



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

THIRD SECTION

CASE OF PAPADOPOULOS v. CYPRUS

(Application no. 39972/98)

JUDGMENT

STRASBOURG

21 March 2000

FINAL

21/06/2000

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.

In the case of Papadopoulos v. Cyprus,

The European Court of Human Rights sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J.-P. COSTA,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Mrs H.S. GREVE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 September 1999 and 7 March 2000,

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

PROCEDURE

1. The case originated in an application (No. 39972/98) against the Republic of Cyprus lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Christos Papadopoulos, on 9 February 1998.

2. The applicant was represented by Mr C. Clerides and Mr N. Pirilides, lawyers practising in Cyprus. The Government of Cyprus (“the Government”) were represented by their Agent, Mr A. Markides, Attorney General of the Republic of Cyprus.

3. The applicant alleged that his case had not been heard within the “reasonable time” required by Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber called upon to examine the case (Article 27 § 1 of the Convention) was constituted according to the provision of Rule 26 § 1 of the Rules of Court.

6. By a decision of 28 September 1999 the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits.

AS TO THE FACTS

8. On 19 July 1994 the applicant filed an action in the District Court of Limassol against four defendants claiming, *inter alia*, arrears of salary, payment for services rendered and damages for unfair dismissal. Because of the amount claimed, the action had to be heard by the Full Court which, moreover, had to be composed of the President of the District Court and another District Court judge.

9. The first hearing of the case was set for 17 October 1995. After a number of adjournments at the behest of the parties, and more than ten hearings, on 28 February 1997 the court heard the final addresses of all parties concerned. Judgment was reserved. In particular, on 17 October 1995, the hearing was adjourned until 1 February 1996 owing to the withdrawal of the lawyer of some of the defendants, and then until 22 February due to the appointment of a new lawyer. It continued on 19 March, 9 April and 13 May 1996, but on 12 June it was adjourned again due to the absence abroad of the lawyer of some of the defendants. It resumed on 2, 3 and 4 July 1996. On 26 September 1996 it was adjourned at the request of both lawyers until 21 October 1996, and again on 11 November 1996 due to the fact that one of the lawyers of the defendants had business elsewhere. The hearing continued on 11 and 12 December 1996 and 15 January 1997.

10. However, on 30 June 1997 the President of the District Court of Limassol and member of the Full Court which had tried the applicant's case was appointed by the Government to the Public Service Commission, a body responsible for the appointment and promotion of civil servants.

11. The new President of the District Court of Limassol fixed the applicant's case for directions on 2 October 1997. On that date the applicant requested that the reserved judgment be rendered. However, the President of the District Court suggested to the applicant that he address the Supreme Court.

12. On 6 October 1997 the applicant sent a letter to the President and the members of the Supreme Court of Cyprus asking them to give directions to the District Court of Limassol to issue the reserved judgment. In support of his request, he referred to relevant case-law of the United Kingdom courts, as there was no pertinent case-law of the Supreme Court of Cyprus.

13. A new hearing for directions was fixed by the President of the Supreme Court of Cyprus on 6 November 1997, but no decision was taken pending the reply of the Supreme Court to the applicant's request.

14. On 7 November 1997 the Supreme Court, via its Chief Registrar, advised the applicant that the matter, being judicial, should be referred to the competent court.

15. Another hearing for directions was held on 27 November 1997. The applicant asked the President of the District Court of Limassol to give the court directions to proceed with the reserved judgment.

16. On 5 December 1997 the President of the District Court of Limassol ruled that he was not able to issue such a direction because, according to the general principles and the case-law, the court which was to issue a judgment should first hear and see the witnesses in order to be able to assess their testimony, especially in cases where there was a conflict of evidence. In the applicant's case there was a conflict of evidence and the court needed to assess which evidence it would accept and which it would not. The new President of the District Court of Limassol had neither seen nor heard any of the witnesses and, as a result, he could not assess the evidence which had already been given. It followed that the President was not able to issue the reserved judgment on his own or together with the second member of the Full Court which had reserved the judgment. Nor was the President able to give directions to the second member of that Full Court to issue the reserved judgment on her own even though she had heard and seen all the witnesses. In these circumstances, the President of the District Court of Limassol decided that the applicant's case should be reheard from the beginning (*de novo*) and fixed a hearing date for 11 February 1998.

17. On that date the applicant's lawyer asked for an adjournment due to sudden illness. On 18 March 1998 he asked for a further adjournment because of other business. On 8 April 1998 the lawyer asked for another short adjournment which the court granted until 18 June 1998. After six hearings, the testimony of the applicant and his three witnesses was completed on 21 July 1998. The defendants and their six witnesses gave evidence from 17 September 1998 until 4 December 1998 at ten hearings. On 18 September, the court granted a further request for an adjournment because the lawyers of both parties wished to attend the annual general assembly of the Bar association. Final addresses were heard on 8 January 1999 and the District Court of Limassol delivered judgment on 26 April 1999.

