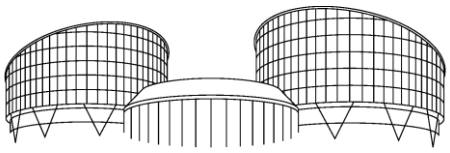

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ROONEY v. IRELAND

(Application no. 32614/10)

JUDGMENT

STRASBOURG

31 October 2013

This judgment is final. It may be subject to editorial revision.

In the case of Rooney v. Ireland,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Angelika Nußberger, *President,*
Mark Villiger,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 8 October 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32614/10) against Ireland lodged with the Court under Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the named applicant, an Irish national, Mr. John Rooney, who describes his professions as farmer and barrister.

2. The applicant complained about the length of two civil actions he began in 1987 and 1995 and about the lack of an effective domestic remedy in that respect. The issues raised by this application are already the subject of well-established case law of this Court (see *McFarlane v. Ireland* [GC], no. 31333/06, 10 September 2010).

3. The applicant represented himself before the Court. The Irish Government ("the Government") were represented by their Agent, Mr. P White, of the Department of Foreign Affairs.

4. On 12 September 2012 the application was communicated to the Government.

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Monaghan.

A. The 1987 Proceedings

6. Certain of the applicant's cattle were put down under a Government Scheme to eradicate Bovine Tuberculosis ("TB"). In November 1987 he began a High Court action challenging the constitutionality of that Scheme.

7. After three hearings in 1988, he was granted partial discovery. He applied to amend his pleadings, leading to two more hearings in1988. Notice of trial was filed in April 1988. He was given leave to amend his pleadings a number of times and he served new pleadings in 1989 and 1990. His request to join other defendants led to six hearings. In February 1990,

the High Court refused his motions for judgment in default of defense, struck out his case against some defendants and refused to appoint a shorthand writer to report on the proceedings.

8. On 14 March 1990 the applicant appealed these decisions to the Supreme Court (appeal no. 111/1990). On 12 October 1990 the appeal was heard. The Supreme Court directed the hearing of a special case in the High Court to rule on two of the applicant's claims, pending which his Supreme Court appeal was adjourned. On 16 May 1991 the High Court rejected the special case. In June 1991 the applicant appealed (appeal no. 224/1991). The Supreme Court heard the appeal in November 1991 and rejected it in December 1991. On the same date, the Supreme Court also rejected appeal no. 111/1990. However, while it upheld the High Court order to strike out the case against certain defendants, it did not deal with the High Court decision to refuse judgment in default of defense.

9. Over the next decade the applicant made several attempts to have the Supreme Court re-open his appeals because, *inter alia*, of this omission. In December 2000 and July 2001 the Supreme Court refused his motions to set aside judgments in appeal nos. 111/1990 and 224/1991. On 5 October 2001 that court made a vexatious litigant order against the applicant.

10. On 30 July 1992 the High Court refused to refer questions to the European Court of Justice ("ECJ"). On 4 July 1994 he applied to the High Court for directions on whether his action had been fully determined by Supreme Court appeal nos. 111/1990 and 224/1991. The High Court made no order and adjourned the matter generally. On 8 January 2001 he issued a motion seeking leave to amend his statement of claim: it was adjourned once the vexatious litigant order was made.

11. On 31 July 2006 the High Court allowed the applicant re-enter the motion of 8 January 2001. On 19 June 2007 the High Court refused to hear that motion given the vexatious litigant order. In July 2007 he appealed (appeal no. 217/2007). On 6 October 2009 the Supreme Court heard this appeal (along with another appeal in a separate action of the applicant, appeal no. 387/2004, see paragraph 17 below). In its judgment of 9 March 2010, the Supreme Court found that claims outside the scope of the special case could still be pursued so that the High Court decision of 19 June 2007 was incorrect. It also found that, due to a clear "oversight", his appeal in relation to the motion seeking judgment in default of defense had not been determined (part of appeal no. 111/1990):the Supreme Court would therefore hear submissions as to how to deal most quickly with it. While claiming that the applicant had orally proposed not to go ahead with this part of his appeal, the Government submitted no court order or other substantiating document to that effect.

12. On 18 November 2010 the High Court rejected his claim to amend his statement of claim. On 14 December 2010 he appealed to the Supreme

Court (appeal no. 430/2010). The applicant has filed a certificate of readiness in relation to that appeal and the appeal awaits a hearing date.

B. The 1995 Proceedings

13. From April 1993 to July 1996 the applicant's herd of cattle was "restricted" under the same Government Scheme given a suspicion of TB.

