CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF DORAN v. IRELAND
(Application no. 50389/99)

JUDGMENT

STRASBOURG

31 July 2003

FINAL

31/10/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Terence and Maureen Doran v. Ireland,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 February 2002 and 8 July 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 50389/99) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Irish nationals, Terence and Maureen Doran ("the first and second applicants"), on 21 May 1999.

2. The Irish Government ("the Government") were represented by their Agent, Dr A. Connolly and, subsequently, by Ms D. McQuade, of the Department of Foreign Affairs.

3. The applicants mainly complained under Articles 6 and 13 of the Convention about the length of civil proceedings issued by them and about the lack of an effective domestic remedy in that respect.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By decision dated 30 March 2000 the Court found certain complaints inadmissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

7. By decision dated 28 February 2002 the Court declared the applicants' complaints concerning the length of the proceedings and an effective remedy in that respect admissible and found their remaining complaints inadmissible.

8. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*) and observations on the merits were not submitted by the parties.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants are Irish citizens, born in 1958 and 1957, respectively, and they both live in County Wicklow, Ireland.

10. On 12 September 1990 they agreed to buy a site with planning permission from "the vendors" on which they intended to build a house. The sale was completed in October 1990. It subsequently emerged that, because of discrepancies in the relevant site maps on which they relied during the sale, they did not have access to the site from the road. They were obliged to discontinue building and to sell the site.

11. On 31 May 1991 the Minister for Agriculture and Food established the Tribunal of Enquiry into the Beef Processing Industry ("Beef Tribunal") and nominated the President of the High Court to be the sole member of the Tribunal. While conducting the Beef Tribunal, the President continued, when possible, to sit in cases in the High Court.

12. On 17 July 1991 the applicants instituted High Court proceedings for negligence, negligent misstatement, breach of contract, misrepresentation and breach of warranty against their own solicitors ("the applicants' solicitors"), the vendors and "the vendors' solicitors". On 10 March 1992 the High Court ordered discovery on a consent basis. Pursuant to the applicants' motion and the defendants' consent, on 4 May 1992 the High Court ordered the defendants to file their defence within 4 weeks. Further motions of the applicants were struck out on 22 and 24 June and on 19 October 1992. On 18 May 1993 the case was certified ready for hearing by the applicants' senior counsel.

13. The case was originally listed for hearing on 8 July 1993 but it was adjourned (the applicants objected) due to the illness of one of the defendants to 15 July 1993 when another hearing date would be fixed. On 15 July 1993 a hearing date was fixed for 6 October 1993. On that date there was no judge available and the matter was heard on 7 October 1993 when the President of the High Court ("the trial judge") made himself available.

The Government maintained that the trial judge was advised by counsel present that the hearing required two days, that the judge had notified the parties that his tribunal commitments meant that he had only two days for their case so that, if the case took longer, he would be obliged to adjourn

until after the Beef Tribunal, that he would only deal with issues of liability and that the applicants agreed to this. The applicants denied that their counsel so advised the trial judge, that the trial judge had informed them that the trial would be so adjourned, that their counsel would have agreed to an indefinite adjournment (given the second applicant's psychological state) or that they agreed to the separation of issues of liability and damages.

14. The applicants' case was heard on 7 and 8 October 1993 and, since it was unfinished, the trial judge adjourned it. On 2 November 1993 and 8 February 1994 the applicants wrote to the Chief Registrar of the High Court asking for enquiries to be made as to when the action would be resumed. On 16 March 1994 they wrote to the Registrar asking him to intervene with the trial judge to fix a date and enclosing a medical report of the second applicant's doctor dated 12 March 1994 (see paragraph 32 below). The Registrar was also contacted by telephone on numerous occasions by the applicants regarding a hearing date. In March 1994 the Registrar informed the applicants by telephone that the trial judge had confirmed a hearing date in July 1994. A letter to the Registrar of 9 June 1994 requested that a hearing date be fixed.

15. During this period, the applicants wrote also wrote to, *inter alia*, numerous members of Dáil Eireann (the House of Representatives) including to the Minister for Justice. The Deputy Chair of Dáil Eireann indicated, in a letter dated 25 March 1994, that he had contacted the Acting President of the High Court asking the latter to intercede on the applicants' behalf. On 7 April 1994 the Acting President responded that the case would be taken in July 1994.

16. On 29 July 1994 the trial judge completed his report on the Beef Tribunal. On 19 September 1994 he was appointed Chief Justice of the Supreme Court. The trial judge resumed the hearing of the applicants' case on 5 October 1994. He heard the last two witnesses and requested legal argument in writing. He reserved judgment, indicating that he would deliver it approximately one week after receipt of the written submissions. Those submissions were made by the end of October 1994

17. On 29 November 1994, 2 February, 12 April and 22 May 1995 the applicants wrote to certain Registrars of the High Court requesting information as to when the judgment would be delivered. A response, dated 26 May 1995, stated that the trial judge could not confirm when he could deliver his judgment given his heavy commitments. Further to the applicants' letter, the Minister for Justice indicated in a letter of 10 July 1995 that, while she could not intervene, she had brought the matter to the attention of a Registrar of the High Court. The applicants also wrote to a Registrar on 12 July 1995 again requesting an early delivery date. A Registrar's letter of 13 July 1995 indicated a delivery date before the end of the month. By letter dated 25 July 1995 the Minister for Justice responded to a further letter from the applicants indicating that she had forwarded a

copy of the applicants' correspondence to the trial judge. Further to another letter from the applicants, a Registrar subsequently confirmed delivery of the judgment on 12 September 1995.

