THE SUPREME COURT
78/05

Hardiman J.
Geoghegan J.
Fennelly J.
McCracken J.
Kearns J.

BETWEEN
TRACY CIRPACI (née McCORMACK) and AUREL CIRPACI
Applicants/Appellants
and
THE MINISTER FOR JUSTICE, EQUALITY & LAW REFORM
Respondent

JUDGMENT of MR JUSTICE FENNELLY delivered on the 20th day of June, 2005.

The legitimate interest of the State in the control of immigration frequently conflicts with claims of migrants based on family reunification. This has been recognised for more than twenty years by the European Court of Human Rights. In the present case, a marriage took place in Romania between an Irish citizen ("the wife") and a Romanian citizen ("the husband") just over three months after the deportation of the husband from the State. The High Court (Quirke J) refused the appellants' claim for an order of *certiorari* of the Minister's refusal to revoke his deportation order so as to enable the parties to live together in the State with the children of the wife from earlier relationships.

The Appellant's attack is upon a decision of the Minister dated 31st March 2003, communicated by letter dated 1st April 2003.

The husband is a Romanian of Roma extraction. He arrived in this jurisdiction on 30th August 1999 and applied for asylum. In the course of that application, both in his questionnaire and at interview, he stated that he was married to a Romanian, that he had four children and that his wife and family were in Romania.

His application for asylum was refused by the Refugee Applications Commissioner on 8th May 2001. This decision was confirmed on appeal by the Refugee Appeals Tribunal on 22nd April 2002.

The husband's Romanian wife arrived in the State on 12th April 2002. She named the husband (the second-named Appellant) as her husband. On 26th June 2002, solicitors for the husband wrote informing the Minister, as he had already informed the Refugee Appeals Tribunal on 25th May 2001, that his Romanian wife had divorced him.

In 1992, the husband had unsuccessfully claimed asylum in Germany together with his Romanian wife and two of their children. He had also sought asylum in France in 1998. That application had also been refused and

the husband was returned to Romania. In 2002, his Romanian wife consented to voluntary repatriation to Romania from the State.
A letter of 12th August 2002 addressed to the husband and to his solicitors required him to attend at Dundalk Garda Station on 16th August 2002. The letter was returned marked: *"not called for."* He failed to attend as required and was classed as having avoided deportation. He was arrested at the wife's home (she was not then married to him) on foot of a deportation order and was deported to Romania on 16th September 2002.
The above material was the material which was before the Minister, or to be more precise, before Mr Joseph Mortell, Higher Executive Officer in Immigration Operations in the Department of Justice, Equality and Law Reform (hereinafter "the Department"), when he made the impugned decision on 31st March 2003. I treat this, for the purposes of the appeal, as being the decision of the Minister.
That decision came to be made in the following circumstances. On 30th January 2003, the marriage between the Appellants took place at Covasint, Romania. On the following day, the Appellants presented themselves at the Irish Embassy in Bucharest and applied for a "*D-Reside Visa*" for the husband to travel to the State as the spouse of an Irish national. However, as there was in force an order for his deportation, he was advised that he could not obtain such a visa. Accordingly, solicitors for the Appellants in Ireland wrote to the Department on 17th February 2003:

> *"We are instructed by our above named clients to make further submissions in support of Mr Cirpaci's application for a D-Reside visa and to formally apply for the necessary revocation of the deportation order issued in respect of Mr Cirpaci.*
> *You will be aware that Mr Cirpaci's circumstances have changed through his marriage to his partner of three years, Mrs Tracy McCormack, an Irish national.*
>
> *Our clients presented to the Irish Consulate in Bucharest on 31st January 2003 and submitted Mr Cirpaci's visa application as well as their marriage certificate, a copy of Mrs McCormack's passport, Mr Cirpaci's passport, confirmation of accommodation in Ireland, confirmation of Mrs McCormack's employment as well as letters from family and friends confirming their relationship prior to Mr Cirpaci's departure in September 2002."*

In spite of the terms of the second paragraph of that letter, it seems clear that, other than that letter itself, no information had, prior to that date, been submitted to the Department suggesting a "*change*" in the husband's circumstances. As already stated, he had said that his Romanian wife had divorced him in Romania, but no prior information had been conveyed concerning a relationship between him and the first-named Appellant, who was now his wife.

