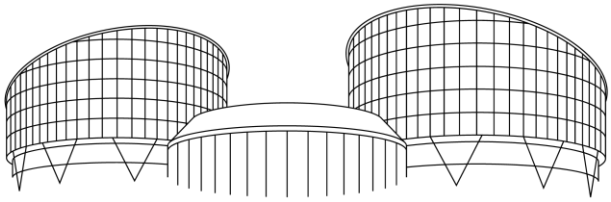

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SUPERWOOD HOLDINGS PLC AND OTHERS
v. IRELAND

(Application no. 7812/04)

JUDGMENT

STRASBOURG

8 September 2011

FINAL

08/12/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Superwood Holdings Plc and Others v. Ireland,

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ann Power,
Ganna Yudkivska, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 5 July 2011,

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

PROCEDURE

1. The case originated in an application (no. 7812/04) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish national, Mr Richard Bunyan, who is the Executive Chairman of all the applicant companies and who is the first applicant. The second applicant, Superwood Holdings plc, is the parent company which owns all shares in the five other applicant companies (Superwood Ltd, Superwood Exports Ltd, Superwood International Ltd, Superchip Ltd and Superwood (U.K.) Ltd). All the companies are incorporated in Ireland, except Superwood (U.K.) Ltd, which is incorporated in the United Kingdom.

2. The applicants were represented before the Court by Mr Michael Forde, Senior Counsel, and, subsequently, by Ms Mary Bunyan, barrister at law. The Irish Government ("the Government") were represented by their Agent, Ms P. O'Brien and, subsequently, by their co-Agent Mr P. White of the Department of Foreign Affairs.

3. On 31 May 2007 the Court decided to communicate the complaint concerning the length of the proceedings to the Government.

THE FACTS

4. The applicant companies are collectively described as "Superwood".

5. In October 1987 a fire occurred for which Superwood claimed 2,000,000 Irish pounds ("IR£") from their insurers. The latter denied liability arguing that Superwood's claim was so grossly exaggerated as to be fraudulent. On 28 June 1989 Superwood took proceedings against the insurers seeking damages for wrongful repudiation.

6. On 1 July 1989 the High Court hearing began. The trial took place over 116 hearing days and was one of the longest trials in Irish civil

litigation history (the transcript exceeded 8500 pages). During the trial (on 1 May 1990) the trial judge directed that liability would be determined first and quantum thereafter, if relevant.

7. Some weeks after the end of the trial, on 13, 14 and 15 August 1991 the High Court delivered its judgment finding Superwood's claim to be fraudulent. Any insurance benefit was therefore forfeited and an assessment of damages was moot. On 12 November 1991 the High Court ordered the dismissal of the action.

8. On 12 December 1991 Superwood filed a notice of appeal to the Supreme Court with 56 grounds of appeal. Superwood lodged Books of Appeal on 15 July 1992 and a certificate of readiness in October 1992. In December 1992 Superwood applied for an early hearing date, which application was adjourned six times. Superwood's detailed appeal submissions were lodged in July 1993. Following two further adjournments, the insurer's appeal submissions were lodged in January 1994. In March 1994 the Supreme Court heard and allowed Superwood's request to amend its notice of appeal. Following the Supreme Court's orders to file submissions as to the transcripts to be relied upon for the appeal, then to file abridged written submissions and then to file skeleton submissions, on 9 December 1994 the Supreme Court set a hearing date.

9. Following a hearing of 16 days during February and March 1995, on 27 June 1995 the Supreme Court delivered its judgment unanimously upholding the appeal and finding, *inter alia*, that the trial judge had erred in holding that the evidence supported a finding that Superwood's claim was fraudulent. The case was remitted to the High Court to determine the losses attributable to the fire and any other relevant issues.

10. In March 1996 Superwood's motion for interim payment of damages (based on an alleged recognition by the Supreme Court of clear minimum liability of the insurers to Superwood) and of costs was struck out.

11. On 16 July 1996 the High Court, on Superwood's request, gave directions for the re-trial and made a consent order that the re-trial would first quantify the loss attributable to the fire (the insurance money) and then any losses arising out of a failure by the insurers to pay that money.

12. On 25 July 1996 the High Court set the case down for re-trial on 19 November 1996.

13. On 25 October 1996 the first three insurers applied to extend time to make lodgements into court.

14. On 11 November 1996 the re-trial judge ruled that the re-trial would not follow the two-phased structure envisaged by the consent order of 16 July 1996 but that it would be a composite trial. On 12 November he allowed the first three insurers to make lodgements: Superwood could accept the lodgements within 3 days. On 18 November the Supreme Court rejected Superwood's appeal: it could accept the lodgements within a further 3 days. On 19 November 1996 lodgements were made by the first three insurers (IR£ 3,152,761). It would appear that the fourth insurer also made a lodgement (IR£ 1,650,000) at this point.

