Neutral Citation Number : [2009] IEHC 200

THE HIGH COURT

2008 234 & 256 JR

BETWEEN:

PAUL KELLY

APPLICANT 2008 234 JR

AND

KARL O'MALLEY

APPLICANT 2008 256 JR

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS and THE COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENTS

AND

THE JUDGES OF THE DUBLIN METROPOLITAN DISTRICT COURT

NOTICE PARTIES

Judgment of Mr. Justice Hedigan, delivered on the 29th day of April, 2009

1. This decision relates to two separate sets of judicial review proceedings which were brought by the applicants arising out of the same set of factual circumstances. The substantive applications were heard by me on the 12th and 13th of March 2009.

2. The first named applicant was born on the 12th of December 1989 and was 17 years of age at the time of the incident which forms the foundation of these proceedings.

3. The second named applicant was born on the 23rd of January 1990 and was also 17 years of age at the time of the said incident.

4. The first named respondent is the authority responsible for the prosecution of criminal offences in Ireland. His statutory authority to carry out this function is derived from the Prosecution of Offences Act 1974.

5. The second named respondent is the most senior official in An Garda Síochána. He retains oversight over all the activities of the force.

6. The applicants seek the following relief:

(a) An order of *certiorari* quashing the decisions of the Director of the Juvenile Diversion Programme ('the Director of the Programme') not to admit the applicants to the Juvenile Diversion Programme ('the Programme');

(b) An order of *mandamus* requiring the Director of the Programme to consider, or re-consider as may be appropriate, in accordance with the statutory criteria, the admission of the applicants to the Programme;

(c) A declaration that the Director of the Programme acted unlawfully and in breach of the applicants' right to natural and constitutional justice, in considering the applicants' entitlement to access to the Programme in the manner which he did and/or in failing to afford the applicant a right of representation and failing to provide reasons for his decision;

(d) A declaration that the applicants were not treated fairly and/or were treated contrary to the principles of natural and constitutional justice, in the manner in which reports were prepared or information communicated by members of An Garda Síochána to the Director of the Programme and/or in failing to convey adequately the views of the applicants and/or their parents;

(e) An order of prohibition preventing the further prosecution of the applicants in respect of the alleged offences; and

(f) A declaration that there has been an undue and/or unwarranted and/or unreasonable delay in processing the case against the applicants which was unfair in all the circumstances and which has caused the applicants actual and/or inferred prejudice.

I. Factual and Procedural Background

7. On the 10th of February 2007, an incident occurred at Maplewood Road in Tallaght during which two foreign men were attacked by a number of youths. Both men received stab wounds and one required emergency surgery in order to prevent the loss of his life.

8. On the 11th of February 2007, both of the applicants were arrested as part of the criminal investigation into the

incident. Following a series of interviews, the applicants were released without charge on the 12th of February 2007. Later that day, an adult male was charged with an offence under section 3 of the Non-Fatal Offences Against the Person Act 1997 ('the 1997 Act') arising out of the same incident.

9. On the 29th of March 2007, both applicants were visited by a Juvenile Liaison Officer, Garda Helen Gralton, at their respective homes. In both cases, Garda Gralton spoke with the applicant in the presence of their mothers. There is some dispute as to what was in fact discussed. Garda Gralton asserts that she explained the purpose of her visit, namely that she had in her possession a file relating to a number of serious offences which it was alleged had been committed in Tallaght on the 10th of February 2007. She maintains that she then provided information, in ordinary language, on the workings of the Programme including the preconditions for admission to same. The criterion that the juvenile in question should admit the offence is said to have received particular emphasis. Both of the applicants reject the suggestion that Garda Gralton explained her objectives in such detail or that she provided information on the workings of the Programme.

10. During the course of the visit to the first named applicant's home, he explained his role in the events on the 10th of February 2007. The first named applicant maintained that he had simply been in the wrong place at the wrong time. He admitted punching one of the injured parties but claimed that he had only done so in self-defence. Garda Gralton states that she explained to the first named applicant and his mother that he was not fully admitting the alleged offence and that, for potential inclusion in the Programme, he would need to make a full confession. She further states that the first named applicant maintained his position of self-defence and that she advised him that she would forward a report on the matter to the Director of the Programme. She indicated that if the first named applicant was considered suitable for the Programme, she would call again to arrange a formal caution. Were the applicant to be deemed unsuitable, Garda Gralton explained that the investigating Garda would proceed with charges in the usual manner. Again, this dialogue is contested by the first named applicant, who contends that his suitability for the Programme was not discussed.

