



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

FIFTH SECTION

CASE OF C. v. IRELAND

(Application no. 24643/08)

JUDGMENT

STRASBOURG

1 March 2012

This judgment is final. It may be subject to editorial revision.

In the case of C. 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 7 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 24643/08) 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, Mr C. (“the applicant”), on 24 April 2008. The President of the Section acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr B. Flanagan, a solicitor practising in Co. Galway. The Irish Government (“the Government”) were represented by their Co-Agent, Mr P. White, of the Department of Foreign Affairs.

3. On 14 December 2010 the President of the Third Section decided to give notice of the application to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1954 and lives in Dublin. He was a teacher at a school in Dublin in the 1980s.

5. In July 1998 the applicant was charged with sexual offences in 1982 as regards A, B, C, D and E (minors and students in the school).

6. On 5 October 1998 he was returned for trial. The trial was due to commence in February 1999 but it was adjourned (the applicant’s request) due to publicity surrounding the trial. The trial was re-listed for 15 November 1999: on that date the indictment was severed (the applicant’s request) so that separate consecutive trials would take place as regards each complainant.

1. Proceedings concerning A, B, C and D

7. On 15 November 1999 the trial proceeded on the charges raised by A. The applicant was acquitted nine days later.

8. On 24 January 2000 the trial on charges concerning B began. The jury was dismissed and the trial was reset for 22 May 2000.

9. On 22 March 2000 the applicant was tried and convicted of 2 counts of sexual assault of C and sentenced to four years' imprisonment.

10. On 22 May 2000 the trial concerning B recommenced. He was acquitted of a charge of rape but convicted on five counts of sexual assault. He was sentenced to four years' imprisonment (one year of which was suspended), which sentence was to run concurrently with the sentence in respect of C. During the trial the applicant had unsuccessfully applied to stay the indictment on grounds of delay; on 22 May 2000 he was accorded leave to appeal the refusal of the stay; on 27 January 2003 the Court of Criminal Appeal ("CCA") dismissed his appeal; in March 2003 the CCA granted the applicant leave to appeal on a point of law of exceptional public importance to the Supreme Court (section 24 of the Courts of Justice Act 1924); on 15 June 2006 the Supreme Court heard the appeal; and on 27 July 2006 judgment, dismissing the appeal, was delivered.

11. On 26 June 2001 the trial on the charges concerning D began. The indictment was quashed on grounds of delay (the applicant's application).

2. Proceedings concerning E

12. E was 12 years of age at the time of the alleged offences in 1982. She complained to the police in June 1998. On 15 July 1998 the applicant was charged with indecent assault contrary to the Criminal Law (Rape) Act 1981. As noted above, on 5 October 1998 he was returned for trial on all charges (students A-E) and the trial was adjourned to 15 November 1999, on which date the indictments were severed.

13. The trial concerning E was listed for 10 June 2002. However, since no judge was available, it was re-listed for 12 January 2004.

14. On 6 May 2003 the applicant was released from prison (sentence following conviction on offences against C).

15. On 7 July 2003 the applicant applied on an *ex parte* basis to the High Court for, and was granted, leave to apply by way of judicial review to prohibit the proceedings on grounds of delay since the alleged offence as well as for a stay on those proceedings pending the prohibition action. On 10 February 2004 a statement of opposition was delivered.

16. On 11 March 2005 the High Court ruled (detailed judgment) that the delay in pursuing the charges was such that his applicant's ability to defend the charges had probably been prejudiced so that there was a risk of an unfair trial and it prohibited the applicant's prosecution.

17. In April 2005 the prosecution appealed to the Supreme Court. The appeal was adjourned on a number of occasions, although the dates and reasons are not clear. On 20 December 2007 the Supreme Court heard the appeal. On 4 March 2008 judgment was delivered allowing the appeal (the court not being satisfied that there was a real or serious risk of an unfair trial) so that the prosecution could proceed.

18. On 20 October 2008 the applicant pleaded guilty to the offence of indecent assault of E. On 9 February 2009 he was sentenced to 3 years' imprisonment. He appealed against sentence arguing that that sentence amounted to a consecutive sentence whereas concurrent sentences were the practice where offences were committed against several victims. On 5 November 2009 the CCA rejected his argument, but suspended the last 12 months of his sentence subject to probation and therapy.

19. The applicant was released from prison in July 2010.

THE LAW

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

20. The applicant complained that the length of the proceedings against him concerning E was incompatible with the "reasonable time" requirement of 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 ..."

21. The Government contested that argument.

22. The period to be taken into consideration began on 15 July 1998 and ended on 5 November 1999. It thus lasted 11 years and 4 months for two levels of jurisdiction.

A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (for example, *McFarlane v. Ireland* [GC], no. 31333/06, 10 September 2010).

25. 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.

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

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

27. The applicant further complained that it would be unfair to continue the proceedings concerning E because he would not receive a fair trial given the above-noted delay. However, the applicant pleaded guilty and did not suggest that that plea was anything other than voluntary and informed: he cannot therefore claim to be a victim of any alleged procedural unfairness.

28. 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

29. 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.”

30. The applicant submitted observations which he referred to as just satisfaction claims but which contained observations on the merits only. The applicant has not therefore made any just satisfaction submissions to the Court. Having regard to Rule 60 of the Rules of Court and the Practice Direction of 28 March 2007 on Just Satisfaction Claims, the Court makes no award under this heading.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings concerning E admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Mark Villiger
President