

	<p>Take Notice: Information supplied based on our opinion reading - The Constitution, Conventions, law, Case Law, Rules, Regulations and Standards in the Republic of Ireland only. This sheet is drafted by lay litigants and might not be correct.</p> <p>This is not legal advice, but the opinion of the author(s). Please consult your legal advisor</p>
Version 1	22 February 2021

In-Camera – File not released - offences.

Dear Target Parent,

From the information given to me during sessions with you in the past few years, and more, I understand:

- You are involved in a serious toxic separation
- The children are victims of psychological abuse, moral and physical neglect
- You are a victim of inhumane and degrading treatment that is causing serious harm to you
- Several offences are allegedly committed by the alienating parties. Some of the offences were reported by your therapist as a mandatory report to law enforcement and child protection authorities.
- Your ex and its new partner started firing “silver and golden bullets”
- The latest bullet targeted at you is an attempt to have you imprisoned

You also stated that the ex refused permission for the evidence contained in the family law proceedings to be released to you and that you believe that it will assist in proving your innocence in the criminal charge against you.

The opinion hereunder may be too technical for your understanding, therefore I strongly suggest that you obtain legal representation and supply the information to him/her.

My opinion:

“918JR”

In the matter *Andries van Tonder v Commissioner of An Garda Síochána, IEHC, Case Ref: 2011/918JR, 23 July 2019*, Mr Justice Noonan issued the declaration:

“The Court doth grant a Declaration that a prosecution for a criminal offence allegedly occurring during the course of civil proceedings heard in a court of law otherwise than in public (in camera) is capable of being investigated and prosecuted as prescribed by law.”

In the past, offenders could hide behind the in-camera rule to prevent their offences from being investigated and prosecuted.

The same declaration can be reworded “evidence can be gathered to prosecute an offender, as prescribed by law”, therefore you can use the same statement as a declaration that “evidence can be gathered to vindicate an accused, as prescribed by law”.

All the relative evidence must be disclosed

I believe that the prosecuting Garda does know of the offences reported by your therapist as a mandatory report. Your solicitor should verify if the information was supplied to the DPP and whether said information was taken into consideration when the decision was made to prosecute you.

“Égalité desarmes”

In the matter of O’Callaghan v Judge Mahon, IESC unreported 9 March 2004, Judge Hardiman noted these developments and made the following observation:

A major issue in civil and criminal procedural law is the extent to which either side must make disclosure to the other. This has led to the development of an impressive body of jurisprudence both in the United Kingdom and in Strasbourg. The latter has significantly influenced the former and will no doubt influence our jurisprudence too, in particular through the concept of “égalité desarmes”, which might be regarded as the opposite of that state of imbalance and disadvantage described by Ó Dálaigh C.J. as “clocha ceangailte agus madraí scaoilte”.

It is clear that your ex opposes the disclosure of vital evidence that will confirm your innocence.

Discovery in a criminal prosecution

In the matter The People (D.P.P.) v. Flynn, [1996] 1 I.L.R.M. 317, Judge Moriarty stated amongst others:

The complainant in a criminal case is bound to supply the DPP with any information relevant to the case, whether favourable to the prosecution or the accused. The judge is obliged to ensure that fair procedures are observed at the trial. If the prosecution cannot obtain evidence disclosure of which is necessary for the purposes of the defence, the accused may be entitled to a direction on the relevant counts.

It is clear, according to my understanding, that your ex did not supply information that is favourable to your defence, to the DPP and is now perverting the course of justice by refusing that said information be made available.

Failure to seek evidence:

I believe that the DPP would not have initiated prosecution in your case if they actually sought out evidence favouring you, meaning that you can ask the court to strike out the case.

In the matter Dunne v. DPP, [2002] 2 I.L.R.M. 241 (S.C.), the judge stated that:

Where a court would be asked to prohibit a trial on the grounds that there was an alleged failure to seek out evidence, it would have to be shown that any such evidence would be clearly relevant, that there was at least a strong probability that the evidence was available, and that it would in reality have a bearing on the guilt or innocence of the accused person.

In closing:

I can rant off another ten thousand pages, giving the opposition a better chance to find a mistake in my argument, but I do not have the time and energy.

I firmly believe that your solicitor can ask that the matter against you be dismissed.

You were disadvantaged by this allegation against you, losing or delaying Garda clearance, becoming unemployed, losing your house and more. This also needs to be addressed.

If the Court refuse to listen to your solicitor, you should consider an application for a Judicial Review.

Please inform me of the final outcome.

-oOo-

Comments, corrections, opinions and criticism will be appreciated: Email andy at aps dot ie

Copy available in Word or ODT format.