Neutral Citation No. [2005] IEHC 31

THE HIGH COURT
JUDICIAL REVIEW

[2003 No. 153 JR]

BETWEEN

T. F.

APPLICANT

AND
DIRECTOR OF PUBLIC PROSECUTIONS AND
HIS HONOUR JUDGE HARVEY KENNY

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 the 24th March, 2003, the applicant was granted leave to apply by way of Judicial Review for an order of prohibition restraining the respondents from proceeding further with the prosecution of the applicant in respect of certain criminal charges which have been preferred against him.
The applicant was also granted leave to seek additional declaratory and other ancillary reliefs against the respondents including an order pursuant to the provisions of O. 84 r. 21 of the Rules of the Superior Courts extending the time within which the application for the reliefs sought by the applicant may be made.

FACTUAL BACKGROUND

1. The applicant who is a retired health care worker has been charged with indecently assaulting one M.H. on five unidentified dates between the 13th May, 1984, and the 14th December, 1988.
The offences are alleged to have been committed at four different locations in the county of Galway, namely Spiddal, Aran Islands, Moycullen, and A. House, B.
2. M.H., due to family circumstances was placed in the care of the Western Health Board in 1981 and was transferred to a Residential Care Home in Galway City in 1983 when he was approximately 12 years old. The applicant was then a member of the staff of the care home which was run by the Sisters of Mercy.
It is alleged that the applicant was a *"key worker"* responsible for a group of children of whom M.H. was one.
The offences with which the applicant has been charged were allegedly committed during camping trips to Spiddal and to the Aran Islands and thereafter in Moycullen and in a Care Home (which was separated into two buildings called respectively A. House and L. House).
3. On 21st April, 1998, M.H. who was then 27 years old made a statement of complaint to the Gardaí in respect of the alleged offences.
4. Just over twelve months later on 7th May, 1999, the applicant was arrested and was questioned by the Gardaí in relation to the facts which have given rise to the charges.
5. Just over two years later on 11th June, 2001, the applicant was charged with the commission of the offences concerned. He appeared before the District Court in Galway on 4th July, 2001, and was remanded on one or two occasions before being returned for trial in the Circuit Court in Galway on 8th October, 2001.
6. The case came before the Circuit Court in Galway on 4th December, 2001 and on a number of subsequent occasions but was adjourned from time to time before it was finally listed for trial on 28th January, 2003.
On that date the case was adjourned *inter alia* because M.H. was not in court. Evidence was adduced during the course of these proceedings indicating that due to a failure in communications M.H. had been unaware that the trial was to proceed on that day.
7. On 24th March, 2003, the applicant was granted leave to seek the reliefs which have been sought herein.
8. The statement of complaint made by M.H. to the Gardaí indicated *inter alia* that one or more of the offences occurred at the applicant's home in Shantalla. It was alleged that on those specific occasions the applicant had prepared lunch for M.H.. Thereafter the applicant invited him upstairs. The offences were allegedly committed within the applicant's bedroom.
M.H.'s statement indicated that at the time of the commission of the offences the applicant's grandmother was confined (by reason of her health) to the ground floor of her house.
9. The applicant's grandmother M.E.L. died on 28th November, 1993. The applicant, in evidence, averred that she was not confined to the ground floor of her house at the material times. He said that she was healthy and fit until approximately four or five months before she died in 1993 (the offences are alleged to have occurred between 1984 and 1988). He claims that had the complaints been made by M.H. within a reasonable time after their alleged commission his grandmother would have been available to testify at his trial and could have confirmed her state of health and physical capacity at material times.