18. Judgment was orally delivered on that date. Both the vendors and the applicants' solicitors were found liable in damages and the claim against the vendors' solicitors was dismissed. On 21 September 1995 the Court made various orders concerning damages (adjournment of the assessment of damages) and costs to be paid by the unsuccessful parties. Pending finalisation by the trial judge of the written judgment, the form of order was not to be perfected in order to allow the applicants time to consider the text of that judgment prior to the expiration of the time-limit for appealing any orders of the High Court. The applicants wrote two letters to a Registrar of the High Court (dated 6 and 13 October 1995) and the text of the judgment became available in mid-October 1995. The order of the High Court was perfected on 17 October 1995 and on 3 November 1995 the applicants appealed the findings in favour of the vendors' solicitors to the Supreme Court. The vendors also appealed the High Court findings against them.

19. Since a stenographer had not been present during the High Court hearings, it was necessary to prepare and agree a record of the evidence given during those hearings for the purposes of the appeal. By 9 February 1996 the applicants had completed a substantial note of evidence and on 29 March 1996 they submitted it to the vendors and to the vendors' solicitors for their agreement. On 17 July 1996 the applicants issued two motions. The first sought the comments of the vendors' solicitors on the note of evidence and the second requested that the vendors' appeal be struck out for “want of prosecution” since the vendors had not filed documents in their appeal.

20. On 26 July 1996 the Supreme Court heard both motions with the trial judge (then Chief Justice) presiding. The court requested the vendors and the vendors' solicitors to submit their comments on the note of evidence within two weeks, in default of which the trial judge would finalise the note. On the second motion, the vendors were given until 7 October 1996 to file the relevant appeal documents, in default of which the Supreme Court envisaged striking out the vendors' appeal. Both motions were adjourned until 11 October 1996. The vendors' appeal and the related motion were later dropped.

21. Following further letters from the applicants in August 1996, on 17 September 1996 the vendors' solicitors indicated that they disagreed with 16 items in the note of evidence. On 11 October 1996 the applicants' motion concerning the note of evidence was adjourned to 18 October 1996. Three days later the vendors' solicitors confirmed that agreement would not be reached on the note. On 18 October 1996 three judges of the Supreme Court (not including the trial judge) directed the trial judge to settle the note of

evidence. On 24 October 1996 the applicants submitted the note of evidence together with a note of the 16 disputed points to the trial judge.

22. In or around November 1996 the President of the High Court gave directions that all complaints about delays in proceedings should be forwarded to him. A memorandum of the President of the High Court published in the Bar Review of January/February 1997 noted the delays in delivering reserved judgments due to the shortage of judges and requested legal practitioners formally to notify the President of the High Court of their concerns about such delays.

23. Subsequently, the applicants wrote to a Registrar of the High Court on a number of occasions (including on 14 January, 12 March and 25 June 1997) requesting the early settlement of the note of evidence. On 8 July 1997 the applicants wrote to the President of the High Court requesting him to intervene given the delay in their proceedings. In July 1997 a Registrar of the High Court indicated orally that the trial judge would deal with the matter after 20 August 1997. The applicants sent a further reminder to that Registrar on 18 September 1997. On 10 October 1997 the Department of Justice, Equality and Law Reform ("the Department of Justice") requested the Chief Registrar's comments on the alleged undue delay in the case. On 16 October 1997 a Registrar indicated to the Department of Justice that the note of evidence matter would be resolved in one week.

24. By letter dated 22 October 1997 the trial judge forwarded a report (six pages) he had prepared on the evidence and on the points disputed by the relevant parties and he apologised to the applicants for the delay. By letter dated 24 October 1997 a Registrar assured the Department of Justice that the note of evidence matter had been resolved and that an early date for a hearing of the appeal would be made available.

25. Further to the applicants' complaints to their member of Dáil Eireann and to the Tánaiste (the deputy Prime Minister), the Attorney General expressed, by letter dated 30 October 1997 to the applicants, his concern at the delay in their case. While he was constitutionally obliged not to interfere in judicial matters, he had mentioned the matter informally to the trial judge and the latter assured him that all outstanding matters had been dealt with. In a letter dated 4 November 1997 the Attorney General confirmed to the Tánaiste that he was concerned about the delays which the applicants had experienced in their case and that he had raised these matters in a private and informal manner with the trial judge who had assured him that all outstanding matters had been dealt with. Following an invitation, the applicants met with a member of the Attorney General's Office in late November 1997, although the advice was that that office could not interfere in judicial processes.

