

**THE HIGH COURT**

**JUDICIAL REVIEW**

**RECORD NO. 2011/ 325 JR**

**BETWEEN**

**STEPHEN McARDLE**

**APPLICANT**

**v.**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**Judgment of Mr. Justice Hedigan delivered the 5th day of July 2012**

**1. The applicant seeks the following reliefs:-**

1. An Order of prohibition by way of an application for Judicial Review restraining the respondent, his servants or agents from taking any further steps in the proceedings entitled Director of Public Prosecutions v. Stephen McArdle, at present pending before the Dublin Circuit Criminal Court, Bill number 223/2011.
2. Further and in the alternative to the foregoing plea, an Order in the nature of an injunction by way of an application for Judicial Review restraining the respondent, his servants or agents from taking any further steps in the proceedings entitled Director of Public Prosecutions v. Stephen McArdle, at present pending before the Dublin Circuit Criminal Court, Bill number 223/2011.
3. A declaration by way of an application for Judicial Review that the delay on the part of the respondent in the institution and prosecution of the criminal proceedings entitled Director of Public Prosecutions v. Stephen McArdle, which said offences are alleged to have occurred on the 3rd February, 2007, which said charges are at present pending before the Dublin Circuit Criminal Court is in breach of the applicants right to a trial with due expedition, which said right is protected by Article 38.1 and Article 40.3 Bunreacht na hEireann and/or Article 6 of the European Convention on Human Rights and Fundamental Freedoms.
4. A declaration by way of application for Judicial Review that the delay on the part of the respondent in the institution and prosecution of the criminal proceedings entitled Director of Public Prosecutions v. Stephen McArdle, which said offences are alleged to have occurred on the 3rd February, 2007, which said charges are at present pending before the Dublin Circuit Criminal Court, has irreparably prejudiced the prospect of the applicant herein obtaining a fair trial in accordance with the applicant's rights under Article 38.1 and Article 40.3 of Bunreacht na hEireann and/or Article 6 of the European Convention on Human Rights and Fundamental Freedoms and or is in breach of the applicants right to a fair trial.
5. An order staying the criminal proceedings entitled Director of Public Prosecutions v. Stephen McArdle the subject matter for relief herein, pursuant to Order 84, Rule 20(7) a) of the Rules of the Superior Courts, pending the determination of these proceedings.
6. An order providing for all necessary an/or incidental directions in relation to this application for relief.

**Background Facts**

2.1 The applicant seeks an injunction restraining the respondent taking any further steps in the proceedings pending against him entitled *Director of Public Prosecutions v. McArdle* at present pending before Dublin Circuit Criminal Court, bearing Bill number 223/2011. The applicant further seeks a declaration that delay on the part of the respondent in the institution of the proceedings is in breach of his right to a trial with due expedition, and has prejudiced his prospect of obtaining a fair trial.

2.2 These proceedings arise out of two alleged offences of criminal damage and assault causing harm, arising out of an incident where the applicant is accused of throwing rocks at a bus, hitting a passenger through the window and fracturing her skull. This incident occurred on 3rd February 2007. The applicant was 16 years old at this time. The driver of the bus identified the applicant to the gardai as the perpetrator of the offence immediately after it had happened. The applicant admitted in his cautioned memorandum of interview that he had thrown a rock at the bus but denied that it had hit the window.

2.3 The file was first sent by the prosecuting Garda Shane Fitzsimons to the Juvenile Liaison Office which determined that the case was not appropriate for inclusion in the programme. When this decision was made, the file was sent to the DPP in October 2007. In November 2007 directions were received to charge the applicant. Garda Fitzsimons then went to the address that had been given by the accused when he was arrested, and found that he was not living at that address. Garda Fitzsimons visited the address on a number of subsequent occasions and spoke with the applicant's mother. The contents of this conversation are in dispute. Garda Fitzsimons avers that the applicant's mother told him she would not bring the applicant to the station for purposes of charging. The applicant's mother has sworn an affidavit stating that she never told the guard she would not bring him to the station.

