

**THE HIGH COURT  
JUDICIAL REVIEW**

**[2002 No. 472 JR]**

**BETWEEN**

**J. M.**

**APPLICANT**

**AND  
THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENTS**

**Judgment of the Honourable Mr Justice Quirke delivered the 4th day of April 2006.**

By order of the High Court (McKechnie J.) dated the 30th July, 2002, the applicant was given leave to seek various reliefs by way of judicial review including an order of Prohibition restraining the respondent (hereafter the "DPP") from prosecuting the applicant in respect of:

- (a) 25 charges of indecent assault on A.R. (formally A.D.) allegedly committed between the 1st October, 1976 and the 31st December, 1978,
- (b) 23 charges of indecent assault on S.D. allegedly committed on the 1st January, 1977, and the 30th September, 1983, and,
- (c) one charge of indecent assault on Stephen D. contrary to s. 2 of the Offences Against the Person Act, 1861, allegedly committed between the 1st October, 1976, and the 31st December, 1984.

All of the offences are alleged to have been committed by the applicant at an address in B. in Dublin where the applicant then lived with P.Q. and the complainants. P.Q. is the natural mother of the three complainants.

**Relevant Facts**

1. On the 13th May, 1998, A.R. who was born on the 9th June, 1965, made a written statement of complaint to the L. Constabulary at A. Police Station. She was then living in the U.K. She alleged that the applicant had indecently assaulted her on a number of occasions when she was between 11 and 13 years old.

2. On the 28th May, 1998, A.R. and S.D. met Detective Garda D. O'B., by appointment, at a Garda Station in Dublin.

S.D. advised Detective Garda O'B. that she wished to make a complaint against the applicant. She said that he had indecently assaulted her on a number of occasions between the 1st January, 1977, and the 30th September, 1983, when she was between 6 and 12 years old.

On the same date Detective Garda O'B. received by fax from Police Constable K.W. of A. Police Station a copy of the statement of complaint which A.R. had made to the L. Constabulary on the 13th May, 1998. On the 30th May, 1998, Detective Garda O'B. met with A.R. and S.D. at Harcourt Sq. by arrangement. On that date Detective Garda O'B. took a statement in writing from A.R. and S.D. made a statement of complaint in writing to Detective Garda M.M. The statement was completed on the 1st June, 1998.

3. Between the 4th June, 1998, and the 3rd October, 1998, Detective Garda O'B. conducted investigations and obtained documentary and other evidence arising out of the complaints made by A.R. and S.D.

During the ten month period between October, 1998 and August, 1999, Detective Garda O'B. worked on criminal investigations unrelated to the complaints made by A.R. and S.D. During that period no effort was made on behalf of the Director of Public Prosecutions to advance the investigation.

4. On the 18th August, 1999, Detective Garda O'B. contacted the police in England. He made further enquiries and he was informed by the police in England that the applicant was willing to be interviewed in relation to the allegations made against him. An appointment was made to have the applicant interviewed by Detective Garda O'B. in W. in the U.K. on the 7th December, 1999.

Detective Garda O'B. obtained additional statements from other relevant witnesses. On the 6th December, 1999, S.D. made a statement of complaint against the applicant to Detective Garda K.

5. On the 7th December, 1999, Detective Garda O'B. interviewed the applicant at W. Station in Northumberland in England together with Detective Garda K. and an officer from the British Police Force. Having conducted additional investigations and sought additional evidence in relation to the complaints made against the applicant, Detective Garda O'B. submitted an investigation file to the DPP in July of 2000. On the 30th August, he received directions from the DPP to prosecute the applicant in respect of the relevant offences.

He prepared the draft charges and submitted them to the Chief State Solicitor on the 28th September, 2000. On the 30th November, 2000, he received a letter confirming that the draft charges could be proceeded with.

6. During the six month period between November, 2000 and May 2001, Detective Garda O'B. worked on a number of unrelated criminal investigations. During that time no attempt was made on behalf of the DPP to advance the investigation into the allegations made by A.R., S.D and Stephen D.

7. Between May and October, 2001, there were communications between Detective Garda O'B. and Ms. K. B. who is a solicitor in the U.K. then retained to represent the applicant.

There is a conflict between the evidence of Ms. B. and that of Detective Garda O'B. as to the nature and extent of those communications.

8. On the 25th October, 2001, Detective Garda O'B. sought and obtained 49 warrants for the arrest of the applicant. These were duly issued and delivered to the Extradition Section of Garda Headquarters. They were then forwarded to the appropriate authorities in

England.

