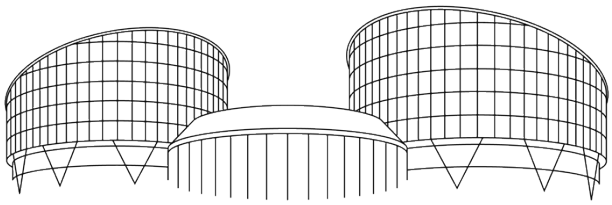

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RICHARD ANDERSON v. THE UNITED KINGDOM

(Application no. 19859/04)

JUDGMENT

STRASBOURG

9 February 2010

FINAL

09/05/2010

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

In the case of Richard Anderson v. the United Kingdom,

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

Lech Garlicki, *President,*
Nicolas Bratza,
Giovanni Bonello,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 19 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 19859/04) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Mr Richard Anderson ("the applicant"), on 27 May 2004.

2. The United Kingdom Government ("the Government") were represented by their Agent, Ms E. Willmott of the Foreign and Commonwealth Office.

3. On 15 January 2008 the Acting President of the Fourth Section to which the case had been allocated decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

1. The background to the applicant's civil proceedings

4. The applicant was born in 1952 and lives in Glasgow. He is an advocate by profession. He owned a flat in a tenement building in Edinburgh. A number of the flats in the building were also owned by a commercial property company. In August 1988, when the proprietors of the

building failed to carry out repairs mandated by the city council under statutory notices, the city council itself instructed works to be carried out (provided for by section 99 of the Civic Government (Scotland) Act 1982). It sought advice from a private architect, awarded the contract for the repairs to a private preservation company and apportioned the cost of the repairs among the various proprietors of the building. In October 1988, a fire occurred in the building which damaged part of the applicant's flat and part of the flat below belonging to the commercial property company. Whilst the applicant was living elsewhere, the commercial property company instructed repair work. The applicant claimed that both sets of repairs constituted trespass to his property, that in each case the repairs were in fact inadequate and unsatisfactory, and that he was entitled to damages in the sum of GBP 100,000.

2. Proceedings in the Sheriff Court

5. When the applicant refused to pay the council for his share of the repair costs, the council brought proceedings in the Sheriff Court (the civil court of general jurisdiction). The applicant filed a counter-claim alleging that the council had instructed further repairs that had damaged his property. The applicant further sought referral of the whole case to the Court of Session (the highest civil court in Scotland).

On 14 November 1994 the Sheriff Court upheld the council's claim, rejected the applicant's counter-claim and found that the case did not meet the criterion for referral to the Court of Session. On 11 May 1995, the applicant's appeal to the Sheriff Principal was rejected.

In 1998, the applicant then brought proceedings against the architect and chief executive of the preservation company for contempt of court in relation to an alleged failure to produce documents in the initial action. By judgments of 17 February 1999, the Sheriff Court rejected the applicant's claims.

3. Proceedings in the Court of Session

6. On 26 March 1997, the applicant obtained a summons to bring proceedings against the commercial property company ("the first defenders") and the city council ("the second defenders") in the Outer House of the Court of Session, alleging that the statutory notices were invalid on grounds of fraud and illegal conspiracy. The second defenders were served on 15 April 1997. The first defenders were served on 14 May 1997. Defences were lodged by both defenders on 12 June 1997. Between that date and 7 January 1998 the record in the case (the parties' written pleadings) was open and closed on a number of occasions at the request of the parties and with the leave of the court to allow for adjustment of their pleadings.

7. The applicant was then informed by the court that, since part of his claim challenged one of the orders made in the Sheriff Court proceedings, he was required to intimate a copy of the closed record to the relevant sheriff clerk. On 26 February 1998, the court gave him leave to do so. There was then further correspondence between the parties as to the future procedure in the case, which led the applicant to apply to the court first, for an order for disclosure of certain documents and second, for a warrant to direct the relevant sheriff clerk to transmit the record of the Sheriff Court proceedings to the Court of Session. On 15 July 1998, the applicant's motion to this effect was adjourned to 22 September 1998. On the latter date, the motion was granted by way of interlocutor. This was done when the first defenders, despite their opposition to the motion, failed to appear. On 2 October 1998, the Lord Ordinary granted the first defenders leave to reclaim (appeal) to the Inner House against the interlocutor of 22 September 1998 in so far as it related to the disclosure of documents.

