



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

FIRST SECTION

CASE OF PANAYIOTOU v. CYPRUS

(Application no. 20009/06)

JUDGMENT

STRASBOURG

20 January 2011

FINAL

20/04/2011

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

In the case of Panayiotou v. Cyprus,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

Stelios Nathanael, *ad hoc judge*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 20009/06) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Stavros Panayiotou (“the applicant”), on 4 May 2006.

2. The applicant was represented by Mr M. Kyprianou, a lawyer practising in Nicosia. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 10 January 2008 the President of the First Section decided to communicate the complaint concerning the length of the proceedings. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. Mr G. Nicolaou, the judge elected in respect of Cyprus, was unable to sit in the case (Rule 28 of the Rules of Court). The President of the Chamber decided to appoint Mr Stelios Nathanael to sit as an *ad hoc* judge (Rule 29 § 1(b)).

THE FACTS

5. The applicant was born in 1966 and lives in the village of Kalepia, in the district of Paphos.

6. The applicant was arrested on 23 July 2000.

7. On 28 July 2000 he was charged under the Criminal Code (Cap. 154) with rape and various offences against morality.

8. On the same date he was taken before the Paphos District Court which referred the case to the Paphos Assize Court (“the Assize Court”).

A. Proceedings before the Paphos Assize Court (criminal action no. 6747/00)

9. On 5 September 2000 the applicant appeared before the Assize Court and pleaded not guilty to the charges. His detention was ordered until his trial which was fixed to commence on 9 October 2000.

10. Between 9 October 2000 and 22 March 2002 the case was adjourned on five consecutive occasions by the Assize Court owing to hearings in other cases.

11. In the meantime, on 4 December 2000, the applicant was released on bail.

12. The hearing commenced on 22 March 2002 and ended on 6 February 2003. One hundred and four hearings in camera were held within this period. There were no adjournments. During the trial the Assize Court heard approximately thirty witnesses and examined a considerable amount of material which included thousands of pages of evidence.

13. On 19 March 2003 the Assize Court gave judgment in the case convicting the applicant of rape, defilement of a girl under 13 years of age, defilement of a girl between 13 and 17 years of age and abduction under sections 144, 153(1), 159 and 154 of the Criminal Code respectively.

14. The court, in a lengthy judgment of 157 pages, examined the evidence given by the witnesses in depth and, after warning itself of the dangers of acting on uncorroborated evidence, accepted the complainant's evidence in its entirety without recourse to corroborating evidence. It found that the complainant's evidence was credible and that the main and intrinsic body of her evidence was characterised by clarity, consistency and firmness. It noted that the differences in her evidence were minimal and immaterial and that her credibility remained intact. The Assize Court, however, pointed out that, even if it had decided that corroborating evidence had been necessary, such evidence did exist in support of the applicant's conviction. The Assize Court referred to examples of such evidence.

15. On 20 March 2003 the applicant received one sentence of four years' imprisonment for the offence of rape, seven sentences of four years' imprisonment for the offence of defilement of a girl under 13 years of age, one sentence of one year's imprisonment for defilement of a girl between 13 and 17 years of age and two sentences of six months' imprisonment for abduction. All sentences were to be served concurrently.

B. Appeal proceedings before the Supreme Court (appeals nos. 7426 and 7437)

16. On 28 March 2003 the applicant appealed against his conviction (appeal no. 7426). The Attorney-General lodged an appeal against the sentences (appeal no. 7347).

17. The applicant raised a total of forty grounds of appeal. The first ground concerned the manner in which the prosecution had presented its case and its conduct throughout the proceedings; the fourth, fifth, sixth and seventh grounds challenged the Assize Court's assessment of the evidence given by the complainant and its decision to rely on it without recourse to corroborating evidence; the remaining grounds challenged the Assize Court's evaluation of the evidence given by the other witnesses.

18. On 3 April 2003 the Chief Registrar of the Supreme Court sent a letter to the Registrar of the Paphos District Court requesting to be informed of the number of pages of the transcript of the case and the amount of time it would take to prepare it.

19. On 9 April 2003 the Registrar of the Paphos District Court sent the appeal notice to the Chief Registrar of the Supreme Court informing the latter that the court transcript amounted to 3,820 typed pages and would be sent to the Supreme Court by 31 December 2003.