On the 18th April, 2002, Detective Garda O'B. travelled to England accompanied by a colleague.

On the following day the applicant was delivered into their custody. He was returned to Dublin Airport and was arrested on foot of the 49 warrants issued.

He was brought to B. Garda Station and was charged with the commission of the relevant 49 offences.

On the 10th May, 2002, the applicant was returned for trial to the Dublin Circuit Criminal Court on the 49 charges concerned.

9. The applicant who was born on the 15th June, 1945, denies the commission of the offences with which he has been charged. He lived with P.Q. and her children at the address in B. from 1976 to a date in February, 1986. He moved to the U.K. in early 1986 with P.Q., S.D. and Stephen D.

He suffered from alcohol dependence and required treatment for that condition. After the treatment he moved to England with P.Q. whom he married on the 3rd December, 1993. P.Q. also suffered from alcohol dependence.

In November, 1996 the applicant and P.Q. separated. The applicant says that he has recovered from his addiction. He claims that P.Q. has not recovered from her addiction.

10. A.R. told her (then) boyfriend M.M. of the alleged abuse in 1979 or 1980. Around the same time (when she was approximately fourteen years old) she reported the abuse to her friend A.K.

Around the same time she told her older sister C. of the abuse.

In evidence she stated that she told a priest "*in a corridor*" in her school. She said that nobody had any taken action arising out of the complaints. She expressed surprise that the priest had done nothing.

In or around 1981 A.R. became involved in a relationship with F.C. by whom she had a child in 1983 (she was 18). She told F.C. of the abuse at the commencement of their relationship.

A.R. also reported the abuse to C.M., the applicant's sister, in 1979. C.M. reported the abuse to A.R.'s mother, P.Q., in December, 1995.

11. S.D. reported the abuse to her sister A.R. at an early stage in the abuse.

Although she spoke to A.R. about the abuse, S.D. did not report the abuse to the police. She stated that she did not wish to do so because her mother was not aware of it. She said that C.M. reported the abuse to her mother in 1997. She reported the abuse to a boyfriend, M.B., in 1991 or 1992 and to another boyfriend before that.

12. Mr. Paul Gilligan who was a senior clinical psychologist with the Eastern Health Board was retained on behalf of the Director of Public Prosecutions to conduct assessments of A.R., S.D. and Stephen D. for the purpose of these proceedings. He travelled to A. in L. where he met and assessed both A.R. and S.D. on the 24th and 25th February, 2003.

He made numerous attempts to facilitate and contact Stephen D. who declined to attend the appointments which had been made for him.

13. Mr. Gilligan considered that the delay in reporting the alleged abuse by both A.R. and S.D. was both reasonable and understandable in the light of each of their individual circumstances, he found as follows:

**(a) A.R.**

He found that A.R. was the third child in a family of six children. As a young child she had lived with her family until her mother and father separated and the applicant became her mother's partner and her stepfather. She had a good relationship with her natural father when she was living with him.

She left home to live with her sister when aged 15. A year later she moved to live in London with her then boyfriend/partner. In 1985 she moved to live in Accrington where she met her husband in 1988. She currently lives with him and with her two children, a boy, aged 19, and a girl, aged nine.

She left school at age 12 feeling that she had underachieved because of the trauma associated with the abuse.

Her childhood became traumatic when her mother and father separated and the applicant joined the family. She said that she hated the applicant and was frightened of him, stating that he was an alcoholic who seriously abused her mother physically.

She said she had always worried that the applicant would seriously hurt or kill her mother who suffered from bad health.

Mr. Gilligan felt that the abuse had occurred when A.R. was between 11 and 14 years old which was a crucial age for the development of self awareness, self worth, sexual identity and healthy gender relationship.

He said that the age difference between A.R. and the applicant was significant and caused the applicant to occupy a position of authority and trust which contributed to A.R.'s compliance and difficulty in reporting. He said that this was exacerbated by the fact that the applicant was, at the material time, A.R.'s stepfather.

Reporting on the immediate impact of the abuse together with the delayed and current impact Mr. Gilligan felt that A.R. had spent her early years in chronic fear of her stepfather. That fear dominated and controlled her life. Until quite recently she was still extremely frightened of the applicant. She believed he might hurt or kill her or one of her family. Psychological testing reflected an individual who had had a difficult time expressing distress to others. This indicated a high level of psychological distress. It strongly indicated the need for therapeutic intervention.

