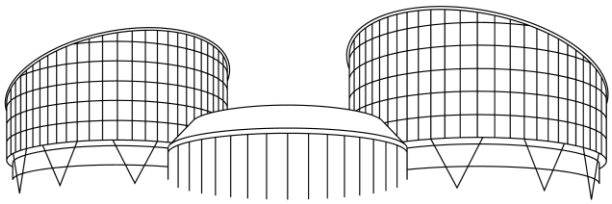

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF T.H. v. IRELAND

(Application no. 37868/06)

JUDGMENT

STRASBOURG

8 December 2011

This judgment is final but it may be subject to editorial revision.

In the case of T.H. v. Ireland,

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

Mark Villiger, *President,*
Dean Spielmann,
André Potocki, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 15 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 37868/06) 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, T.H. ("the applicant"), on 8 September 2006.

2. The applicant was represented by Mr D. O'Sullivan, a solicitor practising in Cork, Ireland. The Irish Government ("the Government") were represented by their Agent, Mr P. White, of the Department of Foreign Affairs.

3. On 31 May 2007 the Court decided to give notice of the application to the Government.

4. The applicant died in July 2007. On 26 February 2008 the Chamber decided that the applicant's sister could take over his application before this Court. The Court has referred below to the late T.H. as the applicant.

THE FACTS

5. The applicant was born in 1974 and lives in Ireland.

6. Further to a complaint in 1995, in September 1995 the applicant was requested to attend a local police station to be interviewed. In October 1995 he was arrested for further questioning, following which a summons issued in September 1996 charging him with sexual assault. Over a number of hearings before the District Court (October 1996-January 1997) the applicant argued that the case should be disposed of by summary trial.

7. In February 1997 he was granted leave by the High Court to apply for judicial review on two grounds: that the prosecution had brought unlawful pressure to bear on him as it would not consent to a summary trial unless he pleaded guilty and, further, that there was a pattern of abuse of process and fundamental unfairness amounting to oppression and a denial of justice.

8. Between July 1997 and October 2002 the High and Supreme Courts made several orders essentially in the applicant's favour concerning discovery by the prosecution to him of documents, ending with the production, in November 2002, of a letter.

9. In December 2002 the applicant obtained leave to add a ground to his pending judicial review application: he argued that delay in his prosecution was contrary to the Constitution and to Article 6 of the Convention.

10. In February 2003 the High Court judicial review hearing was adjourned (the trial judge was unavailable to finish it) and it ended in March 2003. Judgment was delivered in March 2004 staying the prosecution as there had been a breach of his constitutional right to trial with reasonable expedition and because there was a real risk that he would not receive a fair trial. In May 2004 the prosecution appealed.

11. The Supreme Court delivered judgment in July 2006 reversing that of the High Court. As to his contention that he had been subjected to pressure to plead guilty, there could be no objection to the District Court ascertaining whether an accused wished to plead guilty. The applicant, who was legally represented, was clearly not oppressed or induced to plead guilty and, importantly, he was never asked how he proposed to plead, he never pleaded and he was never "put on his election". As to his right to a speedy or expeditious trial, the Supreme Court found that the stay on prosecution was not justified by delay: the applicant's judicial review process interrupted the criminal process; his judicial review application was without merit as it must have been obvious to his legal advisers that he was not put under any pressure to plead; and, while there had been undoubtedly unnecessary delay by the prosecution, the applicant had equally delayed. The principal reason for the failure to go to trial was that the applicant had brought unfounded judicial review proceedings in the course of which he conducted a "war of attrition" with the prosecution in respect of discovery from which he secured minimal benefit.

12. On 25 January 2007 the prosecution successfully applied to the District Court for the applicant to be forwarded for trial on indictment in the Circuit Criminal Court. The latter adjourned his trial three times (in February, May and June 2007) pending the prosecution furnishing documents. On the last date the trial was fixed for November 2007.

13. The applicant died in July 2007, bringing the criminal proceedings to an end.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (LENGTH OF PROCEEDINGS)

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

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

15. The Government contested that argument.

16. The period to be taken into consideration began in September 1995 and ended in July 2007 with the death of the applicant. It thus lasted 11 years and 10 months for one level of criminal jurisdiction, the intervening civil judicial review proceedings having been examined by the High and Supreme Courts.