10. In his statement of complaint M.H. also indicated that one or more of the offences occurred whilst he occupied a double sleeping bag with the applicant. It is alleged that the sleeping-bag had been joined together at the applicant's suggestion by fastening the zips of the two bags. The applicant, in evidence averred that the sleeping bag which he used on the camping trips was larger than the sleeping bags used by the children within his care. He said that the bags could not have been joined by fastening zips in the manner alleged by M.H..
The applicant stated in evidence that the larger sleeping bag which he used is no longer available to him and he cannot now corroborate this fact.
11. In his statement of complaint M.H. further alleged that on one occasion whilst he was bathing in A. House he saw the applicant looking through a window at him. He said that on another occasion the applicant offered to pay a substantial sum towards the cost of the purchase of a motorcycle.
The applicant claims that enquiries directed towards establishing that it would have been impossible for him to see anyone bathing in A. House have been frustrated. The applicant has changed his account and now says that the incident occurred at a location (in L. House) other than was first alleged.
The applicant says that he is further prejudiced by the fact that he is not in a position to establish where the motorcycles used by both men were purchased.
12. Mr. Eamonn Murphy who is a senior clinical psychologist in the Galway Family Services Institute consulted with M.H. (at the request of the first named respondent), on three occasions, namely 14th March, 2004, 17th March, 2004 and 20th March, 2004. Arising out of those consultations he prepared a psychological report which was adduced in evidence in these proceedings. Mr. Murphy was not cross-examined on behalf of the applicant.
13. In his report Mr. Murphy outlined M.H.'s history from the time when he first went into care. The report dealt principally and in particular with the allegations made against the applicant.
Under the heading "*Delay in Reporting Abuse"* Mr. Murphy described in general the reasons why children may be abused but powerless to report the abuse. He concluded:

> "*Victims of abuse will also often delay reporting the matter because of difficulty in trusting anyone. Victims generally want to 'forget' what happened to them and frequently disclose the abuse almost accidentally when, for instance, they go for professional help or for some other reason. In this case Mr. F. was suspended from work only when management at B., almost accidentally and indirectly got information about his alleged sexual abuse of children in his care."*

This information, whilst helpful and informative in a general sense, was of no assistance to the court by way of explanation as to why M.H. between 1988 and 1998 appears to have taken no steps to complain of the abuse now complained of.
Under the heading "*Psychological Profile of Mr. H"* Mr. Murphy indicated that he could:

> "*find no evidence of mental instability in this man. He has to date received no treatment for the effects of sexual abuse but has now asked me to deal with this matter…he seemed a hard working practical man well organised in this daily life and there is no history of delusions or psychiatric illness…"*

He went on to deal with the question of M.H.'s credibility and of his insecurity and vulnerability during childhood. However it was not suggested by Mr. Murphy that the applicant had influenced or exercised dominion over M.H. at any time between the end of 1988 and the date of complaint in 1998. Accordingly, no explanation was offered which would account for the delay on the part of M.H. in reporting the offences between 1988 and 1998.
Under the heading "*Opportunity"* Mr. Murphy expressed his opinion on what was contained in the book of evidence. He observed that:

> "*It is, in my opinion, only in recent times that victims had the means to report sexual abuse while it was taking place. Especially for those committed to care in past decades there does not seem to be any evidence of procedures being in place to report the abuse. This would certainly be true in the case of Mr. H. In that sense he would be typical of most victims who, much later in life, found themselves faced with the consequences of this type of violation to their person. Mr. H believed that his former care worker is a confirmed paedophile and concerned that he might still be preying on children."*

THE LAW
The general principles of law which apply to applications to prohibit, on grounds of delay, the prosecution of offences of a sexual nature allegedly committed against children (and reported only after very substantial periods of time) are now well settled. They have been 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 DPP (1999) 2 I.R. 25, PO'C v. Director of Public Prosecutions* [2000] 3 I.R. 87, *J.L. v. Director of Public Prosecutions* [2000] 3 I.R. 122, and *JO'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 the delay (between eleven and fourteen years) by M.H. in reporting the offences was inordinate and of such duration that, of itself, it warrants the prohibition of the trial.
It is argued that a further period in excess of 12 months was allowed to elapse by the prosecuting authorities before the applicant was first arrested and questioned by the authorities and an additional period in excess of two years before the applicant was finally charged and returned for trial.
The applicant claims that this period of three and a half years was inordinate and culpable prosecutorial delay which

