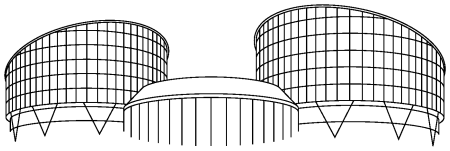

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BRENNAN v. IRELAND

(Application no. 44360/15)

JUDGMENT

STRASBOURG

2 November 2017

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

In the case of Brennan v. Ireland,

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

Nona Tsotsoria, *President,*
Síofra O'Leary,
Lətif Hüseynov, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 44360/15) against Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Margaret Brennan ("the applicant"), who holds both Irish and British nationality, on 15 January 2016.

2. The Irish Government ("the Government") were represented by their Agent, Mr P. White of the Department of Foreign Affairs and Trade.

3. On 29 September 2016 the complaint concerning the length of the proceedings was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Co. Roscommon.

5. In November 1999 the applicant purchased a newly-built house, which has been her dwelling place since then. The sale took the form of two agreements. The first was an agreement to purchase the land from the owners, Mr and Mrs F, for the sum of 5,000 Irish pounds (IEP) (approximately 6,350 euros). The second was a building agreement under which she paid IEP 80,000 (approximately 101,600 euros) to a building company called T and C Developments Ltd. The company was owned by Mr and Mrs F, who were the only shareholders. The house was covered by a guarantee provided by a company known as Homebond.

6. From the time she moved into the house in March 2000, the applicant noted major structural defects in the property. She reported this to

Homebond in September 2001. The company carried out an inspection of the house and, in September 2002, offered to make certain repairs to it in accordance with the terms of the guarantee. According to the applicant, Homebond refused to issue an Engineer's certificate/guarantee upon the completion of the works, which would have been required if the applicant were to sell the house afterwards.

7. In February 2003 the applicant instituted proceedings in the High Court against the parties mentioned above, i.e. Mr and Mrs F (first and second defendants), T and C Developments (third defendant), and Homebond (fourth defendant). A fifth defendant was included in the action, a Mr Q, who, as an engineer, had certified that the house was in compliance with the relevant building regulations. In March 2003, Mr Q's company was named as the sixth defendant. The applicant filed her statement of claim in May 2003.

8. Over the following months, she wrote several times to the solicitors for the first three defendants requesting that they deliver their defence, on each occasion offering some additional time for this purpose. By December 2003 these defendants had not yet delivered their defence, at which point the applicant applied to the High Court for a judgment in default of defence against them.

9. The statement of claim was not served on the fourth defendant until December 2003, an oversight that the applicant attributed to her solicitors. The fourth defendant entered its defence to the plaintiff's claims in May 2004.

10. In January 2004 the High Court ordered the first three defendants to deliver their defence within three weeks. In March 2004, the applicant agreed to allow an additional 21 days for them to file their defence.

11. In July 2004 the applicant again applied to the High Court for a default judgment against the first three defendants, in light of their failure to enter their defence to the action. The defence was filed in September 2004. While it was presented as the defence of the first and second defendants, it was clarified at a later stage in the proceedings (in mid-2009), that it also concerned the third defendant.

12. On 20 December 2004, at the request of the applicant, the High Court gave a default judgment against the fifth and sixth defendants (Mr Q and his company), holding them liable to the applicant in damages and for costs. According to the judgment, these sums were to be assessed at a future date. The judgment was never enforced. The applicant explained that she received legal advice to the effect that the practice was to hold over such judgments until the case had been heard and damages assessed. She added that at a later stage in the proceedings (2009/2010) she received legal advice that the default judgment had by then expired.

13. According to the applicant, in the years 2005-2008 her solicitors considered it more effective to engage principally with the fourth defendant,

Homebond, in light of the guarantee on the house. Homebond made a proposal to the applicant in June 2006 to carry out remedial work on the house. Her solicitor sought clarification of the proposal, writing several times between December 2006 and February 2008 when Homebond replied. The applicant indicated her readiness to accept the proposal. However, when subsequently requested to assign her rights to Homebond she sought clarification of the matter from the company, writing in April 2008 and again in April 2009.