20. On 15 March 2004 the Chief Registrar of the Supreme Court sent a follow-up letter.

21. On 16 March 2004 the Registrar of the Paphos District Court informed the Chief Registrar of the Supreme Court that efforts would be made to send the transcript by 6 April 2004.

22. On 5 April 2004 the case file and the transcript of the first-instance proceedings were sent to the Supreme Court.

23. On 30 April 2004 the parties were notified that the appeal hearing had been fixed for 25 June 2004 and that the written outlines of their submissions should be filed by 14 May 2004.

24. On 10 May 2004 the applicant applied for an extension of the deadline for filing the written outline of his submissions on the ground that it was impossible to go through the extensive transcript of the case before the given deadline. The request was granted by the Supreme Court on 7 June 2004.

25. On 5 July 2004 the applicant requested another extension and this was granted by the court on 22 September 2004.

26. The written outlines of the submissions were filed on 22 October 2004 by the applicant and on 15 February 2005 by the Attorney-General.

27. Supplementary outlines were filed on 28 February 2005 by the applicant and on 10 March 2005 by the Attorney-General.

28. On 23 March 2005 the applicant applied for an adjournment of the hearing. This was granted and the hearing was adjourned until 24 May 2005.

29. The hearing began on the above date and ended on 29 September 2005. Several hearings were held.

30. On 9 November 2005 the Supreme Court, in a judgment of approximately twenty-three pages, dismissed the appeal and upheld the findings of the Assize Court. In particular it held as follows:

“The principles on the basis of which the appeal court intervenes to set aside the findings of a first-instance court regarding the credibility of witnesses are known. The issue of witness credibility is a matter for the first-instance court. The appeal court intervenes only if the findings or the conclusions of the first-instance court contravene common sense or are not justified given the evidence or its own conclusions. In so far as omissions or contradictions in statements or evidence are concerned, for first-instance judgments to be set aside by the appeal court, these must be material, so they strike a fatal blow to the credibility of the witness or disclose his disposition to distort the truth.

We have carefully gone through both the above and the rest of the points in the statements and evidence of the complainant, which the appellant's lawyer referred to us in order to point out omissions and contradictions. The same points were also put before the Assize Court, which also dealt with them extensively in its decision before finally accepting the evidence of the complainant. We consider that the reasons given by the Assize Court for its evaluation of both the omissions and the contradictions of the complainant are in all respects convincing and reasonable so as not to justify intervention by us. Its conclusion that the discrepancies in the complainant's evidence 'are minimal and completely immaterial with the result that they leave her credibility intact' and that 'the main and intrinsic body of her evidence concerning the various episodes of sexual intercourse as described in her evidence is characterised by clarity, consistency and firmness ... At no point in the cross-examination was the basic core of her evidence shaken', finds us in agreement. Consequently, the relevant ground of appeal is dismissed.

The remaining grounds of appeal, except for one, which we will deal with further on, touch on the evaluation and the resulting findings of the Assize Court with reference to the evidence adduced by the prosecution to corroborate the evidence of the complainant and/or to prove its case against the appellant, always in relation to the evidence adduced by the defence to corroborate the evidence of the appellant and/or to rebut the evidence of the prosecution.

In view of our conclusion that the previous ground of appeal, which touches on the Assize Court's acceptance of the complainant's evidence in its entirety without recourse to corroborating evidence, is not well-founded, we consider that the extensive examination on our part of the remaining grounds of appeal would be of academic significance only, since, regardless of our conclusion relating to the one or the other ground, the appeal must be dismissed in the end. We confine ourselves, simply, to noting that we have not been convinced of the validity of any of these grounds. This is particularly the case with reference to the specialist scientific evidence of the geneticist M. K., a ground to which a great deal of time was devoted in the proceedings before us as well.