2.4 The applicant was in any event eventually found and charged on the 22nd January, 2008. Between January 2008 and October 2008 psychiatric and psychological reports were secured at the request of the defence on behalf of the applicant. During the period from October 2008 until December 2009 the applicant was the subject of seven bench warrants on the following dates; 9th October,

2008, 23rd January, 2009, 3rd April, 2009, 6th May, 2009, 23rd July, 2009, 9th of October, 2009 and 3 December, 2009. The applicant has averred that his failure to appear on these dates was attributable to a number of problems he was having at that time. In relation to the period from December 2009 when the last bench warrant issued and November 2010 when it was executed, the applicant claimed he was available to be arrested. Garda Fitzsimons avers at paragraph's 11 and 12 of his affidavit that he does not accept that the applicant was available to have the warrant executed during this period. The applicant claims that he contacted his solicitor to try and have the warrant executed and that he was contacted by his solicitor to inform him that they had written to the Garda to execute this warrant. Garda Fitzsimons has specifically rejected any contention that any effort was made by the applicant to have the warrant executed. In relation to the period between November 2010 and February 2011 when the matter was sent forward for trial the respondent argues that matters progressed promptly. The applicant however argues that there was unacceptable delay in particular he complains about delay in serving the book of evidence.

2.5 The applicant asserts that he is prejudiced because of the delay in this case. He states that as a result of the delay he may not be able to re-collect certain events on the date in question which would assist him in his defence of the allegations. The applicant further asserts that there may have been a number of witnesses who were present on the date who could give evidence on his behalf at trial and that the delay in charging him until nearly a year later means that he may no longer be able to recollect who these persons were. He also states that one "potential witness" is now deceased. He states that a Mr Black could have given exculpatory evidence on his behalf. For these reasons the applicant now seeks to have his trial prohibited.

### **Applicants Submissions**

3.1 The applicant seeks an injunction restraining the respondent taking any further steps in the proceedings at present pending against him before the Dublin Circuit Criminal Court. The applicant seeks a declaration that the delay on the part of the respondent in the institution and prosecution of the criminal proceedings involving offences alleged to have occurred on the 3rd February, 2007 is in breach of the applicant's right to a trial with due expedition. The applicant further seeks a declaration that the delay on the part of the respondent in the institution and prosecution of the instant criminal proceedings has irreparably prejudiced the prospect of the applicant obtaining a fair trial.

3.2 The Courts have recognised that when charges are before the courts concerning children, there is a special duty on the part of the prosecution to expedite any criminal matters, above and beyond that with adults. This was first recognised in *B.F. v Director of Public Prosecutions* [2001] I.R. 656 where Geoghegan J. stated at 666:-

"I also take the view that in the case of a criminal offence alleged to have been committed by a child or young person as in this case, there is a special duty on the state authorities over and above the normal duty or expedition to ensure a speedy trial, having regards to the obvious sensitivities involved."

Whenever a criminal offence is brought against a child there is a special duty on the state, above that of the normal duty of expedition to ensure a speedy trial. The applicant accepts that the facts in this case are different to the case cited above, however relevant principles can be extracted. Case law has held that there is an onus on the applicant seeking an injunction and such applications may only succeed in exceptional circumstances. The applicant however submits that this is one of those exceptional circumstances. The applicant has asserted his innocence. He is pleading not guilty to the offences and although he accepts that he was present at the scene, he denies the specific allegations against him. Whilst the delay for which the state was responsible is not as long as the delay in the above case, the applicant here can show that there is specific prejudice in that a potential witness for the defence is now deceased.

3.3 With regard to the delay from February 2007 to January 2008 the applicant disputes that he was not in a position to be found until that date. The only explanation given for directions not being available until November 2007 was that the applicant's file was considered for the Juvenile Liaison Programme. It is submitted on behalf of the applicant that he could never have been considered suitable for Juvenile Liaison Programme as he had denied the charges against him during his interview. The applicant further points out that the respondent has not indicated to whom the file was sent, when it was sent or whether it was followed up with further correspondence.

3.4 With regard to the delay from January 2008 to 9th October 2008 this is accounted for by the time taken to prepare psychological and psychiatric reports. The applicant submits that this delay was not his fault. It was incumbent upon the Judge in the Children's Court to consider the age and maturity of the applicant and any other factors it considered relevant before considering jurisdiction. Reports confirming the above were crucial to the consideration of whether or not the applicant should be dealt with in the Children's Court or in the Circuit Court. It is further submitted that there were issues in relation to the applicant's fitness to plead which are obviously relevant and crucial in respect of whether the prosecution could even proceed or not. It is submitted that this systemic delay should be treated in a similar fashion to prosecutorial delay.