26. By motion dated 9 December 1997 the applicants amended their appeal. By letter dated 21 January 1998 the Minister for Justice responded

to queries of the Taoiseach (Prime Minister) concerning the applicant's case pointing out that on 21 November 1997 the appeal hearing had been fixed for 2 February 1998.

27. The Supreme Court delivered its reserved judgment on the applicants' appeal on 9 March 1998 and found in the applicants' favour, considering that the vendors' solicitors were also liable in negligence to the applicants.

28. The case was remitted to the High Court for the assessment and apportionment of damages. By letter dated 7 May 1998 the Attorney General responded to queries raised by the applicants' member of Dáil Eireann: he indicated that their case was "concerning" and that it was hoped that the recently established system for monitoring judicial delays would ensure that their experience would not be repeated.

29. The vendors' solicitors filed an amended defence in May 1998 and the applicants filed further particulars of damage in June 1998. On 26 June 1998 the vendors' solicitors made a late lodgement into court in the sum of 85,000 Irish pounds (IR£). The applicants objected. A letter dated 13 July 1998 from the Attorney General's office to the applicants explained that his previous intervention related to an administrative act by the trial judge (the note of evidence) but that the outstanding matters were judicial in which he could not interfere. By letter dated 22 July 1998 the Attorney General's office confirmed that it had been informed that a hearing date had been fixed by the High Court for 13 October 1998. A letter dated 6 August 1998 from the Taoiseach's office to the applicants confirmed that increased resources to the courts meant that it was hoped that their experiences would not be repeated. On 9 October 1998 the applicants also met with the Tánaiste to discuss the length of their ongoing proceedings.

30. On 13-16 October 1998 an assessment hearing took place in the High Court. On 25 November 1998 the High Court awarded the applicants approximately IR£200,000 in respect of pecuniary loss and IR£10,000 in respect of non-pecuniary damage (the High Court finding that both applicants had been put through "a high degree of anxiety and upset" as a consequence of the defendants' negligence). The applicants were also awarded their costs when taxed and ascertained. On 11 December 1998 the High Court dealt with matters concerning the attribution of liability between the defendants. The order of the High Court was perfected in early February 1999. There was no appeal on these matters to the Supreme Court.

31. The Taxing Master abridged the time for service of the applicants' bill of costs (Order 99, Rule 28(1) of the Rules of the Superior Courts) and fixed a hearing for 29 July 1999. The bill of costs contained 519 items and comprised 172 pages. This hearing was then adjourned on the application of the vendors' solicitors until 20 October 1999. The hearing took place on that date and, since it did not finish, it was adjourned to and continued on 20 November 1999. It was again adjourned and concluded on

22 November 1999, when the Taxing Master delivered his reserved ruling. The Certificate on Taxation (approximately IR£300,000) was signed by the Taxing Master on 15 December 1999.

32. The applicants submitted a number of medical certificates to the Court.

A certificate prepared by the second applicant's doctor on 26 May 1993 attested to her severe symptoms of anxiety since the legal problems had arisen. She had required repeated courses of medication and she was, at that stage, depressed and on medication. Her anxiety symptoms were likely to continue until the legal situation was resolved. The same doctor confirmed, in a certificate dated 12 March 1994, a deterioration of the second applicant's condition into "frank depression". Medication had initially helped but the delay in the proceedings was worsening her condition. A psychiatric report on the second applicant dated July 1998 recorded her significant clinical depression since the start of the proceedings which warranted anti-depressants and tranquillisers on many occasions. It was considered that the proceedings continually threatened to bring about a relapse, in spite of certain periods of recovery following appropriate treatment. It was also considered that a full recovery was foreseeable only after the proceedings terminated. A psychiatric report on the first applicant dated August 1998 attested to the great strain the proceedings had caused him.

II. RELEVANT DOMESTIC LAW AND PRACTICE

33. Article 40(3)(1) of the Constitution provide:

> "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen. "

Certain of the personal rights of the citizen are explicitly guaranteed by provisions of the Constitution. In addition, in interpreting and applying Article 40(3)(1) of the Constitution, the Irish courts have identified other "unenumerated" rights protected by virtue of that Article. These include the principle of "constitutional justice" (*inter alia*, no one should be a judge in their own cause (*nemo iudex in sua causa*), anyone who may be adversely affected by a decision should be afforded the opportunity to put their side of the case (*audi alteram partem*) and the right to fair procedures). The other relevant unenumerated right derived from Article 40(3)(1) is the right to litigate or the right of access to court.

34. Order 60 of the Rules of the Superior Courts provides as follows:

> "1. If any question as to the validity of any law, having regard to the provisions of the Constitution, shall arise in any action or matter the party having carriage of the proceedings shall forthwith serve notice upon the Attorney General, if he is not already a party.

2. If any question as to the interpretation of the Constitution, other than a question referred to in rule 1, shall arise in any action or matter, the party having carriage of the proceedings shall, if the Court so directs, serve notice upon the Attorney General.