The last ground of appeal against the conviction of the appellant touches on the whole of the proceedings before the Assize Court, which, it should be noted, lasted for almost one year, and consists of the point that, according to the appellant, the prosecutor from the Attorney General's Office ... presented his case in such an improper, unfair and oppressive way as to render the whole procedure vulnerable and the trial unfair. *Inter alia*, it makes the charge that [he] was particularly pugnacious throughout the whole trial and made constant verbal attacks and insulting statements and characterisations at a personal level at the expense of the defence lawyer, the appellant and certain witnesses for the defence; that he spied on both the defence lawyer and on some of the defence witnesses; that he raised unjustifiable obstacles and other difficulties to hinder the smooth conduct of the appellant's defence thus causing unjustifiable prolongation of the proceedings, the length of which resulted in the violation of the appellant's rights safeguarded by Article 30 (2) of the Constitution and Article 6 of the Convention on Human Rights; that he made extremely unfavourable and inadmissible statements about the appellant with the aim of influencing the court to his detriment; that he acted contrary to the professional responsibility and the basic duties and rights of prosecutors as adopted by the Council of Ministers on 6.10.2000 after their adoption by the International Union of Public Prosecutors on 23.4.1999 and that, in various respects, he put the defence in an unfavourable situation and caused it serious and irreparable harm.

It is a fact that on certain occasions the behaviour, phraseology and, in general, the reactions of [the prosecutor], particularly at the sensitive stage of the cross-examination of witnesses for the defence, exceeded the bounds which the high principles of the profession of lawyer impose and, particularly, of that of public prosecutor; principles which impose the demonstration of the highest possible self-restraint and tolerance towards the other side, particularly during cross-examination. Of course, the fact does not escape us that, in certain cases at least, the reactions of [the prosecutor] were to some extent occasioned by the attitude of the appellant's lawyer. This, however, is not a justification. The unpleasant atmosphere of confrontation and tension which was created without reason between the lawyers, at specific phases of the proceedings, did not, in our judgment, deprive the appellant of a trial that was fair from all points of view. The Assize Court, with its patience, occasional interventions and its indications, mainly to [the prosecutor], restored the requisite calm to the entire proceedings and secured for the defence every possible opportunity to present its case in full. This is demonstrated, *inter alia*, by the exhaustive cross-examination of the prosecution witnesses and the very detailed examination of defence witnesses, as it emerges from the transcript of the trial."

As regards the claim of the appellant's lawyer that [the Prosecutor] 'unnecessarily contributed to the creation of excessively lengthy and time-consuming proceedings that resulted in the violation of the 'constitutionally safeguarded rights of the accused as provided for by Article 30 (2) of the Constitution and Article 6 of the Convention on Human Rights', we observe that the proceedings did indeed take a long time but that this was mainly owing to the extensive case of the defence".

31. The Supreme Court also dismissed the Attorney-General's appeal against the sentence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE LENGTH OF THE PROCEEDINGS

32. 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 ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ...”

33. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Period to be taken into consideration

35. The Court finds that the period to be taken into consideration started on 23 July 2000, the day of the applicant's arrest (see *Wemhoff v. Germany*, 27 June 1968, § 19, Series A no. 7) and ended on 9 November 2005 when the Supreme Court gave its judgment on appeal. It therefore lasted approximately five years and three months at two levels of jurisdiction.

2. Reasonableness of the period

(a) The parties' submissions

36. The Government submitted that the length of proceedings in the present case had been reasonable, taking into account, in particular, its complexity. In this respect, they pointed to the great volume of evidence that was submitted before the Assize Court, which included complex scientific evidence, and to the large number of witnesses that the court had heard. The Government further submitted that although there had been one period of inactivity after the applicant had appeared before the Assize Court, once the trial of the case had started, hearings had been held almost every day. The Government noted that the period of inactivity had been caused by

adjournments by the Assize Court due to the fact that it had had to sit in other hearings in other cases. Furthermore, the Government maintained that there had been no delays attributable to the Supreme Court during the appeal proceedings. All the adjournments that had occurred had been at the applicant's request.

37. The applicant disputed the Government's submissions and argued that the length of the proceedings had been excessive. In this respect he pointed to the period of delay before the commencement of the trial caused by the consecutive adjournments by the Assize Court. He claimed, *inter alia*, that hearings had not been held continuously, on a day to day basis. As regards the appeal proceedings, the applicant noted that there had been a substantial delay in preparing the transcript of the first-instance trial and that this had been the reason why his lawyer had requested time extensions for filing the outline of his submissions.