Mr. Gilligan said that A.R. had told three people about the alleged abuse at an early stage. She had not reported the incident as an adult because she was still afraid of the applicant. She was also afraid that the applicant would hurt her mother or kill her.

He concluded that the main delayed impact of the abuse on A.R. had been a number of serious psychological and emotional difficulties including depressive episodes. These had resulted in suicide attempts, an eating disorder and a deep distrust and anger towards men in general. He took the view that A.R. is still deeply traumatised and haunted by her experiences in childhood. He said that psychological testing indicated this was a profile which was common amongst those who had been sexually victimised. It reflected an individual who had difficult time expressing distress to others. It was his opinion that the assessment indicated that the instance of abuse had a significant psychological impact on A.R. It had particularly impacted on her psychological well being and sense of personal security. These factors contributed significantly to her reluctance to report the abuse. Mr. Gilligan felt that this was reasonable and understandable in the circumstances.

#### **(b) S.D.**

Mr Gilligan found that S.D. was the sixth child in the family. She left school at age 15 and worked in various part-time jobs before becoming a full time waitress. She had a poor relationship with her mother who was a heavy drinker. She reported witnessing serious physical assault upon her mother by the applicant during childhood. She worried that the applicant would seriously hurt or kill her mother. She believed that he dominated and controlled her.

She reported being raped by A.R.'s partner when she was aged 13. The rape resulted in the birth of her first child. She suffered from depression and panic attacks. She made a suicide attempt on one occasion.

Mr. Gilligan felt that the abuse had occurred between the ages of 7 and 15 which was a crucial age for the development of healthy self awareness, self worth, sexual identity and healthy gender relationships. The age difference between S.D. and the applicant was significant and caused the applicant to occupy the position of authority and trust which contributed to S.D.'s compliance and difficulty in reporting. This was exacerbated by the fact that the applicant was, at the material time, her stepfather.

Dealing with the impact of the abuse Mr Gilligan reported that S.D. was a frightened withdrawn child who was completely dominated by the applicant. Dealing with the current impact of the abuse he stated that the serious psychological and emotional difficulties from which she now suffers include depressive episodes and panic attacks. The difficulties have resulted in a suicide attempt. He found that she did not report the abuse because she felt there was no point in doing so as it would cause difficulties within her family and she felt that it was her fault and she deserved no better. Furthermore she feared that the report might have a detrimental effect on her mother who was in bad health and the applicant might injure or harm her mother.

She had reported the abuse to two boyfriends one of whom abused the information to control and intimidate her.

She reported to A.R. and ultimately decided to report it to the police when she realised that her mother knew of the abuse. She felt that reporting might help her take control of her life.

A Trauma Symptom Inventory conducted by Mr. Gilligan reflected the profile of a person who was emotionally isolated and who suffered from dissociated depression which resulted in a high level of psychological distress indicating the need for therapeutic intervention.

Mr. Gilligan felt that the abuse had a significant psychological impact on S.D. which contributed significantly to her reluctance to report the abuse and it was his opinion that a delay in reporting the abuse was consistent with her condition.

14. The separation of their parents, the violence which they witnessed in their home between the applicant and her mother, the death of their father and the instability associated with their family life were all factors which contributed to the psychological fragility of both A.R. and S.D. These factors made A.R. and S.D. particularly vulnerable to psychological damage of the type which they sustained. However Mr. Gilligan believed that the abuse was "*the primary source*" of their psychological difficulties.

#### **The Law**

The general principles of law which apply to applications to prohibit, on grounds of delay, the prosecution of offences of a sexual nature allegedly committed against children (and reported only after very substantial periods of time) are now well settled. They have been identified by the courts within this jurisdiction on countless occasions and are to be found in such cases as *Barker v. Wingo* 407 U.S. 514 (1972), *B. v. Director of Public Prosecutions* [1997] 3 I.R. 140, *P.C. v. Director of Public Prosecutions* [1999] 2 I.R. 25, *PO'C v. Director of Public Prosecutions* [2000] 3 I.R. 87, *J.L. v. Director of Public Prosecutions* [2000] 3 I.R. 122, *J.O'C v. Director of Public Prosecutions* [2000] 3 I.R. 478, *P.L. v. Judge Buttiner and the Director of Public Prosecutions* (Unreported, Supreme Court, 20th December, 2004), *P.M. v. District Judge Malone and the D.P.P.* [2002] 2 I.R. 560, and many others. It is accordingly unnecessary to restate them herein. They have been again discussed to some extent in *T.S. v. D.P.P. and Ors* (Unreported, Supreme Court, 22nd June, 2005).

