



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

THIRD SECTION

CASE OF BARRY v. IRELAND

(Application no. 18273/04)

JUDGMENT

STRASBOURG

15 December 2005

FINAL

15/03/2006

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 Barry v. Ireland,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mrs R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 24 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 18273/04) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a United Kingdom national, Dr J. Barry (“the applicant”) on 21 April 2004.

2. The applicant was represented before the Court by Mr D. O’Sullivan, a lawyer practising in Cork, Ireland. The Irish Government (“the Government”) were represented by their Agent, Mr B. McMahon of the Department of Foreign Affairs. The United Kingdom Government did not propose to exercise their right to intervene in the case.

3. On 18 March 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1925 and lives in Cork. He is a medical doctor. In May 1995 a formal complaint was made to the police by a former female patient that she had been indecently assaulted by the applicant and that he had made video recordings. On 4 June 1995 a search warrant was obtained. On 6 June 1995 his home, clinic and consulting rooms were searched. Videos were found reflecting matters similar to those about which the woman had complained. Pills obtained by a prescription made out to, and using the medical card of, another patient were found although that patient knew nothing of the pills. A replica pistol and blank ammunition

were found. The applicant was questioned. He admitted that he had obtained pills in that manner for several years.

5. In July 1995 the Medical Council (“the Council”) was informed of a number of complaints against him by two former female patients and, in August 1995, the police confirmed to the Council that they were investigating allegations of indecent assault by the applicant. In October 1995 the Council received written complaints from those two patients alleging sexual assault and blackmail. On 19 October 1995 the Fitness to Practice Committee (“the Committee”) of the Council decided that there was a *prima facie* case for the holding of an enquiry.

6. On 27 October 1995 the High Court made an order (unpublished) restraining him from practising pending the outcome of the inquiry. On 6 November 1995 the High Court ordered the removal of the applicant’s name from the register of practitioner’s and restrained him from practising pending the inquiry and all consequent proceedings. The High Court also agreed that the Council could make public the “sequence of events” including the orders of 27 October and 6 November 1995. The Council issued a press release on the same day which included the applicant’s name, the terms of those two High Court orders and details of how an individual could complain to the Council about a medical practitioner. Further complaints (600) were then received from other former female patients of the applicant, of which 145 made formal statements to the police.

7. The applicant left Ireland for a number of months to avoid the publicity but kept in contact with the police through his solicitor. On 2 March 1996 he attended with his solicitor, and by prearranged appointment, at a police station to enquire as to whether there were criminal charges pending against him. He claims that he was informed that no charges were pending. However, on 6 March 1996 when he voluntarily attended the same police station with his solicitor, his solicitor insisted on attending the interview, the police refused and, given the dispute, arrested the applicant (under Section 4 of the Criminal Justice Act 1984 – for the proper investigation of a crime - on suspicion of sexual assault of a former patient) during which period the applicant saw his solicitor. The period of lawful detention expired that evening: that same evening he appeared voluntarily before a High Court judge in his *habeas corpus* application. That application was later determined against him.

8. On 9 April 1996 the Chief State Solicitor advised the applicant that certain summonses had issued against him. The applicant was served at his solicitor’s office. The charges concerned the pills, replica pistol and ammunition found. On 8 July 1996 these charges were, pursuant to his application, struck out for lack of evidence.

9. On unspecified dates, certain former patients, also complainants in the criminal proceedings, initiated civil actions against the applicant alleging sexual assault. These proceedings are defended by the applicant.

10. On 18 July 1996 the applicant informed the Committee that the criminal proceedings had been favourably disposed of and that the pending civil actions against him (by patients who had not complained to the Council) would be vigorously defended: he asked for the resumption of the disciplinary inquiry. A hearing was held on 11 November 1996 and the Committee rejected his request to hold the inquiry in public. The applicant's request for leave to apply for judicial review of that decision was rejected by the High Court but was granted by the Supreme Court (December 1996). The High Court (February 1997) and then the Supreme Court (December 1997) rejected the substantive judicial review application and appeal, respectively. When it became subsequently clear that sexual assault charges would be pursued against him, the Council proceedings were stayed.