11. During the course of the visit to the second named applicant's home, Garda Gralton states that he indicated that he was familiar with the Programme as he had received a number of previous cautions under its provisions. The second named applicant is then said to have explained his role in the events of the 10th of February 2007 and made a full admission of the alleged offences. Garda Gralton further states that she advised the second named applicant that she would forward a report on the matter to the Director of the Programme. She indicated that if he was considered suitable for the Programme, she would call again to arrange a formal caution. Were the applicant to be deemed unsuitable, Garda Gralton suggests that it was explained that the investigating Garda would proceed with charges in the usual manner. As in the case of the first named applicant, this version of events is not accepted. The second named applicant likewise claims that no discussion of his suitability for admission to the Programme occurred.

12. While the applicant's were being considered for admission into the Programme, the Garda investigation into the alleged offences of the 10th of February 2007 was continuing. On the 2nd of April 2007, a medical report on the injured parties was sought on behalf of the Director of the Programme. The investigation ultimately concluded on the 11th of April 2007 and on the same day, Garda Gralton submitted her reports to the Director of the Programme. In both cases, Garda Gralton concluded that the offences alleged were of a very serious nature, involving two separate attacks on foreign nationals who received very significant injuries. She was also of the opinion that there had been a racial undertone to the attacks. In the case of the first named applicant, Garda Gralton noted additionally that he had declined to make a full admission of the offences. In the case of the second named applicant, Garda Gralton made reference to the fact that he had previously been directed to the Programme on a number of occasions. On the basis of all of these factors, Garda Gralton concluded that neither applicant was suitable for admission to the Programme.

13. On the 15th of May 2007, the applicants received formal notification of the decision of the Director of the Programme, Inspector Finbarr Murphy, not to admit them. Inspector Murphy's decision was predicated in each case on the report of Garda Gralton, the juvenile referral form prepared in respect of the applicant and the investigation file pertaining to the incident.

14. Once it was apparent that the applicants were not to receive the benefit of the Programme, prosecutions for the alleged offences were initiated. On the 11th of August 2007, the file relating to the incident on the 10th of February 2007 was received by the Chief State Solicitor. On the 30th of November 2007, the first named respondent directed the particular charges to be preferred against each of the applicants. Each applicant was to be charged with two offences contrary to section 3 of the 1997 Act, assault of each of the injured parties causing harm, and also an offence contrary to section 15 of the Criminal Justice (Public Order) Act 1994 ('the 1994 Act'), violent disorder. These directions were received by the Gardaí on the 5th of December 2007 and included instructions to seek a more comprehensive medical report in relation to one of the injured parties. This report was duly sought on the 21st of December 2007 and was received on the 23rd of January 2008.

15. In the early hours of the 7th of February 2008, the applicants were arrested at their homes by four Gardaí, including Garda Ciarán Loughrey. Both applicants were informed that they were to be charged with assault, and were asked to confirm that they were now 18 years of age. The applicants were conveyed to Tallaght Garda station and were released a number of hours later having been charged with offences under section 3 of the 1997 Act and section 15 of the 1994 Act.

16. On the 3rd of March 2008, the applicants were granted leave in identical terms by Peart J. in the High Court to apply by way of judicial review.

II. The Submissions of the Parties

(a) Breach of Statutory Duty

17. The applicants argue that the statutory procedure for administration of the Programme was not fully complied with in the present case. Specifically, they identify a number of provisions of the Children Act 2001 ('the 2001 Act') which, in their submission, were plainly ignored by the Director. First, they argue that Garda Loughrey, and not Garda Gralton, ought to have explained and administered the Programme to them in his capacity as the investigating Garda. Second, the applicants maintain that irrespective of which police officer dealt with the scheme, he or she ought to have explained fully the nature of the scheme, including the extent of any pre-requisites for admission. This is a statutory requirement which, as noted above, both applicants claim was not adequately performed. Finally, the applicants contend that there was a further breach of duty in the manner in which the ultimate decision in respect of their cases was reached; they argue that the Director failed to adjudicate on the overall merits of their candidacy for the scheme and instead decided the

issue based on an alleged failure to admit responsibility on the part of the first named applicant and on the basis of the previous history of the second named applicant.

