

**THE HIGH COURT
JUDICIAL REVIEW**

[2002 No. 795 J.R.]

BETWEEN

N. P.

APPLICANT

**AND
DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENT

JUDGMENT of the Honourable Mr. Justice Quirke delivered the 18th day of January, 2005.

By order of the High Court (O'Neill J.) dated 2nd December, 2002, the applicant was given leave to seek relief by way of judicial review including an order of prohibition restraining the respondent from prosecuting the applicant in respect of certain criminal offences allegedly committed by the applicant between the 1st January, 1984 and the 30th June, 1984.

The applicant was also given relief to seek certain additional declaratory and other reliefs ancillary to the substantive relief sought.

FACTUAL BACKGROUND

1. The applicant, who is now aged 73 years, has been charged with indecently assaulting one W.D. on four unknown dates between 1st January, 1984 and 30th June, 1984. All of the offences are alleged to have been committed at an address at Clontarf in the city of Dublin.

2. On an unknown date in 1984 W.D. complained to his natural mother Ms. V. S. of the offences. His mother informed Ms. Helena Sullivan who was a social worker employed by the Northern Area Health Board. Ms. Sullivan reported the allegations to Garda Sergeant Pat Cregg on 14th June, 1984.

3. Sergeant Cregg remains a member of An Garda Síochána. He now holds the rank of Chief Superintendent. Sergeant Cregg called to Ms. V.S. He took a statement from W.D.'s natural mother.

4. W.D. and his sister were brought to Temple St. Hospital shortly after Sergeant Cregg had been informed of the allegations. There they were examined by Professor O'Doherty who is now deceased. W.D. complained to his then foster parents B.D. and J.D. of the alleged offences some time in 1986 or 1987. As a result of this complaint B.D. contacted Ms. Margaret Beaumont who was a social worker with the Eastern Health Board. Ms. Beaumont arranged to have W.D. examined at the Rotunda Hospital. He was seen and examined there by Dr. Maura Woods.

5. On 20th April, 2000, W.D. made a formal statement of complaint to Det. Garda Shay Woods at Santry Garda Station in Dublin.

6. Further statements were made by W.D. to Det. Garda Woods and on 4th September, 2001 and on the 4th June, 2002.

Having received the first complaint Det. Garda Woods conducted an investigation and interviewed various witnesses and made a series of inquiries before arresting the applicant at his home on 30th March, 2001.

7. On 17th August, 2001, Det. Garda Woods forwarded an investigation file to the office of the respondent who raised queries on the file. Garda Woods responded.

Further investigations were then conducted by Garda Woods and on 20th May, 2001, the applicant was again arrested and was charged with the four offences which are the subject of these proceedings. He was remanded on continuing bail to 16th July, 2002, when a Book of Evidence was served upon him and he was returned for trial to the Dublin Circuit Court.

8. Between 16th February, 1988 and 17th February, 1998, W.D. attended between ten and twenty sessions of professional counselling with a Ms. Sue Dromey who was a former social worker. He complained to Ms. Dromey of the alleged offences with which the applicant has been charged.

9. In 1997, W.D. complained to his then girlfriend Ms. F.D. of the offences allegedly committed by the applicant. He also advised Ms. D.Q. of these matters in February 1999 and a Jesuit priest Fr. Rory Halpin on another date which is unknown.

10. Some time in 1994 or 1995, Mr. D.S. made a complaint to the Gardaí at Clontarf Garda Station in relation to the applicant. The nature and the extent of the complaint was not adduced in evidence.

11. W.D. was born on 27th October, 1975. He was the eldest of three children, one of whom was murdered by their father and a girlfriend companion in December of 1981.

His family circumstances were tragic, his father was an alcoholic and his mother suffered from manic depression. She was regularly hospitalised as a consequence.