11. In April 1997 the applicant was served with a routine summons under the Police Property Act 1897 (in order to allow them to dispose of the blank ammunition and the replica pistol). That summons lapsed as it was returnable for a bank holiday.

12. On 30 October 1997 the applicant was arrested on foot of a warrant (issued on 29 October 1997) in respect of an alleged sexual assault of a former patient on a date between 1 October 1992 and 30 November 1992. A list of all charges concerning 43 complainants was read to him later in the police station: he was thereby formally charged with 237 offences of a sexual nature. He was brought before the District Court later that morning to considerable media attention. Bail was opposed but granted on condition that he report to a police station every Monday morning. His passport was impounded.

13. On 14 November 1997 he unsuccessfully applied for a copy of the statement grounding the application for his arrest warrant. On 17 November 1997 he was given leave to apply for judicial review for an order prohibiting his prosecution on three grounds, including "gross and inexcusable delay". A stay on prosecution was granted pending the determination of the judicial review proceedings.

14. In February and March 1998 the respondents submitted a statement of opposition and three affidavits. On 9 March 1998 an order for discovery was made against the respondents. In April, May, June and July 1998 the proceedings were adjourned on the application of the respondents. In early July 1998 the respondents filed their first affidavit of discovery and in late July the applicant requested further discovery. The proceedings were adjourned six times between July and November 1998 at the respondents' request. On 7 December 1998 the respondents requested the hearing of the substantive matter; on 8 December 1998 they filed a further affidavit of discovery; on 9 December 1998 the applicant issued a motion requesting further and better discovery; and on 10 December 1998 the respondents requested that a date be fixed for the substantive hearing.

15. On 28 January 1999 the High Court ordered the applicant to file an affidavit listing those documents over which he disputed the respondents' assertion of privilege. The applicant filed an affidavit on 9 February 1999 but it was later found not to have complied with the order of 28 January 1999. In response, the respondents filed affidavits on 3 June 1999. On that date the High Court heard the applicant's motion for further discovery, ordered the respondents to make further discovery by 25 June 1999 and the matter was adjourned to 2 July 1999. On 29 June 1999 the applicant filed an affidavit complaining, *inter alia*, about delay in the case. On 30 June 1999, and further to the respondents' submission that another affidavit and discovery would be soon ready, the matter was adjourned to 27 July 1999.

16. On 25 July 1999 the applicant was informed that a further adjournment would be applied for by the respondents. On 26 July 1999 the adjournment was accorded by the High Court (until 11 October 1999). The applicant filed an affidavit on that date again complaining about delay. The respondents filed further affidavits in September and October 1999 as did the applicant on 7 October 1999. On 11 October 1999 a further adjournment was accorded, with the applicant's consent on the basis that the respondents furnish him with all non-contested documents by 29 October 1999. On 4 November 1999 the High Court ordered him to clarify within 3 weeks the documents in respect of which he contested the privilege claimed by the respondents. On 2 December 1999 the applicant filed a further affidavit.

17. On 3 December 1999 the hearing of the application for further and better discovery resumed. At this hearing the applicant indicated that he disputed privilege in relation to the complainants' statements and the medical reports. The court ordered the respondents to make the complainants' statements available to the applicant (with addresses blocked out). It made no order as regards the respondents' medical reports and indicated that it would provide the first available date for the hearing of the substantive judicial review matter.

18. In December 1999 the substantive judicial review hearing was fixed for 22 February 2000. However, on 18 February 2000, the respondents filed another 10 affidavits. As a result, the substantive hearing had to be adjourned. Both parties were in agreement that the case should not be re-listed until the Supreme Court had given judgment in a case which was relevant to one (not delay) of the grounds of review ("the related case").

19. In the meantime, the procedural disputes continued. The applicant disputed the claimed privilege during a hearing from 22 to 26 February 2000. During a hearing on 14, 15 and 16 March 2000 the applicant sought further inspection of the respondents' documents. On 2 April 2001 the High Court refused this application. It noted that, while the respondents had been "grossly in delay" in filing the affidavits in February 2000, the information contained therein had not added anything material to the case. It also noted that the applicant had not complied with

the High Court's order of 28 January 1999 to specify which of the documents, in which the respondents were claiming privilege, were being disputed.