18. The respondents reject any suggestion of breach of statutory duty in the manner in which the scheme was administered. They dispute that there was any shortcoming in the manner, detail or context in which the applicants were informed about the workings of the Programme. They further contend that the decision of the Director was made on a logical interpretation of the totality of the information before him. The respondents also emphasise that the provisions of the 2001 Act have been interpreted as affording a wide discretion to the Director in his implementation of the Programme.

(b) Fair Procedures
19. The applicants submit that the decisions in respect of their candidacy for admission to the Programme were made in violation of the fundamental principle of *audi alteram partem*. In this regard, the applicants argue that they should have been afforded the right to make representations before the report of Garda Gralton was finalised and submitted to the Director. They further argue that they ought to have been permitted to make representations before the ultimate decision was made by the Director and that the Director should have provided reasons for his determinations on the matter.

20. The respondents submit that the principles of natural and constitutional justice have an extremely limited application to the decision at issue. They contend that there is no obligation under such principles to afford a right of representation in the present case. They also reject any suggestion on the part of the applicants that they were entitled to a reasoned decision from the Director, particularly in light of the limited scope for review of decisions to prosecute.

(c) Delay
21. The applicants contend that respondents in the present case are responsible for inordinate and inexcusable prosecutorial delay in their preferment of charges against the applicants. They suggest that all of the information relevant to the initiation of criminal proceedings was available in April 2007 but that nonetheless the Gardaí did not charge them until January of the following year, by which point both of them had turned 18. The applicants contend that as a result of this delay, they have suffered serious prejudice in that they are now set to be tried as adults whereas if the prosecution had been initiated even a couple of months earlier, they could have been eligible for summary trial in the Children's Court pursuant to section 75 of the 2001 Act.

22. The respondents contest the argument that the charges could reasonably have been brought with any greater degree of expedition. They therefore submit that there can be no issue of blameworthy delay in the present case. Furthermore, the respondents contend that no prejudice has been occasioned by whatever lapse of time has occurred since the offences in question are of such a serious nature that the Children's Court could not conceivably have decided to deal summarily with the matters. Finally, the respondents suggest that any issues which do arise in relation to the applicants' attaining majority during the course of the prosecutorial process could readily be dealt with by the trial judge.

III. The Decision of the Court

(a) Breach of Statutory Duty
23. I note at the outset that Part IV of the 2001 Act, which prescribes the parameters of the Programme, affords a considerable degree of discretion to the Director as to how the scheme should be applied in individual cases. Nonetheless, there are a number of discreet statutory requirements which must be adhered to in all cases.

24. In respect of these specific duties, I turn first to the argument of the applicants that Garda Loughrey, as opposed to Garda Gralton, should have dealt with their candidacy for admission to the Programme. The first step in dealing with a child under the Programme is set down in section 22 of the 2001 Act. It provides as follows:-

> "Where criminal behaviour by a child comes to the notice of the Garda Síochána, the member of the Garda Síochána dealing with the child for that behaviour may prepare a report in the prescribed form as soon as practicable and submit it to the Director with a statement of any action that has been taken in relation to the child and a recommendation as to any further action, including admission to the Programme, that should, in the member's opinion, be taken in the matter." (Emphasis added)

25. Considering the language of section 22 as a whole, I cannot accept that the effect of the provision is to require that the Programme should be administered in each individual case by the member of An Garda Síochána who is primarily responsible for the investigation of the alleged offence itself. The phrase "dealing with the child" cannot logically be read in such a restrictive fashion in the absence of express instruction to such effect in the statute. Indeed, it seems to me that the current practice of designating certain officers such as Garda Gralton to the Programme is an expedient method which is entirely supported by the language and purpose of the 2001 Act. The administration of the Programme by individuals who have built up a wealth of experience and expertise is a highly desirable situation and does not, in my view, amount to a breach of the requirements of section 22.