3.5 With regard to the delay from October 2008 to December 2009. The applicant has accepted that some of the delay is attributable to him. He accepts that he was late to court on some occasions and absent on others. There was however during this period systemic delay on the part of the respondent. It is the position that adjournments were made by Judges in the District Court which resulted in the delay of proceedings. It is accepted that the applicant was the subject of bench warrants during this period. He refers however to his difficult upbringing and to a number of medical and psychological problems, including a previous substance abuse problem. This resulted in his not being present on the dates in question because of these difficulties.

3.6 With regard to the delay from December 2009 to November 2010 the applicant submits that this was caused by the respondents delay in executing the bench warrant. It was the position that the applicant was in other courts during this period but his bench warrant was not executed until almost a year later notwithstanding communication having been made and the applicant being present in other courts throughout this period. It is a well established principle that there is an obligation on the gardai to execute bench warrants promptly. It is not open to them to take no active steps or simply wait for the person to be arrested in relation to other offences. Finally with regard to the delay from November 2010 to April 2011, the applicant submits that this delay was not as a consequence of his behaviour. The applicant was remanded in custody during this period. He alleges systemic and prosecutorial delay in this regard. The Judge presiding in the Children's Court sought updated medical reports and the state were not in a position to serve the Book of Evidence once jurisdiction had been decided. This is the position notwithstanding that the matter had been before the courts on over 30 occasions, the Book of Evidence was not ready to be served on the 6th January, 2011 and the applicant was further remanded in custody for service of same.

3.7 It is now five years since the alleged offences and were the applicant to fail in these proceedings, there will be a further delay pending his receiving a trial date. The result of all this is that the applicant may not be able to recollect certain specific events which would assist him in his defence. The applicant submits that the death of Paul Black a potential defence witness now results in the applicant being at risk of not receiving a fair trial. It is accepted that Paul Black was present at the scene of the alleged offences. It

is disputed by the respondent that he was a suspect in the case. The applicant submits that this cannot be the position when the prosecuting Garda put the alleged offences to the deceased person during his cautioned voluntary interview. Mr Black could have provided oral exculpatory evidence on behalf of the applicant. Further it is submitted that because of the delay the applicant is no longer subject to the sentencing regime for children. The applicant has no outstanding charges pending against him and was released from prison where he was serving a sentence. It is the position that had these matters been dealt with on a timely basis and if he was convicted, they could have been finalised whilst he was in custody.

### **Respondents Submissions**

4.1 It is submitted on behalf of the Director of Public Prosecution that delay can not be blamed on the prosecution in this case. It is clear from the affidavits, filed on behalf of both the applicant and the respondent that a significant cause of delay in this case are the seven bench warrants (mostly unexplained) issued against him, because of his failure to attend court to answer the charges laid against him. It is submitted on behalf of the respondent that the actions of the applicant are not consistent with the actions of a person who was seeking a prompt and speedy trial, and these actions alone are enough to disentitle him to the relief sought.

4.2 It is submitted on behalf of the respondent that even if the Court finds any element of prosecutorial delay in this case, the applicant has not discharged the onus of proving that the delay is prejudicial to him. He makes some general assertions about possible problems with recollection and he also states that one specific "potential" witness - Paul Black, has died. However, he gives no specific details of how this "potential" witness would assist at his trial. Mr Black gave a voluntary cautioned interview to the gardai at the time of the offence and he stated that he heard the window smash but he "didn't see anything." Garda Fitzsimons avers in his affidavit that Mr Black "never asserted at that time or since that he could or would give exculpatory evidence on behalf of the applicant."

4.3 The applicant also asserts that he has some right to have this charge dealt with in conjunction with other criminal matters he had before the court and that he has lost this opportunity because of delay. It is submitted on behalf of the respondent that there is no right to have separate criminal matters before the court dealt with together. An accused who pleads guilty to a number of offences may be able to expedite matters and there may be an advantage to such an accused in having a number of charges sentenced together. However, if an accused is contesting a charge, there is no right to have that charge dealt with in conjunction with any other charge. The charge he is contesting must take its course through the criminal process.