20. The Supreme Court gave judgment in the related case in May 2001. The applicant's substantive hearing was set down for 11 January 2002. It ended on 25 January 2002 and judgment was reserved.

21. On 14 February 2003 the High Court delivered its judgment refusing the relief (prohibition of prosecution) sought by the applicant. It found that both parties were at fault for the delay caused by the discovery process: the applicant for not being more focused as to the documents he required (and in particular not complying with the order of 28 January 1999); the respondents for being slow to furnish discovery. It also stated that the respondents had been entirely to blame for the adjournment of the proceedings on 22 February 2000. However, it considered that this default had not caused any significant delay because the proceedings had to be adjourned anyway to await the judgment in the related case. Accordingly, by judgment of 13 March 2003 the High Court removed the stay on prosecution and ordered the applicant to pay the State's costs.

22. In April 2003 the applicant appealed (against the refusal of the prohibition order and the order for costs). In October 2003 the Supreme Court heard the appeal. On 17 December 2003 it rejected the appeal concerning the refusal of the prohibition order. It considered that some of the delay in the judicial review proceedings was the fault of the applicant (for not complying with the order of 28 January 1999); some was necessary (in order to await the judgment in the related case); some was caused by the Director of Public Prosecutions ("D.P.P.") (in particular the adjournments they sought during the protracted discovery process); and some was caused by the High Court (in failing to deliver judgment for over a year). It held that it could only take into account the delay for which the D.P.P. was responsible.

23. As to the "considerable delay" of the High Court in delivering judgment, it said:

"...it is a complete misunderstanding of the decision of the European Court of Human Rights in *Doran v. Ireland* [no. 50389/99, ECHR 2003-X (extracts)] to treat it as authority for the proposition that, in a case such as the present, the right of the public, as represented by the D.P.P., to the trial of serious offences can be defeated by a delay for which the prosecuting authorities bore no responsibility. The decision of the majority of the [C]ourt in *Doran v Ireland* ... does not have the effect of entitling a party in the domestic courts to relief which would otherwise not be available to him."

24. On 30 January 2004 the Supreme Court affirmed the costs order of the High Court and required the applicant to pay the respondents' costs.

25. In December 2004 the applicant was informed by the police that, in light of the Supreme Court's judgment, the prosecution would proceed before the District Court on 22 December 2004. On that date, the prosecutor

withdrew charges concerning four complainants but maintained the charges of sexual assault concerning 38 complainants. The prosecution sought and was granted an adjournment (until 19 January 2005) to allow it to prepare a Book of Evidence after which it was envisaged that the charges would be transferred for trial on indictment. On 26 January 2005 the District Court lifted his bail conditions. It ordered the transfer of the charges to the Circuit Court for trial on indictment. The District Court refused to conduct a preliminary examination of the charges under Part II of the Criminal Procedure Act 1967 (which provision had been repealed by Part III of the Criminal Justice Act 1999 in October 2001). On 21 February 2005 the High Court granted leave to seek judicial review of this refusal by the District Court.

A medical report dated 11 March 2005 concluded that the applicant's advanced age and the ongoing prosecution "have affected his physical and mental condition to such an extent that at this point in time his capacity to defend himself is impaired". The Medical Council disciplinary proceedings and the civil assault actions have been adjourned pending the criminal proceedings.

THE LAW

I. ADMISSIBILITY

A. The length of the proceedings

26. The applicant mainly complained under Articles 6 and 13 of the Convention about the excessive duration of the criminal proceedings against him (still not terminated) and the lack of an effective remedy in that respect.

The Court considers that this applicants' complaints raise questions of law which are sufficiently serious that their determination should depend on an examination of the merits and no other ground for declaring them inadmissible have been established. The Court therefore declares these complaints admissible.

B. Orders for costs and legal aid

27. The applicant also complained about the costs orders made against him and invoked Articles 6, 13 and 14 of the Convention as well as Article 1 of Protocol No. 1.

The Court recalls that it is not an unreasonable requirement of civil litigation that the unsuccessful party should pay the adversary's costs. The Court has found a general rule that costs follow the event in civil litigation to be reasonable (*O'Reilly v. Ireland* (dec.), no. 54725/00, 28 February 2002 and 21826/02, and *Albert and Dudley Dawson* (dec.), no. 21826/02, 8 July 2004) and the Court does not find any evidence of unfairness or arbitrariness as regards the costs' orders in the present case.