(b) The Court's assessment

38. 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 applicant's conduct and the conduct of the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

39. The Court notes that the applicant was charged on 28 July 2000, five days after his arrest, and was taken before the Paphos District Court on that same date (see paragraphs 6-8 above). He appeared before the Paphos Assize Court on 5 September 2000 (see paragraph 9 above). The proceedings before that court lasted approximately two years and eight months. It is clear from the file that the proceedings were of a certain complexity: the court heard a substantial number of witnesses and had to examine a considerable amount of material (see paragraph 12 above). This is reflected in the lengthy and detailed judgment which was delivered very promptly following the conclusion of the trial (see paragraphs 13-14 above). Furthermore, the Assize Court held more than one hundred hearings within a period of about ten months (see paragraph 12 above).

40. The Court notes, however, that there was a large period of inactivity before the trial actually commenced. In particular, between 9 October 2000 and 22 March 2002 the trial was continually adjourned by the Assize Court as it had to sit in hearings in other cases (see paragraph 10 above). The Court considers that this caused significant delay to the proceedings. It observes in this respect that an accused in criminal proceedings should be entitled to have his case conducted with special diligence and Article 6 is, in criminal matters, designed to avoid that a person charged should remain too long in a state of uncertainty about his fate (see, amongst other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006). The Court

also notes that there were no delays attributable to the applicant in these proceedings.

41. As regards the appeal proceedings, the Court observes that they lasted approximately two years and seven months, nearly as long as the first-instance proceedings. The Court points, in particular, to the delay in the commencement of the appeal, as it took about a year for the transcript of the first-instance trial to be prepared (see paragraphs 18-22 above). The Court cannot ignore this delay which significantly prolonged the appeal proceedings and notes in this respect that it has identified delays in proceedings due to the same reason in other cases against Cyprus which it has examined (see, for example, *Papakokkinou v. Cyprus*, no. 4403/03, § 34, 14 December 2006; *Tengerakis v. Cyprus*, no. 35698/03, § 65, 9 November 2006; and *Waldner v. Cyprus*, no. 38775/02, § 42, 19 January 2006). Finally, the Court notes that there were no major delays attributable to the applicant in these proceedings.

42. The Court observes that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII, and *Massa v. Italy*, 24 August 1993, § 31, Series A no. 265-B). In this respect, it notes that the delays in the present case related to organisational problems.

43. Given the above, the Court considers that the “reasonable time” requirement was not complied with in the present case.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints under Article 6 § 1 of the Convention

44. The applicant raised a number of complaints under Article 6 § 1 concerning the fairness of the proceedings before the domestic courts.

45. The applicant first complained that the Assize Court had made errors when evaluating the evidence submitted before it and, in particular, in accepting the evidence that had been given by the complainant without recourse to corroborating evidence. Secondly, the applicant complained that the prosecution had acted in an unfair and oppressive manner throughout the proceedings before the Assize Court rendering the whole trial unjust. Thirdly, the applicant complained that the Supreme Court had not examined all his grounds of appeal and had failed to give a reasoned judgment.

46. As regards the applicant's first complaint, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and

freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The Court's task under the Convention is not to give a ruling on whether the witness statements were properly admitted as evidence, but to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (*García Ruiz v. Spain*, cited above; see also *Mika v. Sweden* (dec.), no. 31243/06, 27 January 2009)

47. In the present case, the Court observes that the applicant had the benefit of adversarial proceedings and had a reasonable opportunity to present his arguments before the courts and contest the evidence submitted. The Assize Court examined all the evidence before it and, in a detailed and lengthy judgment, analysed its evaluation and conclusions in this respect. It found that the complainant's evidence was credible in its entirety and that no recourse to corroborating evidence was necessary even though such evidence existed (see paragraph 14 above). The Supreme Court examined the Assize Court's findings in this respect and noted that that court had carried out a thorough and extensive examination of the evidence put before it and that the reasoning given by the Assize Court was in all respects convincing and reasonable so as not to justify the Supreme Court's intervention (see paragraph 30 above).

48. Having regard to the above, the Court finds no indication that the assessment of the evidence by the Assize Court was arbitrary in any way.

