The appellant also sought to support his interpretation of s. 18 of the Act of 1965 by reference to Art. 1 of the Council of Europe's Fourth Additional Protocol to the European Convention on Extradition of 20 September 2012 (CETS No. 212, 'Fourth Additional Protocol'). This seeks to replace Art. 10 of the European Convention on Extradition (ETS No. 24), which Ireland has ratified, the text of which is expressed in terms almost identical to those in s. 18 of the Act of 1965. The Fourth Additional Protocol would allow Contracting Parties to refuse extradition on the basis that an

offence would be statute barred according to the law of the requested party only where the request for extradition is based on offences for which that State has jurisdiction under its own criminal law and/or if its domestic legislation explicitly prohibits extradition when the prosecution or punishment of the person claimed would be statute barred under its law.

22. The relevance of the Fourth Additional Protocol for the interpretation of s. 18 of the Act of 1965 is far from apparent in circumstances where Ireland has neither ratified it nor amended that provision in order to take account of it. If anything, by neither ratifying nor transposing the Fourth Additional Protocol, an inference can be drawn that the State does not seek to alter its adherence to provisions that are, in substance, identical to those in s. 18 of the Act of 1965, the meaning of which is elucidated in this judgment.

IV. Ruling

23. For the reasons set out at Part III, above, I would dismiss the appeal and affirm the order of the High Court.

Appearances:

For the Appellant: Robert Barron SC and Joanne Williams, instructed by the Chief State Solicitor.

For the Respondent: Michael Lynn SC and Thomas Horan, instructed by the Tracy Horan & Co., Solicitors.