26. The applicants also challenge the procedures adopted by Garda Gralton in preparing her reports on their respective suitability for admission to the Programme. In this regard, they place reliance on section 23(1) of the 2001 Act, which details the criteria for admission to the Programme. It provides:-

> "A child may be admitted to the Programme if inter alia he or she:-
>
> (a) accepts responsibility for his or her criminal behaviour, having had a reasonable opportunity to consult with his or her parents or guardian and having obtained any legal advice sought by or on behalf of him or her;
>
> (b) consents to be cautioned and, where appropriate, to be supervised by a juvenile liaison officer;
>
> (c) is of or over the age of criminal responsibility and under 18 years of age
>
> but paragraph (b) shall not apply where the Director is satisfied that the failure to agree to being cautioned or supervised is attributable to undue pressure being brought to bear on the child by any person and, in that vent, the child shall be deemed to have consented for the purposes of that paragraph."

27. Firstly, it is important to note that there is no mandatory obligation on the member of An Garda Síochána who is "dealing with the child" to actually prepare a report under section 22 of the 2001 Act. It is therefore difficult to accept that the combined effect of sections 22 and 23 is to delineate any precise statutory form which the consultation with a candidate for admission to the Programme should take. However, there are nonetheless a number of bare requirements which must be satisfied, arising under section 23 of the 2001 Act.

28. In the present case, the question of whether Garda Gralton adequately complied with these requirements is primarily an issue of fact. In this regard, I cannot accept the version of events proffered by the applicants, to the effect that Garda Gralton failed to explain the purpose of her visit to each of their homes and that she did not provide information on the operation of the Programme. It is clear from the evidence before the Court that Garda Gralton has extensive experience in carrying out such visits and that they are generally executed in keeping with a standard procedure. I find unconvincing any suggestion that such an experienced police officer, paying visits to the applicants for the exclusive purpose of assessing their suitability under the Programme, would neglect to mention it entirely or to adequately explain the pre-requisites for admission. Garda Gralton says that she did explain the workings of the scheme and its requirements. I accept this evidence and I therefore reject the submission of a breach of statutory duty arising under this aspect of the case.

29. The final breach of statutory duty which is suggested by the applicants relates to the ultimate assessment of their candidacy for the Programme by the Director. Specifically, they argue that each of them had met the requirements of section 23(1) of the 2001 Act and that there were no other circumstances militating against their admission. In those circumstances, they contend that the Director acted unlawfully in excluding them and did so on the basis of invalid considerations. Again, this alleged breach is one which the Court cannot accept. First, it is clear that the first named applicant did not satisfy the requirements of section 23(1) in that he failed to "accept responsibility" for the alleged criminal behaviour. To my mind, an acceptance of some co-incidental involvement, accompanied with a denial of the use of any weapon as well as a claim of self-defence, cannot amount to satisfaction of section 23(1)(a) for the purposes of the present case. The full and unequivocal acceptance of the offences charged lies at the heart of the Part IV 2001 Act; if young persons accused of serious crime were permitted to benefit from its provisions by merely accepting a much lesser form of wrongdoing, the objective of encouraging contrition and reform would be defeated. The first named applicant is plainly contesting the manner in which the alleged offences occurred and also his criminal culpability in respect of same. On this basis, he clearly had not satisfied the statutory precondition at the time his case was considered by the Director.

30. Furthermore, the Court is unable to accept the general proposition advanced by the applicants that in cases where the requirements of section 23(1) are met, admission to the Programme should follow as a matter of course. This is evident from the remainder of section 23 of the 2001 Act which provides inter alia as follows:-

> "(2) The Director shall be satisfied that the admission of the child to the Programme would be appropriate, in the best interests of the child and not inconsistent with the interests of society and any victim…
>
> (4) When the admission of a child to the Programme is being considered any views expressed by any victim in relation to the child's criminal behaviour shall be given due consideration but the consent of the victim shall not be obligatory for such admission…"

31. It is quite clear that under section 23(2) of the 2001 Act, the Director is required to assess any candidacy for the Programme in a manner which achieves a balance between the best interests of the particular candidate and those of any victims as well as society as a whole. This accords with the generally wide discretion which is afforded to prosecuting authorities when deciding whether to bring criminal proceedings against a particular individual. In *Eviston v. Director of Public Prosecutions* [2002] 3 IR 260, Keane J. examined the authorities on this point and concluded as follows at page 294:-

> "It is an important feature of the decisions… that, in each case, the court was concerned with (a) a decision not to prosecute in a particular case and (b) a challenge to the merits of that decision. The decisions, accordingly, go no further than saying that the courts will not interfere with the decision of the respondent not to prosecute where:-
>
> (a) no *prima facie* case of mala fides has been made out against the respondent;
>
> (b) there is no evidence from which it could be inferred that he has abdicated his functions or been improperly motivated; and
>
> (c) the facts of the case do not exclude the reasonable possibility of a proper and valid decision of the respondent not to prosecute the person concerned."