14. On 20 April 2009 the High court granted a motion brought by the applicant's solicitor to cease to represent her. From that point onwards, she acted as a lay litigant.

15. On 22 April 2009 the applicant gave notice of intention to proceed with her case to all of the defendants, a necessary step under domestic law where proceedings have been dormant for more than one year (Order 122 r. 11 of the Rules of the Superior Courts).

16. On 20 July 2009 the High Court struck out the applicant's motion for a judgment in default of defence. The applicant sought to appeal this ruling to the Supreme Court, requesting additional time for this purpose in September 2009, which the Supreme Court refused to allow on 16 October 2009.

17. On 13 October 2010 the applicant again gave notice of her intention to proceed. The following month, she was informed by solicitors for Homebond that the offer made in 2002 was still valid.

18. On 12 September 2011 the applicant once more issued notice of her intention to proceed. In November 2011 she sought a trial date and was informed that a hearing would take place in March 2012, later moved to April 2012. At that point it was suggested by a High Court judge that the parties could attempt to resolve the dispute by mediation. The applicant explored this option but did not pursue it when it became clear, by June 2012, that some of the defendants were not interested. By this stage she had been informed that the sixth defendant had gone into voluntary liquidation. In July 2012 the applicant was informed that the case would be heard in early 2013.

A. Decisions of the High Court

19. The case was not heard as a single action. Only the fourth and fifth defendants appeared (the latter only briefly) at the hearing that commenced on 29 January 2013. The first three defendants, although given notice of the hearing, were not represented at it. The High Court's ruling, given on 20 March 2013, therefore only considered the claims against Homebond and Mr Q. The judge ruled that Homebond was liable to the applicant under the terms of the guarantee. Although the guarantee set an upper limit of IEP 30,000 (approximately 38,100 euros), the judge considered that in the

circumstances of the case it was justified to award the full amount of the estimate for repairs, approximately 51,000 euros. The judge dismissed the case against Mr Q, and observed that the real fault lay with the builder.

20. On 10 April 2013 the High Court issued an order against the fourth defendant for the amount awarded to the applicant.

21. On 15 May 2013 the same judge dealt with the case against the first three defendants. She held them jointly and severally liable to the applicant in damages for 94,082 euros.

B. The Homebond appeal

22. Homebond sought to appeal the judgment and order against it. For this it was required to serve the notice of appeal personally on the applicant within twenty-one days. According to the elements in the case-file, the company's solicitors tried unsuccessfully to arrange service on the applicant. They subsequently applied to the Supreme Court for additional time to appeal, which was granted on 14 June 2013.

23. The applicant brought a cross appeal, claiming that the High Court had wrongly failed to award her legal costs.

24. In October 2014 the applicant sought to have the appeal struck out for lack of prosecution by Homebond. This was not granted. Instead, ruling on 10 October 2014 the Supreme Court granted her two weeks to make her submissions on the question of costs. The applicant filed her submissions the following week.

25. On 28 October 2014 many pending appeals were transferred from the Supreme Court to the new Court of Appeal, including the Homebond appeal.

26. In November 2014, the Court of Appeal directed the parties to file their respective submissions within two weeks, granting a short extension of this deadline the following month. On 19 December 2014 it set a hearing date of 23 February 2015. On the latter date it allowed Homebond's appeal and dismissed the applicant's cross appeal.

C. The appeal brought by the first and second defendants

27. On 10 June 2013 the first and second defendants filed a notice of appeal against the judgment of the High Court.

28. On 8 July 2013 the High Court made a garnishee order attaching monies owed by a commercial bank to the first and second defendants in the amount of the damages awarded to the applicant.

29. On 26 July 2013 the Supreme Court granted to the defendants a stay on the award of damages, on condition that they pay into court the sum of 45,000 euros within a period of three months, failing which the stay would lapse. The payment was not made. An application by the defendants to put

forward property deeds in lieu of money was refused by the Supreme Court on 22 November 2013.

30. The applicant obtained a judgment mortgage against the defendants on 29 October 2013.

31. On 24 January 2014 the Supreme Court again refused an application from the defendants to stay the judgment of the High Court. It also refused to lift the garnishee order and to vacate the judgment mortgage obtained by the applicant.