However, in support of the application made on 17th February 2003, a number of documents were submitted including a "*letter from wife re her relationship with applicant*."
Ms Lisa O'Connor of the Immigration and Citizenship Division of the Department prepared a memorandum dated 27th March 2003, based on the history outlined above, and concluded with a recommendation in the following terms:

"From the information to hand, there are indications that the marriage in question may have been entered into solely to facilitate re-entry into the State. Furthermore, the couple have not been residing together as part of a subsisting family unit since their marriage, as Ms McCormack has returned to the State in order to care for her three children. I would therefore recommend refusal of this application for revocation of the Deportation Order in place against Mr Cirpaci."
On 31st March 2003, Mr Mortell wrote the word "Agreed" on the memorandum and initialled it. It will be noted that, while the first sentence of Ms. O'Connor's recommendation casts doubts on the genuineness of the marriage, the second lays emphasis on the lack of cohabitation of the parties to the marriage, in light of the wife's return to the State. The decision to refuse revocation of the deportation order was communicated to the solicitors by letter of 1st April 2003, signed by Ms. O'Connor. The letter gives one reason only for the decision:

> *"Mr Cirpaci and Ms McCormack have not resided together as a family unit for an appreciable period of time since the date of their marriage."*

There ensued further correspondence from the Appellants' solicitors written in an attempt to persuade the authorities to change the decision. They gave details of the relationship between the Appellants which had existed since late in 1999, shortly after the husband had arrived in the State. The information included details concerning the wife's Irish children from previous relationships, their relationship with the husband and the wife's employment status. It was argued that it was not reasonable to expect the wife to reside with the husband in Romania.
Ms. O'Connor wrote on 29th May 2003 confirming the letter of 1st April and stating that *"the Minister's decision … … shall endure until such time as the applicant and his spouse are in a position to establish that they have resided together as part of a family unit for an appreciable period of time since the date of their marriage."*
Thus it is clear that, so far as the Appellants were concerned, there was only one reason for the decision. The other reason mentioned in Ms. O'Connor's recommendation was not communicated to them. On 28th July 2003, O'Neill J made an order giving leave to apply for Judicial Review of the decision *"communicated… … by letter received on the 1st day of April 2003 and repeated by letter dated the 29th day of May 2003……"*

The grounds upon which leave were granted may be summarised as follows:

1. There is no statutory basis for the requirement that the applicants live together for an appreciable time before the grant of permission to reside in the State: the decision is, therefore, ultra vires the powers of the Minister;
2. The Minister is bound to exercise his discretion in a constitutionally just manner and with due regard to the rights of the family protected, inter alia, by Articles 40.1, 40.3, 41 and 42 of the Constitution;
3. The Minister is similarly bound to have regard to the fundamental rights guaranteed, inter alia, by Article 8 of the European Convention on Human Rights and Fundamental Freedoms;
4. The family circumstances of the applicants are such that it is not reasonable to require them to live together, in effect, in Romania: the decision is, therefore, unreasonable;
5. The decision is also disproportionate: the objective of protecting the integrity of the immigration system is not of sufficient weight to justify interference with the constitutionally protected rights of the applicants to the company of each other, the right to family reunification and the right to forma a family life;
6. Insofar as concerns Article 8 of the Convention, the decision is also disproportionate and the objectives pursued do not relate to concerns pressing and substantial in a free and democratic society.

Those grounds could not and did not relate to that part of Ms. O'Connor's recommendation which raised doubts as to whether the marriage had been entered into solely to facilitate the husband's re-entry into the State. The Appellants were unaware of that matter prior to the substantive hearing of the application for Judicial Review before Quirke J in the High Court.
It appears that Ms. O'Connor's memorandum was produced in the High Court at the request of counsel for the Appellants and was admitted into evidence without formal proof. The consequences of this disclosure was the subject of debate on the hearing of the appeal, when Mr Feichin McDonagh, Senior Counsel for the Appellants, sought to place reliance on the existence of the first sentence of Ms. O'Connor's recommendation as a basis for suggesting that the second reason (absence of evidence of cohabitation for an appreciable period) could not stand alone and had to be read with the first reason. In effect, he sought to expand the grounds for Judicial Review to include a ground based on the existence of this reason, that it must have had an influence on the decision and that, since the Minister was not now relying upon it, the decision must be held to be invalid. In order to deal with this issue, it is necessary to revert to the history of the proceeding in the High Court.
When the memorandum was produced, Quirke J quite properly granted leave to the applicants (now the Appellants) to amend the grounds of application for Judicial Review. Consequently, the following grounds were

added:

11A. Failing to take into account all relevant considerations and taking into account irrelevant considerations.