8. On 8 October 1998, the Inner House directed the parties to lodge their grounds of appeal within 28 days. On 4 November 1998, the first defenders lodged their grounds of appeal. It appears that, by oversight, the first defenders failed to apply for a hearing.

9. On 5 November 1999, the Inner House allowed the applicant to amend his pleadings and allowed the other parties to lodge answers within 21 days. On 7 December 1999, on the first defenders' unopposed motion, the Inner Court appointed the case to the Summar Roll (the list of appeals and other business before it). On 3 February 2000, the Inner House allowed the second defenders' answer to be received late. The interlocutory appeal was then to be heard in one day, 26 May 2000, but this date was vacated when, on 20 April 2000, the applicant explained to the court that he believed a two day hearing would be necessary. On 9 June 2000, the hearing was then fixed for 15 and 16 March 2001. On 7 February 2001, the applicant advised the court that a one-day hearing would be sufficient. The interlocutory appeal was duly heard on 15 March 2001 and, in a judgment given the same day, the Inner House allowed the first defenders' reclaiming motion and remitted the case back to the Lord Ordinary in the Outer House.

10. On 20 March 2001, upon remittal to the Outer House, further directions were given for disclosure. On 14 September 2001, on the motion of the first defenders, the court appointed the case to the procedure roll for a debate (hearing) on pleas-in-law. After two dates for that debate were vacated, a two-day hearing was fixed for 20 and 21 June 2002. On 15 May 2002, the court allowed the applicant to lodge further supplementary arguments alleging a lack of candour in the defenders' pleading but refused his motion for further disclosure. The case was heard on 21 June 2002. As a result of that hearing, the applicant's action was dismissed on 4 September 2002 by the Outer House. In a written judgment, the Lord Ordinary found the applicant's claims to be unfounded and unspecified.

11. The applicant appealed to the Inner House. The appeal was listed for 18 and 19 November 2003. On 4 November 2003, the Inner House refused the applicant's motion for leave to amend his appeal. However, on 13 November, it allowed him to abandon his appeal against the second defenders and proceed only against the first defenders. The appeal was heard on 18 and 19 November 2003. The appeal was unanimously dismissed on 11 December 2003, the court finding that the applicant's pleadings lacked specification. The applicant was found liable for the first defenders' costs on 18 December 2003.

12. In June 2002 the applicant also sought to bring proceedings in the Court of Session against the solicitors acting for the council in the Sheriff Court proceedings. Unable to obtain a solicitor who would provide the necessary signature on the summons, the applicant petitioned the Court of Session for leave to proceed without the signature. Leave was refused on the papers on 25 July 2002. Complaints made in relation to the solicitors and advocates representing the council were dismissed by their respective professional bodies and then by the Scottish Legal Services Ombudsman on 13 November 2001 and 4 July 2003, respectively.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION ARISING FROM THE LENGTH OF THE COURT OF SESSION PROCEEDINGS

13. The applicant principally complained that the length of the proceedings before the Court of Session challenging the statutory notices was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention. He also referred to Article 13 of the Convention in this connection.

Article 6 § 1 of the Convention, 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..."

