



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

THIRD SECTION

CASE OF O'REILLY AND OTHERS v. IRELAND

(Application no. 54725/00)

JUDGMENT

STRASBOURG

29 July 2004

FINAL

29/10/2004

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 O'Reilly and Others 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 R. TÜRMEŖ,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mr K. TRAJA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 4 September 2003 and 8 July 2004,

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

PROCEDURE

1. The case originated in an application (no. 54725/00) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Irish nationals, Mr Desmond O'Reilly, Mr James McGurran, Ms Carol Moore, Mr William Moore, Mr Kevin Ludlow, Mr Patrick Leddy, Mr Patrick Brady, Mr John Wilson, Ms Agnes Ludlow and Ms Maura Egan ("the applicants"), on 1 November 1999.

2. The applicants were represented by Mr G. Toolan, a solicitor practising in Leitrim, Ireland. The Irish Government ("the Government") were represented by their Agents, Dr A. Connelly and, subsequently, Ms D. McQuade, of the Department of Foreign Affairs.

3. The applicants mainly complained about the length of the proceedings they had brought against the local authority (Article 6 § 1 of the Convention) and that they did not have an effective remedy in this regard (Article 13). They also made additional complaints under Article 6, Article 8 and Article 1 of Protocol No. 1, alone and in conjunction with Article 13 of the Convention.

4. The application was initially 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. 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).

6. By a decision of 28 February 2002 the Court declared inadmissible the complaints under Article 6 (other than the complaint concerning the length of the proceedings), under Article 8 and under Article 1 of Protocol No. 1 together with the related complaint under Article 13 of the Convention.

7. By decision of 4 September 2003 it declared the remaining complaints of two of the applicants (Ms Agnes Ludlow and Ms Maura Egan) inadmissible and declared admissible the remaining complaints (under Article 6 about the length of the proceedings, alone and in conjunction with Article 13 of the Convention) of the other eight applicants.

8. The Government filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants (Desmond O'Reilly, James McGurran, Carol Moore, William Moore, Kevin Ludlow, Patrick Leddy, Patrick Brady and John Wilson) live in Belturbet, Ireland and all have homes, farms or business premises on a public road in Belturbet.

10. On 21 July 1994 certain residents on the road (including the applicants) applied on an *ex parte* basis for leave to take judicial review proceedings. The relief sought was an order of *mandamus* compelling the Council to repair the road and put it in good condition, a declaration that the Council had failed in its statutory duty to maintain the road in good repair and condition together with damages for breach of statutory duty and costs.

11. On 25 July 1994 leave was granted to apply for judicial review by way of an order of *mandamus*. By letter dated 4 August 1994 the applicants served the proceedings on the Council. On 5 December 1994 the Council served its statement of opposition. On 14 December 1994 the Council filed an affidavit of the County Engineer, on 20 February 1995 the applicants filed an affidavit in response, on 29 March 1995 the County Engineer filed a further affidavit and on 31 March 1995 the applicants filed a final responding affidavit. The pleadings thereby closed.

12. On 4 and 5 April 1995 the application for judicial review was heard by the High Court. Judgment was reserved.

13. Some months thereafter, senior counsel for both parties requested an early judgment of the relevant High Court judge who indicated that she could not given the extent of her commitments.

14. In November 1996 one of the applicants wrote to the President of the High Court requesting that arrangements be made to have the judgment

delivered quickly. The President of the High Court responded that he would endeavour to have the judgment delivered speedily.

15. By judgment delivered on 6 December 1996 the High Court made an order of *mandamus* requiring the Council to repair the road and to put it into good condition. The court found that the Council had a statutory obligation to repair the road and keep it in good condition and that the Council's lack of resources could not constitute a defence. An order for costs was made in the applicants' favour.

16. The Council requested a stay on the order of the High Court and this application was adjourned until 20 December 1996, when the High Court judge ordered that execution on foot of the order be stayed for six months from the date of perfection of the High Court order, that any application for an extension of the stay be made to the Supreme Court and that, in the event of an appeal by the Council, the stay on the order for costs would remain pending final determination of the appeal.

17. On 9 January 1997 the Council appealed to the Supreme Court. On 16 January 1997 the Council requested the applicants' consent to the Council amending its notice of appeal. The applicants so consented.

18. In 1997 the Council commenced repair work on the relevant road, which was completed by the end of 1998.

19. On 11 March 1997 the Attorney General applied for liberty to appear as *amicus curiae* and be heard in the proceedings. By affidavit dated 1 May 1997 the applicants objected to the application and to the arguments the Attorney General was proposing to make. A hearing took place on this point on 22 July 1997 following which the Attorney General was given leave to appear and address the Supreme Court at the appeal hearing.

20. A date for the hearing of the appeal was fixed for December 1997 but this was vacated to accommodate an urgent case. On 18 February 1998 the Supreme Court started but did not finish the appeal hearing. It could not finish it on the next day because of other pre-assigned business. The next available hearing date was over a year later on 26 February 1999. On that date the appeal hearing resumed and concluded. Although the repair work on the road had been completed by that time, the Supreme Court considered that the appeal should proceed given the public importance of the issues.