12. When he was three years old W.D. was taken into care by the Eastern Health Board. During the first half of 1979 he was fostered. When brought to England by his father in 1981 he was taken into care by the authorities in London. On return to Dublin he was taken into care by the Eastern Health Board and was again fostered with a family in

Ballymun.

In September of 1983 he moved back to live with his mother and sister. His mother had many male acquaintances one of whom was an English national called G.S.

W. D. alleges that G.S. began to sexually abuse him in late 1983 and early 1984 and then brought him in his car to a house at Clontarf. He said he was there introduced to the applicant.

He says that the offences which are the subject of these proceedings occurred at the house at Clontarf during that and subsequent visits which he made to the house in the company of G.S.

In June of 1984, W. D. was taken into the care of the Eastern Health Board. He said he was not abused further after that time.

14. Within a short time after that he was fostered by B.D. and J.D. to whom he made a complaint about the offences. Subsequently W. D. enjoyed the benefit of a settled family with Mr. and

Mrs. D. Later he completed a degree in mechanical engineering in Trinity College Dublin between 1993 and 1997 and a Masters in engineering in NUI Galway between 1997 and 1999. He commenced employment as a business consultant in 1999. In evidence he averred that he tried to put the abuse out of his mind and to get on with his life.

15. W.D. in evidence averred that in February or March of 2000 he met a Mr. D.S. who told him that the applicant was a paedophile. W.D. indicated that he was afraid that he would bump into the applicant since he was not living far from his then residence. He said that he was afraid that the applicant was still abusing children.

He made a statement of complaint to Det. Garda Shay Woods on 20th April, 2000. He made subsequent statements to the gardaí on 4th September, 2001 and 4th June, 2002.

16. W.D. was examined on 16th April, 2003, by Mr. Michael Dempsey who is a senior clinical psychologist at Hilltop Centre, Raheny, Dublin.

Mr. Dempsey prepared a psychological report which was adduced in evidence in these proceedings.

Mr. Dempsey referred to W.D.'s "*...difficult and disruptive early childhood...*". He described the disclosure by W.D. to his foster mother Mrs. B.D. and his subsequent examination in the Rotunda Hospital Dublin and his counselling with Ms. Sue Dromey. He requested and received copies of counselling notes made by Ms. Dromey. Mr. Dempsey said that:

"...one factor that prohibited his reporting the alleged abuse to the Gardai earlier was that his sister developed a severe and enduring mental health problem when she was 16 years and he reported that he had to deal with this at the time."

He also reported that:

"... he attended a counsellor at approximately 25 years of age for about nine months in relation to the alleged sexual abuse..."

Mr. Dempsey concluded that:

"In my opinion his delay in reporting the alleged abuse until relatively recently is reasonable in the light of his individual life circumstances. He wanted to get on with his life and put the past behind him. He was busy completing two university degrees. It was only after meeting Mr. S. in 2000 that he initiated the complaint to the Gardai because his conversation with Mr. S. made him angry that the alleged abuse had occurred and because he wanted to protect other children from abuse."

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 a very substantial period of time) are now well settled. They have been stated 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, *P.O'C. v. Director of Public Prosecutions* [2000] 3 I.R. 87, *J.L. v. Director of Public Prosecutions* [2000] 3 I.R. 122 and *J.O'C v. Director of Public Prosecutions* [2000] 3 I.R. 478 and many others. It is accordingly unnecessary to restate them herein.

In this case it is contended on behalf of the applicant that there has been prosecutorial delay of such gravity as to require that the trial of the applicant should be prohibited.

It is argued that on 14th June, 1984, details of the offences with which the applicant has now been charged were reported to Garda Sergeant Pat Cregg.

Thereafter Sergeant Cregg called to the complainant's natural mother and took a statement from her.

The complainant and his sister were brought to Temple St. Hospital where they were examined by Professor O'Doherty. This was done with the knowledge of and in consultation with Sergeant Cregg.