14. The Government contested that argument.

A. Admissibility

1. The parties' submissions

15. The Government contended that the applicant had failed to exhaust domestic remedies as he did not complain about the alleged unreasonable length of the proceedings before the Outer and Inner Houses of the Court of Session. First, before the Outer House, when the parties could not agree to the future procedure in the case, the applicant could have enrolled a motion for the court to decide on future procedure. Second, in October 1998, he had failed to seek early disposal of the first defenders' reclaiming motion or to have it heard as a single bill (a motion which can be heard in a short period of time) rather than on the Summar Roll. The brief and interlocutory nature of the appeal meant it would have been well-suited to being heard promptly in this way. Third, when the first defenders failed to apply for a hearing before the Inner House, the applicant failed to apply for the reclaiming motion to be refused for want of insistence. He could also have requested that the first defenders be asked to explain to the court whether they intended to insist upon their appeal. Fourth, in December 1999, when the case was on the Summar Roll, he again failed to seek early disposal of the appeal or to have the case heard as a single bill. Fifth, in October 2001, when the case was on the procedure roll, the applicant failed to agree to allowing the case to be put on the "warning list" (a list of cases that could be heard at short notice). Sixth, in October 2002, the applicant failed to seek early disposal of his own reclaiming motion. Apart from the failure to make use of these procedures, at no point did the applicant enrol a motion, making reference to Article 6 § 1 of the Convention, to have the case expedited. He also had not sought any redress under the Human Rights Act 1998. Finally, the Government argued that the absence of a formal case management system for some ordinary actions in the Court of Session did not prevent litigants from using the above procedures to expedite cases.

16. The applicant argued that the Government's submissions were without foundation. For the first alleged remedy, a motion on future procedure, the delay at that stage was minimal. For the remaining delays and the possibility of an early disposal of the appeal, such a procedure existed but it was for urgent matters, such as an appeal against an order removing someone from the matrimonial house, and there was nothing in the present case that met that test. Instead, the applicant's concern throughout the proceedings was that the defenders had been less than candid in their pleadings and he had sought to address that in his own pleadings and in his motion to that effect, which had been refused on 15 May 2002.

2. The Court's assessment

17. The Court reiterates that Article 35 § 1 of the Convention requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but that no recourse need be had to remedies which are inadequate or ineffective. The existence of the remedy must be sufficiently certain, failing which it will lack the requisite accessibility and effectiveness. Article 35 of the Convention also provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Bullen and Soneji v. the United Kingdom*, no. 3383/06, § 43, 8 January 2009, with further references).

18. In determining whether the present applicant has exhausted domestic remedies, the Court also recalls its findings in the cases of *Price and Lowe v. the United Kingdom* (nos. 43185/98 and 43186/98, § 23, 29 July 2003) and *Crowther v. the United Kingdom* (no. 53741/00, § 29, 1 February 2005) where it held:

> "a principle of domestic law or practice that the parties to civil proceedings are required to take the initiative with regard to the progress of the proceedings, does not dispense the State from complying with the requirement to deal with cases in a reasonable time...The manner in which a State provides for mechanisms to comply with this requirement, whether by way of increasing the numbers of judges, or by automatic time-limits and directions, or by some other method, is for the State to decide. If a State lets proceedings continue beyond the 'reasonable time' prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay."

19. The Court finds that, in the present case, the Government's submissions have essentially identified periods in the proceedings where the delay was caused by the applicant's conduct and, in particular, his failure to take "the initiative with regard to the process of the proceedings". As such, and consistent with its approach in the cases of *Price and Lowe*, *Crowther* and *Bullen and Soneji*, all cited above, it finds that these submissions in reality go to the merits of the application and in particular to the applicant's conduct and contribution, if any, to the length of the proceedings. It follows that the Government's objection to non-exhaustion of domestic remedies must therefore be dismissed.

20. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. The complaints must therefore be declared admissible.

B. Merits

(a) Article 6 § 1

1. The parties' submissions

21. The Government considered that, because in Scots law proceedings commence when a summons is served on the defender, the relevant period began on 15 April 1997. It ended on 18 December 2003 when the Inner House found the applicant to be liable for the first defenders costs. The total period was therefore some six years and eight months.