21. On 17 June 1999 the Supreme Court delivered its judgment allowing the appeal. The court noted that the Council did not have the financial resources necessary to repair the estimated 600 roads in poor condition in the area and considered that the courts should not make orders of *mandamus* where it is acknowledged that the public authority did not have the resources to comply with the order and where the implementation of the order depended on the co-operation of other Government bodies.

22. The case was adjourned to 22 June 1999 for submissions on ancillary orders to be made. On that day the Supreme Court confirmed its decision to allow the appeal. No order as to the costs (of the High or

Supreme Court) was made so that the parties were responsible for their own costs.

II RELEVANT DOMESTIC LAW AND PRACTICE

A. Practice of the High Court with respect to delay

23. In or around November 1996 the President of the High Court issued general 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 to formally notify the President of the High Court of their concerns about such delays.

B. The Court and Court Officers Act 2002

24. Section 46 of this Act introduced a register of reserved judgments. If a judge does not deliver a judgment within specified time-limits, the matter is re-entered in open court and the judge is required to enter a date in the register by which the judgment will be delivered.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND 13 OF THE CONVENTION

25. The applicants complained under Article 6 § 1 of the Convention about the length of the proceedings and under Article 13 of the Convention about the lack of an effective domestic remedy in this regard.

Article 6 § 1, in so far as relevant, provides as follows:

“In the determination of his civil rights ... , everyone is entitled to a ... hearing within a reasonable time ...”

Article 13, as relevant, reads as follows:

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

A. The parties' submissions

1. *The Government*

26. The Government considered that the length of the proceedings was not unreasonable having regard to all the circumstances of the case. They maintained that the issues raised by the case were novel, complex and of general public concern. Any delay before 31 March 1995 was due to the exchange of the parties' pleadings. While acknowledging that the applicants were exercising their legal right, the Government argued that their opposition to the Attorney-General's application delayed the proceedings since a separate hearing was required. The Government further noted that, while the applicants made some effort to secure the delivery of the High Court judgment (April 1995 - December 1996), they made no such effort to ensure the resumption of the Supreme Court hearing after February 1998. It was reasonable, in the Government's view, for the Supreme Court to give priority to more urgent cases and the appeal hearing did not finish in February 1998 because the parties had incorrectly estimated the time necessary. Finally, and as to what was at stake for the applicants, the Government submitted that the case had no relevant significance for the applicants after 1998 (other than costs) as the Council had already repaired the road pursuant to the High Court judgment.

27. As to Article 13, the Government pointed out that the applicants could have, but did not, challenge the alleged unreasonable delay on the basis of a constitutional right to a decision within a reasonable time both as a general principle of constitutional justice and as an aspect of the right to litigate expressly guaranteed by the Constitution.

2. *The applicants*

28. The applicants maintained their argument that the proceedings were too long. They rejected the Government's suggestion that they contributed to the delay submitting, *inter alia*, that the Attorney-General's application was made late and that it caused one year's delay. The legal issues were not excessively complex and, in this regard that, the applicants pointed out that, once the Supreme Court had heard the case, it was able to deliver its judgment within four months.

29. As to the remedies available, the applicants submitted that, even accepting that there was a constitutional right to a reasonably prompt decision, there was no effective method by which the High Court and the Supreme Court could be compelled to deliver a swift decision. They had used as much as possible the limited and informal mechanisms available and the new arrangements introduced by the President of the High Court and the new provisions contained in the Court and Court Officers Act 2002 were not in force at the relevant time. They also noted that they were

powerless to do anything about the delay in the appeal hearing which was postponed for more urgent cases.

B. The Court's assessment

30. 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 applicant and of the relevant authorities, and the importance of what is at stake for the applicant in the litigation (see, among other authorities, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV, and *Horvat v. Croatia*, no. 51585/99, § 52, ECHR 2001-VIII).

31. It notes that the proceedings began with the application for leave to apply for judicial review on 21 July 1994 and ended on 22 June 1999 with the final orders of the Supreme Court: they lasted some four years and eleven months. While the Court notes that the case concerned certain complex legal issues of some public importance, it was neither procedurally nor factually complex.

32. As to the applicants' conduct, the Court notes that the applicants exercised their legal right to object to the Attorney-General's application and, while this necessitated a hearing in the Supreme Court, it did not significantly delay the proceedings: the Attorney-General made his application on 11 March 1997, the applicants objected on 1 May 1997 and the matter was determined on 22 July 1997. As regards the Government's submission that the applicants did not pursue the speedy resumption of the Supreme Court proceedings after February 1998, the Court recalls that States are obliged to organise their legal systems so as to allow the courts to comply with the reasonable time requirement of Article 6 so that even a principle of domestic law or practice requiring the parties to take initiatives to advance the proceedings does not dispense the State from this obligation (*Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1174, § 55, *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 56, 17 December 2002, and *Price and Lowe v. the United Kingdom*, nos. 43185/98 and 43186/98, § 23, 29 July 2003). The Court does not find that any material periods of delay are attributable to the applicants.