4.4 The applicant seeks to rely on a body of case law which deals with delay in cases involving juveniles. It is acknowledged that there is a special onus to have matters involving juveniles processed without delay, however it is submitted on behalf of the respondent that the cases relied on by the applicant are extraordinary cases with extraordinary facts, where the applicants did not contribute in any way to the delay. There are no such extraordinary circumstances in this case. The applicant had reached the age of 18 when he failed to appear in court on at least seven occasions and that was a major factor causing the delay in this case.

4.5 The applicant argues that because he is now an adult he will be at a disadvantage if he is convicted of these offences as his young age at the time of commission of the offence will be overlooked. However it is submitted on behalf of the respondent that if the applicant is convicted any sentencing court will be obliged, as is always the case, to take into account the circumstances of the offender and his age at the time of the offence. The applicant has not established a real risk of an unfair trial in this case. Neither has he shown any prejudice that would outweigh the public interest in having serious indictable crime prosecuted. In this case, a very serious assault occurred, resulting in the victim suffering a fractured skull. It is submitted on behalf of the respondent that there are no "wholly exceptional circumstances," such that the public should be deprived of the right to have serious crime prosecuted in accordance with law. The Supreme Court decision in *S.H v DPP* [2006] 3 IR 575 reflects the current emphasis in delay cases for an applicant to show actual prejudice and the requirement that he must demonstrate how the delay has led to a real risk of an unfair trial. In that case Murray CJ held at 580:-

"I am satisfied that in general there is no necessity to hold an enquiry into, or to establish the reasons for, delay in making a complaint. The issue for a court is whether the delay has resulted in prejudice to an accused, so as to give rise to a real or serious risk of an unfair trial."

4.6 The applicant complains about a number of specific periods of delay. The respondent submits that the delay from the February 2007 to January 2008 is entirely accounted for by the attempts to see if the applicant was suitable for inclusion in the Juvenile Diversion Programme and the difficulties the guard had in finding the accused who had changed his address and could not be contacted. Garda Fitzsimons avers that when he got the directions from the DPP, he went to the address given by the accused when he was arrested and found that he was not living there. He further avers that he visited the address on a few occasions and spoke with the applicant's mother who did not give him any assistance in locating her son. The applicant was located on the 22nd January 2008.

4.7 The period from January 2008 to 9th October 2008 is accounted for by the fact that psychiatric and psychological reports were secured at the request of the applicants solicitors. It is noteworthy that in relation to the psychiatric report requested by the defence, no issue was found with fitness to plead. They had raised this issue themselves. During the period from October 2008 until December 2009 the applicant was the subject of bench warrants. It is understandable that when the applicant did not show up on a remand date, a great deal of time was lost executing the bench warrant and then remanding the matter back to the relevant court and judge who was dealing with the matter. In relation to the period from December 2009 when the bench warrant issued and November 2010 when it was executed Garda Fitzsimons avers at paragraph's 11 and 12 of his affidavit that he does not accept that the applicant was available to have the warrant executed during this period. The Garda states he was never contacted by anyone on behalf of the applicant to have the warrant executed. No proof by way of letters or other correspondence has been exhibited to show any attempts made to execute this warrant. The respondent submits that this delay is the fault of the applicant. Finally in relation to the period between November 2010 and February 2011 the respondent submits that matters progressed promptly. It is apparent that once the bench warrant was executed in December 2010, the Court decided to refuse bail to the applicant and remanded him in custody. At that stage, matters moved quickly as the case was not hampered by constant failures to appear. Because of the lapse of time, the Court ordered an up to date medical report for the injured party. On December 9, 2010, the Judge considered the issue of jurisdiction, which was refused. Given that jurisdiction was only refused on 9th December 2010, and given the intervening Christmas period, the respondent submits that it was not unreasonable that the Book of Evidence was not served on 6th January 2011 but was served on the next court date, February 3rd, 2011, when the matter was sent forward to the Circuit Court. At that stage, the applicant could have opted to take a trial date immediately but instead he instituted judicial review proceedings.

4.8 It is submitted on behalf of the respondent that this applicant is not entitled to relief on purely discretionary grounds, given that the delay in this case is largely attributable to his unexplained failure to attend court on a number of occasions. It is further submitted on behalf of the respondent that even if the court finds there is some blameworthy delay on behalf of the prosecution, the applicant has not discharged the onus of showing that this has resulted in any prejudice to him, such that would outweigh the public interest in

having serious crime prosecuted.