Notwithstanding the complaint made on 14th June, 1984, the applicant was not arrested or interviewed in relation to the allegations made against him until the 30th March, 2001. Accordingly a period of 16 years and 9 months elapsed between the date when the prosecuting authorities were first notified of the commission of the alleged offences and the date upon which the applicant was first interviewed in respect thereof.

A further period of 15 months elapsed before the applicant was returned for trial to the Dublin Circuit Court on 16th July, 2002.

Accordingly, there has been a delay in excess of eighteen years between the date when the offences were first reported to the prosecuting authorities and the 16th July, 2002 when the applicant was returned for trial.

It has been contended that this period comprised inordinate and excessive prosecutorial delay of such gravity as to deprive the applicant of his right to a trial with reasonable expedition and sufficient to require that his trial in respect of the alleged offences should be prohibited.

A period of time in excess of fourteen years elapsed between the date when the offences were allegedly committed and the date when W.D. first completed a written statement of complaint to the prosecuting authorities.

It has been contended on behalf of the applicant that this delay on the part of W.D. in completing a written statement of complaint to the prosecuting authorities has been inordinate and excessive and that since it has not resulted from any conduct referable to the applicant it comprises a violation of the applicant's right to a trial with reasonable expedition which has not been vitiated in any respect by any conduct or inaction on the part of the applicant.

It is therefore argued that the trial of the applicant in respect of the alleged offences should be prohibited.

Finally, it has been argued that in addition to the unavoidable presumption of prejudice caused by the lapse of time between the dates of the alleged offences and the date of return for trial the applicant has suffered specific prejudice because:-

- (a) at least two witnesses with whom he socialised at the time of the alleged offences are now deceased and
- (b) Professor O'Doherty who examined W.D. and his sister in Temple St. Hospital shortly after the alleged commission of the offences is now deceased and unavailable to testify at the trial and
- (c) Dr. Maura Woods who examined W.D. in 1987 is not available to testify at the trial.

SPECIFIC PREJUDICE

It has been contended on behalf of the applicant that in addition to the unavoidable presumption of prejudice which he has suffered by reason of the lapse of time between the dates of the alleged offences and the date of return for trial he has suffered express prejudice because:-

- (i) of the death of Professor Doherty, who examined W.D. in respect of the complaint made on his behalf in 1984 and
- (ii) Dr Maura Woods who examined W.D. in 1987 is unavailable to testify at the trial and
- (iii) by reason of the death of two other witnesses with whom the applicant socialised at the time of the commission of the alleged offences.

The unavailability through the decease of Professor Doherty is unlikely to prejudice the capacity of the applicant to defend himself in respect of the charges preferred against him.

The assaults alleged against the applicant by W.D. were of a character which would not have given rise to physical injury or other evidence of the kind discoverable upon medical examination.

Similar considerations apply in respect of Dr. Maura Woods and her examinations of W.D in March and May of 1987. The substance of the complaint made on behalf of the applicant in respect of the unavailability, by reason of decease and otherwise, of the four witnesses referred to is that their potential testimony might, when subjected to cross-examination, have undermined the complaints of W.D.

As such the evidence of prejudice is of a general and speculative nature and comes within the category of prejudice identified by the courts as evidence which, by itself, does not amount to a specific prejudice sufficient to warrant the prohibition of a trial.

Accordingly, this court is not satisfied that the applicant has established on the evidence and on the balance of probabilities that he has suffered specific prejudice so grave that, of itself, it warrants the prohibition of his trial in respect of the offences alleged against him.

"PRE-COMPLAINT" DELAY.

In *P.C. v. Director of Public Prosecutions* [1999] 2 I.R. 25, the Supreme Court (Keane J.), (as he then was) described in detail the three-stage approach which should be adopted by a court which is asked to prohibit a trial of sexual offences on grounds of delay of this kind.

He stated at p. 67, *inter alia* that:

"The delay may also be more readily explicable in cases where, not merely is the person concerned significantly older than the complainant at the time of the alleged offences, but occupies a particular role in relation to him or her e.g. as parent, stepparent, teacher or religious. In such cases, dominion by the alleged perpetrator over the child and a degree of trust on the part of the child may be more readily inferred."