28. The applicant further complained about the fact that he was not provided with legal aid. He invoked Article 6, 13 and 14 also in this respect.

The Court notes that the applicant was legally represented throughout the judicial review proceedings and, in any event, that he did not indicate that he had applied for, but was refused, legal aid. As a result, there is no appearance of a violation of Article 6 in this respect.

29. Moreover, the Court does not find any evidence of any discriminatory difference in treatment either as regards the costs' orders made against the applicant or the legal aid issue he raised.

In so far as Article 13 is invoked with Article 14, these complaints do not therefore involve any arguable claim of a breach of the requirements of Article 14 (*Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131 and, more recently, *Douglas-Williams v. the United Kingdom*, (dec.), no. 56413/00, 8 January 2002). In so far as Article 13 is invoked in conjunction with Article 6 (other than as regards its reasonable time requirement), Article 6 is considered to be the *lex specialis* (see, for example, the above-cited decision in *Dawson v. Ireland*).

30. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

II. MERITS

A. Complaint under Article 6 § 1

31. The applicant complained that the length of the proceedings was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which provision, in so far as relevant, 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..."

32. The Government contested that argument.

33. The applicants argued that the period to be taken into consideration began on 6 June 1995, when the applicant's home and office were searched under warrant. The Government submitted that time should run from 30 October 1997 when he was informed of the charges against him.

34. In *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 73 the Court said:

“In criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court (see, for example, the *Deweert* judgment of 27 February 1980, Series A no. 35, p. 22, par. 42), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened (see the *Wemhoff* judgment of 27 June 1968, Series A no. 7, pp. 26-27, par. 19, the *Neumeister* judgment of the same date, Series A no. 8, p. 41, par. 18, and the *Ringeisen* judgment of 16 July 1971, Series A no. 13, p. 45, par. 110). “Charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see the above-mentioned *Deweert* judgment, p. 24, par. 46).”

The Court recalls that, in the above-cited *Eckle* case, it found that the applicant had been “charged” at the moment when the search warrant against his property was issued and executed (*op. cit.* § 75).

35. Accordingly, the Court considers that the period to be taken into consideration began on 6 June 1995, the day on which it can be said the applicant was “substantially affected” within the meaning of the *Eckle* judgment. The proceedings have not yet ended and have thus lasted over 10 years and 4 months.

36. 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, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). On the latter point, what is at stake for the applicant in the litigation has to be taken into account (*Pailot v. France*, judgment of 22 April 1998, *Reports of Judgments and Decisions* 1998-II, § 61).

37. The Government pointed out that the criminal investigation was very sensitive and complex, involving 237 charges and 43 separate complainants.

38. The Court considers that the complexity of the criminal investigation might explain the delay between the laying of the first complaint (in May 1995) and the formal charging of the applicant (in October 1997). However, it cannot, on its own, explain the subsequent delay of eight years in bringing those charges to trial.

39. The Government submitted that the applicant was to blame for the delays from October 1997 to date. They submitted that those delays were caused by the two sets of judicial review proceedings which he had chosen to bring. Although they did not dispute that the applicant was entitled to bring such proceedings, they submitted that much of the delay in those proceedings had been caused by the way he conducted those proceedings, in particular his “blunderbuss” attack on every aspect of his prosecution, his

“unfocussed” approach to disclosure and his refusal to comply with the directions of 28 January 1999 until 3 December 1999.

40. The Court considers that, given the prior delay, the applicant was entitled to pursue the judicial review proceedings he did in order to have the prosecution abandoned. The applicant was entitled to apply for discovery. It is true that he was responsible for some of the delay in the discovery process by failing to specify the documents that he required and, in particular, by failing to comply with the order of 28 January 1999. However, as the domestic courts themselves noted, the authorities were also responsible for part of this delay (see paragraphs 21 and 22 above).

41. While the Court therefore considers that the conduct of the applicant contributed somewhat to the delay, it alone does not explain the overall length of the proceedings against him.