15. In December 1996 and March 1997 the High Court refused Superwood's motion to adduce further evidence and the Supreme Court rejected its appeal on 18 March 1997.

16. The High Court re-trial began in 19 February 1997 and ended, after 281 trial days, on 3 March 2000. It generated 41,000 pages of transcript.

The re-trial was adjourned from 31 July 1997 to 17 February 1998. The trial judge, diagnosed with cancer, underwent surgery in November 1997, intensive treatment in December 1997 and some treatment continued until May 1998. The re-trial judge informed the parties of his illness and treatment on 5 March 1998 giving them an opportunity to apply to disbar him. Superwood claimed that their Counsel requested the re-trial judge in his chambers to disbar himself in March 1998 but that he did not do so. They also claimed that the re-trial judge did not sit for all potential hearing dates from March to May 1998. In July 1998 the High Court judge submitted, at the request of Superwood, to a medical examination which concluded as to his fitness to preside the trial. While that report was intended to be sent sealed *via* Superwood's solicitors to Superwood's insurers (to assist their taking out insurance for litigation delay), on the judge's instructions it was sent to the Central Office of the High Court where it remained sealed. A copy was later made available to the Supreme Court. Superwood first had sight of this report when the Government furnished it to this Court.

In May 1998 (also during the re-trial) the High Court refused an extension of time to Superwood to accept the lodgement of the fourth insurer. On 21 June 1998 the Supreme Court allowed Superwood's appeal. Superwood then accepted the fourth insurer's lodgement and settled its case against that insurer for an added sum of approximately IR£ 1,420,000.00.

In January 1999 Superwood's counsel withdrew from the case. Superwood continued to be represented by a number of solicitors.

17. On 4-6 April 2001 the High Court delivered its judgment (872 pages exhibiting 1525 indexed documents). The High Court found the first three insurers liable to Superwood in the total sum of about IR£ 150,000 (plus interest). Superwood was therefore entitled to its re-trial costs only up to the date of the lodgements and, consistently, the first three insurers were entitled to their costs from the date of their lodgements. The High Court also granted an injunction freezing Superwood's assets up to the value of IR£ 5,000,000 to cover the estimated legal costs of the insurers.

18. On 16 May 2001 Superwood appealed the High Court judgment to the Supreme Court invoking 336 separate grounds of appeal. Later that month Superwood also appealed against the injunction.

19. On 21 December 2001 the first three insurers applied to the Supreme Court for an order for security for costs as regards their defence of the appeal. On 12 April 2002 the Supreme Court ordered the payment by Superwood of security for costs (section 390(1) of the Companies Act 1963) and stayed the substantive appeal pending payment. The Supreme Court noted that the issue on re-trial was quantum, not liability, and that an arguable right of appeal existed as to quantum. However, an order for

security for costs was warranted since Superwood comprised limited liability companies which had pursued expensive and protracted litigation exposing the insurers to a substantial financial burden in which Superwood's claim to substantial damages had been rejected.

20. On 30 October 2002 and 26 March 2006, respectively, the Master of the High Court determined the amount of security to be lodged (about 1,600,000 euros, "EUR") and the High Court dismissed Superwood's appeal. The High Court recorded that Superwood's claim amounted to approximately IR£92,000,000. From October 2003 a Senior Counsel joined Superwood's legal team. On 17 October 2003 the Supreme Court dismissed Superwood's appeal and ordered that security for costs be paid into court within three months. On 19 December 2003 and on 16 and 23 January 2004 the Supreme Court refused Superwood's applications for an extension of the time to furnish security for costs, for the appeal to be heard in two stages and for it to be allowed to substitute a new notice of appeal.

21. Further to the application of the first three insurers (February 2004), on 15 March 2004 the Supreme Court struck out Superwood's appeal for failure to furnish security for costs. It also dismissed Superwood's further applications, *inter alia*, for leave to amend its notice of appeal or to file a new notice. The Supreme Court considered that it was within its inherent jurisdiction to dismiss proceedings by a company which had failed to provide security for costs ordered in the interests of the proper administration of justice. This was not inconsistent with the constitutional right of access to an appeal. Had Superwood made some realistic proposal to furnish security for costs, the Supreme Court might have been disposed to consider it. However, Superwood choose instead to bring numerous applications in a futile attempt to re-open the security for costs matter already determined by the Supreme Court in April 2002. In its judgment, the Supreme Court referred to the claim as amounting to IR£92,000,000.