22. In the Government's submission, the proceedings were of some complexity as evidenced by the applicant's own attempts to amend his written pleadings by means of lengthy minutes of amendment. Responsibility for the progress of proceedings rested with the parties, in particular the applicant as pursuer in the case. In considering what steps he should have taken, it was to be noted that the applicant was represented by a firm of solicitors who regularly acted for litigants in the Court of Session and the applicant himself was an advocate who had practised in the Court of Session for many years. He had failed to show diligence in carrying out the procedural steps required of him, he had used delaying tactics and he had failed to avail himself of the available means for shortening the proceedings. In addition to the failure to take the steps set out by the Government in their submissions on non-exhaustion (see paragraph 15 above), he was also culpable for the delay in the following ways. He had failed to complete service until 14 May 1997; he did not oppose the defenders' motions for adjustment made in 1997; he continued to develop his pleadings from September 1997 – January 1998; he failed promptly to obtain the necessary warrant for intimation to the clerk of the Sheriff Court and, having done so, he had failed to enrol a motion for further procedure to be determined. Before the Inner House, he had persuaded that court that a two-day hearing was necessary (causing the hearing to be postponed) when in fact it was heard in one hour on 15 March 2001. After that hearing he had failed to respond to the defenders' calls to agree upon further procedure. When the case was remitted to the Outer House he had also caused another hearing date to be vacated by insisting that a two-day hearing was required, when in fact the hearing only took one day.

For the period from late 1998 to autumn 1999, the Government understood that the parties were involved in other proceedings in the Sheriff Court (see paragraph 5 above), in settlement discussions and the complaint proceedings brought by the applicant. The Inner House could have held a hearing in this period but the Government submitted that, during this period, it was clear that the parties were content to leave the proceedings in abeyance. When the parties had agreed on future procedure, all hearings

dates had been set with reasonable promptness; judgments then had been issued promptly by both the Outer House and the Inner House. The dispute was about repairs to property and was not of a nature to require special efforts of expedition.

23. The applicant submitted that the initial delay in service was by no means out of the ordinary. Thereafter the case began to depart from the procedure ordinarily followed in the Court of Session, principally because the defenders had not properly outlined their defences and had not adjusted their pleadings in the time when they could do so without needing to obtain the leave of the court. The applicant was not to blame for his failure to oppose the defenders' motion for adjustment: there was nothing to be gained from such an objection and it was better for the procedure to obtain as full a set of written pleadings as possible. When those adjustments were finally filed, he had no choice but to apply for an extension of time to adjust his own pleadings. He accepted that there was a short delay on his part in giving notice of the proceedings to the clerk of the Sheriff Court but, at the same time, there was nothing more he could have done when his motion for specification for documents (which the defenders had opposed) was before the court.

When the defenders appealed to the Inner House, the applicant was not at fault for failing to seek early disposal of the appeal. As he had submitted at paragraph 16 above, the case was not of the type that would be expedited by the Inner House. He was also not to blame for seeking a two-day hearing before the Inner House, believing this was necessary given the lack of specification in the defenders' written pleadings. He submitted that almost the whole of the proceedings were taken up by his attempts to force the defenders to make candid and proper disclosure of their case and, moreover, that the majority of the delay was due to the inability of the Outer and Inner House to control the proceedings. There was no proper system of case management by the courts; the Scottish courts had only introduced such a principle after his case had been concluded.

2. The Court's assessment

24. 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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. As to the first of these criteria, the complexity of the case, the Court cannot accept the Government's argument that this was a complex civil dispute. The case turned entirely on the veracity of the applicant's allegations of fraud and illegal conspiracy and there had already been previous litigation between the applicant and the city council in the Sheriff

Court. There were no novel points of law at stake and the Outer House was ultimately able to reject the applicant's allegations as unfounded and unspecified. The Inner House was also able to dismiss the applicant's appeal from the Outer House's decision for substantially the same reasons. The relative lack of complexity of the case is also demonstrated by the fact that, once various procedural issues had been resolved, the Inner House was able to dismiss each appeal to it shortly after hearing oral argument.

26. As to the third criterion, what was at stake for the applicant, the Court does not accept that the proceedings were of exceptional significance. The repairs to the property may have had some financial consequences for the applicant but this matter had already been litigated before the Sheriff Court and, in the Court's view, the Court of Session proceedings were secondary to that litigation.