11B. Failing to have regard to natural and constitutional justice in the exercise of a statutory discretion, in particular, having regard to the nature of the constitutional and/or human rights interests at stake and/or affected by the decision.

It will be noted that neither of these additional grounds relates in any way to the revelation that the first sentence of Ms. O'Connor's original recommendation referred to a doubt about the genuineness of the marriage. Ms. Sara Moorhead, Senior Counsel for the Minister, explained to this Court that she was conscious of the fact that insofar as this was a reason for refusal to revoke to deportation order, it had never been communicated to the applicants. Thus she found herself bound by the only reason actually conveyed and unable to rely on the first sentence. This is confirmed by the terms of the affidavit of Mr Mortell, sworn on behalf of the Minister. Mr Mortell confirmed, in the first instance, that he had taken into account all available information and proceeded:

"*It was considered that the application for residency on the basis of marriage to an Irish national and also therefore, revocation of the Deportation Order should be refused, particularly as Mr Cirpaci and Ms McCormack had not resided together as a family unit for an appreciable period of time since the date of their marriage and Mr Cirpaci did not make any representations regarding his relationship with Ms McCormack prior to the Deportation Order being signed."*

Although evidence was given on behalf of the applicants in the High Court, no application was made to cross-examine Mr Mortell on his affidavit. Ms Moorhead's position on the hearing of the appeal was that she could not and did not rely, either in the High Court or in this Court, upon any doubts concerning the genuineness of the marriage. Mr McDonagh responded that this represented a new concession and that it somehow altered the proceedings from what had existed in the High Court. I cannot accept this argument. The Minister's position has not changed between the High Court and this Court. The Appellants had every opportunity to amend their grounds at the time of the High Court hearing. The amendment of grounds for Judicial Review is not a mere matter of pleading. The grounds form the basis upon which the courts enter into a consideration of the decisions which are attacked. It is important that, so far as practicable, they be clearly advanced at the earliest time which is feasible. The proposed new ground was not considered by the High Court. I would not be prepared to entertain any amendment at this late stage to the grounds based on the existence of the sentence concerning the genuineness of the marriage.

Mr McDonagh, on behalf of the Appellants, relied on the grounds on which Judicial Review had been granted, which have been summarised above. He acknowledged the State's legitimate interest in the control of immigration: there was, therefore, no challenge to the validity of the deportation order enforced against the husband in September 2002. There were, he said, two possible approaches to the letters of 1st April and 29th May 2003. Either there was one decision, with the later letter containing an explanation of the earlier, or there were two separate decisions. Mr McDonagh argued that the solicitors for the husband, after 1st April, placed before the Minister material which had not been before Mr Mortell when he made his decision on 31st March. Hence the letter of 29th May conveyed a new decision. Counsel favoured the latter approach.

Mr McDonagh principally concentrated his fire on the reason given for the decision. It could not be lawful for the Minister to insist on the applicants living together for an appreciable time as a precondition of considering whether to revoke the deportation order so as to permit them to enjoy, in the State, the family rights protected both by the cited Articles of the Constitution and by Article 8 of the European Convention. Firstly, he argued strenuously, as he had in the High Court, that the Minister, by putting forward such a reason, had shown that he was following a fixed, rigid and inflexible policy, which precluded him from taking account of the merits of the individual case. He had, thus, unlawfully fettered himself in the exercise of the broad discretion conferred upon him by the section. Secondly, he argued, in reliance on the decision of Ryan J in *P.F. and C.F. v Minister for Justice, Equality and Law Reform* (Unreported 26th January 2005), that this reason had no rational connection with the policy objectives being pursued by the Minister and that, for this reason, it was unreasonable (irrational) in the sense explained in the decisions of this Court in *State (Keegan) v Stardust Compensation Tribunal* [1986] I.R. 642 and *O'Keeffe v An Bórd Pleanála* [1993] 1 I.R. 39. Thirdly, partially as an expansion of the second argument, but also as a demonstration of the failure of the decision to respect the principle of proportionality, it was unduly unfair, harsh and unjust to require the wife to satisfy this condition by living for an appreciable time with the husband in Romania, a country whose language she does not speak and in the light of her duty to her three Irish-born children in the State. Finally, counsel for the Appellants argued in their written submissions that, in view of the constitutional rights at stake, it was appropriate for the Court to apply a stricter standard of review than the traditional "*Wednesbury*" one enunciated in the *Keegan* and *O'Keeffe* cases. The Court should adopt the more exacting *"anxious scrutiny"* test developed in recent English case law (see, in particular, *Regina v Lord Saville of Newdigate and others* [2001] 1 WLR 1855.)