He continued:

"But the issue is not whether the court is satisfied to any degree of proof that the accused person committed the crimes with which he is charged. The issue in every case is whether the court is satisfied as a matter of probability that the circumstances were such as to render explicable the inaction of the alleged victim from the time of the offence until the initiation of the prosecution."

It has been argued on behalf of the applicant that at the time of the commission of the alleged offences the applicant was not in a position to exercise any type of dominion over W.D. of the kind referred to by Keane J. in *P.C. v. Director of Public Prosecutions*. It has been contended on behalf of the respondent that at all material times the applicant was an adult companion of a person (G.S.) who did exercise such dominion.

On the evidence in this case I am satisfied that the question of dominion is not relevant to the issues in the case.

I say this because it has been established on the evidence that W.D. made a complaint to his natural mother in respect

of the offences in June 1984 shortly after they were allegedly committed. His complaint was acted upon because his mother informed Ms. Helena Sullivan who was a social employer employed by the Northern Area Health Board and Ms. O'Sullivan in turn reported the allegations to Garda Sergeant Pat Cregg on 14th June, 1984.

Accordingly there was and is no "inaction" on the part of W.D. which requires explanation. He made a complaint within a very short time after the commission of the alleged offences and his complaint was transmitted to the prosecuting authorities. He was nine years old at that time. He, and the persons who delivered the complaint on his behalf, were entitled to expect that the complaint would be dealt with by the prosecuting authorities in an appropriate manner.

When a nine year old child complains that he has been the subject of criminal sexual offences and a complaint is made on his behalf to the prosecuting authorities in respect of such offences there is no obligation upon either the child or upon those who have transmitted the complaint on his behalf to pursue the complaint further. That is the responsibility of the prosecuting authorities of the State.

In this case a complaint was made to the prosecuting authorities on behalf of W.D. on 14th June, 1984.

The complaint was acted upon and both W.D. and his sister were brought to Temple St. where they were examined by Professor O'Doherty for the express purpose of seeking evidence in respect of the complaint which had been made. In 1986 or 1987 when (W.D. was ten or eleven years old) he repeated his complaint to two persons (B.D. and J.D.) who then exercised authority over him as his foster parents.

As a result of this the complaint an official of the Eastern Health Board was contacted and W.D. was again examined – this time at the Rotunda Hospital by Dr. Maura Woods.

By the time W.D. had reached the age of twelve years he had complained of the commission of these offences on two occasions to persons who exercised authority over him. On the first occasion the complaint was transmitted to the prosecuting authorities and W.D. was medically examined. This was undertaken during the course of an investigation into his complaint.

On the second occasion the complaint was transmitted to another organ of State (the Eastern Health Board) and he was again medically examined, presumably by way of a further investigation into his complaint.

It is perfectly understandable that he did not feel obliged to remind the prosecuting authorities or the Eastern Health Board subsequently of the complaints which had been made on his behalf. Nothing additional had occurred which had altered the situation from his point of view.

It is perhaps apposite to observe that nothing additional has occurred during the intervening seventeen years which has altered the position from the point of view of the prosecuting authorities either (other than the fact that W.D. has now reached adulthood). No additional evidence has become available to the State which was not available when W.D. first made his complaint and at all times material thereafter.

As I have indicated earlier, a person (whether a child or adult) who complains to the prosecuting authorities of the State of the commission of a criminal offence is not under an obligation to repeat that complaint intermittently over the years. The investigation of the complaint is the responsibility of the prosecuting authorities. Delay in prosecuting an alleged perpetrator cannot reasonably be attributed to failure on the part of the complainant to repeat the complaint to the prosecuting authorities, particularly when the complainant remains available and cooperative.