27. The Court finds that whether there was a breach of Article 6 § 1 essentially turns on the second criterion, that is, the extent to which any delay was attributed to the conduct of the applicant or the relevant authorities. Having reviewed the record of the proceedings submitted by the parties, the Court finds that the applicant bears some responsibility for the delay in the initial stage of proceedings, notably his attempts to have the written pleadings amended on several occasions and his failure promptly to obtain a warrant for intimation to the clerk of the Sheriff Court. However, it accepts that, in respect of the former, the applicant was motivated by a desire to have the written record as fully developed as possible and there was nothing to be gained from objecting to attempts by the defenders to amend their pleadings. The Court also rejects the Government's submission that the applicant contributed to the length of the proceedings by insisting on a two-day hearing for an interlocutory appeal before the Inner House and for the debate on pleas-in-law once the case had been remitted to the Outer House. It sees no reason why this would have required the one-day hearing dates to be vacated since, in the Court's view, it would not have been necessary for a two-day hearing to have taken place on two successive days; each hearing could have gone ahead and, if a second day proved necessary, arrangements been made for the hearing to be continued on the next available date.

28. Moreover, the Court finds that there were periods of inactivity for which no satisfactory explanation has been given by the Government. The Court is particularly struck by the fact that the first appeal was before the Inner House from 22 September 1998 until 15 March 2001 and there was little or no activity between late 1998 and autumn 1999. It may well have been that, as the Government submitted, the parties were involved in other proceedings and settlement discussions. However, the Court finds that these considerations were not sufficient to absolve the Inner House of its own obligation to take an active role in the management of proceedings and to make enquiries of the parties to ascertain their position in respect of the

appeal. As the Court has frequently stated, the State remains responsible for the efficiency of its system; the manner in which it provides for mechanisms to comply with the reasonable time requirement – whether by automatic time-limits and directions or some other method – is for it to decide. If a State allows proceedings to continue beyond the "reasonable time" prescribed by Article 6 of the Convention without doing anything to advance them, it will be responsible for the resultant delay (*Bhandari v. the United Kingdom*, no. 42341/04, § 22, 2 October 2007, together with further references therein). Additionally, for the time the interlocutory appeal was pending before the Inner House, the Court does not find that any significant period of delay can be attributed to the applicant or that the expedition of the proceedings was his responsibility at this stage; the interlocutory appeal had been taken by the first defenders when the applicant's motion for disclosure – which they opposed but for which they failed to appear in person – had been granted by the Outer House.

29. In all the circumstances, the Court does not consider that the proceedings were pursued with the diligence required by Article 6 § 1. There has accordingly been a violation of that provision, in that the applicant's "civil rights and obligations" were not determined within "a reasonable time".

(b) Article 13

30. To the extent that the applicant also appears to rely on Article 13 in respect of the length of the proceedings before the Court of Session, the Court, having regard to the particular circumstances of the case and its analysis of the Article 6 complaint, finds that it is not necessary to examine the complaint under Article 13.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant made the following additional complaints. First, under Article 6 § 1 of the Convention, he complained that the refusal of the Court of Session to grant leave for him to proceed without the necessary signatures on his summons violated his right of access to court. Secondly, under Article 6 § 1 he alleged that there was a lack of a fair hearing in three aspects: (i) that the Sheriff Court and Sheriff Principal refused to hold oral hearings on preliminary matters before them; (ii) that the Court of Session while it heard oral argument, essentially based its ruling on preliminary, written pleadings; and (iii) that the Court of Session failed in its duty to make a proper examination of the submissions, arguments and evidence adduced by the parties. Thirdly, under Article 6, the applicant complained that the courts hearing his case, while themselves independent and impartial, were not in fact independent and impartial by virtue of the corruption and contempt of court of the legal representatives before them. Fourthly,

invoking Article 13 of the Convention, the applicant complained that there was no effective remedy in respect of these alleged violations of Article 6 § 1. Finally, he complained under Article 8 of the Convention that the council, by entering his property to carry out the repairs, failed to respect his right to respect for his home.