Ms Moorhead, while accepting that the Minister should respect the principles laid down in a number of decisions of the European Court of

Human Rights in interpretation of Article 8 of the Convention submitted that the Appellants, in particular the husband, did not have any constitutional right, as members of a family, to reside in the State. She cited *Osheku v Ireland* [1986] I.R. 733, *Pok Shun Sun v Ireland* [1986] I.L.R.M. 733, *Laurentiu v Minister for Justice* [1999] 4 I.R. 26 and *A.O. & D.L. v Minister for Justice* [2003] 1 I.R. 1. She said that the Minister had made one decision on 1st April, but had explained this in subsequent correspondence. The Minister had not adopted a fixed or inflexible policy. Ms. O'Connor's memorandum as approved by Mr Mortell and the affidavit of the latter showed that all the circumstances of the individual case had been considered. Nor was there anything irrational in requiring, particularly in the case of a very recently deported asylum-seeker, evidence of cohabitation with his Irish wife for an appreciable period. This had nothing to do with expressing doubts about the genuineness of the marriage. It reflected the fact that constitutional rights are not, in any event, absolute and that the State has a legitimate interest and duty in controlling immigration into the State. With regard to the European Convention, Ms Moorhead cited the summary of the relevant case-law given in the judgment of Lord Phillips of Worth Matravers in *R. (Mahmood) v. Secretary of State for the Home Department* [2001] 1 W.L.R. 840. In particular, relevant considerations are that the parties, at the time of the marriage, are aware of the precarious immigration status of one of the parties and the length of time during which they are able to establish a settled family situation within the State.

I approach this case on the basis that the Minister made a single decision communicated on 1st April 2003. He there gave as a sole reason that the Appellant had not resided together as a family unit for an appreciable period of time since the date of their marriage. It is true that the Appellants subsequently communicated additional information regarding the relationship between the husband and the wife and between him and her children. However, it is clear that the Minister already had some information on that topic. The Minister had been told of the divorce of the husband from his Romanian wife and of the marriage of the Appellants. Among the papers listed in Ms. O'Connor's memorandum is "*letter from wife re her relationship with applicant*." The letter of 29th May merely restates the Minister's position, namely that the applicants must be in a position to establish that they have resided together as part of a family unit for an appreciable period of time since the date of their marriage, before he will reconsider the application. In this respect, there had been no change between the dates of the two letters. Accordingly, I see the letter of 29th May as merely explaining the position the Minister had adopted in the letter of 1st April.

The Minister, in making the impugned decision, was exercising the power conferred by section 3(11) of the Immigration Act, 1999:

"*The Minister may by order revoke an order made under this section*

including an order under this subsection."

On its face, this provision confers a broad discretion, to be exercised in accordance with general principles of law, interpreted in the light of the Constitution and in accordance with fair procedures. Otherwise, the Minister is at large.