3. Such notice shall state concisely the nature of the proceedings in which the question or dispute arises and the contention or respective contentions of the party or parties to the proceedings.

4. The Attorney General shall thereupon be entitled to appear in the act ion or matter and become a party thereto as regards the question which arises."

35. Order 123 of the Rules of the Superior Courts provides, in so far as relevant, as follows:

"1. At the trial or hearing of any cause or matter with oral evidence, any party may apply to the Judge for an order that the proceedings be reported by a shorthand writer and thereupon the Judge shall appoint a shorthand writer. ...

3. The party applying for an order under rule 1 ... shall pay the remuneration of the shorthand writer and said payment shall be borne by said party unless the Judge or the Master (as the case may be) shall after the trial or hearing certify that in his opinion it was expedient that the proceedings or any part thereof should have been so reported. If such certificate is given the remuneration of the shorthand writer for reporting the proceedings or part thereof to which the certificate relates shall be part of the costs in the cause.

4. The Judge shall have power, during the course or at the conclusion of the trial or hearing, to direct that copies of the shorthand writer's transcript of the evidence or any part thereof be furnished to him at the public expense or be furnished to any party applying therefor at the expense of that party."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. According to the applicants, the length of the proceedings constituted a breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government rejected the allegation. Article 6 § 1, in so far as relevant, 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..."

A. The parties' submissions

1. The Government

37. The Government maintained that the proceedings were complex involving as they did the liability of the vendors, the vendors' solicitors and of the applicants' solicitors and concerning, *inter alia*, a novel issue as to the duty of care owed by the solicitor for a vendor to a legally represented purchaser.

38. They also contended that the applicants were responsible for the delay in the proceedings. The Government maintained that, in October 1993, the applicants had agreed that the trial judge would hear their case despite his Tribunal commitments and even though that hearing would involve only issues of liability. On 5 October 1994 they failed to object to the order to make additional written submissions. Their appeal to the Supreme Court on liability led to the postponement of the assessment of damages. It was "essentially the responsibility" of the applicants to provide a transcript for the purposes of their appeal to the Supreme Court and they should have been more prudent and engaged a stenographer: their failure to do this led to the necessity for the parties to agree the note of evidence and no agreement was ever reached. The trial judge subsequently produced a comprehensive note of evidence in October 1997 which was followed quickly by the Supreme Court's hearing on the appeal.

39. As to the conduct of the authorities, the Government pointed to the trial judge's Tribunal commitments, indicated that any delay in delivering the written judgment until October 1995 was explained by the fact that it had been orally delivered during court vacation time and by the need to perfect the text. In any event, the Government suggested that the applicants could have arranged for a note or other record to be taken of the oral delivery of the judgment A stay had to be granted in September 1995 pending any appeals. The Government further maintained that there had been no delay in the taxation of the applicants' costs.

2. The applicants

40. The applicants did not accept that the complexity of the case was responsible for the length of the proceedings.

41. They strongly disputed the Government's suggestion that they were responsible for any delay. They argued that, on the contrary, they were more than diligent in attempting to ensure the timely hearing of their case. They disputed the Government's suggestion that they had agreed certain matters with the trial judge in October 1993 (see paragraph 14 above), they had trusted the trial court that additional written submissions were required and it was plain to the applicants that the assessment of damages could not proceed until the liability of all defendants (including the vendors'

solicitors) had been definitively established by the Supreme Court (and, in the end, their appeal to the Supreme Court was successful). They believed that it was the defendants' responsibility to ensure the presence of a stenographer and, in any event, the finalising of the note of evidence thereafter by the trial judge was unacceptably long.

42. As to the conduct of the authorities, the applicants maintained that the courts inadequately responded to their attempts to speed up the proceedings, facilitated the delaying tactics of the defence and were themselves the source of significant delay.

They noted that the courts and authorities were fully aware of and acknowledged the delay, but took no steps to remedy the problem despite the applicants numerous and continuous requests. In particular, they pointed to the delay in fixing a first hearing date, the delay between the beginning of the High Court hearing and its completion, the trial judge's delay in finalising the note of evidence and the lapse of time between the referral of the case to the High Court for an assessment of damages and the final judgment on damages. The applicants agreed that they did not find that the taxation of costs' element of the proceedings was responsible for the delay.

B. The Court's assessment

43. The proceedings issued by the applicants began on 17 July 1991 and ended on 15 December 1999 with the signature of the taxation certificate by the Taxing Master of the High Court (*Robins v. the United Kingdom* judgment of 23 September 1997, *Reports of Judgments and Decisions* 1997-V, §§ 28-29). They therefore lasted 8 years and 5 months approximately.

The proceedings were not before a significant number of instances, the Court observing that the High Court was seized as a court of first instance on the liability issue and, later, on the assessment and apportionment of damages with the Supreme Court examining the applicants' appeal on one liability matter.