On the evidence, therefore, I am satisfied that in this case there has not been what has been termed as "pre-complaint delay" on the part of W.D..

However, it is undeniable that there has been a delay of sixteen years and nine months between the date when prosecuting authorities were first notified of the commission of the alleged offences and the date when the applicant was first interviewed in respect thereof. *Prima facie* such a delay gives rise to a clear inference that the applicant's constitutionally protected right to a trial with reasonable expedition has been violated (see *P.C. v. Director of Public Prosecutions* [1999] 2 I.R. 25, at p. 66).

In this case the violation (if such there be) of the applicant's right to an expeditious trial has not been referable to the conduct of the applicant himself. The applicant has exercised no dominion over W.D. of the kind identified in *P.C. v. Director of Public Prosecutions* and other authorities since 1984. W.D. was not inhibited or prevented from complaining to the prosecuting authorities by any psychological or other factor. He complained to two persons who exercised authority over him in 1984 and in 1988. A complaint was made on his behalf to the prosecuting authorities in 1984.

Having regard to the evidence of Mr Dempsey it cannot reasonably be suggested that W.D. was precluded or inhibited from testifying at a trial of the applicant in the weeks, months and years following upon the alleged offences by any psychological or other factor. W.D. wanted to "get on with his life ..". Anger after a conversation with Mr. S. and concern that other children might be at risk were the factors which spurred him to repeat his complaint in April 2000 when he was 26 years old.

Evidence of the circumstances surrounding each case of this kind must be examined for the purpose of discovering what caused the delay complained of. There have in the past been many cases where the explanation provided and accepted by the courts has been the fact that the complainant, as a child of tender years has been emotionally unable or unwilling to testify for a substantial number of years. However this is not such a case.

In this case W.D. has been available to testify in support of the charges at all material times and certainly for the ten year period prior to April 2000 when he went to the lengths of repeating the earlier complaint which had been made on his behalf.

In this case the cause of the delay complained of has been the fact that the prosecuting authorities appear to have simply forgotten about the complaint made on behalf of W.D. in 1984 and done nothing about it until they received a reminder from W.D. in April 2000.

PROSECUTORIAL DELAY

On 14th June, 1984, details of the offences with which the applicant has now been charged were reported to Garda Sergeant Pat Cregg by Ms. Helena Sullivan. She was a social worker employed by the Northern Area Health Board. Ms. O'Sullivan, in a statement made to the prosecuting authorities, 19th October, 2001 indicated that she had been informed of the details of the offences by W.D.'s mother V.S. She continued that:

"...I informed Garda Sergeant Pat Cregg on 14/6/84 and he called and took a statement from V.S... we brought the children for examination to Temple St. Hospital where they were seen by Professor O'Doherty..."

By letter dated 14th October, 2002, (in response to a request made on behalf of the applicant for "...disclosure of all notes, documents, statements and memoranda in relation to the original Garda investigation into the allegations in 1984...") the Chief Prosecution Solicitor advised *inter alia* that:

"Chief Supt. Pat Cregg has no recollection of a complaint being made to him in June 1984 in relation to this incident and Det. Garda Woods has been unable to locate any documentation recording such a complaint having been made in 1984. Chief Supt. Pat Cregg says that he took no statements circa June 1984 in relation to the suggested complaint."

In a statement made to the prosecuting authorities on 18th April, 2002, Ms. A.M. who lived next door to W.D. at the material time, referring to W.D. and his sister indicated that:

"For a short time prior to the time that the children were taken into full care. A sergeant from Ballymun got involved, a man called Pat Cregg. He showed a great interest in the case and he called to me, I think the night after they were taken into care, and he told me that the two children were taken to Temple St. and V.S was up in Ballymun station."

Having regard to what is contained within the statements of Helena Sullivan and A.M., I am satisfied on the balance of probabilities that the assertion contained in the letter from the Chief States Solicitor's Office dated 14th October, 2002, to the effect that Chief Supt. Pat Cregg "... took no statements circa June 1984 in relation to the suggested complaint" is factually inaccurate.