49. Concerning the applicant's second complaint about the attitude of the prosecution throughout the trial before the Assize Court, the Court notes that the Supreme Court examined the applicant's arguments in this respect and found that, although on certain occasions the prosecutor's behaviour and language exceeded the bounds which the high principles of the profession of advocate imposed and, particularly, that of public prosecutor, the disagreeable atmosphere of confrontation and tension which had been created without reason between the advocates at particular phases of the proceedings did not deprive the applicant of a fair trial (see paragraph 30 above). The Supreme Court found that the Assize Court had, with patience and with its occasional interventions and indications, mainly to the prosecutor, restored the requisite calm to the entire proceedings and had secured for the defence every possible opportunity to present its case in full. The Supreme Court noted that this was demonstrated by, *inter alia*, the exhaustive cross-examination of the prosecution witnesses and the very detailed examination of defence witnesses, as it emerged from the transcript of the trial (see paragraph 30 above). The Court observes that the applicant has not submitted any evidence showing that this was not the case.

50. As regards the applicant's third complaint concerning the examination of his appeal by the Supreme Court and that court's judgment, the Court reiterates that although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see, for example, *García Ruiz v. Spain*, cited above, § 26, and *Klemeco Nord AB v. Sweden*, no. 73841/01, § 39, 19 December 2006); a party does not have an absolute right to require reasons to be given for rejecting each of his arguments, nor is the Court called upon to examine whether arguments are adequately met (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288).

51. In the present case the Court observes that the Supreme Court's judgment was fully reasoned. It is true that the Supreme Court did not examine all the applicant's grounds of appeal in depth. The reasons, however, for this are clear: as the Supreme Court examined and upheld the Assize Court's findings concerning the complainant's evidence and its decision not to have recourse to corroborating evidence for the purposes of convicting the applicant, it then considered that it was unnecessary to carry out an extensive examination of the remaining grounds of appeal which concerned the evaluation of such corroborating evidence and the resulting findings of the Assize Court (see paragraph 30 above). Furthermore, it should be noted that the Supreme Court observed that it had not been convinced of the validity of any of the grounds raised by the applicant challenging the findings of the Assize Court (see paragraph 30 above). In view of the above, the Court considers that there was no need for the Supreme Court to enter into a detailed examination of these grounds.

52. The applicant therefore may not validly argue that the Supreme Court did not properly examine his arguments and that its judgment lacked reasons. No unfairness or arbitrariness can be detected.

53. Given the above, the Court finds that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

B. Complaints under Article 6 § 2 of the Convention

54. The applicant further complained under Article 6 § 2 of the Convention of a violation of the presumption of innocence. In this respect he alleged that during the proceedings the burden of proof had been unfairly shifted to the defence a number of times and that the Supreme Court had failed to examine all the appeal grounds or issue a judgment with sufficient reasoning.

55. The Court notes that there is no indication in the case file that the domestic courts had a preconceived view of the applicant's guilt: no evidence has been adduced to show that the applicant's right to the

presumption of innocence was violated. Furthermore, with regard to the second limb of the applicant's complaint, the Court refers to its conclusions concerning the Supreme Court's examination of the appeal in respect to the applicant's complaint under Article 6 § 1.

56. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaints under Article 6 § 3 of the Convention

57. Invoking Article 6 §§ 3 (b) and (c), the applicant complained that he had not been given adequate time or facilities for the preparation of his defence and that he had been refused legal aid, in particular, for the summons of an expert witness. Finally, the applicant complained of a violation of the rights of the defence in respect of witnesses under Article 6 § 3 (d).

58. To the extent that the applicant is complaining under Article 6 § 3 (b) about the preparation of his defence, the Court first observes that it does not appear that the applicant raised this complaint before the domestic courts. In any event, the Court notes that this complaint is unsubstantiated. There is no indication in the case file that the applicant's defence rights were not properly respected.

59. With regard to the applicant's second complaint under Article 6 § 3 (c), the Court notes that the applicant has not submitted any documents indicating that he applied for legal aid, that he was refused such a request or that he appealed against any such decision. He has therefore not substantiated his complaint under this head.