44. 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 in the litigation (see, for example, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

45. The Court notes that the proceedings concerned, *inter alia*, allegations of negligence and misrepresentation against two firms of solicitors and the vendors of the relevant property. It considers that the case was not significantly complex from an administrative or factual point of view. While the proceedings may have established a novel duty of care by a vendor's solicitor to a legally represented purchaser, the Court does not find

that any such legal novelty can explain the length of the applicants' proceedings.

46. As to the conduct of the applicants, the Court does not accept the Government's suggestion that their conduct accounts for the delay in their proceedings.

In particular, the adjournment of the High Court hearing (from July to October 1993) was due to the illness of one of the defendants. Even assuming that the applicants accepted on 7 October 1993 that the judge chairing the Beef Tribunal hear their case in the circumstances suggested by the Government (which the applicants firmly contested – see paragraph 13 above), no other High Court judge was, in any event, free to hear the case in October 1993 and the Government did not indicate when another would have been available. Once the case had begun with one judge, efficiency and logic dictated that it remain with him and, in any event, the trial judge had completed his report on the Beef Tribunal by July 1994. Even if the applicants did not object to the order of 5 October 1994 allowing further written submissions, those submissions had been made by the end of that same month. As to the adjournment of the damages' assessment until after the applicants' appeal to the Supreme Court, the Court observes that applicants were entitled to appeal, they were in fact successful and it would have been irrational to assess and apportion damages to be paid by the defendants before the liability of each had been established.

As to the presence of a stenographer at trial, the Court observes that the applicants would have been required to decide prior to knowing the result of the first instance hearing whether to risk the not insignificant costs of a stenographer for the purposes of any appeal (see Order 123, Rule 3 of the Rules of the Superior Courts). It is further noted that the Government did not claim that seeking agreement of the parties on a note of the evidence, when the nature and ambit of the appeal was clearer, was a novel manner of proceeding. Furthermore, the applicants had completed a substantial note of the evidence by February 1996 and subsequently carefully pursued the vendors' solicitors agreement through letters and an application to court (see paragraphs 19-21 above). They responded within two weeks to the 16 points of disagreement then submitted by the vendors' solicitors. Once the Supreme Court directed the trial judge to settle the note of evidence, they vigorously pursued the trial judge's settlement of the note (see paragraphs 21-24 above).

The Court has also had regard to the applicants' timely completion of their submissions and their numerous motions to the court to ensure the defendants' adherence to their procedural obligations. They were also tenacious in their pursuit of informal means of speeding up their proceedings, which steps resulted in the informal intercession on the applicants behalf by, *inter alia*, the Taoiseach, the Tánaiste, the Attorney General and the Department of Justice, such authorities on certain occasions

acknowledging the unacceptability of the delay in the applicants proceedings (see, for example, paragraphs 23, 25 and 29 above). The Court finds that the applicants diligently pursued the timely resolution of the proceedings issued by them.

47. As to the conduct of the competent authorities, the Court recalls that, whether or not a system allows a party to apply to expedite proceedings, the courts are not exempted from ensuring that the reasonable time requirement of Article 6 is complied with, as the duty to administer justice expeditiously is incumbent in the first place on the relevant authorities (*Philis v. Greece* (no. 2), judgment of 27 June 1997, *Reports* 1997-IV, § 49).

The Court notes that one year (from 8 October 1993 to 5 October 1994) elapsed between the beginning and end of the hearing at first instance. In addition, there was a further delay of almost one year between the end of the hearing and the delivery of judgment at first instance (from 5 October 1994 to 12 September 1995). Although the trial judge had commitments to the Beef Tribunal, he had completed his report for that tribunal by July 1994 and, in any event, it is for the State to organise its legal system as to ensure the reasonably timely determination of legal proceedings (see, for example, *Salesi v. Italy,* judgment of 26 February 1993, Series A no. 257-E, § 24). Furthermore, almost a further year passed between the date when the Supreme Court directed the trial judge to settle the note of evidence and his finalising a six-page report on that note (from 24 October 1996 to 22 October 1997). The trial judge apologised to the applicants for this delay. The Court considers that these periods of delay, amounting to approximately three years, were attributable to the authorities.

Moreover, the Court observes that, when the Supreme Court gave judgment on the applicants' appeal in March 1998, the proceedings had already been in being for over six and a half years, which period included the above-described delays attributable to the authorities. In such circumstances, the Court considers particular diligence was required of the judicial authorities subsequently concerned with the proceedings to ensure the speedy determination of the outstanding issues namely, the assessment and apportionment of damages by the High Court and the applicants' costs. However, the assessment and attribution of damages was not completed by the High Court until nine months later (December 1998), with a further year elapsing before the costs' aspect of the case was finalised.

The Court considers that the above-described delays attributable to the competent authorities are not justified by the submissions of the Government.