requires explanation. He says that no sufficient explanation has been provided. Accordingly, it is argued, the trial should also be restrained on that ground alone.
It is claimed on behalf of the applicant that the period of almost thirteen years which has elapsed between the date of the alleged commission of the last criminal offence with which the applicant has been charged, and the date when he was returned for trial, is excessive and inordinate in the circumstances and of such a character that it deprives him of his constitutionally protected right to a trial with reasonable expedition.
Finally the applicant claims that by reason of the delay in prosecuting him in respect of these offences, he has suffered both specific prejudice and presumptive prejudice in his capacity to defend himself in respect of the charges preferred against him. He says that accordingly there is a real and serious risk that he will not receive a fair trial.
On behalf of the first respondent it is contended that the applicant is in breach of the provisions of O. 84 r. 21 of the Rules of the Superior Courts by failing to institute these proceedings promptly and in any event within the three month period provided by that Rule.
Alternatively the respondent agues that:
(a) There had been no prosecutorial delay on the part of the authorities,
(b) There has been no culpable other delay on the part of the prosecuting authorities or otherwise which requires to be justified,
(c) If there has been pre-complaint delay then the same was referable to the conduct of the applicant and,
(d) In any event the court must go on to consider the overriding question of whether or not the delay will result in an unfair trial for the applicant and,
(e) no prejudice either actual or presumed has resulted from any delay in prosecuting this applicant in respect of the alleged offences.

ORDER 84, RULE 21

Order 84 rule 21 of the Rules of the Superior Courts provides as follows:

> *"An application for leave to apply for judicial review shall be made promptly and within any event within three months from the date when the grounds for the application first arose, or six months where the relief sought is certiorari, unless the Court considers that there is a good reason to extending the period in which the application has been made."*

In this case, I am quite satisfied that there is a good reason for extending the time within which the application may be made.
It has been candidly and properly acknowledged on behalf of the parties to these proceedings that at the time when the grounds for the relief sought by this applicant first arose (when the applicant was first returned for trial) a practice had been adopted in the Circuit Court and in the Central Criminal Court whereby applicants who sought to prohibit trials on the grounds of delay were discouraged from seeking relief by way of judicial review and were instead encouraged to seek relief by way of an application made just prior to the commencement of criminal trials for orders quashing indictments on grounds of delay.
This practice was followed by the applicant's legal advisers who indicated at an early stage their intention to make such an application to the Circuit Court in Galway immediately prior to the applicant's trial (which was postponed). The practice was discontinued and the applicant instituted these proceedings forthwith.
Having regard to the acknowledgement of the existence of the practice and its adoption by the Courts (including the Circuit Criminal Court in Galway), during the times material to these proceedings I have no hesitation in accepting that it was reasonable in the circumstances for the applicant to adopt that practice and I am satisfied that he did do so and that an application was made on his behalf for such relief at the first available opportunity within the Circuit Criminal Court in Galway when his trial was listed for hearing.
I am satisfied also that he sought the relief sought herein as soon as was reasonably possible. Accordingly there is a good reason why the time limited by Order. 84 r. 21 of the Rules of the Superior Courts should be extended and I will accordingly do so.

PROSECUTORIAL DELAY

A period of three and a half years elapsed between the 21st April, 1998, when M.H. first complained to the gardaí in respect of the alleged offences and the 8th October, 2001, when the applicant was returned for trial in the Circuit Court in Galway.
The evidence adduced on behalf of the first respondent by Gardaí Peadar Ryan and Denis Sweeney indicates that the complaint made by M.H. was made in April 1998 during the course of an investigation into a series of complaints of abuses which were alleged to have occurred at B. Childcare Centre in Galway.
Garda Ryan averred, that arising out of this investigation, a review team was established by the Western Health Board. This review team met regularly throughout the year 1998 and worked in consultation with the gardai and the first respondent. During that year a number of former residents of the B. Childcare Centre were interviewed as part of this overall investigation.
The review team completed its work in April 1999. Garda Ryan was promoted to the position of sergeant in May of