### Decision of the Court

5.1 The applicant seeks injunctive relief restraining the respondent taking any further steps in the proceedings pending against him entitled *Director of Public Prosecutions v. McArdle* at present pending before Dublin Circuit Criminal Court, bearing Bill number 223/2011. The applicant also seeks a declaration that the delay on the part of the respondent is in breach of the applicant's right to a trial with due expedition and has prejudiced his prospects of obtaining a fair trial. The pending proceedings consist of two alleged offences of criminal damage and assault causing harm. These arise from an incident where the applicant is accused of throwing a rock at a bus which went through the window and fractured a passenger's skull. The incident occurred on 3rd February 2007. The applicant was 16 years old at the time of the alleged offences. The applicant admitted in his interview that he had thrown a rock at the bus but denied that it had hit the window. The file was first sent by prosecuting Garda Shane Fitzsimons (on a date unknown) to the Juvenile Liaison Office which determined that the case was not appropriate for inclusion in the programme. When this decision was made, the file was sent to the DPP in October 2007, and directions were received to charge the applicant in November 2007. Garda Fitzsimons then went to the address that had been given by the accused when he was arrested, and found that he was not living at that address. Garda Fitzsimons visited the address on a few occasions and spoke with the applicant's mother. The applicant was eventually found and charged on the 22nd January, 2008. The period from January 2008 to 9th October 2008 was taken up by the preparation of psychiatric and psychological reports requested by the applicant's legal team. During the period from October 2008 until December 2009 the applicant failed to appear in court on seven occasions and was the subject of seven bench warrants. In relation to the period from December 2009 when the last bench warrant issued and November 2010 when it was executed, Garda Fitzsimons stated that the gardai could not locate the applicant to execute the warrant. In relation to the period between November 2010 and February 2011 when the matter was sent forward for trial the applicant was in custody and matters progressed promptly. The applicant asserts that he is prejudiced because of the delay in this case. He states is no longer able to recollect certain events on the date in question. He also states that one potential witness who may have given exculpatory evidence on his behalf is now deceased. For these reasons the applicant now seeks to have his trial prohibited.

5.2 An order prohibiting the holding of a criminal trial is exceptional in nature. In *Devoy v DPP* (Unreported Supreme Court, 7th April 2008) Kearns J. (as he then was) stated as follows:-

"Under our jurisprudence, as noted by Denham J. in *D.C. v DPP* [2006] 1 ILM 348, prohibition is a remedy to be granted only in exceptional circumstances. The Court does not adopt a punitive or disciplinary role in this context. Further, any court called upon to prohibit a trial must give due weight to the gravity and seriousness of the offence when exercising this jurisdiction".

There are very good reasons why an order prohibiting the holding of a criminal trial should be exceptional in nature. The court must have regard to the public interest in ensuring that crime is prosecuted and that the wrongdoer is convicted and punished. Furthermore prohibition is not necessary where the trial judge can give appropriate directions and warnings on issues which arise after such a lapse of time. Such directions and warnings should normally be sufficient to ensure a fair trial. Furthermore it is vital for the efficient conduct of criminal matters that criminal trials proceed through the criminal courts and are not dispersed between the court of trial and other courts. In *Corporation of Dublin v Flynn* [1980] IR 357 at 365, Henchy J. stated:-

"It is the essence of a criminal trial that it be unitary and self contained, to the extent that proof of the ingredients of the offence may not be established as a result of a dispersal of the issues between the Court of trial and another tribunal."

Moreover in applications such as herein the Court must bear in mind that a criminal trial will be conducted before a court established by law and presumed capable of providing a trial to an accused person in conformity with all the requirements of natural and constitutional justice. Save for the most exceptional cases, criminal proceedings belong in the criminal courts.

5.3 The applicant argues that this is one of those cases where exceptional circumstances exist requiring an order of prohibition. The applicant makes complaint with regard to a number of periods of delay. The delay from February 2007 to October 2007 is accounted for by the attempt to see if the applicant was suitable for inclusion in the Juvenile Diversion Programme. Had the applicant been deemed suitable this would have been to his benefit. I am informed by Counsel for the DPP that it is the invariable practice of the state to refer all matters involving minors to the Juvenile Liaison Office. It is however undesirable that it took 8 months for a decision to be made. There is a special duty on the state authorities, over and above the normal duty to ensure a speedy trial, in the case of a criminal offence alleged to have been committed by a juvenile. Furthermore in this case it seems to have been a straightforward decision that the programme would not be suitable as the applicant was not accepting responsibility for the incident. When it was eventually decided that the matter was not suitable for the diversion programme the file was sent to the DPP and in November 2007, directions were made to charge the applicant. The applicant was not located until January 2008. No criticism can be made of the gardai in this regard. I accept the affidavit evidence of Garda Fitzsimons who has not been cross examined that he visited the applicant's address on a number of occasions and I note that the applicant's mother refers to a conversation she had with Garda Fitzsimons concerning the applicant's whereabouts at this time.