#### **Stephen D.**

Stephen D. was born in 1972. On the 6th February, 1999, he reported the alleged abuse to the Gardaí.

No evidence whatever has been adduced in these proceedings which explains the delay by Stephen D. in reporting the offence which he alleges against the applicant. In 1990 he was 19 years old. The subsequent period of 9 years before he made a complaint to the prosecuting authorities was *prima facie* inordinate and unreasonable in the circumstances. No explanation has been offered for that delay by way of evidence or otherwise.

For reasons which have been outlined in *T.F. v. DPP* (Unreported, High Court, 18th January, 2005) I am assuming that the right of an accused person to an expeditious trial is an independent right, separate from the constitutional right of an accused person to a fair trial.

It follows that there has been a breach of the applicant's constitutionally protected right to an expeditious trial of the offence alleged against Stephen D. The applicant is, therefore, entitled to an injunction restraining the DPP from prosecuting the applicant in respect

of the charge preferred against him in respect of Stephen D.

### **The Applicant's Claim**

The applicant claims that his constitutionally protected right to a trial with reasonable expedition has been violated in two respects, that is:-

1. By reason of inordinate and inexcusable pre-complaint delay on the part of A.R. and S.D. in making their complaints to the prosecuting authorities. The applicant claims that as a result of that delay he has suffered, an unavoidable presumption of prejudice in his capacity to defend himself in respect of the charges preferred against him, and,
2. By reason of inordinate and inexcusable delay on the part of the prosecuting authorities in completing their investigation into the offences and bringing him before the courts for trial.

It is argued that by allowing a period of almost four years to elapse between May, 1998, when A.R. and S.D. first complained to the prosecuting authorities, and April, 2002, when the applicant was charged with the commission of the offences, the prosecuting authorities were guilty of such "*blameworthy*" and unconscionable delay that the trial should be prohibited on that ground alone - (see *P.P. v. DPP* [2000] 1 I.R. 403).

### **Specific Prejudice**

In support of her contentions Ms. Donnelly S.C. has relied upon the presumptive prejudice to the applicant which, she argues, will inexorably result from the passage of time between the alleged commission of the offences and the date of trial.

No evidence has been adduced in these proceedings suggesting that the applicant will suffer any actual identified specific prejudice by reason of the delay.

### **Pre-Complaint Delay**

The right of an accused person to a trial with reasonable expedition is well settled. It has been recognised by the courts in this jurisdiction repeatedly (see *The State (Healy) v. Donoghue* [1976] 1 I.R. 325, *The State (O'Connell v. Fawsitt* [1986] I.R. 362 and other cases).

The right is derived from Article 38.1 of Bunreacht na hÉireann. It is also protected by Article 6 of the European Convention on Human Rights.

In *P.C. v. DPP* [1999] 2 I.R. 25 the Supreme Court (Keane J.) observed (at p. 68) that:-

*"... the delay may be such that, depending on the nature of the charges, a trial should not be allowed to proceed, even though it has not been demonstrated that the capacity of the accused to defend himself or herself would be impaired.*

*In other cases, the first enquiry must be as to what are the reasons for the delay and, in a case such as the present where no blame can be attached to the prosecuting authorities, whether the court is satisfied as a matter of probability, assuming the complaint to be truthful, that the delay in making it was referable to the accused's own actions. If that stage has been reached, the final issue to be determined will be whether the degree to which the accused's ability to defend himself has been impaired is such that the trial should not be allowed to proceed".*

Applying the test in *P.C.* to the facts of the instant case I am satisfied that this is a case where:

*"... the first inquiry must be as to what are the reasons for the delay and ... whether the court is satisfied as a matter of probability that, assuming the complaints to be truthful, the delay in making it was referable to the accused's own action".*

I am required therefore to enquire into the reasons for the delay and to determine whether the courts can be satisfied as a matter of probability that, assuming the complaints of (A.R. and S.D.) were truthful, the delay in making them was referable to the actions of the applicant.

Reversing the presumption of innocence (enjoyed by the applicant in every other aspect of these proceedings) as I must for the purpose of applying the test identified in *P.C.*, I am satisfied on the evidence and on the balance of probabilities that the applicant occupied a position of dominion over A.R. and S.D. at the time of the commission of the offences alleged.

I am satisfied further that the applicant's dominion over A.R. continued until in or around 1983 when she had a child resulting from her relationship with F.C.