48. Accordingly, and having regard to what was at stake for the applicants (see, for example, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, § 61), the Court concludes that the applicants' proceedings were not determined within a reasonable period of

time as required by Article 6 § 1 of the Convention and that there has therefore been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicants also maintained, invoking Article 13 of the Convention, that they had no effective remedy as regards the length of their proceedings. This Article 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 notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

50. The Government maintained that the applicants did have an effective domestic remedy. They submitted that it had been open to them to contend that they had a right to a decision within a reasonable time on two constitutional grounds drawn from the unenumerated rights guaranteed by Article 40(3)(1) of the Constitution. Such grounds could have been invoked by the applicants at any stage of the proceedings (*The State (Shatter, Gallagher & Co.) v. de Valera (No. 2)* [1987] IR 55, at 59-60). While the Constitution and other law did not prescribe any particular remedy for the infringement of an individual's constitutional rights, the appropriate remedy would depend on the facts of a particular case and "may" include an award of damages against the State (*Healy v. Minister for Defence*, High Court, 7 July 1994, at p. 10, and *Kennedy v. Ireland* [1987] IR 587, at 593).

51. The first constitutional ground which the applicants could have invoked was the principle of "constitutional justice". The Government submitted that the courts have recognised that the unenumerated rights guaranteed by Article 40(3)(1) of the Constitution include principles of constitutional justice and that the latter includes various procedural guarantees including a right to a reasonably prompt decision. In this respect, the Government cited a number of domestic cases (*In Re Haughey* [1971] IR 217; *Garvey v. Ireland* [1981] IR 75; *O'Keefe v. Commissioners of Public Works*, Supreme Court, 24 March 1980; *The State (McFadden) v. Governor of Mountjoy Prison (No. 1)* [1981] ILRM 113; *Cannon v. Minister for the Marine* [1991] 1 IR 82; *Twomey v. Minister for Tourism and Transport*, Supreme Court, 12 February 1993; *Bosphorous Hava Yollari Turizm ve Ticaret Anonim Sirketi v. Minister for Transport (No. 2)* [1997] 2 IR 1; *In Re Gallagher (No. 2)* [1996] 3 IR 10; and *McNeill v. Garda Commissioner* [1997] 1 IR 469).

The Government submitted that constitutional justice had successfully been invoked to augment the specialised code of procedural and evidential law regulating judicial function where the passage of time could have resulted in injustice (*O'Domhaill v. Merrick* [1984] IR 151 and *Toal v. Duignan* (No. 1) [1991] ILRM 135).

52. The second constitutional ground which the Government suggested the applicants could have invoked was their constitutional right to litigate or their right of access to court to assert and vindicate legal rights (*Macauley v. Minister for Posts and Telegraphs* [1966] IR 345, at 357-358). They maintained that the applicants could therefore have argued before the High and Supreme Courts that they had a constitutional right to a decision within a reasonable period of time in order for their right to litigate to be effective, based on the maxim that justice delayed is justice denied and, in particular, they could have argued that their right to litigate extended to the more prompt processing of their case by the courts. They could have requested the courts to give effect to this right or, in default, to award them damages for its infringement.

53. Furthermore, the Government submitted that the domestic courts had a positive duty to protect persons against invasion of their constitutional rights. They pointed out that judges take an oath to uphold the Constitution and are therefore under a duty to preserve the individual's constitutional rights. They further argued that the applicants could also have pleaded the judgments of the European Court of Human Rights as persuasive authority in support of their constitutional contentions.

2. The applicants

54. The applicants contended that they were more than diligent in ensuring the speedy conclusion of the proceedings, including issuing numerous motions and otherwise corresponding with the authorities. While various branches of the State had consequently recognised the delays in their case, the response of the judiciary was inadequate and it would have been the same judges who would have had to consider any constitutional proceedings suggested by the Government. They also maintained that they could not have been reasonably expected to pursue additional and substantial proceedings before the High and Supreme Courts in order to speed up the proceedings. As to the case-law to which the Government referred, the applicants noted that not one case related to delay attributable to a judge.

B. The Court's assessment

55. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic

legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

56. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (*Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-...).

57. In addition, particular attention should be paid to, *inter alia*, the speediness of the remedial action itself, it not being excluded that the adequate nature of the remedy can be undermined by its excessive duration (*Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX, and *Paulino Tomás,* cited above).

58. The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees are relevant in determining whether the remedy before it is effective. In addition, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may, in principle, do so (see, among many other authorities, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, § 113, and *Chahal v. the United Kingdom,* judgment of 15 November 1996, *Reports* 1996-V, § 145).

59. It is further recalled that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13, if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (*Kudła,* cited above, § 158). In the context of excessive length of proceedings, Article 13 therefore offers an alternative: a remedy will be considered "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (*Mifsud v. France* (dec.), no. 57220/00, ECHR 2002–VIII).

60. Finally, it is recalled that, in the case of *Mc Mullen v. Ireland* ((dec.), no. 42297/98, 4 July 2002), the applicant also complained about the length of civil proceedings instituted by him. The Government argued that he had failed to exhaust domestic remedies as he had not brought an action based on his unenumerated right to litigate and to have access to court. The Court found that the Government had not discharged the onus on them to show

that he had available to him an effective domestic remedy in respect of the length of his proceedings.