The application of these principles to decisions made under the Programme, albeit in its previous non-statutory incarnation, was affirmed by Hardiman J. in *Dunphy (A Minor) v. Director of Public Prosecutions* [2005] 3 IR 585. I am satisfied that they should also apply in relation to Part IV of the 2001 Act.

32. In the present case, the Director accepted the view of Garda Gralton that the offences alleged were of such a serious nature, and occurred in such aggravating circumstances, as to render the perpetrators unsuitable for admission to the Programme. Furthermore, I am satisfied that the Director was entitled to take account of the fact that the second named applicant had benefited from the scheme on several previous occasions. This is also clear from the *Dunphy* decision. In that case, Hardiman J. stated the following at page 598:-

> "It is… true that the fact that a juvenile has had the benefit of the scheme on one occasion is a proper matter to be taken into account when considering whether she should have the benefit of the scheme again… There is clearly scope for the view that the applicant should not again be given the benefit of the diversion scheme, either on the basis that she had not profited from her previous experience of the scheme, or on the basis that the vindication of the law in the fraught matter of unlawful drugs required that a person who had not taken a previous opportunity offered by the Diversion Scheme should not be given the benefit of it on another occasion, or indeed for a

combination of these views."

I am therefore unable to accept that there was any violation of the provisions of the 2001 Act in the present case which would impel the Court to grant the relief sought.

(b) Fair Procedures

33. All public and administrative bodies are required to conduct themselves to a certain basic standard of propriety and fairness. To this end, they must adhere to the fundamental principles of natural and constitutional justice. However, these principles are not without qualification or limits and what is required of a decision-maker depends upon the circumstances of the individual case. In *Lewis v. Heffer* [1978] 1 WLR 1061, Lane L.J. considered the limits of the right to be heard. He stated as follows at page 1078:-

> "In most types of investigation there is in the early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at that stage demand that the investigator should act judicially in the sense of having to hear both sides. No one's livelihood or reputation at that stage is in danger. But the further the proceedings go and the nearer they get to the imposition of a penal sanction or to damaging someone's reputation or to inflicting financial loss on someone the more necessary it becomes to act judicially, and the greater the importance of observing the maxim *audi alteram partem* ."

34. In keeping with this, it is well-established that executive decisions made at the outset of a prosecution for a criminal offence are not reviewable save in the most exceptional circumstances. Such determinations do not have any bearing on civil or criminal liability and therefore have a limited impact on the rights of individuals. In *H. v. Director of Public Prosecutions* [1994] 2 ILRM 285, Blayney J. stated at page 291:-

> "In deciding whether to bring or not to bring a prosecution the Director is not settling any question or dispute or deciding rights or liabilities; he is simply making a decision whether it is appropriate to initiate the prosecution."

35. In *R. v. Durham Constabulary ex parte R*. [2005] UKHL 21, a warning scheme similar to the Programme in the present case was held not to involve the determination of criminal liability. Lord Bingham of Cornhill stated:-

> "[T]he police officer … had only two decisions to make: whether it would be in the public interest for R to be prosecuted, and whether, if not, he should be reprimanded or warned, or no further action taken. It was no part of his duty to decide or determine or adjudicate whether R was guilty or not, and had Parliament envisaged the exercise of such a function it would not have entrusted it to a police officer."

36. It seems to me that the decision whether or not to admit a given individual to the Programme amounts to little more than a single choice falling within the overall decision whether or not to prosecute. I am therefore unable to accept that the requirements of natural justice extend beyond those which apply to that primary decision to bring criminal proceedings. In the present case, both applicants were informed of the nature of the Programme, the fact that they were being considered for admission and the prerequisites for such inclusion. They were each given the opportunity to explain their involvement in the offences charged and also to make such informal representations as they saw fit. It seems to me, therefore, that any limited requirement to take account of their views was quite clearly complied with.

