

## Ahern hails Supreme Court judgement on 'Mr A' case

Today's Supreme Court judgement on the 'Mr A' case clarifies the current position in relation to people convicted under the defunct underage rape law, the Taoiseach said tonight.

Chief Justice John Murray explained in a detailed 52-page decision that the continued detention of "Mr A" is perfectly legal because "Mr A" did not challenge the 1935 legislation under which he was convicted at the time of his trial.

The 41-year-old, jailed for raping a 12-year-old girl, was freed by the High Court last month following the striking down by the Supreme Court of the law in the 'CC' case under which he was jailed.

However, he was re-arrested when the state won an appeal in the Supreme Court before rushing through emergency legislation to plug a loophole in the statute books.

Taoiseach Bertie Ahern said today: "Today's judgment clarifies the general position in relation to people who were previously convicted under the legislation that was struck down.

"And these people convicted would not now be able to claim that they should be released on the basis of the decision in the 'CC' case.

Mr Ahern said he never believed that dozens of convicted sex offenders would walk free as a result of the original Supreme Court decision.

He added that individuals affected by the 1935 law could be charged with other offences if the statutory rape charges fell.

Citing the "general principle" rule, Chief Justice John L Murray said today that the state relied in good faith on the legislation at the time of Mr A's conviction and the trial court's decision must therefore be deemed lawful despite any future challenges.

"Mr A, like all persons who pleaded guilty to or was convicted of an offence contrary to the 1935 Act, had available a full range of remedies under the law.

"They could have sought to prohibit the prosecution on several grounds including that the section was inconsistent with the Constitution," he noted.

"Not having done so they were tried and either convicted or acquitted under due process of law. Once finality is reached in those circumstances, the general principle should apply."

The judgment was delivered at the Supreme Court by Chief Justice Murray with Justice Susan Denham, Justice Adrian Hardiman, Justice Hugh Geoghegan and Justice Catherine McGuinness.

Children's charity Barnardos welcomed the judgment but expressed concern that the defence of 'honest mistake' can still lead to an already traumatised child being cross-examined by lawyers in court, with their demeanour, dress and appearance being taken into account, effectively turning

children into exhibits in court.

“This case has illustrated just how much children need the full protection of the law and that means starting at the supreme source of law in this country - the Constitution,” said Barnardos spokeswoman Norah Gibbons.

The Labour Party said today’s written judgements are of enormous legal and constitutional significance and will require careful consideration.

“The very fact that there were five separate written judgements points to the complexities of the issues that faced the Court,” justice spokesman Brendan Howlin said.

“However, until the judgements have been considered in detail it is not possible to say if they will have any impact on individual cases where people have already been sentenced. Nor indeed is it clear at this stage what impact the judgements will have on cases of the 54 people currently facing charges before the courts under the 1935 Act.”

Mr Howlin called for the new Oireachtas Committee on Child Protection to work swiftly to ensure children have the greatest possible level of protection from sexual predators.

Mr C argued that section 1 (1) of the 1935 Criminal Law (Amendment) Act, which made it an offence to have sex with a girl under 15, was unconstitutional because it did not allow him to plead that he was mistaken about the age of the girl.

The Supreme Court ruled on May 23rd that the law was unconstitutional in that it did not allow for any such defence.

Mr A, who had served 18 months of a three-year sentence for having sex with the girl after plying her with alcohol, subsequently applied to the High Court to be freed on the basis that the law under which he was convicted did not exist. The High Court granted his application.

The state subsequently appealed this ruling to the Supreme Court, which ruled on June 2 that Mr A was not denied his constitutional rights because he had not argued he was mistaken as to the age of the girl. The court ordered his immediate re-arrest.

The release of Mr A led to a number of other applications, brought under Article 40 of the Constitution, for release by men serving sentences under the 1935 Act. Those applications were adjourned pending the outcome of the Supreme Court appeal.

More than 50 cases of sex with underage girls are being examined with a view to prosecutions being brought under other laws dealing with sexual offences.

The Chief Justice said that he didn’t accept that cases decided before Irish courts could be set aside as null and void if legislation that secured convictions was later found to be unconstitutional.

Justice Murray said he based his judgment in the Mr A case on similar legal precedents in the US, Canada and India.

He said the High Court decision in May to order the release of Mr A did not fully analyse the broader constitutional considerations.

“It would appear that these considerations may not have been addressed with the same depth and breadth as they were by counsel in the appeal before this [Supreme] Court.

“For the reasons set out in my judgment, I am of the view that the approach adopted by the learned trial judge was not the correct approach.”