61. It remains for the Court to determine whether the means available to the present applicants in Irish law for complaining about the length of their proceedings can be considered "effective" within the meaning of Article 13 of the Convention (which Article has a close affinity with Article 35 § 1 of the Convention – the above-cited *Kudła* judgment, § 152) in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred.

62. The Court notes that the Government did not claim that there was any specific legal avenue conceived of as a separate remedy whereby an individual could complain about the length of proceedings. Nevertheless, they argued that effective constitutional remedies were available. Referring generally to a number of domestic cases, they argued that the applicants could have, at any stage of the proceedings, commenced an action in pursuit of their right to a decision within a reasonable time based on two unenumerated constitutional rights (the principle of constitutional justice and the right to litigate).

63. The Court notes that, of the domestic judgments generally relied upon by the Government, none states that either of the two unenumerated constitutional rights include a right to complain about delay during court proceedings attributable to the judicial authorities. As to the case-law cited in respect of the right to constitutional justice, certain cases concerned the customary legal limitations on plaintiffs commencing proceedings once there has been a substantial lapse of time after the impugned event (the above-cited cases of *O'Keefe*, *O'Domhaill* and *Toal*), delays by Ministers in granting relevant licences and certification (*Cannon* and *Twomey,* cited above), a Minister's duty to act with expedition under European law (*Bosphorous Hava Yollari Turizm ve Ticaret Anonim Sirketi,* also cited above) and the application of general principles of constitutional justice and fair procedures which did not concern delay (the above-cited cases of *In Re Haughey*, *Garvey*, *The State (McFadden)* and *In Re Gallagher (No. 2)*). As regards the right to litigate, the above-cited *Macauley* judgment relied on by the Government applied the right to have recourse to the High Court to vindicate constitutional rights in a context not concerning delay.

64. However, and even if it could be assumed that a right to a determination of proceedings within a reasonable period of time could be considered to be one of the guarantees flowing from Article 40 (3)(1) of the Constitution (as referred to but not applied in the above-cited *McNeill* case) and even assuming that such a complaint could be raised at any time (*The State (Shatter, Gallagher & Co. v. de Valera* cited above), the Court does not consider that it has been demonstrated that the remedy to which the Government referred can be considered to be "effective, adequate or

accessible" within the meaning of Article 13 of the Convention for the following reasons.

65. In the first place, the Government did not address the question of how the constitutional action proposed by them could constitute a remedy preventative of future delay.

The Government relied on the above-cited case of *The State (Shatter, Gallagher & Co.) v. de Valera* to demonstrate that such a procedure could be commenced during the applicants' substantive proceedings, but that case itself took over a year and a half to complete, a period which the remaining domestic cases cited by the Government demonstrate is relatively quick for the determination of a constitutional action. The requirement that the remedy itself be sufficiently swift is particularly important if the remedy is proposed to be one preventative of future delay (see paragraph 57 above).

In addition, neither the Government nor the case-law cited by them clarify whether the applicants could have made these constitutional arguments as part of their substantive proceedings, namely, without issuing separate proceedings. Even if separate proceedings were not necessary, it is not explained whether the applicants would have been obliged to complain about delay before a court to that same court or, if complaining to a different court, how the latter's decision in their favour could in practice be relied upon to speed up substantive proceedings before a different court.

66. Secondly, and as to the alternative remedy of an award of damages for delay which had already occurred, the Government accepted that there was no domestic legal provision for an award of damages following a successful constitutional action and limited their submissions to suggesting that damages "may" be available (*Kudła,* cited above*,* § 159, and *Matthies-Lenzen v. Luxembourg* (dec.) no. 45165/99, 14 June 2001). In addition, even if the applicants could have incorporated a constitutional complaint about delay already experienced into their substantive proceedings (although again this is not addressed by the Government), the Government did not clarify the basis for the State's liability to pay damages (*O'Reilly v. Ireland* (dec.) no. 24196/94, Decisions and Reports (DR), 84-A, p. 72) and how such damages would be calculated or the level of damages which could be expected, the Court noting that the adequacy of a remedy is also determined by reference to this latter factor (*Scordino v. Italy* (dec.), no. 36813/97, ECHR 2003-...). While the Government relied on two cases (the above-cited cases of *Kennedy* and *Healy*) as demonstrating the availability of damages following a successful constitutional claim, the Court notes that the proceedings in one case lasted over two years, and substantially longer in the other, before the relevant order for damages: such a lapse of time is not reconcilable with the requirement (see paragraph 57 above) that the remedy must itself be sufficiently swift.

67. Finally, and more generally, the Court observes that the applicants would have been required to join the Attorney General to proceedings in

order validly to raise any relevant constitutional arguments (Order 60 Rule 2 of the Rules of the Superior Courts 1986). The Attorney General would have been consequently entitled to appear and make submissions as regards the constitutional questions arising. The Government's submissions concerning the positive obligation on the domestic courts to protect persons against an invasion of their constitutional rights is noted: however, such an obligation applied when the above-established unreasonable delays took place. Moreover, while the Government relied on the "persuasive authority" domestically of the judgments of this Court, the Convention has not been incorporated into domestic law and, consistently, no case was cited by the Government where the domestic courts relied on this Court's judgments to recognise a further unenumerated constitutional right and to develop a domestic remedy for its breach.