22. Superwood maintained that the taxation of various awards of costs in its favour has not been completed. It would appear that the taxing master disallowed part of its claim and, when Superwood appealed this to the High Court, the High Court made a security for costs order against Superwood. Superwood has not made this payment to date.

23. On 5 January 2004 Superwood issued proceedings against Ireland and the Attorney General seeking to challenge the constitutionality of section 390(1) of the Companies Act 1963. By judgment and order of 5 and 13 July 2005, respectively, that action was dismissed as disclosing no reasonable cause of action.

THE LAW

I. COMPLAINTS OF THE FIRST APPLICANT

24. The first applicant, as well as being the Executive Chairman of the applicant companies, referred to his shareholdings in those companies. The Court also notes that he was not a party to the domestic proceedings. Having regard to the principles established in the Court's case law, the Court does not consider that he can claim to be a victim of a violation of Article 6 of the Convention (see, for example, *Agrotexim and Others v. Greece*, 24 October 1995, §§ 59-72, Series A no. 330-A; and *Veselá v. Tobiáš* (dec.), no. 54811/00, 13 December 2005).

25. It follows that the first applicant's complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4 of the Convention.

26. The Court has considered below the complaints of the applicant companies, which are referred to collectively as "Superwood".

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (REASONABLE TIME)

27. Superwood complained that the length of the proceedings was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which provision reads as follows:

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

28. The Government contested that argument.

29. The Court notes that the period to be taken into consideration began on 28 June 1989. As to when the period ended, the Government maintained that the final decision was delivered by the Supreme Court in March 2004 and Superwood argued that, since the taxation of costs was unresolved, the proceedings had not ended. The Court recalls that a taxation of costs procedure is to be seen as a continuation of the substantive litigation and accordingly as part of the "determination of ... civil rights and obligations" (*Robins v. the United Kingdom*, 23 September 1997, § 29, *Reports of Judgments and Decisions* 1997-V; *Doran v. Ireland*, no. 50389/99, § 43, ECHR 2003-X; and *McMullen v. Ireland*, no. 42297/98, § 31, 29 July 2004). Since the Government did not dispute that taxation of costs has not been completed, the proceedings can be considered to be continuing.

30. The period under consideration is therefore almost 22 years.

A. Admissibility

31. The Government argued that there had been a failure to exhaust domestic remedies as Superwood did not take an action for damages for breach of the constitutional right to an early trial. Superwood disagreed.

32. The Court's recalls its conclusion in *McFarlane v. Ireland* ([GC], no. 31333/06, § 128, ECHR 2010-...) that such an action did not constitute an effective remedy available in theory and in practice within the meaning of Article 13 in a case concerning the length of criminal proceedings. It sees no reason to find otherwise in a case concerning the length of civil proceedings (see, also, *Doran v. Ireland*, cited above, at §§ 55-69 and *O'Reilly and Others v. Ireland*, no. 54725/00, § 37, 29 July 2004). This objection of the Government must therefore be dismissed.

33. The Court further considers that this complaint of Superwood is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

34. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicants and of the relevant authorities, and the importance of what was at stake for the applicants (see, for example, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV and, the above cited *Doran* case, at § 44).

35. The Court has already found violations of Article 6 § 1 of the Convention in cases against Ireland raising similar issues (the above-cited cases of *Doran*, *O'Reilly* and *McMullen* as regards civil proceedings and the above-cited case of *McFarlane* as regards criminal proceedings). While the Court has reached the same conclusion in the present case, it has highlighted below certain differences of degree in the present case.

36. In the first place, the Court considers it evident that the proceedings were procedurally, legally and factually complex having regard to the issues disputed, to the volume of pleadings and the length of the judgments, to the amount of interim applications and appeals therefrom and to the fact that the trial and re-trial were two of the longest High Court trials in Irish civil litigation history. The very nature of the action itself contributed significantly to the overall length of the proceedings.

37. Secondly, the Court is of the view that the conduct of Superwood also accounted for much delay in the proceedings. In particular, while Superwood was entitled to make use of all procedural steps relevant to it, it must bear the consequences when delay results (*McMullen v. Ireland*, § 35). In this respect and, in particular during the re-trial phase of the proceedings, Superwood made numerous applications to the Supreme Court (including an appeal against the judgment on re-trial which contained over 300 grounds of

appeal), the majority of which applications were not successful. Moreover and importantly, the failure to resolve the taxation of costs matter since March 2004 is, on Superwood's own submissions, the result of the refusal to pay security for costs as ordered by the High Court and thus the last 7 years delay is entirely attributable to Superwood.