32. On 11 July 2014 the Supreme Court refused an application from the applicant to strike the appeal out for lack of prosecution. It directed the defendants to file their books of appeal within ten weeks, failing which the appeal would be dismissed.

33. The appeal was transferred to the Court of Appeal, which indicated on 19 November 2014 that it would first consider the issue of the liability of the first and second defendants, and set a short deadline for the parties' submissions on this.

34. The hearing took place on 9 March 2015. The Court of Appeal set aside the judgment of the High Court, holding that as a matter of law Mr and Mrs F were not liable to the applicant for the defects in the house since they had simply sold her the land and were not themselves party to the building agreement. There could only be a remedy against the third defendant, T and C Developments Ltd., with whom the applicant had concluded the agreement in 1999.

35. The applicant sought leave to appeal to the Supreme Court against this judgment. On 29 July 2015 the Supreme Court refused to grant leave.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which 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 ..."

37. The Government contested that argument.

A. Admissibility

38. The Government accepted that the complaint was admissible.

39. 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

1. The parties' submissions

40. The applicant maintained that the duration of the proceedings had been excessive, and was critical of the conduct of the other parties as well as of the manner in which the case was dealt with by the courts, notably at the appellate stage.

41. The Government denied that there had been a breach of Article 6. They argued that the length of the proceedings could not be attributed to the respondent State, as it had not been caused by any backlog before the courts, or an insufficient number of judges or any other failure on the part of the authorities. Instead, the duration of the proceedings was due to the exceptional procedural complexity of the case. The applicant had named six defendants and during the litigation had made numerous applications to the courts for various interim reliefs. The applicant's legal strategy had also contributed to the overall duration. The fourth defendant had made an initial proposal to the applicant in 2002, and the matter was still subject to correspondence between them in 2009. For most of that time, the applicant did not pursue the other defendants. While the applicant blamed her solicitor for various errors, the State should not be liable for this, or for any similar shortcomings by any other parties to the proceedings.

42. The Government defended the High Court's suggestion in 2012 that the parties seek to resolve the case through mediation. This was a legitimate course of action to propose in the circumstances, and the delay it caused should not be held against the respondent State, they argued.

43. The Government denied that there had been any excessive delay in hearing the appeals, and noted that the applicant had had procedures available to her to deal with any delays on the part of the other parties. She had herself contributed to the duration of the appellate proceedings by avoiding service of the fourth defendant's notice of appeal against the judgment and order of the High Court.

44. Once the cases had been transferred to the Court of Appeal, there had been no delay. Thanks to active case management by that court, the appeals had been decided within a few months. The final stage, before the Supreme Court, had been free of any delay.

2. The Court's assessment

45. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case, which call for an overall assessment, 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, and *Superwood Holdings Plc and Others v. Ireland*, no. 7812/04, § 34, 8 September 2011).

46. The Court notes that the proceedings commenced on 10 February 2003 and ended on 29 July 2015. The overall duration was thus twelve years and five months involving three instances.

47. Regarding the complexity of the case, the Court does not consider that the proceedings presented any particularly difficult questions of law for the domestic courts to resolve. It agrees with the Government, however, that the case proved to be very complex procedurally by virtue of the number of defendants, and also the manner in which the applicant chose to conduct it.

48. In this respect, the Court notes that the applicant commenced proceedings against six different defendants in the period February-March 2003, although the statement of claim was not served on the fourth defendant until December of that year. During this initial stage of the litigation, she made use of certain procedural means to advance the proceedings, quickly obtaining a default judgment against two of the defendants in December 2004. At that stage, as she explained in her submissions, she followed legal advice to engage with the fourth defendant with a view to obtaining the redress she sought for the poor construction quality of her house. In consequence, the proceedings were effectively in abeyance from 2005 until April 2009 when she took over the case from the solicitor and acted as a lay litigant. Between that point in time and September 2011 she issued three notices of intention to proceed, these documents being necessary when a case has been left dormant for a considerable period of time.