Turning then to the major arguments in the case, I do not think there is an unbridgeable gap between the submissions of the respective counsel regarding the basic considerations affecting the exercise of the Minister's discretion. They are, respectively, the legitimate interest of the State in giving effect to its immigration policy and respect for family interests, whether by reference to the Constitution or the European Convention. There is thus a great deal of legal common ground between the parties. Mr McDonagh concedes the relevance of the former consideration and concentrates on the alleged lack of reasonableness and proportionality in the decision. Ms. Moorhead, for her part, while contesting the right of the husband, in particular, to claim a constitutional right to reside in the State, concedes that the Minister should respect family rights guaranteed by the Convention. Indeed it is implicit in the very terms of Ms O'Connor's letter of 29th May 2003 that the Minister's position, both at the time of the decision and subsequently, was that he was willing to consider favourably an application to review the deportation order once there was evidence that the parties to the marriage had lived together for an appreciable time after the marriage. Thus, the Minister implicitly accepted the need to take account of the marital or family relationship. While I would not, for my own part, accept that the family articles of the Constitution in no circumstances confer rights on an Irish citizen to enjoy the society, within the State, of non-national family members, I do not think it is necessary, in view of the stance adopted by the Respondent, to explore these matters further in the present case. I will return to the matter in passing when considering the rationality of the decision.

I turn then to consider the three principal arguments of the Appellants: a fixed policy; unreasonableness; disproportionality.

Like Quirke J, I do not accept that the Minister has been shown to have adopted a fixed or inflexible policy regarding the need for an appreciable period of cohabitation. Mr McDonagh is not saying, under this heading of his argument, that this is not a legitimate consideration, but that the Minister has deprived himself of the opportunity to consider the merits of each individual case. Certainly, Mr McDonagh has shown that the Minister has cited this consideration in other similar cases. But that does not make it a fixed or inflexible policy. Mr Mortell swore that he had given consideration to all available information placed before him. He emphasised that it was (as it still is) open to the Appellants to submit evidence that they have resided together for an appreciable period of time. An "*appreciable period*" is itself a flexible notion capable of adaptation to the facts of the individual case.

I do not accept, either, that it is irrelevant to the Minister's decision whether to revoke a deportation order in a case such as the present, where the application is based entirely on the marriage of the parties, to ascertain whether the parties to such a marriage have resided together for an appreciable period of time. It is legitimate for the Minister to have regard to the duration of the marriage relationship when weighing in the balance the family rights in question. In the course of argument, a number of hypothetical cases were explored. At one extreme an Irish citizen might contract a marriage, valid under the laws of a remote jurisdiction, while on holiday there. Could such a person, within days of the marriage, insist, to the point of demanding that the brevity of the marital relationship was irrelevant, that his or her new spouse be granted a visa admitting him or her to reside in the State? At the other extreme would be an Irish citizen, who had lived abroad for many years, perhaps for his or her entire working life. Such a person has, as a citizen, an undoubted right to return to reside in Ireland on retirement or earlier. It is not necessary to pose the constitutional question whether that person would have the right to be accompanied by his or her foreign spouse of many years. For my own part, I have no doubt that such a right exists. It would not, of course, be absolute. The foreign spouse might be a notorious criminal. It is enough to say that, in the most benign of such circumstances, the Minister would be entitled and possibly bound, in exercising the statutory powers applicable to such situations, to give favourable consideration to a claim that such a person be permitted to be accompanied by his or her spouse. Thus, I am satisfied that the Minister is entitled to take into account, when considering whether to revoke a deportation order, the length of time during which the parties to a marriage have lived together as a family unit. Insofar, as Ryan J decided otherwise in *P.F. and C.F. v Minister for Justice, Equality and Law Reform,* I would not approve of that decision.

I am satisfied, therefore, that the duration of cohabitation was a legitimate consideration. At this juncture, I believe that it is particularly relevant to bring to bear the considerations identified by the European Court of Human Rights. They show how the Member States are required to balance the competing considerations. These have been summarised by Lord Phillips in the passage from *Mahmood,* upon which Ms Moorhead relied. That very useful summary, cited by this Court in earlier judgments, appears at page 861 of the judgment as follows:

"(1) A state has a right under international law to control the entry of non-nationals into its territory, subject always to its treaty obligations.

(2) Article 8 does not impose on a state any general obligation to respect the choice of residence of a married couple.

(3) Removal or exclusion of one family member from a state where other

members of the family are lawfully resident will not necessarily infringe article 8 provided that there are no insurmountable obstacles to the family living together in the country of origin of the family member excluded, even where this involves a degree of hardship for some or all members of the family.

(4) Article 8 is likely to be violated by the expulsion of a member of a family that has been long established in a state if the circumstances are such that it is not reasonable to expect the other members of the family to follow that member expelled.