38. While the Court therefore considers that the complexity of the case and the conduct of Superwood contributed in no small part to the delay in the proceedings, those factors alone do not explain the overall length of the proceedings. The Court has therefore examined the conduct of the authorities. In this respect, the Court recalls in particular that, contrary to the Government's submission, even a principle of domestic law that parties to civil proceedings are required to take the initiative to progress the proceedings, does not dispense a State from the requirement to organise its system to deal with cases within a reasonable period of time: if a State allows proceedings to continue beyond a "reasonable time" without doing anything to advance them, it will be responsible for the resultant delay (*Foley v. the United Kingdom*, no. 39197/98, § 40, 22 October 2002; *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003 as cited in *McFarlane v. Ireland* [GC], no. 31333/06, § 152, ECHR 2010-...). Moreover, particular diligence was required of the authorities following the appeal judgment of 1995 which ordered a re-trial in a complex case 6 years after the action had begun. The periods of delay noted below have been assessed in the light, *inter alia*, of these principles.

39. In the first place, the Court notes that the period between the lodging of Superwood's appeal to the Supreme Court (December 1991) and its hearing (early 1995) was marked, not only by numerous adjournments and several requests by the Supreme Court to the parties for different forms of pleadings, but also by a lack of initiative by the authorities to progress the appeal certified as ready since October 1992. The Court does not consider a delay of over 3 years to hold an appeal hearing, even in this complex case, to be justified.

Secondly, the Court notes that the first hearing date fixed for the re-trial (November 1996) was 17 months after the judgment requiring that re-trial.

Thirdly, while the Court considers that it may well have been more efficient to adjourn the re-trial pending the re-trial judge's illness rather than to appoint a third High Court judge to such a complex case, this adjournment led to over 5 months' delay during the re-trial (taking account of the two-month judicial vacation period). Thereafter and until May 1998, the Government did not dispute that the re-trial judge did not spend all available trials dates on the case. Once the High Court re-trial was finished, a year passed before judgment was delivered, at which point the action was in being for almost 12 years**.**

Fourthly, and while Superwood's appeal to the Supreme Court of 2001 was extensive, that appeal was not determined on its merits but on the basis of the narrower question of security for costs. However, while the relevant insurers applied for an order for security for costs in December 2001, the Supreme Court did not strike out the appeal for failure to pay those costs

until March 2004, a delay of almost 2 and half years. It is true that the calculation and payment of security for costs was contested, determined and appealed during this period: however, the Court does not consider that sufficient diligence was exercised at this point by the authorities to bring lengthy proceedings to a speedy conclusion.

Fifthly, on the Government's own observations, the overall length of this complex commercial case was not a fatality. They accepted that the present case would now be examined by the Commercial Court (established in 2004) and explained that that court examines complex commercial cases in markedly shorter periods of time.

40. Accordingly, the Court finds that the above-described delays were attributable to the competent authorities, were not justified by the submissions of the Government and contributed importantly to the overall length of the proceedings.

41. Finally, having regard, *inter alia*, to the sums of money at issue (the High and Supreme Courts described Superwood's claim as having risen during the proceedings to approximately IR£90,000,000, paragraphs 20 and 21 above), there was evidently much at stake for Superwood.

42. In such circumstances, the Court considers that the length of the present proceedings was excessive and failed to meet the "reasonable time" requirement and finds that there has therefore been a breach of Article 6 § 1 of the Convention.

III. REMAINING COMPLAINTS

43. Superwood also complained under Article 6 § 1, alone and in conjunction with Article 14 of the Convention, of a denial of access to court as a result of the order for security for costs of the Supreme Court of March 2004. Superwood also took issue under these Articles with various matters concerning the re-trial judge arguing, *inter alia*, that his health, hostile attitude and inexperience had a negative impact on the trial and the resulting judgment, which they considered was inconsistent and incorrect.

Superwood further complained under Article 1 of Protocol No. 1 about the domestic costs awards against them, arguing that they were wrongfully deprived of their possessions.

Finally, Superwood complained under Article 13 that they were deprived of an effective remedy as a result of the security for costs order and, further, that they had no remedy to challenge the medical fitness of the re-trial judge.

44. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

45. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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. Damage

1. Pecuniary

47. Superwood made detailed submissions claiming compensation for pecuniary damages including for property and other material loss, loss of business and loss of business opportunities. They requested the lifting of the current High Court injunction to release monies to them to brief an expert to fully evaluate their pecuniary losses.

48. The Government considered that there was no causal connection between the pecuniary damages claimed and the violation established.