I am satisfied that the applicant's dominion over S.D. probably continued for a period of time until she was approximately 18 years old when she left the residence which she shared with her mother and with the applicant in England.

Applying the principles identified by the Supreme Court (Keane J.) in *P.C.*, this Court must investigate the delay on the part of the A.R. in reporting the abuse during the period of approximately 15 years between 1983 (when she was 18 years old) and 1998 (when she reported the abuse) in order to discover whether, on the balance of probabilities, that delay in reporting by A.R. was referable to the conduct of the applicant.

It follows similarly that this Court must establish, on the balance of probabilities, whether the delay on the part of S.D. in reporting the alleged abuse during the 8 or 9 year period between 1989/1990 (when S.D. was 19 or 20) and April, 1998, (when she reported the abuse), was referable to the conduct of the applicant.

I am satisfied on the evidence that the delay in each case was *prima facie*, inordinate and unreasonable.

Explanations have been offered and evidence has been adduced in these proceedings which Mr. Collins S.C. contends is sufficient to discharge the onus which lies upon the DPP of proving, on the balance of probabilities, that the delay by A.R. and S.D. in reporting the offences was referable to the conduct of the applicant.

On the evidence adduced by Mr. Gilligan I am satisfied that the failure by A.R. to report the abuse as a child occurred because of the dominion exercised over her by the applicant. This dominion continued until she was approximately 18 years old.

During the succeeding 15 years I am satisfied on the evidence of Mr. Gilligan that A.R. was suffering from psychological difficulties which were primarily caused by the abuse to which she was subjected to by the applicant. Other factors contributed to her psychological frailty and instability. These included her unstable home and family circumstances, the separation of her parents, the death of her father and in particular the violence which she witnessed in her home.

In particular, I accept the evidence of Mr Gilligan that the "*primary source*" of her psychological condition was the abuse which she suffered at the hands of the applicant. I am satisfied, on the evidence, that it was her psychological condition which made it impossible for her to report the abuse until she did so in April of 1998.

I am satisfied also on the evidence and on the balance of probabilities that the applicant exercised dominion over S.D. until she was more than 18 years old and had left the residence which she was obliged to share with him. This explained her failure to report the abuse during that time.

Thereafter I am satisfied on the evidence of Mr. Gilligan that she suffered from severe psychological difficulties which were primarily caused by reason of the abuse to which she was subjected by the applicant.

Like A.R. her domestic circumstances including the separation of her parents, the death of her family, the physical evidence which she witnessed in her home, her apparent rape at the hands of F.C. and the instability of her life in general were factors which contributed to her psychological difficulties. In particular I am satisfied on the evidence that the primary source of those difficulties was the abuse to which she was subjected at the hands of the applicant.

It follows that I am satisfied that the delay on the part of A.R. and S.D. in reporting the offences was referable to the conduct of the applicant and that his trial in respect of the alleged offences should not be prohibited on grounds of their delay in reporting the alleged offences.

### **Prosecutorial Delay**

It is the contention of the applicant that there has been an inordinate and inexcusable delay on the part of the prosecuting authorities in investigating the offences alleged against the applicant and bringing him before the courts for trial in respect of those offences.

It is of some significance that at important times during the investigation of these alleged offences the most material witnesses were residing in the U.K.

The first complaints were made in May, 1998. At that time the applicant and the two most relevant complainants were resident within the U.K.

I am satisfied on the evidence as follows:

1. The investigation of the offences was conducted efficiently and expeditiously between May of 1998 and October of 1998.
2. The explanation offered for the inactivity on the part of the prosecuting authorities during the ten month period between October, 1998 and August, 1999 is unsatisfactory.
3. Having regard to the then prevailing circumstances, including the location of the relevant witnesses and the fact that the applicant was then resident in the U.K. the investigation was conducted with reasonable diligence between August, 1999 and the 30th November, 2000 (when the draft charges submitted to the Chief State Solicitor by Detective Garda O'B. were approved).
4. The explanation for the inactivity on the part of the prosecuting authorities during the six month period between November, 2000 and May, 2001, is unsatisfactory.
5. The prosecuting authorities conducted the further investigation of the alleged offences with reasonable expedition between the 28th May, 2001, and the 25th October, 2001, when Detective Garda O'B. sought and obtained 49 warrants for the arrest of the applicant.
6. No satisfactory explanation has been offered for the delay of five months between the 25th October, 2001, and the date in March, 2002 when the applicant was arrested in the U.K. in respect of the offences alleged against him.
7. After the applicant was returned to this jurisdiction on the 19th April, 2002, the prosecuting authorities acted expeditiously in charging him and returning him for trial in respect of the offences.