It may well be that the earlier sentence in the same letter indicating that Chief Supt. Pat Cregg "... has no recollection of a complaint being made to him in June 1984 in relation to this incident..." is accurate. However, I am satisfied on the evidence as a matter of probability that a complaint was made to (then) Sergeant Pat Cregg on 14th June, 1984 and that he took a statement from W.D.'s natural mother V.S. shortly thereafter in relation to the complaints made by Ms. Helena O'Sullivan on behalf of W.D.

Detective Garda Shay Woods averred in evidence as to the conduct of the investigation and the course of the prosecution following the formal statement of complaint made by W.D. at Santry Garda Station on 20th April, 2000. I am quite satisfied on the evidence that the investigation on the course of the prosecution from 20th April, 2000, until the date when the applicant was returned for trial on 16th July, 2002, was as efficient and as expeditious as was reasonably possible.

Cross-examined by Mr. Hartnett S.C. on behalf of the applicant as to his search for documentation in relation to any earlier investigation during 1984 and thereafter Det. Garda. Woods stated that in 1990 there had been a fire in Santry Garda Station when records of the kind sought had been destroyed.

No explanation has been offered by way of evidence to this court for what appears to be total inaction on the part of the prosecuting authorities between 14th June, 1984, when a complaint was made by Ms. Sullivan to (then) Garda Sergeant Cregg and 20th April, 2000, when W.D. made a formal statement of complaint to Det. Garda Woods at Santry Garda Station.

Detective Woods was certainly correct when in evidence agreed that the testimony of Chief Superintendent Cregg would be of "...huge importance" to the issues which fall to be determined in these proceedings.

Inexplicably, Chief Supt. Cregg has not testified on these proceedings. The deafening silence so created gives rise to a conclusion in simple terms. The complaint and the resultant investigation was allowed to lie dormant. Nothing whatsoever was done by or on behalf of the prosecuting authorities to progress it between June 1984 and April 2000. As has been indicated earlier no additional evidence had become available to the State on 30th March, 2001, (when the applicant was arrested) which was not available to the State on 14th June, 1984. Nothing additional had occurred during the intervening period. Nothing had altered other than the fact that W.D. had reached adulthood and was 26 years old in 2001. Rather the contrary was the case. Memories had been affected by the passage of time, documents had apparently been lost or destroyed and some potential witnesses had died.

Reliance has been placed by the respondent upon the following extract from the case of *Hogan v. President of the Circuit Court* [1994] 2 I.R. 513 at 521:

"Obviously in any case where the prosecuting authorities on the information available to them have not

got proper grounds for charging any person with an offence, their failure to do so with a lapse of time before they are in a position to do so, cannot give to an accused a right to prohibit a trial on the basis of the defeat of his constitutional right to an expeditious trial. For example, cases consisting of charges by young children in regard to assaults on them at an early age which are not brought to the attention of the authorities by such children until very many years later after they occurred involve wholly different considerations to those applicable in the present case."

Reliance was also placed upon the approval of the Supreme Court in *O'Flynn v. Clifford* [1989] I.R. 524 of the following extract from the High Court judgment of Gannon J. in that case:

"The supposed existence of an unexpressed suspicion of criminality in the mind of another in relation to a person cannot in law or in reason confer any rights cognisable by the court upon the person to whom the suspicions relates. A person who is a mere suspect (and therefore presumed innocent) has no legal right to have a charge made against him nor to have some legal process diligently or expeditiously pursued, be arrested or by summons to bring him before a court."

However this is not a case where the applicant was "a mere suspect" in the sense described in *O'Flynn v. Clifford*. Equally this is not a case "...where the prosecuting authorities on the information available to them have not got proper grounds for charging any person with an offence..." of the kind identified in *Hogan v. President of the Circuit Court* [1999] 2 I.R. 513.

