Neutral Citation Number: [2009] IEHC 197

THE HIGH COURT

2007 1707 JR

BETWEEN:

TOM MOLLOY

APPLICANT

AND

THE GARDA SÍOCHÁNA COMPLAINTS TRIBUNAL

RESPONDENT

Judgment of Mr. Justice Hedigan, delivered on the 28th day of April, 2009

1. The applicant has been a member of An Garda Síochána since 1979.

2. The respondent is a statutory body established under the Garda Síochána (Complaints) Act 1986 ('the 1986 Act'). Its function is to investigate, and to adjudicate upon where necessary, complaints made by the public against members of An Garda Síochána.

3. The applicant seeks the following relief by way of judicial review:

> (a) An order of prohibition, or in the alternative an injunction, restraining the respondent from holding a full hearing in respect of a complaint made against him on the 21st of April 2004 by a member of the public; and
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> (b) A declaration that the failure by the respondent to process the complaint made against the applicant expeditiously amounted to a breach of the principles of natural and constitutional justice and/or a breach of statutory duty and/or a breach of the applicant's legitimate expectation that any complaints made against him under the 1986 Act would be dealt with expeditiously.

I. Factual and Procedural Background

4. On the 21st of April 2004, a complaint was made to the respondent by a member of the public, alleging that the applicant had failed to inform her of the outcome of an investigation into an alleged forged letter and that he had also failed to reply to correspondence in relation to same.

5. On the 26th of July 2004, the Deputy Chief Executive of the respondent determined that the complaint was inadmissible under section 4(3)(a)(iii) of the 1986 Act, on the basis that it had not been made within 6 months of the incident complained of.

6. On the 28th of July 2004, the complainant lodged an appeal against this decision with the Garda Síochána Complaints Board ('the Board'). On the 6th of August 2004, the Board upheld this appeal and the complaint against the applicant was deemed admissible.

7. On the 23rd of September 2004, a Superintendent of An Garda Síochána ('the investigating officer') was appointed to investigate the complaint pursuant to section 6 of the 1986 Act. On the 30th of September 2004, the applicant was served with the GSC3 form, outlining the nature of the complaint.

8. By late October 2004, the investigating officer had still not completed his final report so he prepared an interim report, as envisaged by section 6(2)(a) of the 1986 Act. The final statements in respect of the investigation were ultimately taken on the 22nd of December 2004 and the Board received the investigating officer's final report on the 31st of December 2004.

9. On the 7th of March 2005, the Board decided to refer the matter to the respondent for consideration. By letters dated the 15th of March 2005, the applicant and the complainant were both notified of this fact and on the 5th of April 2005, the complainant informed the respondent that she wished to have the matter heard in Galway, as opposed to Dublin.

10. On the 8th of July 2005, the applicant received a set of documents relating to the complaint which might loosely be referred to as the 'book of evidence'. It included specifications of the three breaches of discipline which were being alleged against him as well as a copy of all relevant witness statements. The applicant responded via his solicitor on the 16th of August 2005 and denied the alleged breaches of discipline.

11. On the 30th of August 2005, the applicant received notification from the respondent that the hearing was intended to take place at some point during October or November of that year. Again the complainant requested that the hearing should take place in Galway. Shortly thereafter, on the 5th of September 2005, the respondent informed the complainant that in order to transfer the hearing to Galway, she would need to produce medical evidence of her incapacity to attend in Dublin. The complainant duly provided a medical report on the 15th of September 2005.

12. On the 14th of October 2005, the chairperson of the respondent wrote to its other members stating that there was "no objection to the transfer of the hearing to Galway provided this [did] not delay the hearing of the case". Exactly one month later, on the 14th of November 2005, the complainant was informed that the hearing would take place in Galway in line with her request.

13. On the 30th of November 2005, the applicant was informed by telephone that the respondent would hold its full hearing in respect of the complaint on the 6th of January 2006. However, this proposed hearing was postponed owing to an alleged difficulty in securing the attendance of witnesses. The applicant was informed of such a postponement by letters dated the 22nd of December 2005 and the 4th of January 2006. It subsequently emerged that the purported difficulty was in fact the unavailability of the complainant's solicitor on the proposed date.

14. On the 28th of February 2006, the applicant was informed, again by telephone, that the hearing had been rescheduled for the 24th of March 2006. This proposed hearing was postponed at the applicant's request by a letter from the respondent to all parties dated the 13th of March 2006. There is some dispute as to the basis for the postponement but in any event the hearing was ultimately re-scheduled for the 21st of July 2006. The applicant was informed of this revised arrangement, initially by telephone call on the 31st of May 2006 and also by formal letter on the 12th of June 2006.

15. On the 29th of June 2006, the applicant was informed by telephone that the third proposed hearing date was to be postponed owing to circumstances beyond the respondent's control. It has since been clarified that the chairperson of the respondent was not available on the proposed date.

16. On the 11th of July 2006, the applicant contacted the respondent seeking an indication of a revised hearing date. On the 20th of July 2006, the applicant received a response to the effect that no date had yet been assigned but that he would be notified in due course.