68. In sum, while there may be some constitutional basis for the recognition of the right to a determination of a civil right within a reasonable period of time, the Government have not referred to one domestic case where any individual complained to a domestic tribunal about delay of the nature at issue in the present case and which resulted in the prevention of excessive delay or its continuation, or in damages for delay which had already occurred.

69. In such circumstances, and since the remedy must be effective both in law and in practice, the Court does not consider that a claim based on the constitutional right to justice and to litigate has been shown to constitute an effective domestic remedy for excessively long proceedings for the purposes of Article 13 of the Convention.

There has therefore been a violation of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicants claimed IR£65,545 in damages for the pecuniary loss suffered as a result of the incorrect assessment of the High Court of damages in their case. They further claimed 100,000 euros (EUR) in non-pecuniary damages, the applicants referring to the suffering and distress caused, particularly to the second applicant, by the excessive delay in the

proceedings. The second applicant continues to be vulnerable to depression and to take medication.

72. The Government maintained that the applicants' claims were exorbitant. They submitted that the Court should take into account that the delays in the proceedings were not especially excessive and that the nature of proceedings is such that certain delays are inevitable and unavoidable. In addition, they pointed to the level of damages awarded by the High Court to the applicants (IR£202,198.56) which included a claim for general damages of IR£10,000: they argued that the applicants had already been compensated for any losses that may have arisen from the delays of which they complain. They also submitted that the applicants' claim as to the inadequacy of the award of damages by the High Court is not related to the matter at issue in this case namely, the length of their proceedings.

73. As regards the applicants' claims for pecuniary loss based on an allegedly incorrect assessment of damages by the High Court, the Court's case-law establishes that there must be a clear causal connection between the violation of the Convention established and the damage claimed by the applicant (see, amongst other authorities, *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, §§ 16-20; *Cakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). The Court has already declared inadmissible the applicants' complaints concerning the assessment of damages by the High Court in this case (see *Doran v. Ireland* (dec.), no. 50389/99, 30 March 1998 and 28 February 2002). There is therefore no causal connection between the violations of the Convention established in this case and the pecuniary damage claimed. No award is accordingly made for pecuniary damage.

74. Turning to non-pecuniary loss, the Court does not accept that the applicants have already been compensated domestically for the Convention violations found. Damages were awarded by the High Court to compensate the pecuniary and non-pecuniary loss of the applicants caused by their former solicitors, the vendors and the vendors' solicitors and arising from the sale of the site. They did not therefore concern the excessive length of the applicants' proceedings or their lack of an effective domestic remedy in that respect.

75. The Court considers that the applicants must have certainly suffered some non-pecuniary damage, such as distress and frustration resulting from the protracted length of the proceedings and the lack of an effective remedy for this, which cannot sufficiently be compensated by the finding of a violation (see, for example, *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 69, 17 December 2002).

In addition, the Court finds it substantiated that the second applicant suffered, as a result of the breaches of the Convention established in this case, some concrete injury to her mental health. Although it is clear that certain symptoms emerged relatively early in the proceedings and can be

considered to relate to the problematic purchase of the relevant site and the necessary consequent domestic proceedings, the Court considers that the subsequent medical reports are demonstrative of a significant deterioration in her mental health as a result of the ongoing proceedings and it notes the medical view that a full recovery was foreseeable only once the proceedings terminated. In such circumstances, the Court finds that there is a causal connection between the violations established in this case and the duration of the second applicant's mental health problems. The Court has also taken into account the consequent and inevitable additional burden on the second applicant's husband, the first applicant, which is consistent with the medical report submitted in his respect dated August 1998.

76. Accordingly, and taking into account all of the circumstances of the case, in particular the considerable distress of the applicants, and making its assessment on an equitable basis, the Court awards the applicants a total sum of EUR 25,000 under this head.

B. Costs and expenses

77. The applicants also claimed EUR 1,000 compensation for the costs and expenses of the Convention proceedings in relation to matters such as postage, telephone and stationary, together with EUR 500 in respect of time lost by them in preparing their extensive submissions to the Court.

78. The Government indicated that they had no comments on this claim of the applicants.

79. The Court finds that the sum claimed in respect of the actual expenses incurred by the applicants in pursuing their Convention complaint (EUR 1,000) is recoverable and appears reasonable, but that the sum claimed in respect of time spent drafting submissions to the Court cannot be taken into consideration, as the applicants presented their own case (*Brincat v. Italy*, judgment of 26 November 1992, Series A no. 249-A, § 29).

C. Default interest

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

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the sums of EUR 25,000 (twenty-five thousand euros) in respect of their non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of their costs and expenses.
   (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President