42. The Government accepted that the authorities were, in part, responsible for the delays caused by the discovery process but reiterated that the applicant was also responsible. Secondly, they submitted that the delay in holding the substantive hearing (February 2000 to January 2002) was not the authorities’ fault: both parties had agreed to await the outcome of the related case. Lastly, they submitted that the delay from December 2003 (when the Supreme Court dismissed the applicant’s appeal) to December 2004 (when the prosecution was re-opened) was explained by the fact that the authorities had to verify whether the complainants still wished to proceed.

43. In response, the applicant complained of various periods of delay which he said were the fault of the national authorities. In particular, he submitted that, even if he were responsible for the delays in the disclosure process from 28 January 1999 onwards, the authorities were responsible for the delays before then because they should have provided disclosure in response to the order of 9 March 1998. Secondly, the authorities were responsible for the delay (from 22 February 2000 to 25 January 2002) in holding the judicial review hearing because it was their late submission of affidavits which caused the hearing to be adjourned. Thirdly, they were responsible for delay between the reserving and the delivery of judgment by the High Court (25 January 2002 to 14 February 2003); and they were responsible for the delay between 13 March 2003, when the High Court lifted the prohibition against bringing the prosecution against the applicant, and 22 December 2004 when the prosecution was finally reopened. He argued that it could not have taken a year to contact all complainants.

44. The Court considers that there are several periods of excessive delay which are partially or completely attributable to the authorities:

(i) November 1997 to February 2000 (namely, the period from the origination of the judicial review proceedings to the date originally fixed for trial). The Court notes that this period was taken up mostly by disputes as to discovery. As the domestic courts made clear (see paragraphs 21 to 22

above), the responsibility for the protracted nature of the discovery process was partially the authorities' responsibility;

(ii) February 2000 to January 2002 (namely, the period from the date originally fixed for the judicial review hearing to the date when the hearing was finally completed). While some of this delay is explained by the wait for the judgment in a related case (handed down on May 2001), the remainder of this delay was caused by the authorities filing affidavits just before the date originally fixed for the hearing and by the authorities' subsequent failure to list the case promptly after May 2001.

(iii) January 2002 to March 2003 (namely, the period between reserving and delivering the judgment of the High Court). This period was clearly unreasonably long particularly given that the case had already been substantially delayed and it was a delay solely attributable to the authorities. The Government did not attempt to explain this delay.

(iv) December 2003 – December 2004 (namely, the period between the final Supreme Court decision (dismissing the appeal) and the reopening of the prosecution). The prohibition on prosecution was lifted in September 2003. Even if it was reasonable for the authorities to await the outcome of the appeal, they could, in the meantime, have contacted all the complainants to verify that they were still willing to proceed. In any event, while there were numerous complainants, it is not persuasively explained why a year was required for this verification process. Given the delay until then, there is no justification found for the authorities' delay of one year in reopening the proceedings following the judgment of the Supreme Court.

45. The Court observes that the allegations and subsequent charges, of sexual assault on 43 former female patients, are clearly grave. The applicant, who is now in his 80s, has therefore had to bear the weight of such charges for the last ten years as well as being concerned about, if convicted, a substantial prison sentence.

46. In the meantime, he has also been denied the possibility of pursuing his profession (albeit that that possibility was remote given his age and health) pending the Medical Council disciplinary proceedings which cannot resume until after the criminal proceedings have been concluded. He has also, for most of the period, been subject to relatively restrictive bail conditions: having to report to a police station once a week and having his passport impounded.

47. Having regard to all the circumstances of the case, the Court cannot consider the time taken in the present case to have been "reasonable". In sum, there has been a violation of Article 6 § 1 of the Convention.

B. Complaint under Article 13

48. The applicant further complained that in Ireland there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

49. The Government contested that argument. They submitted that judicial review provided an effective remedy. They argued that damages might have been available as a remedy in the judicial review proceedings, if the applicant had sought them. They distinguished the above-cited case of *Doran v Ireland* on the ground that it concerned civil proceedings. They also submitted that the *Doran* judgment was wrongly decided and failed to take into account the flexibility of the common law system, where the absence of precedent would not necessarily preclude the applicant from obtaining damages for delay.

50. 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).