A. Admissibility

17. The applicant died after introducing the present application. While the parties were informed by letter of the Chamber's decision of 26 February 2008 that the applicant's sister could take over the application (paragraph 4 above), the Government objected in some detail in their subsequent observations. The Court recalls its judgment in *Arsenić v. Slovenia* (nos. 22174/02 and 23666/02, §§ 17-19, 29 June 2006) and finds nothing in the Government's observations which would indicate that the conditions for striking the case out from its list of pending cases, as defined in Article 37 § 1 of the Convention, are met. It must accordingly continue to examine the application at the request of the applicant's sister.

18. The Government also argued that the applicant had failed to exhaust domestic remedies as he had not taken an action for damages for breach of the constitutional right to reasonable expedition. The applicant disagreed. The Court recalls its conclusions in the *McFarlane v. Ireland* judgment ([GC], no. 31333/06, § 107-129, ECHR 2010-...) to the effect that the Government had not demonstrated that the remedies proposed by them, including an action for damages for a breach of the constitutional right to reasonable expedition, constituted effective remedies available to the applicant in theory and in practice at the relevant time. It concluded that there had therefore been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, and, consequently, it dismissed the Government's objection in that case as to a failure to exhaust domestic remedies. The Court does not see any reason to reach a different conclusion

in the present case and it therefore dismisses this objection of the Government.

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

B. Merits

20. 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 (see, among many other authorities, *McFarlane v. Ireland*, cited above, at § 140).

21. The Court has already found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (for example, *Barry v. Ireland*, no. 18273/04, 15 December 2005 and the above-cited *McFarlane* case).

22. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

23. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION (FAIRNESS OF PROCEEDINGS)

24. The applicant further complained about alleged pressure on him to plead guilty and that the delay in the proceedings was such that it prejudiced the fairness of his trial. However, the Court notes that the criminal proceedings were brought to an end by the applicant's death before his trial so that he cannot claim to be a victim of alleged procedural unfairness (*Józef Oleksy v. Poland* (dec.) no. 1379/06, 16 June 2009, with further citations therein, as well as the *McFarlane* judgment, cited above, at § 78).

25. It follows that this complaint is 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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. Finally, the applicant complained under Article 13 of the Convention that he had no effective domestic remedy in which to complain about the

excessive length of proceedings. The Government contested that argument, arguing that he did not take an action for damages for breach of the constitutional right to reasonable expedition.

27. Having regard to the Court's conclusion at paragraph 23 above, the applicant clearly has an arguable claim of a breach of a violation of the "reasonable time" requirement of Article 6 § 1. His related Article 13 complaint must therefore be declared admissible.

28. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

29. Having regard to the reasoning and conclusion at paragraph 18 above, the Court considers that, in the present case, there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed non-pecuniary damage but left it to the Court to quantify it as the Court considered equitable having regard to its jurisprudence and the circumstances of the case.

32. The Government left the matter of non-pecuniary damage to the Court's discretion to be decided on the basis of its case law in similar cases.

33. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him 9,000 euros ("EUR") under that head, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

34. The applicant also claimed EUR 3,025 in respect of the work of a Senior Counsel as well as EUR 3,630 in respect of his solicitor's fees

amounting to a total claim of EUR 6,655 (inclusive of value-added tax, "VAT") as regards costs and expenses incurred before the Court.

35. The Government contested these claims, notably the absence of hourly rates charged by both legal professionals, and requested that the Court exercise its discretion to reject the claim in whole or in part.

36. Regard being had to the documents in its possession (which do not indicate the hourly rates charged by the relevant lawyers) and to its case-law, the Court considers it reasonable to award the sum of EUR 3,500 (inclusive of VAT) as regards his costs and expenses for the proceedings before this Court, plus any other tax that may be chargeable to the applicant.

C. Default interest

37. 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 UNANIMOUSLY

1. *Declares* the complaints about the excessive length of the proceedings, and about the lack of an effective domestic remedy in that respect, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months:
   - EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
   - EUR 3,500 (three thousand five hundred euros), inclusive of VAT plus any other tax that may be chargeable to the applicant, in respect of the costs and expenses of the Convention proceedings;
   (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;

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

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

Stephen Phillips	Mark Villiger
Deputy Registrar	President