49. The Court has repeatedly held that an applicant cannot be blamed for making full use of the multiple remedies available to them under domestic law. An applicant's conduct, however, constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account in determining whether or not the length of the proceedings exceeds what is reasonable (*McMullen v. Ireland*, no. 42297/98, § 35, 29 July 2004). This includes any errors that may have been committed by an applicant's legal representative. The Court considers that the lengthy delay described above should be attributed to the applicant.

50. In her submissions, the applicant stated that, acting as a lay litigant, it took her two years to ready the case for trial and then to seek and obtain a hearing date. Based on the materials before the Court, it can be said that

from August/September 2011 the proceedings were being actively prosecuted once more. Although the applicant acted thereafter with relative diligence, it is clear from the material before the Court that her conduct throughout the overall period in which the case was before the High Court had a critical impact on the progress of the case.

51. As for the conduct of the relevant authorities, the Court will focus its analysis on the period running from November 2011, when the applicant requested the High Court to set her case down for trial. The Court notes that a trial date was initially set for the following March (subsequently moved to April), which does not disclose any excessive delay.

52. At that point, it was suggested to the applicant by a judge of the High Court that the case might be resolved through mediation. She pursued this course, but two months later concluded that it would not be viable and again sought a hearing date, which was set for the following January, i.e. six months later. While the attempt at mediation had the effect of delaying trial by nine months, the Court agrees with the Government that, given the nature of the case, the proposal to seek mediation was reasonable and legitimate, with the potential to resolve the dispute between the parties within a shorter timeframe than through litigation.

53. The case duly came before the High Court in January 2013. The non-attendance of the first three defendants did not impede the hearing of the action in relation to the fourth and fifth defendants, and the judgment was given within two months. The remainder of the action was decided two months after that, i.e. eighteen months after the case was ready for hearing. Making allowance for the attempt to settle the dispute through mediation, the Court does not consider that there was excessive delay in the proceedings before the High Court.

54. The applicant was critical of the duration of the appellate stage of the proceedings, which ran from June 2013 to July 2015, involving two levels of jurisdiction. The Government argued that, in relation to the Homebond appeal, she had contributed to the duration by failing to accept service of the notice of appeal. The Court notes that this added somewhat to the delay but did not have a significant impact on the case, as the Supreme Court granted Homebond an additional fourteen days to serve notice of its appeal, i.e. by the end of June 2013. There is no indication of any other activity in relation to that appeal until October 2014 when the applicant sought to have it struck out for want of prosecution. In that same month, however, the case was transferred to the new Court of Appeal. There it was rapidly subject to case management, leading to a hearing within four months of the transfer. The decision, delivered that same day, came twenty-three months after the decision of the High Court and marked the end of the case against Homebond.

55. Regarding the other appeal, which was initially dealt with the by the Supreme Court, there appear to have been no developments between

June 2013 and July 2014 when the applicant applied to have the proceedings struck out. The Supreme Court responded by setting a ten-week deadline for the appellants to file their submissions. The appeal was transferred to the Court of Appeal where, as with the Homebond appeal, the parties quickly received directions from that court regarding the lodging of submissions, and the hearing took place within five months of the transfer. The decision on appeal came twenty-two months after that of the High Court. It is clear from the manner in which the appeals were dealt with by the Court of Appeal after they were transferred that it was alive to the issue of delay and prepared to take steps in order to dispose rapidly of the proceedings to the extent possible (see *Beggs v. the United Kingdom*, no. 25133/06, § 272, 6 November 2012). The final stage, regarding this aspect of the litigation – the Supreme Court's refusal of leave to appeal – was concluded without delay.

56. As to what was at stake for the applicant, the Court accepts that the subject-matter of the proceedings – structural faults in her home – was of importance for her, and affected her quality of life throughout the duration of the case.

57. However, the Court is of the view that the present litigation took on a scale and duration incommensurate with the relatively simple nature of the underlying legal claim and that the applicant's own actions generated much of the delay (see, in a similar vein, *McNamara v. the United Kingdom*, [Committee], no. 22510/13, § 60, 12 January 2017). Assessing the reasonableness of the length of proceedings in the light of all the circumstances of the case, the Court concludes that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning length of proceedings admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 2 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Nona Tsotsoria
Acting Deputy Registrar	President