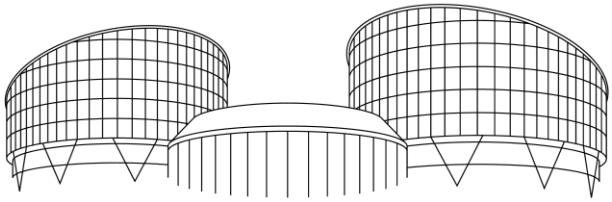

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF O. v. IRELAND

(Application no. 43838/07)

JUDGMENT

STRASBOURG

19 January 2012

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

In the case of O. v. Ireland,

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

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

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 43838/07) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Irish national, O ("the applicant"), on 4 September 2007.

2. The applicant was represented by Mr N. McCartan, a solicitor practising in Dublin. The Irish Government ("the Government") were represented by their Agent, Mrs P. White, of the Department of Foreign Affairs.

3. On 16 April 2009 the President of the Third Section decided to give notice of the application to the Government.

THE FACTS

4. The applicant was born in 1937 and lives in Dublin.

5. In July 1995 the applicant priest became aware of allegations of sexual abuse against him about alleged events in the 1980s. These allegations were made in a letter from the complainant's solicitor to the applicant's religious order. In September 1995 a formal police complaint was made. In June 1996 the applicant was interviewed by the police.

6. In June 1997 the applicant was charged before the District Court on three counts of indecent assault. In October 1997 the case was transferred to a Circuit Criminal Court where he was charged with a further six counts of indecent assault. A hearing date was fixed (for March 1998).

7. In February 1998 the applicant sought disclosure of records from a psychiatrist who had treated the complainant. The trial was then adjourned: the applicant claimed that was due to a conflict of interest on the part of the trial judge and the Government claimed that it was partly because the psychiatrist's records were not available at such short notice.

8. The applicant began judicial review proceedings in the High Court seeking the prohibition of the criminal proceedings on grounds of delay and seeking disclosure of the psychiatrist's records. In March 1999 the High Court rejected the application concerning delay and no order for discovery of the psychiatric records was made because the prosecution undertook to procure them. Since the relevant psychiatrist was unwilling to disclose the medical records, in July 1999 the High Court directed the psychiatrist to make discovery, which was done in October 1999. The applicant then applied for discovery of medical records in the possession of North Eastern Health Board. In February 2000 the High Court directed the Circuit Criminal Court to order discovery against the Health Board. In March 2000 the Circuit Criminal Court so ordered and in September 2000 the Health Board made discovery.

9. In October 2000 the trial began but the jury was discharged and the trial was transferred to another Circuit Criminal Court (the "trial court").

10. The applicant sought to trace the authors of entries in the medical records and maintained that there had not been full disclosure of all relevant medical records. The trial was listed for June 2001. However, since witness tracing was incomplete, the trial was adjourned and further discovery orders were made. In early November 2001 statements from the authors of the entries in the medical records were disclosed to the applicant. In March 2002 the prosecution stated to the trial court that another file had been submitted with those statements, that it needed time to furnish it to the applicant but that it would only proceed with the counts of indecent assault with which the applicant had been charged in June 1997. The trial was fixed for October 2002.

11. In June 2002 the applicant applied to the High Court for leave to apply for judicial review for an order prohibiting his trial because of the delay caused by the failure to make full disclosure. In February 2003 the High Court ruled in his favour. In April 2003 the prosecution appealed to the Supreme Court. In December 2004 the written judgment of the High Court was delivered and in April 2005 the prosecution amended its appeal. In February 2007 the Supreme Court heard the appeal. By judgment of March 2007 (a majority of three to two) it allowed the appeal. Fennelly J, giving judgment for the majority, found that the prosecution was not to blame for the delay. In determining whether an order for prohibition should be made, the correct approach was to balance the right of the accused to be protected from stress and anxiety caused by an unnecessary and inordinate delay against the public interest in the prosecution and conviction of those charged with criminal offences. There was no evidence that the applicant had suffered excessive pre-trial anxiety.