37. It is also clear as a matter of public law that there is no general duty to provide a fully reasoned decision in respect of every administrative decision made. The extent of any obligation in the present case is heavily restricted by the nature of the decision being made by the Director, which has already been outlined. In *H. v. Director of Public Prosecutions*, Blayney J. held that in cases of judicial review of decisions to prosecute, there would be no rationale for a duty to provide reasons. He stated as follows at 291:-

> "It would seem then that as the duty of give reasons stems from a need to facilitate full judicial review, the limited intervention available in the context of the Director's decisions obviates the necessity to disclose reasons."

38. I am therefore unable to accept that the Director in the present case had any obligation to inform the applicants of his reasons for excluding them from the Programme. In my opinion, there is no cause to find any violation of basic fair procedures in the manner in which the Director performed his functions.

(c) Delay

39. The issue of prosecutorial delay has been the subject of considerable judicial scrutiny in recent years. In McFarlane v. Director of Public Prosecutions [2008] IESC 7, the Supreme Court considered the principles which have now been extensively refined. Kearns J. outlined the present position as follows:-

> "Under the current state of Irish law therefore, the following principles appear to have been established in relation to prosecutorial delay:-
>
> (a) Inordinate, blameworthy or unexplained prosecutorial delay may breach an applicant's constitutional entitlement to a trial with easonable expedition.
>
> (b) Prosecutorial delay of this nature may be of such a degree that a court will presume prejudice and uphold the right to an expeditious trial by directing prohibition.
>
> (c) Where a period of significant (as distinct from minor) blameworthy prosecutorial delay less than that envisaged at (b), is demonstrated, the court will engage in a balancing exercise between the community's entitlement to see crimes prosecuted and the applicant's right to an expeditious trial, but will not direct prohibition unless one or more of the elements referred to in P.M. –v- Malone [2002] 2 I.R. 560 and P.M. –v- D.P.P . [2006] 3 I.R. 172 are demonstrated.

(d) Actual prejudice caused by delay which is such as to preclude a fair trial will always entitle an applicant to prohibition.

It is all too easy to lose sight of the fact that there are victims of crime whose interests must not be swept aside in this exercise. The court must therefore analyse the causes of delay with great care, weighing up and balancing the role of both the prosecution and the applicant and their respective contributions to delay."

40. Applying these principles to the present case, I am unable to accept that the lapse of time which occurred is sufficient to warrant an order of prohibition preventing the further prosecution of the offences charged. While it would undoubtedly have been preferrable had the prosecuting authorities brought the charges more swiftly, I do not think that their conduct was "inordinate, blameworthy or inexcusable" to any significant extent.

41. Even if I were incorrect in that assessment, it seems to me society's interest in the prosecution of violent attacks, such as those alleged to have occurred in the present case, heavily outweighs any infringement of the applicants' right to an expeditious trial. It is not necessary for me to make any assumption as to how the Children's Court would have dealt with this matter; it is sufficient for the Court to note that the crimes alleged are of an extremely serious nature and to weigh that factor in the balance.

42. I am supported in my conclusions on this point by the presumption that the trial judge will act fairly and remedy any potential injustice which the applicants may face. In *M.M. v. Director of Public Prosecutions* [2007] IESC 1, the Supreme Court considered an allegation of prejudice arising from the preferrment of fresh charges against an applicant who had already served a sentence in respect of other similar offences. Geoghegan J. affirmed the following dictum of Ó Caoimh J. in the High Court:-

"As I said, these matters will have to be addressed by any court dealing with these charges and the court must presume that fairness will prevail not only in relation to the trial itself but in relation to the consideration of any penalty, if such arises, having regard to the applicant's antecedence and the approach that he has taken in recent times in relation to the complaints against him. This obviously would include a situation where had the charges been brought forward earlier that there might have been a situation where if the applicant was found guilty and was required to serve a sentence that any such sentence would have run, or at least a portion thereof, would have run concurrent to the sentence then being served by the applicant."

It seems to me that a similar approach must be taken in the present case. It is presumed that the trial judge will conduct the proceedings in the fairest manner possible to the applicants and, if they are convicted, their age at the time of the commission of the alleged offences is undoubtedly a factor which will be taken into account.

IV. Conclusion

43. In light of the foregoing, I am not satisfied that the decision of the Director to exclude the applicants from the Programme was made in breach of statutory duty or in contravention of the principles of natural and constitutional justice. I am also unable to accept that there has been a delay of such a nature as to warrant an order of prohibition. I will therefore refuse the relief sought.