60. Lastly, to the extent that the applicant is complaining of a violation of Article 6 § 3 (d), the Court first notes that it does not appear that he raised this complaint before the domestic courts. In any event, the Court observes that the applicant has submitted this complaint in a general manner without providing any explanations or details as to why his rights under this Article have allegedly been infringed.

61. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. He submitted that he had suffered from anxiety and stress owing to the excessive length of the proceedings and had been subjected to humiliation, hatred and rejection from his friends and the small society of the village in which he lived.

64. The Government contested the claim.

65. The Court considers that the applicant must have suffered some non-pecuniary damage, such as frustration, resulting from the protracted length of the proceedings. Ruling on an equitable basis, it awards the applicant EUR 3,200 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

66. The applicant also claimed EUR 80,820 for the costs and expenses incurred in the proceedings before the domestic courts. These included the fees of experts who had testified for the defence and the legal fees of his lawyer for the appearances made before the Assize Court and the Supreme Court.

67. The Government contested the claim.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

69. The applicant made no claim in respect of costs and expenses before the Court. The Court therefore makes no award under this head.

C. Default interest

70. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by five votes to two
 - (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 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Stelios Nathanael

C.L.R.
S.N.

DISSENTING OPINION OF JUDGE NATHANAEL

While I share the view taken that the complaint is indeed admissible, I have to voice my different conclusion on the merits. My dissenting opinion is based on the following considerations which I believe become apparent upon a closer examination of the facts. The factual premise remains the same but its appreciation which was not highlighted in the observations of the Government brings about a different outcome. The following relate to both the first instance proceedings as well as the appeal process.

The first instance proceedings:

From the record of the proceedings before the Paphos Assize Court the following can be noted. They are set out in chronological order for convenience, although their importance obviously differs.

It appears from the record of 4 December 2000 that the hearing of the case was adjourned because the same Assize Court had to commence another urgent criminal case, a homicide case, (previously adjourned) about to begin on the following date 5 December 2000. The record of that date shows that one of the lawyers involved in the homicide case was Mr M. Kyprianou the same lawyer who appeared in the case under discussion. That other case was recorded as number 7919/00 which was in fact the *Panovits* case which was finally brought before the European Court of Human Rights under application no. 4268/04, judgment issued on 11 December 2008. This follows easily from the appeal judgment of the Supreme Court published in (2003) 2 C.L.R. 310 and referred to in the judgment of the European Court of Human Rights.

On the same date, 4 December 2000, the Paphos Assize Court having in mind the lengthening of the time span ordered the release of the applicant on bail notwithstanding prosecution's objection. The applicant remained on bail terms thereafter until his conviction by the Assize Court on 19 March 2003.

On 19 November 2001, defence lawyer himself, Mr M. Kyprianou, essentially requested an adjournment stating that having in mind the bulk of the case and his own schedule it would be preferable if the case was adjourned. Also defence lawyer wanted to discuss DNA issues with the prosecution authority, as well as to be given part of the exhibits in order to place them before the applicant's own expert for study as he had carried out a preliminary investigation. The Assize Court granted the adjournment not only because defence requested so, but because of its own lack of time as it was involved in two other continued hearings. It follows that the adjournment between 19 November 2001 and 22 March 2002 could not be

attributed solely to the Assize Court as it might have been granted in any event or at least it was also desired by defence as well.

On 22 March 2002 counsel for the defendant for the first time raised an issue with regard to the particulars of the charges although he could have done so on any one of the previous dates when the case was fixed or listed for hearing. This led to an adjournment and the amendment by the prosecution authority of the charges twice, so that evidence was in fact first given on 28 March 2002.

Defence lawyer on behalf of the applicant never raised any objection to the various adjournments given.