12. In May 2007 the prosecution requested the trial court not to fix a trial date as a police officer was ill and would be ill for a further six months. The court fixed a trial date for March 2008. In January 2008 the applicant

applied to stay his prosecution pending judgment in the present application having regard to a stay on prosecution obtained in the *Barry* case (see *Barry v. Ireland*, no. 18273/04, 15 December 2005). The trial court adjourned to February 2008 to receive information on whether the *Barry* prosecution had indeed been stayed. In February 2008 the trial date (foreseen for March 2008) was vacated since a police witness had had a car accident. At end March 2008 the case was adjourned to May 2008: prosecution submissions on the applicant's request for a stay on the prosecution were outstanding. In May 2008 the prosecution made those submissions (objecting to a stay) and applied for a hearing date but after the court recess of 2009 (since a police witness would be incapacitated for some time). The trial court fixed a trial date for early July 2009.

13. Before the trial date, in June 2009, the prosecution drew the applicant's attention to a reference, in material already disclosed to him, to the complainant having been referred for hypnosis: the prosecution was making further inquiries. By letter of June 2009 the prosecution confirmed that the complainant had not in fact received such treatment. Once the applicant's further requests for confirmation that the complainant had not been so treated had been responded to, a trial date was fixed for January 2010.

14. The trial took place over 4 days in January 2010, at the end of which hearing the trial judge directed the jury to return a verdict of not-guilty given, *inter alia*, the unavailability of three medical witnesses (one of whom had died). The criminal prosecution thereby ended.

THE LAW

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

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

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

16. The Government contested that argument.

17. The period to be taken into consideration began in June 1996 (when the applicant indicated he was aware of police involvement) and ended with his acquittal in January 2010. The proceedings thus lasted almost 13 years and 7 months for one level of jurisdiction (the intervening judicial review

proceedings having been before the High Court twice with one appeal to the Supreme Court).

A. Admissibility

18. The Government argued that the applicant had failed to exhaust domestic remedies as he had not taken an action for damages for breach of the constitutional right to reasonable expedition. The applicant disagreed.

19. The Court recalls its conclusions in the *McFarlane v. Ireland* judgment ([GC], no. 31333/06, § 128-129, ECHR 2010-...) to the effect that the Government had not demonstrated that the remedies proposed by them, including an action for damages for a breach of the constitutional right to reasonable expedition, constituted effective remedies available to the applicant in theory and in practice at the relevant time. It concluded that there had therefore been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, and consequently, it dismissed the Government's objection in that case as to a failure to exhaust domestic remedies. The Court does not see any reason to reach a different conclusion in the present case and it therefore dismisses this objection of the Government.

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

B. Merits

21. 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, the above-cited *McFarlane* judgment, at § 140).

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

23. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

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

24. The applicant further complained that he would not receive a fair trial because of non-disclosure of the complainant's records. However, since the applicant was acquitted, he cannot claim to be a victim of alleged procedural unfairness (*Józef Oleksy v. Poland* (dec.) no. 1379/06, 16 June 2009, with further citations therein, as well as the *McFarlane* judgment, cited above, at § 78).

25. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

28. The Government considered this excessive and left the matter to the Court's discretion to decide the matter on the basis of relevant case law.

29. Ruling on an equitable basis, the Court awards award him 8,500 euros ("EUR") under that head, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

30. The applicant also claimed EUR 30,000 in solicitors fees, EUR 10,000 in Counsel's fees to which value-added tax ("VAT") of 21% applied amounting to a total claim of 48,400 (inclusive of VAT) for the costs and expenses incurred before the Court.

31. The Government considered the claim excessive, noting the lack of itemisation of the claimed costs. They left the matter to the Court's discretion to decide in accordance with its relevant case law.

32. Regard being had to the documents in its possession (which do not itemise the relevant lawyers' work) and to its case-law, the Court considers it reasonable to award the sum of EUR 3,500, inclusive of VAT plus any

other tax that may be chargeable to the applicant, as regards his costs and expenses of the proceedings before this Court.

C. Default interest

33. 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 complaint concerning the excessive length of the proceedings 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*
   (a) that the respondent State is to pay the applicant, within three months:
   - EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
   - EUR 3,500 (three thousand five hundred euros), inclusive of VAT plus any other tax that may be chargeable to the applicant, in respect of the costs and expenses of the Convention proceedings;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing 19 January 2012**,** pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President