17. The possibility of a hearing on the 30th of March 2007 was explored, however the complainant's solicitor informed the respondent that he would be unable to attend until June of that year. On the 9th of May 2007, internal correspondence of the respondent noted that "the tribunal hearing [had] been outstanding for some time now".

18. On the 27th of July 2007, the applicant was informed that a fourth proposed hearing date had been assigned for the 21st of September 2007. It is worth noting that this was the first correspondence which the applicant had received from the respondent for over one year. Nonetheless, on the 31st of July 2007, the applicant was informed by telephone call that this proposed hearing also needed to be postponed, on this occasion owing to the unavailability of the investigating officer.

19. On the 14th of November 2007, the applicant indicated to the respondent that he would be unavailable to attend any hearing during the week of the 4th of December 2007 by reason of his attendance at a trial in the Circuit Criminal Court in Galway. On the 16th of November 2007, the respondent indicated that a fresh hearing date might be possible for early 2008. However, the solicitor for the complainant again indicated a difficulty during the month of January 2008 and a fifth proposed hearing date was assigned for the 25th of February 2008.

20. On the 17th of December 2007, the applicant sought and was granted leave to apply by way of judicial review for an order prohibiting the holding of any hearing in respect of the complaint on the grounds of undue delay.

II. The Submissions of the Parties

21. The applicant submits that the respondent is vested with quasi-judicial powers under the provisions of the 1986 Act. Specifically, he points to section 9(4) of the Act which prescribes the extensive list of penalties which the respondent can impose, among them dismissal from An Garda Síochána. The applicant submits that owing to its statutory foundation and the potentially severe consequences of its actions, the respondent is obliged to act in compliance with the principles of natural and constitutional justice. The applicant argues that the processing of complaints with reasonable expedition is central to these principles.

22. The applicant emphasises that in the present case the respondent purported to assign no less than 5 separate hearing dates while being seized of the matter for almost three full years. He submits that the responsibility for the delay in adjudicating upon the complaint lies with the respondent as he was available for all but a few short weeks during this period. The applicant contends that no meaningful effort was made to accelerate the process and that many of the reasons relied upon by the respondent in postponing and rescheduling the hearings were insufficient. In this regard, the applicant points to the regular efforts to accommodate the complainant's solicitor whose presence, in his submission, was not essential for a hearing to take place.

23. The respondent contends that the delay complained of in the present case is not sufficient to warrant intervention by this Court so as to prevent the respondent from exercising the functions which have been delegated to it by the Oireachtas. The respondent argues that there is no risk that the applicant will not receive a fair hearing as he has not been able to identify any disadvantage or prejudice which he will suffer as a result of the delay. The respondent further argues that if the applicant had held a legitimate concern about the repeated postponements, he ought to have raised the issue with the respondent and encouraged it to dispose of the matter more speedily.

24. The respondent also submits that an order of prohibition, such as that sought by the applicant in the present case, would be completely disproportionate. In its submission, the 1986 Act requires in the public interest that complaints made against members of An Garda Síochána by the public should be fully investigated and adjudicated upon. The respondent argues that an order which frustrates this process could only be granted in circumstances where the respondent was guilty of a serious breach of statutory duty or where it had no jurisdiction to consider the complaint for some other reason.

III. The Decision of the Court

25. It is clear that a highly significant public interest exists in the full and thorough investigation of complaints made by ordinary citizens against members of An Garda Síochána. Indeed, the existence of procedures to explore and pursue allegations of misfeasance against the police is a necessary element of any modern democratic society. This has been recognised by the Oireachtas through the enactment of the 1986 Act. However, it is beyond question that there is also a valid public interest in seeing that complaints made should be dealt with in a prompt and efficient manner. In *R. v. Chief Constable of the Merseyside Police ex p. Merrill* [1989] 1 W.L.R. 1077, Lord Donaldson stated the following at page 1088:-

> "The public interest in complaints against police officers being fully investigated and adjudicated is undoubted, but it must be done speedily."

26. Furthermore, it is well established that in any case involving allegations against specific members of the Gardaí, the right to an expeditious trial and to defend one's reputation are necessarily engaged. In *McCarthy & Dennedy v. Garda Síochána Complaints* Tribunal [2002] 2 I.L.R.M. 341, Geoghegan J. considered the balance between these rights and the public interest in the full investigation of complaints and concluded at page 371:-

> "The appellants argue in a general way that the Oireachtas envisaged that the investigation and prosecution of complaints by members of An Garda Síochána were to be dealt with as expeditiously as possible. There is no doubt about that, but in interpreting the statutory provisions, it must be borne in mind that the Oireachtas clearly intended expedition both in the interests of the complainant and in the interests of the members complained about. It could never have been intended that if there was some small delay in the procedures and possibly indeed delay engineered by the Garda authorities themselves, the matter could never be processed further as this would be grossly unfair to a complainant not in any way responsible for the delay. On the other hand, a disciplinary complaint against a member of the force is a serious matter and under any reasonable interpretation of the legislation it would have been intended that the expedition was also in the interests of those members. Accordingly, a reasonable balance must be struck between what could be conflicting interests in determining whether in any given circumstance there was a delay which offended the time provisions in the Act irrespective of whether the time provisions are to be regarded as mandatory or directory."