A period of almost four years lapsed between the date when A.R. and S.D. first complained and the date when the applicant was returned for trial.

*Prima facie* that period of time was inordinate and gave rise to the need for an explanation from the prosecuting authorities as to its cause. On the evidence the investigation of the offences and the prosecution of the applicant was delayed to some extent by reason of the fact that the applicant and the two complainants were, at all material times, resident within the U.K.

However unsatisfactory explanations have been offered by the prosecuting authorities in respect of the following:

- (1) the ten month period between October, 1998 and August, 1999,
- (2) the six month period between the 30th November, 2000, and the 29th May, 2001, and
- (3) the five month period between the 25th October, 2001, and the date in March, 2002 when the applicant was arrested.

In respect of the first two periods referred to the explanation offered on behalf of the prosecuting authority has been that at the material times Detective Garda O'B. was:

*"...committed to work on a number of criminal investigations not related to the instant prosecution and was unable, therefore, to materially progress investigation..."*.

No explanation was offered for the delay of five months between the 11th October, 2001, when the warrants in respect of the applicant were issued and the 27th March, 2002, when he was arrested in respect of the charges.

Ms. Donnelly S.C. on behalf of the applicant relies upon the decision of the High Court (Geoghegan J.) in *P.P. v. Director of Public Prosecutions* [2001] I.R. 403 in support of her contention that the delays referred to were of the "blameworthy" category referred to in that case. She argues that by reason of those delays the case should not be allowed to proceed despite the fact that actual prejudice to the applicant's capacity to defend himself has, in this case, not been proved.

She relies upon the settled principle that a substantial delay, of the kind which has occurred in this case, between the date of the commission of the alleged offences and the date of first complaint imposes an additional burden upon the prosecuting authorities to ensure that there is no further unnecessary delay in investigating the complaints and, if appropriate, returning the accused person for trial.

In applying the test identified in P.C. it is important to understand (a) that if, by reason of either "pre-complaint delay" or "prosecutorial delay" an accused person suffers specific prejudice sufficient to expose him or her to the risk of an unfair trial then the trial must be prohibited and (b) the principles underlying the concepts of "pre-complaint delay" and "prosecutorial delay" are quite different.

If the conduct of an accused person prevents a complainant from reporting the commission of an offence for a substantial period of time, the constitutionally protected right of the accused person to be investigated and charged during that period will not have been breached because the delay will have been caused by the person invoking the right and alleging the breach. That is the principle which underlies the investigation of "pre-complaint delay" required by P.C.

The principle underlying the test required by P.C. in respect of "prosecutorial delay" is different. It was identified by Geoghegan J. in *P.P. v. DPP* in the following terms:

*"Where there has been a long lapse of time, as in these prosecutions for sexual offences, between the alleged offences and the date of complaint to the guards, it is of paramount importance, if the accused's constitutional rights are to be protected, that there is no blameworthy delay on the part of either the guards or the Director of Public Prosecutions."*

In that case Geoghegan J. found that..."*The whole investigation appears to me to have been conducted in a lackadaisical and slovenly fashion*" and decided that the case should not be allowed to proceed. The principle invoked in that case was the disapproval and rejection by the courts of unacceptable disregard by the State for the constitutionally protected rights of accused persons.

Whilst the discrete prosecutorial delays to which I have referred earlier in this case have been substantial and the explanations offered to account for them have been somewhat unsatisfactory it cannot be said that the investigation of the offences was carried out in the reprehensible manner described in P.P.

Detective Garda O'B., in evidence provided a history of the detective unit which had, a short time earlier, been established for the purpose of investigating crimes of the kind which has given rise to these proceedings. His evidence established that the unit was under-resourced and that the volume of work imposed upon the unit was far greater than had been anticipated.

Those factors, by themselves, are, of course, insufficient by way of an adequate explanation for delays of the kind which occurred in this case.

However every application of this kind must be decided upon its own facts and the evidence of the circumstances which gave rise to those facts.

On the evidence in this particular case I am satisfied that the delays to which I have referred were not delays of a "blameworthy" character which would or should give rise to an order restraining the Director of Public Prosecutions from further prosecuting the applicant.

It follows from the foregoing that the relief sought by the applicant in respect of the offences alleged against A.R. and S.D. is refused.