33. On the other hand, the Court considers that two specific and lengthy periods of delay are attributable to the domestic authorities. In the first place, a period of approximately one year and eight months elapsed between the High Court hearing (4 and 5 April 1995) and the delivery of its judgment (6 December 1996). Secondly, there was a material delay in the appeal hearing: it was adjourned in December 1997 to accommodate an urgent case and, while it started on 18 February 1998, it did not resume and

finish until a year later given the pre-assigned business before the Supreme Court. While the High Court judge had other judicial commitments, while an urgent case and other court business combined to delay the Supreme Court hearing and even if the parties incorrectly estimated the appeal hearing time, the Court reiterates that it is for the State to organise its legal systems as to comply with the reasonable time aspect of Article 6 of the Convention (see the previous paragraph).

34. As to what was at stake for the applicants, the Court notes that, while the repair works on the road were completed in 1998, the not insignificant question of costs remained to be determined.

35. In such circumstances and having regard to the criteria laid down in the case-law, the Court finds that the proceedings in the present case were not dealt with within a “reasonable time” as required by Article 6 § 1 and that there has therefore been a violation of that provision.

36. As to the applicants’ complaint under Article 13 that they had no effective domestic remedy as regards the excessive length of the proceedings, the Court recalls that the remedies on which the Government relied have been found, in the case of *Doran v. Ireland* (no. 50389/99, § 69, ECHR 2003-X), not to be effective so that the Court concluded in that case that there was a lack of effective domestic remedies as regards the length of civil proceedings in violation of Article 13. The Government have not presented any new evidence or arguments which would lead the Court to reconsider this finding and they did not suggest that the involvement of the President of the High Court (see paragraph 22 above) constituted an effective domestic remedy. The Court and Court Officers Act 2002 was not in force at the relevant time.

37. Accordingly, and for the reasons outlined in detail in the above-cited *Doran* judgment, the Court also finds that there has been a violation of Article 13 in conjunction with Article 6.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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. Pecuniary and non-pecuniary damage

39. The applicants claimed to have suffered pecuniary loss submitting that the delays in the domestic proceedings resulted in extra legal costs to them and referring, for example, to the need for counsel to prepare for the

appeal hearing a second time in February 1999. They also claimed 1,000 euros ("EUR") each in non-pecuniary damage for the disappointment and worry caused by unnecessary delay in the proceedings.

40. As to the pecuniary damage claimed, the Government argued that there was no causal link between the violation (delay) and any pecuniary loss (additional legal fees); no attempt was made to identify in the detailed bill of costs submitted those items of loss directly attributable to the excessive length of the proceedings; no domestic proceedings were pursued by the applicants to vindicate their Convention rights; and there was no evidence that any additional fees could have been in law or, indeed, were requested by counsel as a result of any additional preparation necessary between February 1998 and February 1999.

41. As to pecuniary loss, the Court notes that, while the applicants have submitted a detailed bill of costs in respect of the domestic proceedings, they have not pointed to any specific and identifiable costs incurred as a result of excessive delay. In these circumstances, the Court considers that the applicants have failed to demonstrate a clear causal connection between the legal costs claimed and the unreasonable length of proceedings found to disclose a violation of Article 6 § 1 of the Convention (see *Barberà, Messegue and Jabardo v. Spain*, judgment of 13 June 1994 (Article 50), Series A no. 285-C, §§ 16-20, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). The Court makes no award in respect of pecuniary loss.

42. Turning to the damages claimed for non-pecuniary loss, the Court considers that the applicants must have suffered some distress and frustration resulting from the delays in the proceedings, which cannot sufficiently be compensated by the finding of a violation (see, for example, *Mitchell and Holloway v. the United Kingdom*, cited above at § 69). Having regard to all the circumstances of the case and making its assessment on an equitable basis, the Court awards each of the applicants the sum of EUR 1,000 under this head.

B. Costs and expenses

43. The applicants submitted that they should be awarded the costs of the domestic proceedings and of the proceedings before this Court.

The Government maintained that the Court should decline to make any award under this heading.

44. As to the costs of the domestic proceedings, the Court notes the detailed bill of costs submitted by the applicants. However, there is no evidence that any item was actually and necessarily incurred in domestic proceedings in order to prevent the violation or to obtain redress (see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 18 October 1982 (Article 50), Series A no. 54). As to the legal costs

incurred before this Court, the applicants did not, despite specific requests from the Registry, submit any detail concerning the legal costs incurred by them in pursuing their application to the Court. However, it is considered that they must have incurred some legal costs (see *Migoń v. Poland*, no. 24244/94, § 95, 25 June 2002) and the Court awards the applicants jointly EUR 400 in respect of costs and expenses.

C. Default interest

45. 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) each in respect of non-pecuniary damage and the total sum of EUR 400 (four hundred euros) in respect of legal costs and expenses; and
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President