5.4 The period from January 2008 to 9th October 2008 is accounted for by the fact that psychiatric and psychological reports were being secured. It is to be noted that these reports were quite properly sought by the applicant's solicitors who wished to have the applicant's fitness to plead assessed. This delay cannot be attributed to the respondents. During the period from October 2008 until December 2009 the applicant was the subject of seven bench warrants. I accept that when the applicant did not show up on the various remand dates a great deal of time was lost executing the bench warrant and then remanding the matter back to the relevant judge who was dealing with the matter. The next period covers December 2009 when the bench warrant issued until November 2010 when it was executed by Garda Fitzsimons. The evidence of Garda Fitzsimons was that he had difficulty finding the applicant as noted above, Garda Fitzsimons was not cross examined. Given that the applicant was subject to seven bench warrants over the preceding 14 months it seems highly credible that the applicant was engaging in evasion to frustrate the Garda in the execution of the warrant. Although he claimed he had done so, the applicant has not adduced any proof by way of letters or other correspondence to show he made any attempts to have the warrant executed. I am not satisfied that the applicant has demonstrated that this portion of the delay is attributable to the respondents. The final period covers the three months from November 2010 until February 2011. Once the bench warrant was executed in December 2010, the Court unsurprisingly refused bail to the applicant and remanded him in custody. The Court ordered an up to date medical report for the injured party. Jurisdiction was refused on 9th December 2010. The matter was next in court on 6th January 2011. The applicant complains that the respondents were not in a position to serve the book of evidence at this date. The Book of evidence was served on the next court date 3rd February, 2011. I do not think this is an unreasonable amount of time. The only delay I can find attributable to the respondents is the eight months spent in obtaining a decision from the Juvenile Liaison Programme. The greatest delay by far has been caused by the applicant himself.

5.5 The applicant argues that he is prejudiced as potential witness Paul Black is no longer available to give evidence. It is clear

however that when one reads the statement of Paul Black there is nothing in it which assists the applicant. His is the statement of a young man trying to avoid getting himself or anyone else in trouble. Mr Black stated that while he heard the window smash he says he "did not see anything". The value of this statement is very dubious. I do not think that his absence elevates this case into the category of exceptional cases where the court should intervene. His other complaints of possible absence of witnesses who might assist him or his own difficulty remembering the events are all very vague and unconvincing. The applicant also complains that due to the delay he will be giving evidence as a man in his early twenties and this gives a very different impression to a jury than if the applicant was 16 years old. Furthermore the applicant complains that he will no longer be subject to the sentencing regimes for juveniles. As to the manner in which the trial is conducted, the trial judge can give appropriate warnings to the jury on issues such as the age of the applicant when the incident occurred. Likewise I must presume that the judge will take into account the applicant's age when the incident occurred in determining sentence if the applicant is convicted.

5.6 To summarize, firstly, I am not satisfied that there has been blameworthy prosecutorial delay such as to breach the applicants constitutional entitlement to a trial with reasonable expedition or deny the applicant the opportunity of obtaining a fair trial. The applicant himself is responsible for much of the delay. This is a case in which the applicant, on his own admission, turned up late in court or failed to turn up at all on many occasions. In respect of these absences, the applicant was subject to seven bench warrants in a relatively short period of time. I am not satisfied that the applicant has pointed to any specific prejudice he will suffer that raises a real risk of an unfair trial. The statement of Paul Black is not exculpatory and it is entirely speculative as to whether he could or would give such evidence to the benefit of the applicant. An order prohibiting the holding of a criminal trial is a remedy to be granted only in exceptional circumstances where there is established a real risk of an unfair trial. I am not satisfied that such a risk exists in this case. For all the above mentioned reasons I must refuse the relief sought.