27. In *McNeill v. Commissioner of An Garda Síochána* [1997] 1 I.R. 469, O'Flaherty J. provided further detail on the rationale behind the need for expeditious resolution of complaints against police officers. He stated at page 485:-

> "The Disciplinary Regulations require that the matter should proceed with a degree of expedition at every stage. And for good reason; members of the Garda Síochána have special privileges as well as special responsibilities not shared by the ordinary citizens; therefore, if suspicion descends on a member of the Garda Síochána it is important from a public policy point of view that the matter should be investigated and dealt with quickly. The air should be cleared one way or the other. I am talking of matters of substance, needless to say, and not with every idle word that may be uttered in a locality from time to time. Similarly, from the perspective of members of the Garda Síochána: they are entitled to hold their heads up in the community in which they serve; they are entitled to expect that if a charge is contemplated that it should be brought forward with a degree of expedition and that they should be given a chance to meet it: it may be, in certain circumstances, by admitting a breach of discipline but, in other circumstances, by disputing the allegation on which the charge is based."

28. The importance of expedition is also clear from the express provisions of the 1986 Act itself, a fact which was noted by Kearns J. in *Boland v. Garda Síochána Complaints Board* (High Court, unreported, 28th November 2003). In that case, he stated at page 15:-

> "It is undeniable that there is a strong emphasis on the speedy resolution of complaints brought by members of the public against members of An Garda Síochána under the Garda Síochána (Complaints) Act, 1986.
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> Section 4(1)(a) provides that a complaint must be made within six months of the date of the conduct. Section 4(3)(c) provides that, "If the Chief Executive is of opinion that a complaint is admissible…the Chief Executive shall, as soon as may be, so notify in writing the complainant and the Commissioner…" Section 4(4) provides that on receipt by the Commissioner of a notification he shall, as soon as may be, notify in writing the member concerned that a complaint has been made. Section 5(5) provides that where the Board is of opinion that the complaint is not suitable for informal resolution, it shall, as soon as may be, request the Commissioner in writing to have the complaint investigated under section 6 of the Act. Section 6(2)(a) provides that an investigating officer shall complete the investigation as soon as may be and, if unable to do so within the period of 30 days from the date of his appointment, he is obliged to furnish an interim report in writing to the Chief Executive. Where the Board decides to refer the matter to a tribunal pursuant to section 7(5), there is an obligation on the Board "as soon as may be" to notify the complainant of the reference to the Tribunal and to notify the Commissioner.
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> While no overall time limit is provided for the completion of an investigation, I am satisfied that the foregoing statutory provisions can only be seen as requiring the speedy resolution of the procedures under the Act.
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> It seems to me that the observations of Hamilton C.J. in *McNeill v. Commissioner of An Garda Síochána* [1997] 1 I.R. 469, for the urgent and expeditious resolution of disciplinary inquiries apply with equal force to the processing of complaints under the Garda Síochána (Complaints) Act,1986 . At p. 482, Hamilton C.J. stated as follows:
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> > 'The use in the Regulations of the phrases "as soon as practicable"'"as soon as may be" and "without avoidable delay" clearly indicate the intention of the Minister for Justice, as expressed in the said Regulations, that the alleged breaches of discipline by members of the Garda Síochána be dealt with expeditiously and as a matter of urgency.'"

29. It seems clear to me, therefore, that the tenor and spirit of the 1986 Act are clearly directed towards the speedy resolution of complaints. While there is no strict time limit during which a hearing must be held, a certain minimum degree of expediency must be required in all cases, in the interests of the complainant, the individual member and the public as a whole. In the circumstances of the present case, there has been a delay of almost three years during which the hearing of the complaint has been postponed on 4 separate occasions. The applicant has been available to meet the complaint during all but a few weeks of this period and has offered legitimate excuses for any period of difficulty.

30. Moreover, the provisions of the 1986 Act make clear that the obligation to dispose of cases in an efficient manner rests primarily on the respondent. Difficulties in scheduling a hearing caused by the unavailability of any party cannot be allowed to excuse periods of complete inaction on the respondent's part. I cannot accept the argument that the applicant should somehow have maintained pressure on the decision-maker to perform the function assigned to it by statute. The responsibility to keep things moving and to apply pressure on parties to make themselves available, where appropriate, can only be attributed to the respondent. In this case, these are functions which the respondent quite plainly failed to perform.

IV. Conclusion

31. In light of the foregoing, I am satisfied that the delay in processing the complaint against the applicant has been so

inordinate and inexcusable as to amount to a violation of his basic right to natural and constitutional justice. I will therefore grant the relief sought.