32. For the first complaint, the Court observes that the leave to proceed was refused on 25 July 2002. The present application was lodged on 27 May 2004 therefore this complaint has been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

33. For the second complaint, the Court does not find that the refusal of the Sheriff Court and the Sheriff Principal to hold oral hearings amounted to a breach of Article 6: the obligation to hold an oral hearing in civil proceedings in not absolute and the nature of the issues to be decided by the Sheriff Court and the Sheriff Principal justified their decision to dispense with oral hearings at the preliminary stage of proceedings before them (*Jussila v. Finland* [GC], no. 73053/01, §§ 41–42, ECHR 2006-XIII). It further finds the applicant's complaint that the Court of Session based its ruling on written pleadings to be unsubstantiated and his complaint that it failed to make a proper examination of the papers before it to be fourth instance in nature. It follows that this second complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

34. For the third complaint, the Court finds these allegations to be wholly unsubstantiated and thus also to be rejected as manifestly ill-founded. For the fourth complaint, brought under Article 13 taken in conjunction with Article 6 § 1 of the Convention, the applicant's substantive complaints have been rejected pursuant to Article 35 of the Convention. The Court is not persuaded that any of these complaints were "arguable" (*Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 137, ECHR 2003-VIII) and thus Article 13 has no application to these complaints. The Court therefore rejects this part of the complaint as manifestly ill-founded.

35. For the final complaint, which has been made under Article 8, the Court finds that the applicant has failed to rely on that Article in any of the domestic proceedings which he has brought against the council or the private parties he alleged to be responsible. Hence, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed GBP 85,603.14 (approximately EUR 97,030) in respect of pecuniary damage. This included the costs he was ordered to pay to the first and second defenders by the Inner House (GBP 33,000 – approximately EUR 37,406) and the money he owed to the city council for the repair work (GBP 30,403.14 – approximately EUR 34,463). He was required to sell his home to pay these costs and was forced to pay rental on another house for 2005–2008; the rental costs were GBP 22,200 (approximately EUR 25,172). The applicant further claimed GBP 10,000 in respect of non-pecuniary damage arising from the emotional distress caused by the alleged breaches of the Convention and by the loss of his home.

38. The Government contested these claims. In respect of the claim for pecuniary damage, they submitted there was no causal connection between the damage claimed and any of the breaches of the Convention alleged by the applicant. In respect of the claim for non-pecuniary damage, they submitted that the applicant had failed to explain how any emotional distress was caused by any particular delay in the Court of Session proceedings. Furthermore, any delay was not the cause of the loss of the applicant's home.

39. The Court notes that it has only found a violation of Article 6 § 1 in respect of the length of the Court of Session proceedings. Moreover, it does not discern any causal link between that violation and the pecuniary damage alleged; it therefore rejects the applicant's claim for pecuniary damage. It also does not discern any causal link between this violation and any distress that the loss of the applicant's home would have caused him. On the other hand, it accepts the unreasonable delay in the Court of Session proceedings must have caused the applicant some distress and frustration. As a result he has certainly suffered non-pecuniary damage which is not sufficiently made good by the finding of a violation of the Convention. Ruling on an equitable basis, it awards him EUR 1,500.

B. Costs and expenses

40. In his claim for just satisfaction the applicant stated that he had retained lawyers to represent him before the Court and sought recovery of his legal costs and expenses. The Court recalls that in order for costs and expenses to be recoverable under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable

as to quantum (see, among other authorities, *D.G. v. Ireland*, no. 39474/98, § 128, ECHR 2002-III). The Court notes that no itemised statements were provided in relation to the costs and expenses. Consequently, it makes no award under these heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the excessive length of the proceedings and the absence of an effective remedy in that connection admissible and the remainder of the application inadmissible;

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

3. *Holds* that it is not necessary to examine the applicant's complaint under Article 13 of the Convention in the particular circumstances of the instant case;

4. *Holds*
   (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, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage to be converted into pounds sterling at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Lech Garlicki President