This is a case where the evidence available to the prosecuting authorities in support of the charges preferred against the applicant did not alter (other than perhaps to deteriorate) during the period of sixteen years during between the date when a complaint was first made to the prosecuting authorities and the date when the complaint was revived by W.D. In *T.F. v. Director of Public Prosecutions and Anor.* (Unreported, High Court, 18th January, 2005), which has been delivered concurrently with this judgment, this court, (referring to the constitutionally protected right of an accused person to a trial with reasonable expedition) adopted the finding of the Supreme Court in *P.C. v. Director of Public Prosecutions* [1999] 2 I.R. 25 that:

"...delay... of the order of thirteen years from the first alleged offence ... in the absence of any other factors, would clearly justify an inference that the right had indeed been violated."

Again adopting that statement of law and applying it to the instant proceedings, it follows that a period of almost sixteen years of total inaction on the part of prosecuting authorities similarly justifies an inference that the applicant's constitutionally protected right to a trial with reasonable expedition has been violated.

In *T.F. v. Director of Public Prosecutions* the court continued:

"If, having conducted the enquiry, the court must, in every case, proceed to consider the question of specific prejudice then what was the purpose of the earlier inquiry? If the issue of specific prejudice must be considered in every case of this kind then the test in every such case is the issue of specific prejudice and the overall question of the '...real and serious risk of an unfair trial'.

If that is so then the right to an expeditious trial has no separate existence independent from the right to a fair trial. Undeniably the right to an expeditious trial is based upon the concept of basic fairness. That is because it is seen to be unfair that an accused person should be exposed to the presumptive prejudice caused by the passage of an inordinate period of time for which no reasonable explanation has been provided on behalf of the State. It is not because the accused person has been expressly prejudiced in his or her capacity to defend himself or herself. If the latter were the test then it would be unnecessary for the courts to conduct any enquiry or investigation into the reasons for the delay. Prejudice would be the only issue requiring consideration.

.....It has been suggested in argument in this case that when a breach of the right to an expeditious trial has been established the court should then "weigh" that breach against the right of the community to have criminal offences prosecuted. But how can such an exercise be performed by the courts in a manner that will ensure the consistency which is essential in the interests of accused persons and complainants alike?

Unpredictable results from the performance of such exercises will provide accused persons with an irresistible incentive to seek to prohibit trials on ground of delay in almost every case where delay can be proved. They will have little to lose and everything to gain by so doing and the trial will be delayed further by the judicial review proceedings.

*If the principles identified by the Supreme Court in *B v. DPP* and in *P.C.* and subsequent cases no longer apply or have been altered in the manner suggested then the findings of this court in this case will be corrected in due course.*

*Powell J. in *Barker v. Wingo* 407 U.S. 514 (1972) observed that:*

'...The inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during the delay the prejudice is obvious. There is also prejudice if defence witnesses are unable to recall accurately events of a distance past. Loss of memory, however is not always reflected in the record because what has been forgotten can rarely be shown.'

On the authorities the right of an accused person to a trial with reasonable expedition must be vindicated by the courts even when that may seem inconvenient or even unpalatable. This applies

notwithstanding the absence of a statutory limitation period in respect of the offences concerned.”

The period of inaction of almost sixteen years between June 1984 and April 2000 comprises delay which has been inordinate and excessive. It has comprised prosecutorial delay which has resulted in a clear violation of the applicant's right to a trial with reasonable expedition. The applicant will accordingly suffer presumptive prejudice of the type identified by above by Powell J. in *Barker v. Wingo*.

Since no attempt whatever has been made by the prosecuting authorities to explain that delay by way of evidence it could be argued that it comes within the category of culpable or blameworthy prosecutorial delay identified by the High Court Geoghegan J. in *P.P. v. Director of Public Prosecutions* [2000] 1 I.R. 403.

However, it is on the ground of a clear and unexplained violation of the applicant's right to a trial with reasonable expedition that the relief sought is granted.