that year and apparently required a "period of adjustment" in his new position and a period of training in Templemore. Having completed his investigation into the allegations made against the applicant he submitted a file to the first respondent for consideration in September 1999. He handed the investigation file over to Detective Garda Sweeney on the 6th December, 1999.
Det. Garda Sweeney, in evidence, indicated that he made various inquiries and received instructions from the first respondent. Thereafter he carried out a number of investigations and obtained documents for transmission to the first respondent.
A further query from the first respondent dated 6th April, did not reach him until 22nd May, 2000. He described a series of interviews throughout the remainder of the year 2000 which he conducted on the instructions of the first respondent and in conjunction with the Western Health Board.
The explanation offered by Det Garda Sweeney to account for a period of more than 6 months which elapsed before the arrest of the applicant on 9th June, 2001 was somewhat unsatisfactory.
After a series of adjournments and remands at Galway District Court the applicant was returned for trial to Galway Circuit Court on 8th October, 2001.
After a further period of some 15 months the applicant's trial was finally listed for hearing on the 28th January, 2003 but the trial was postponed because a failure of communication resulted in M.H. failing to attend court.
I am satisfied on the evidence that a reasonable and satisfactory explanation has been provided by the prosecuting authorities for the delay which occurred between April 1998 and May 1999 whilst various complaints made to the prosecuting authorities were investigated.
On the evidence of Detective Sweeney a further significant investigation was required between December 1999 and 9th June, 2001, into the subject matter of the charges preferred against the applicant. That investigation involved the interviewing of witnesses and the gathering of evidence. It was conducted principally by Detective Sweeney on the instructions of the first respondent.
I am satisfied that the overall period of three and a half years which was allowed to elapse between the 21st April, 1998 when M.H. first complained to the prosecuting authorities and the 8th October, 2001 when he was returned for trial in respect of the alleged offences was inordinate and was sufficiently so to require explanation.
Whilst the explanations offered in respect of the prosecutorial delay during that period have not been entirely satisfactory the delay has been explained adequately and it is not the function of this court to conduct a supervisory review of the prosecution of offences by the first respondent. In summary I am satisfied that the delay which occurred does not amount to culpable or "blameworthy" prosecutorial delay of the kind identified by Geoghegan J. in the case of *P.P. v. Director of Public Prosecutions* [2000] 1 I.R. 403.
A further period in excess of fifteen months elapsed between the 8th October, 2001, when the applicant was returned for trial and 28th January, 2003, when his trial was listed for hearing in Galway Circuit Court. That period of time was excessive in the circumstances. It comprises as what has currently become known as "court process" delay. It has not been explained in evidence in an entirely satisfactory manner.

THE RIGHT TO A TRIAL WITH REASONABLE EXPEDITION

The right of an accused person to a trial with reasonable expedition is well settled. It has been recognised by the courts within this jurisdiction repeatedly (see *the State (Healy) v. Donoghue* [1976] 1 I.R. 325; *the State (O'Connell) v. Fawsitt* [1986] I.R. 362 and many other cases.
The right derives from Article 38.1 of Bunreacht na hÉireann and is also protected by Article 6 of the European Convention on Human Rights.
I am satisfied on the evidence and on the balance of probabilities that the applicant occupied a position of dominion over M.H. at the time of the commission of the alleged offences. I make this finding assuming, as I must, for the purpose of this exercise, that M.H.'s complaints are true.
There is, however, no evidence that the applicant occupied such a position in respect of M.H. at any time after 1998. In 1989 M.H. was living at a location other than the B. Care Home. By then he had established a relationship with a young woman. During that year he had a confrontation with the applicant which resulted in the pair not speaking to one another for more than eight years (until August 1997). He is now the father of a child, is a moderate smoker and a "light drinker" who commendably completed his secondary education and has been in constant employment since he left school. When interviewed by Mr. Murphy he was occupying three separate jobs with apparent success.
He has accordingly demonstrated considerable independence and courage. Mr. Murphy found no evidence of mental instability in M.H. who has never required treatment for the effects of sexual abuse, has never been suicidal and *"strongly believes that life is worth while."*
Mr. Murphy described him as *"a hardworking, practical man, well organised in his daily life and with no history of delusions or psychiatric illness."*
As I have indicated earlier no explanation has been provided which would account for the delay on the part of M.H. in reporting the offences which are the subject of these proceedings between 1988 and 1998 other than the observation by Mr. Murphy that: ..*"There does not seem to be any evidence of procedures being put in place to report the abuse. This would certainly be true in the case of Mr. H. In that sense he would be typical of most victims who, much later in life, found themselves faced with the consequences of this type of violation of their person. Mr. H believes that his former care worker is a confirmed paedophile and is concerned that he might still be preying on children."*

In *P.C. v. DPP* the Supreme Court (Keane J.) (as he then was) observed (at p. 66) that:

> *"Unlike cases of summary jurisdiction where the application for a summons must normally be made within six months from the date of the offence, there is no time limit for the institution of a major offence. Accordingly, it is not possible to specify the lapse of time which must occur before a court will be put on inquiry as to whether the accused's right to a trial with reasonable expedition has been violated. In the present case, the delay was of the order of thirteen years from the first alleged offence and, in the absence of any other factors, would clearly justify an inference that the right had indeed been violated."*

He described the three-stage approach to be adopted by a court asked to prohibit, on grounds of delay, a trial in respect of sexual offences of the kind facing the applicant stating (at p. 67):

> *"It is unnecessary to traverse that ground again in any detail. Clearly, the fact that the offence charged is of a sexual nature is not of itself a factor which would justify the court in disregarding the delay, however inordinate, and allowing the trial to proceed. Moreover, even in cases of unlawful carnal knowledge or sexual assault where the complainant is a girl under the age of consent, it is to be borne in mind that the alleged perpetrator may himself be a child. There are cases, however, of which this is one, where the disparity in age between the complainant and the person accused is such that the possibility arises that the failure to report the offence is explicable, having regard to the reluctance of young children to accuse adults of improper behaviour and feelings of guilt and shame experienced by the child because of his or her participation, albeit unwillingly, in what he or she sees as wrongdoing. In addition, of course, in individual cases there may be threats, actual or implied, of punishment if the alleged offences are reported.*
>
> *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 is necessary to stress again that it is not simply the nature of the offence which discharges that onus. All the circumstances of the particular case must be considered before that issue can be resolved.*
>
> *Manifestly, in cases where the court is asked to prohibit the continuance of a prosecution on the ground of unreasonable delay, the paramount concern of the court will be whether it has been established that there is a real and serious risk of an unfair trial; that, after all, is what is meant by the guarantee of a trial, "in due course of law." The delay may be such that, depending on the nature of the charges, a trial should not be allowed to proceed, even though it has not been demonstrated that the capacity of the accused to defend himself or herself will be impaired. In other cases, the first inquiry must be as to what are the reasons for the delay and, in a case such as the present where no blame can be attached to the prosecuting authorities, whether the court is satisfied as a matter of probability that, assuming the complaint to be truthful, the delay in making it was referable to the accsued's own actions.*
>
> *If that stage has been reached, the final issue to be determined will be whether the degree to which the accused's ability to defend himself has been impaired is such that the trial should not be allowed to proceed."*

Adopting that statement of the law it follows that the delay of some fourteen years from the time of the alleged offence to the complaint by M.H. clearly justifies an inference that the applicant's constitutionally protected right to a trial with reasonable expedition has been violated.

In *D.D. v. DPP* (Unreported, 19th May, 2004) the Supreme Court (Geoghegan J.) referred, in part, to the foregoing extract from the judgment of Keane J. in *P.C. v. Director of Public Prosecutions* and observed:

> *"The Chief Justice then recalled that he had emphasised in the P.C. case that it was not simply the nature of the offence which discharged the onus on the prosecution to explain the delay but that all the circumstances in the particular case had to be considered. He then pointed out that none of the facts relevant in the P.C. case applied to the P.M. case. All of this makes it perfectly clear that the Chief Justice was in no way to intending to bring about a change in the understood principles of law applicable to these cases."*

It follows that the principles of law identified by Keane J. in *P.C.* apply to the facts of the instant case. If it has been established that unreasonable delay has resulted in a real and serious risk that the accused person not receive a fair trial the prosecution must be prohibited.

However I do not understand the principles identified to require that in every case an accused person seeking to prohibit his or her trial on the grounds of unreasonable delay must prove on the balance of probabilities that the delay proved will give rise to a real and serious risk of an unfair trial.

In the instant case I have found that the delay of up to fourteen years from the date of the first alleged offence to the date of complaint justifies an inference that the applicant's constitutionally protected right to a trial with reasonable expedition has been violated. That inference may be displaced *inter alia* by evidence that the violation was caused by conduct referable to the applicant himself. Evidence has been adduced, which I accept, that for the first four of those fourteen years the applicant exercised dominion over the complainant sufficient to prevent the complainant from making a complaint against the applicant in respect of the alleged offences.
However for the remaining ten of those fourteen years the complainant suffered from no such inhibition. A delay of ten years in reporting an offence of the kind alleged in these proceedings also justifies an inference that the applicant's right to an expeditious trial has been violated. No evidence has been adduced which has displaced that inference in any respect. Accordingly it is, in my view, undeniable that the applicant's constitutionally protected right to a trial with reasonable expedition has been violated by the inaction of M.H. in failing to report the alleged offences during the ten year period between 1988 and 1998.
In *P.C.* Keane J. identified not only the principles to be applied but also the sequence to be followed during the application of the principles to which I have referred and was at pains to explain that the delay:

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

However he continued:

> *"In other cases, the first inquiry must be as to what are the reasons for the delay and, in a case such as the present, where no blame can be attached to the prosecuting authorities, whether the court is satisfied as a matter of probability that, assuming the complaint to be truthful, the delay in making it was referable to the accused's own actions."*

The reasoning seems to me to be clear. If the person in whom the constitutionally protected right was vested has himself or herself caused or contributed to the breach complained of, then the breach may be vitiated.
In *P.C.* Keane J. conducted the necessary inquiry and concluded that on the evidence in that case the delay complained of was referable to the accused's own actions. He relied upon expert psychological and other evidence in support of that finding.
He then went on then to consider the question of specific prejudice. In so doing he was consistent with the principles with which he had earlier identified and the sequence to be followed in applying those principles. The *"... stage had been reached"* when that issue had to be considered because of the court's earlier finding that the violation of the applicant's right to a trial with reasonable expedition could be disregarded since it was referable to the applicant's own conduct.
However, had the delay in *P.C.* (and countless similar cases since) been the result of unexplained inaction on the part of the complainant then the clear breach of a constitutionally protected right would have been established. Could that breach have been ignored in such circumstances?
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* [1972] 407 U.S. 514 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.
In the instant case there has been a delay of fourteen years between the commission of the first offence and the date when M.H. made his first complaint to the Gardaí. That delay, and in particular the final 10 years thereof, has been inordinate and excessive and has comprised a clear violation of the applicant's constitutionally protected right to a trial with reasonable expedition. The violation has not been vitiated by conduct referable to the applicant. The complainant M.H., understandably, put the matters complained of behind him and concentrated upon building a secure and successful career.
At a later date (between ten and fourteen years after the commission of the alleged offences) he formed the opinion that the applicant was a *"...paedophile and might still be preying on children"*. He then decided to report the events which occurred between ten and fourteen years earlier. His decision to do so, although well intentioned, cannot be said to have overcome the violation of the applicant's right to a trial with reasonable expedition.
All of the circumstances of this case have been considered in an attempt to *"...render explicable the inaction of the alleged victim from the time of the offence until the initiation of the prosecution."* (See *P.C.* at p. 67). No adequate explanation has emerged.
It follows from what I have found that the applicant is entitled to the relief which he seeks.
Although, in the light of that finding it is unnecessary for me to go on to consider the question of express prejudice to the applicant I intend, for completeness, to indicate that the claim in respect of express prejudice has been made under four headings:
1. The death of the applicant's grandmother M.E.L.,
2. The fact that the sleeping bag which the applicant used on camping trips is no longer available,
3. The layout of the area for bathing in A. House, and
4. The unavailability of evidence in respect of the purchase of motorcycles.

The evidence of prejudice alleged under the four headings is of a general nature and (with the exception of the sleeping bag), is evidence directed towards undermining the credibility of M.H..
As such it comes within the category of evidence of prejudice identified by the courts as evidence which, by itself, does not amount to specific prejudice sufficient to warrant the prohibition of trial.
Insofar as the unavailability of the sleeping bag is concerned it would appear likely, on the evidence, that such a bag had a limited life span and would, in any event, have been unavailable to the applicant had M.H. made his complaint after the applicant's dominion over him had ceased. No evidence was adduced indicating that enquiries from retailers or manufacturers would not have disclosed the make and dimensions of the bag concerned.
It follows that this court is not satisfied that the applicant has established on the evidence that he has suffered specific prejudice so grave that, on itself, it would warrant the prohibition of his trial in respect of the offences.
The relief sought is granted on the basis that there has been a clear breach of the applicant's constitutionally protected right to a trial with reasonable expedition, that the breach has not be vitiated by conduct attributable to the applicant and that accordingly he will suffer presumptive prejudice in his capacity to defend himself.