14. On 8 November 1995 he began a High Court action against State defendants claiming that the herd restriction was unlawful and that the Scheme was contrary to statute, the Constitution, the Convention and EU law. In December 1997 he obtained an order for discovery. In July 2002 he served a Notice to Admit Facts on the Chief State Solicitor and in November 2002 the latter refused. He served a Notice of Trial on 16 December 2002. The action was heard in the High Court over ten days (May and June 2004). In July 2004 the High Court dismissed his claims.

15. On 16 August 2004 the applicant filed appeal no. 387/2004 ("the 2004 appeal") claiming, *inter alia*, that the High Court judgment was wrong and had not mentioned important evidence and legal submissions. On 25 July 2006 he filed written submissions in the appeal. On 23 January 2007 he filed a Certificate of Readiness as regards that appeal.

16. On 15 November 2007 he unsuccessfully applied to have the 2004 appeal put in the Supreme Court priority list. Further to his query, in May 2009 the Registrar responded that the waiting time for a hearing after a case had been certified as ready was 31 months and no hearing date had yet been allocated. On 31 July 2009 the courts service informed him that the 2004 appeal would be heard along with appeal no. 217/07 (paragraph 12 above) on 6 October 2009. On that date, oral arguments on both appeals were heard by the Supreme Court and judgment was reserved.

17. On 9 March 2010 the Supreme Court gave judgment in appeal no. 217/2007 and, when the applicant later asked for judgment on the 2004 appeal, the Supreme Court replied that it was covered in that judgment.

18. On 12 March 2010 the State Solicitor agreed with the applicant that the Supreme Court had omitted to deal with the 2004 appeal. Further to the applicant's many initiatives, the case was listed in the Supreme Court list for mention three times in April 2010. On the last date, the Chief Justice ordered that the 2004 appeal be placed on the list of Supreme Court appeals awaiting hearing dates.

19. On 18 November 2010 the Supreme Court delivered a detailed judgment dismissing the applicant's appeal.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1, ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION

20. The applicant complained that the length of the 1987 and 1995 actions was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention and, under Article 13, that he had no effective domestic remedy in that regard.

21. Article 6 § 1, in so far as relevant, reads as follows:

> "6(1) In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

22. Article 13, in so far as relevant, reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority...."

23. The Government contested these submissions, arguing that the delay stemmed principally from the applicant's actions and omissions.

24. As to the 1987 proceedings, the Court notes that the period to be taken into consideration began on 19 November 1987 and has not been shown to have ended. It has thus lasted had already almost 26 years for two levels of jurisdiction.

25. As to the 1995 proceedings, the period to be taken into consideration began on 8 November 1995 and ended on 18 November 2010. The action lasted 15 years for two levels of jurisdiction.

A. Admissibility

26. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

28. The Court has also found violations of Article 6 § 1, alone and in conjunction with Article 13 of the Convention, in cases raising issues

similar to those in the present case (see, in particular, *McFarlane v. Ireland* ([GC], no. 31333/06, 10 September 2010).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, while the applicant did make numerous motions and other applications, significant delay in both actions was also caused by, *inter alia*, long delays before the Supreme Court because of structural issues and because of errors which that court accepted it had made.

30. Having regard to its case-law on the subject, the Court considers that, in the present case, the length of the proceedings was excessive in that it failed to meet the "reasonable time" requirement and, further, that the applicant did not have an effective domestic remedy in that respect.

31. There has accordingly been a breach of Article 6 § 1, both alone and in conjunction with Article 13 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damages, costs and expenses

33. The applicant claimed, *inter alia*, 65,000 euros (EUR) in respect of non-pecuniary damage, additional unspecified sums for an attack on his reputation and for his being pursued for debt. He also claimed EUR 600,000 for pecuniary loss, this representing the alleged reduced capital value of his assets. The applicant, who presented himself before the Court, also claimed EUR 3,950.00 in legal costs and expenses as regards the present application.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violations found and the pecuniary damage alleged: it therefore rejects this claim.

36. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Moreover, regard being had to the documents in its possession and to its case-law, the Court also finds it reasonable to award the applicant, not represented by a lawyer before this Court, a sum in legal costs and expenses). Ruling on an equitable basis, the Court makes a total award to the applicant of EUR 26,000 in respect of non-pecuniary loss, legal costs and expenses, plus any tax that may be chargeable to the applicant.

B. Default interest

37. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1, both alone and in conjunction with Article 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 26,000 (twenty-six thousand euros) in respect of non-pecuniary loss, legal costs and expenses, plus any tax that may be chargeable to the applicant; and
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Angelika Nußberger
President