51. It further recalls the summary of the relevant law in the above-cited case of *Doran* (at §§ 57 and 59):

“[P]articular 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)...

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).”

52. The Court considers that the judicial review proceedings, relied on by the Government, were not capable of expediting the decision by the criminal courts. The aim of the judicial review proceedings was to stay future criminal proceedings, not to expedite them. Moreover, the judicial review proceedings themselves took over seven years. Even if this was longer than normal, it indicates that judicial review proceedings were not sufficiently swift to be preventative of future delay (see the above-cited *Doran* judgment, at §§ 57 and 65).

53. In addition, the Court does not consider that the judicial review proceedings were capable of providing adequate redress for delays that had already occurred. There is no evidence that such proceedings would have been capable of providing damages and the Government accepted that there

was no domestic legal provision for an award of damages in following proceedings. Although the Government argued that the common law might be flexible enough to provide such a remedy, they did not refer to one precedent even tending to support this argument. Moreover, the judgment of the Supreme Court made it clear that Convention case-law would not cause the domestic courts to fashion any remedies that would not otherwise have been available (see paragraph 23 above).

54. Moreover, the Government did not clarify 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 factor (see the above-cited *Doran* judgment, at § 66).

55. Finally, the judgment of the Supreme Court made clear that, in determining the applicant's judicial review proceedings (based on, *inter alia*, delay), the domestic courts would not take into account delays caused by any national authorities other than the D.P.P. Given that the judicial authorities (both the judiciary and the authorities responsible for listing cases) were responsible for a considerable part of the delay in this case (see paragraph 43 above), this is a further reason for concluding that the remedy of judicial review cannot be considered an effective one.

56. Accordingly, the Court considers that there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law, at the time when the applicant lodged his application, for past and future delay in his criminal proceedings.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant did not make a claim for pecuniary loss.

59. He did claim 75,000 euros (EUR) in respect of non-pecuniary damage. He relied on the period of delay involved, his age, his frail health, his inability to deal with his affairs (including the civil action against him) while the proceedings were ongoing, the restriction of his liberty imposed by the bail conditions and the hardship and stress that he was subject to.

60. The Government contested these claims. They disputed, in particular, that there was any connection between his health problems and the length of proceedings.

61. The Court considers that the applicants must have suffered some distress and frustration resulting from the delays attributable to the authorities in the proceedings, which cannot sufficiently be compensated by the finding of a violation (for example, *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 69, 17 December 2002 and the above-cited *Doran* judgment at § 75). The Court has had regard to all the circumstances of the case and, in particular, to those factors which must have exacerbated the impact on the applicant of the breaches of the Convention (including his advanced age associated physical limitations together with the serious nature of the outstanding charges). Ruling on an equitable basis, the Court awards him EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

62. The applicant also claimed indemnity in respect of the costs orders made against him and in favour of the State before the domestic courts and EUR 12,705 for those incurred before the Court.

63. The Government contested the claim in respect of the costs before the domestic courts pointing out that the applicant had failed on the merits. As a result, the said orders would have been made whether or not there was any delay in the disposition of the proceedings.

64. The Court recalls that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, *Smith and Grady v. the United Kingdom (just satisfaction)*, nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX and, more recently, *B. and L. v. the United Kingdom*, no. 36536/02, § 50, 13 September 2005).

65. The Court notes that the domestic costs orders have not yet been enforced. In these circumstances, the Court does not consider it necessary to make any provision in respect of the costs incurred in the domestic proceedings under Article 41 at the present time (*Steel and Morris v. the United Kingdom* (no. 68416/01, § 105, ECHR 2005-...)). No other claim was made by the applicant concerning the costs of the domestic proceedings.

As for the costs in the present proceedings, the Court notes that this was a relatively straight forward case concerning the duration of criminal proceedings which was not pending before this Court for a long period of time. It considers it reasonable to award the sum of EUR 7,000 in respect of the said costs.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints under Articles 6 and 13 of the Convention concerning the length of criminal proceedings admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 13 of the Convention;
4. *Holds* by four votes to three
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sums of EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 7,000 (seven thousand euros) in respect of the legal costs and expenses of his Convention application;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

BOŠTJAN M. ZUPANČIČ
President