The appellate proceedings:

Although admittedly the record of the Assize Court trial was delayed for one whole year which set back the hearing of the appeal for that period of time, it should also be noted that defence had on three different occasions (10 May 2004, 5 July 2004 and 23 March 2005), requested an adjournment of the appeal hearing the first two on account of the need to study the record of the trial which contained the whole of the evidence. It was stated that it was impossible to go through the 3,820 typed pages of the transcript during the time given. The Supreme Court granted the adjournments so defence lawyer would not feel in any way embarrassed or pressed into commencing the hearing, although the grounds of appeal were well settled and filed with the appropriate Registry within the 10 day limit provided by the Rules. The requested adjournments set back the commencement of the appeal for a whole year. It may thus be noted that the time lost on account of the adjournments “compensates” in a way the one year period inactivity on account of the delay of the preparation of the transcript. Another important element to be taken into account is the fact that the requested adjournments were not in any event necessary as the lawyer who defended the applicant before the Assize Court was the same who appeared at the appeal. He was therefore fully conversant with the facts and the evidence and moreover he had, as the record shows, always the benefit of a junior advocate sitting with him during the trial who must have taken notes throughout.

The fourth criterion:

Further to the above, one may well argue that based on the case law of the Court, in the so called fourth criterion or factor that of “what is at stake” for the applicant, the cases revolve around factors such as the applicant's employment, (*Buchholz v. FRG* (1981)), civil status (*Sylvester v. Austria* (2005)), child custody, health, reputation, title to land, compensation for

road accident, financial factors like interest charged on the disputed amount, likelihood of life imprisonment or other heavy sentence (*Henworth v. the United Kingdom*(2004)).

In the case under discussion, the Applicant was 34 years old, was a co-owner of a restaurant, later turned into a kiosk business and was released on bail on 4 December 2000, 5½ months after his arrest and detention. So the urgency factor necessitating a more rigorous standard to be applied when the accused is in detention (*Abdoella v. the Netherlands* (1992)), was not as high or demanding as would have been otherwise. Moreover the lengthening of the case, as recognised by the Supreme Court in its appeal judgment, was to some extent attributable to the way the defence was conducted. One may stress here that the applicant had on two occasions voluntarily confessed the crime in written statements which were subsequently, as was his constitutional right, challenged but were nevertheless upheld by the Assize Court and sustained on appeal. Despite also the existence of strong DNA scientific evidence implicating the applicant into having sexual contact with the complainant, who was under age, this was also challenged.

It follows from the above that the applicant had no recognisable 'at stake' factor that would necessitate urgent hearing. That perhaps explains also the three consecutive adjournments requested by the defence. It is also quite important to note that at the appeal stage, the Applicant raised the issue of breach of Article 6.1 of the Convention (same as Article 30.2 of the Cyprus Constitution), not by attributing it directly to the length of the proceedings, but due to the unfairness in the overall treatment of the applicant and his lawyer due to the way the prosecution presented its case which was thought of as improper and oppressive for the defence. The lengthening of proceedings was presented as only a side effect of the above. This ground of appeal was rejected by the Supreme Court (see also paragraphs 12 and 15.3 of the present Application).

So the complaint against a speedy trial was only partially attributed to the adjournments given by the Assize Court, the other part raising issues relating to the way the prosecution handled the case.

It should be added, finally, that at the mitigation stage for the purposes of sentencing, defence lawyer only raised the issue of delay in the proceedings in relation to the loss of possibility of presidential pardon by the then newly elected President of the Republic.

Moreover, according to s. 117(1) of the Criminal Procedure Law, CAP 155, as amended, imprisonment commences on the date the sentence is

pronounced but, unless the Court otherwise orders, it is reduced by the period of time the convicted person remained in custody pending or during trial. The Assize Court having not given any order to the contrary, the sentence of the applicant was accordingly modified to take into account his period of custody.

Overall, the case, although there was a delay that could have been avoided, could be treated as not falling within the unreasonable delay parameters as established by the case law of the Court, in view of the way the defence handled the case, the overall complexity of the case, necessitating 104 days of hearing before the Assize Court and several hearings at the appellate stage, the enormous transcript, the fact that the applicant was released at an early stage of the proceedings and that he had nothing tangible at stake to lose. The overall period of 5 years and 3 months, at two levels of jurisdiction, should be in fact 4 years and 3 months allowing for the one year delay solely attributed to the defence. The frustration attributed to the protracted length of the proceedings, in assessing damages, was a theoretical one, as one should recognise that there is a frustration element inherent in any criminal case, especially of his nature. There would have indeed been frustration if the applicant was subsequently acquitted which was not the case, as he was found guilty as charged, making him a convicted felon, hardly in need of any compensation.

In view of all the above, I would dismiss the application on the merits.