(5) Knowledge on the part of one spouse at the time of marriage that rights of residence of the other were precarious militates against a finding that an order excluding the latter spouse violates article 8.

(6) Whether interference with family rights is justified in the interests of controlling immigration will depend on

(i) the facts of the particular case and

(ii) the circumstances prevailing in the state whose action is impugned."

Many of the principles to which Lord Phillips there refers can be traced back to the decision of the European Court in *Abdulaziz v United Kingdom* (1985) 7 EHRR 471. At paragraph 67 of that judgment, the following appears:

> *"[T]the notion of "respect"* [for family life] *is not clear-cut: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case. Accordingly, this is an area in which the Contracting Parties enjoy a wide margin*
> *of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals……. In particular, in the area now under consideration, the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the persons involved. Moreover, the Court cannot ignore that the present case is concerned not only with family life but also with immigration and that, as a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory."*

The Court went on to note that the three particular cases before it did not relate

"to immigrants who already had a family which they left behind in another country" and that it "*was only after becoming settled in the United*

Kingdom, as single persons, that the applicants contracted marriage. The Court then observed that the duty imposed by Article 8 *"cannot be considered as extending to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country."*

Furthermore, the Court went on to cite features of the individual cases to demonstrate that each of the three wives resident in the United Kingdom was aware at the time of the marriage of the various immigration difficulties of her foreign spouse.

The Court restated these principles in a number of subsequent cases, notably *Gül v Switzerland* (1996) EHRR 93, a case concerning an application by a Turkish couple who had been permitted to reside over a number of years in Switzerland, to be joined by their twelve-year old son who had lived at all times in Turkey. The Court identified the problem in such cases as being the *"fair balance that has to be struck between the competing interests of the individual and of the community as a whole……"* In deciding in favour of Switzerland, the Court noted, in particular, that the applicant had originally left his son behind in Turkey and that his claim to have left Turkey because of political persecution had not been accepted as a valid reason for his leaving. He had no permanent right to live in Switzerland and his son had at all times been in Turkey. Implicitly, the Court considered that the family life could be re-established in Turkey.

It is apparent that the European Court, while insisting on the obligation of Member States to respect family life even in application of their immigration policies, considers the duration of settled cohabitation of a couple as a relevant consideration. This supports the conclusion I have expressed that it was reasonable for the Minister to take it into account.

The proportionality argument is so closely related as to be almost indistinguishable. The husband had applied unsuccessfully for asylum in the State. He had evaded deportation. Three months after his actual deportation, he contracted a marriage to an Irish citizen in Romania and immediately commenced moves to be readmitted to the State. These are all matters of legitimate concern for the State. As against all this, the Appellants invoke their status as a family and say that the requirement, effectively imposed by the Minister, that they live together for an appreciable time in Turkey is a disproportionate interference with their family rights. However, as the European Court has repeatedly said, a State is not bound to respect the choice of residence made by married couples. It is relevant to bear in mind that the Appellants were aware of the husband's unfavourable immigration history when they entered into their marriage. It was, of course, for the Minister to decide how the balance should be struck between the competing considerations. In doing so, he was bound to respect the principle of proportionality. At least on the facts of this case, that obligation is no

different from his obligation to act reasonably. It has not been demonstrated that the Minister gave disproportionate weight to one rather than the other consideration. He did not shut the door on the Appellants. He made it clear, as appears from Mr Mortell's affidavit, that he remained ready to consider such further evidence as might be submitted to him on the issue of an appreciable period of cohabitation. I do not think that it has been shown that he failed to respect the principle of proportionality.

In summary, I believe that the Minister has been shown to have given due weight to all relevant information placed before him, that it has not been shown that he acted in pursuit of a fixed or inflexible policy or that his decision was unreasonable or disproportionate. Furthermore, given the particular facts of the case, his decision fell well within the margin of appreciation allowed to Member States by the European Convention. If it were necessary and very much for the same reasons, I would be of opinion that the decision would survive the higher standard of scrutiny required by some of the case law cited on behalf of the Appellants. In the circumstances, I do not think this is a case which merits reconsideration of the standard of unreasonableness normally required by the well-established jurisprudence of this Court.

For these reasons, I would dismiss the appeal and affirm the order of the High Court.