49. The Court recalls that there must be a clear causal connection between the violation of the Convention established and the damage claimed (the above-cited *Doran* judgment, at § 73). The complaints, other than those concerning the excessive length of the proceedings, were declared inadmissible and the Court has identified what it considers to be unjustified periods of delay attributable to the authorities.

50. Accordingly, and quite apart from briefing experts to assess the claimed losses, Superwood's numerous submissions on just satisfaction (including on causal link) did not attempt to draw any precise causal connection between periods of unjustified delay and any precise pecuniary impact. No award is accordingly made for pecuniary damage.

2. Non-pecuniary damage

51. Superwood's only claim under this heading was for an *ex-gratia* award for non-pecuniary damage (mainly stress related) sustained by one of Superwood's solicitors during the domestic proceedings. The Government considered that there was no causal connection between the damages claimed and the violation established.

52. The Court notes that the solicitor, to which Superwood referred, is not an applicant and it therefore makes no award under this heading.

B. Costs and expenses before the Court

53. Superwood claimed EUR 37,500 for Senior Counsel's costs (150 hours work at EUR 250 per hour) in preparing the application and observations as well as EUR 16,800 for their legal representative's work (84 hours work at EUR 200 per hour), amounting to a total claim in legal

costs and expenses of EUR 65,703 inclusive of value-added tax ("VAT"). EUR 2000 is also claimed in secretarial and administrative costs.

54. The Government objected to this claim.

55. Regard being had to the documents in its possession and to its case-law as well as the subject matter and complexity of the proceedings before this Court, the Court considers it reasonable to award the sum of EUR 3,800 in legal costs and expenses, inclusive of VAT plus any other tax that may be chargeable to Superwood.

C. Default interest

56. The Court considers it appropriate that the default interest 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

1. *Declares* by a majority the applicant companies' complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one, that there has been a violation of the reasonable time requirement of Article 6 § 1 of the Convention as regards the applicant companies;

3. *Holds* by six votes to one,
   (a) that the respondent State is to pay the applicant companies, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amount of EUR 3,800 (three thousand eight hundred euros), inclusive of VAT plus any other tax that may be chargeable, in respect of costs and expenses of the Convention proceedings; and
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 8 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Dean Spielmann
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Ann Power is annexed to this judgment.

D.S.
C.W.

DISSENTING OPINION OF JUDGE POWER

The question of whether an effective remedy in damages for breach of a Constitutional and Convention right to trial within a reasonable time exists in Ireland was the issue which came before this Court in the recent case of *McFarlane v. Ireland*.[1] That case involved criminal proceedings and it was not contested that there exists a considerable body of domestic case law that demonstrates that damages for a breach of a Constitutional right are readily available (see § 85 of the *McFarlane* Judgment). There was also opened to the Court independent expert opinion to the effect that a Constitutional remedy is not just probably but "almost certainly" available in Ireland.[2] In those circumstances, I shared the opinion of the dissenting Judges that the probability of such a remedy had been established by the Respondent State and that there was, thus, an obligation upon a complainant to exhaust it prior to lodging an application with this Court.

For the reasons set out in the detailed joint dissenting opinion in *McFarlane* I voted against the majority on the admissibility and merits of the claim and I did likewise in the instant case. The consistent approach of this Court as articulated and reiterated by the Grand Chamber in *Selmouni v. France*[3] has been that the complaint which an applicant intends to make subsequently to this Court must first have been made to the appropriate domestic body.

The instant application was lodged in 2004. It is clear from the facts as outlined in the Judgment that the substance of the applicants' claims before the domestic courts was not concerned with an alleged breach of their constitutional right to a trial within a reasonable time. The proceedings were, as the majority points out, procedurally, legally and factually complex, but the dispute in issue did not concern the legal concept of the right to a trial within a reasonable time. It involved, rather, matters relating to insurance law and, subsequently, security for costs and company law. In my view, any complaint or claim which the applicants wish to make in relation to 'length of proceedings' ought to have been made, firstly, at domestic level.

The dissenting judges in *McFarlane* noted that the Judgment stood as an invitation to all who fail to have their allegedly lengthy criminal proceedings prohibited in Ireland to simply by-pass the domestic courts and to come directly to Strasbourg for an award of damages. In the light of that 'invitation' (extended in this case to civil proceedings) applications lodged in this Court *after* the date of the delivery of the *McFarlane* judgment may require consideration of additional matters to those outlined herein.

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[1] *McFarlane v. Ireland* [GC], no. 31333/06, 10 September 2010

[2] Also relied upon in this case at § 17 of the Respondent State's Observations dated 14 December, 2007

[3] *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V