18. The defendants appealed against this judgment to the Supreme Court where the case was still pending when the applicant submitted his observations on the merits to the Court on 29 November 1999.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

19. The applicant complains that he has been, and will further be, subjected to excessive procedural delays and expenditure, particularly as he has had to present his case twice, in violation of his right to a fair hearing within a reasonable time prescribed by Article 6 § 1 of the Convention, which provides:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal”

20. The Government argue that it transpires from the parties' conflicting evidence before the District Court, that in the absence of any written agreement between the parties expressly specifying the applicant's right to the payments he claimed, that court had to establish the truth of the matter - whether agreements had been made, the circumstances under which they had been made, their terms and the amounts due thereunder. The delay in hearing the action *de novo*, when weighed against the necessity of hearing witnesses and assessing their veracity, was not unreasonable or unjustified in the circumstances. On 11 February 1998, the date initially set for the rehearing, the case was adjourned at the request of the applicant's lawyer. Although the District Court was ready to hear the matter on 18 March 1998, the hearing was again postponed until 8 April 1998 because the lawyer had other engagements. Again, on that date, the District Court was obliged, due to the lawyer's request, to adjourn the examination of the case until 18 June 1998. The hearing started on that date and continued on 19, 26 and 30 June, 3, 6 and 21 July and 17 September 1998, by which time the testimonies of the applicant and his two witnesses had been completed and that of the defendants had started. On 18 September 1998, the hearing was adjourned until 12 October 1998 at the request of the lawyers of both parties.

21. As regards the first hearing of the case, it was set for 17 October 1995. After a number of adjournments at the request of the parties, and more than ten hearings, on 28 February 1997 the court heard the final addresses of all parties concerned. Judgment was reserved. Bearing in mind the volume of strongly contested evidence adduced, the Government contend that there was no unreasonable delay in the completion of the case which can be attributed to the District Court.

22. The applicant submits that the Government knew or should have known, before appointing the judge to a new post, that cases were pending before him and judgments were reserved. His action was filed on 19 July

1994 and was completed on 28 February 1997. It took the District Court twelve months to hear a total of six witnesses. The failure to deliver judgment before the departure of the judge remains inexplicable. The judge was appointed to the Public Service Commission on 30 June 1997, but the case was not reheard until 11 February 1998. Nothing complex or difficult was involved that could account for the overall delay and long adjournments until January 1999.

23. The proceedings concerned started on 19 July 1994, when the applicant filed an action with the District Court of Limassol. As of 29 November 1999, they were still pending before the Supreme Court. By then they had lasted over 5 years and 4 months.

24. The reasonableness of the length of proceedings must be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case. Only delays for which the State can be held responsible may justify a finding that a "reasonable time" has been exceeded (see, among many other authorities, the *Monnet v. France* judgment of 27 October 1993, Series A no. 273-A, p. 12, § 30).

25. In the first place, the Court notes that the length of the proceedings relating to the first hearing of the case were not excessive, allowing for five adjournments at the request of both parties. Testimonies were completed on 28 February 1997, namely two years, seven months and nine days after the introduction of the application before the District Court of Limassol and the case was ready for judgment. However, following the appointment of its President to the Public Service Commission on 30 June 1997, the District Court was unable to deliver its judgment. It took five months and five days (until 5 December 1997) for the new President of the District Court to decide that a rehearing of the case from the beginning was necessary. Two further months elapsed until the date of the first rehearing on 11 February 1998, but on that date, and subsequently on 18 March and 8 April 1998, the applicant's lawyer asked for an adjournment. The District Court then needed sixteen hearings to re-examine a total of nine witnesses, from 18 June 1998 to 4 December 1998. It delivered its judgment on 26 April 1999, four years, nine months and seven days after the introduction of the case.

26. Such a delay is hard to reconcile with the need to render justice with the effectiveness and credibility required by the Convention (see the *Papageorgiou* judgment of 22 October 1997, *Reports of judgments and Decisions* 1997-VI, p. 2291, § 48).

27. The Court concludes that the applicant's case was not heard within a reasonable time and that there has therefore been a violation of Article 6 § 1 of the Convention.

II°. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant maintains that the unreasonable length of the proceedings took a heavy toll on his physical and mental health. To be present at all fifteen hearings during the first set of proceedings, he had to take annual leave from his work. All his annual holidays were taken up by the hearings and he was obliged to take some extra days off. This created extreme pressure and difficulties for him in his new job. During the second set of proceedings, every hearing was an ordeal for him because the defendants already knew his testimony and had prepared themselves to answer with lies most of the time. Financially, he had great difficulties to meet the fees of his solicitors and if it were not for their sympathetic understanding, most likely he would have stopped the proceedings for financial reasons. The extremely long delay caused him continuous anxiety, which affected his well being and overall behaviour. It put an enormous strain on his family and his relations suffered badly. He claimed 5,000 Cypriot pounds (CYP) in this respect.

30. The Government contended that the length of the proceedings, both before and during the *de novo* hearing, was mostly attributable to adjournments requested by the parties' lawyers and to which the applicant had not objected. The applicant's overall conduct in the proceedings contradicts his allegations of having been subjected to suffering and distress, and weakens his credibility. The Government submitted that the mere finding of a violation would constitute adequate just satisfaction for the non-pecuniary damage claimed.

31. Having regard to the overall length of the proceedings, which can reasonably be considered to have been a source of anxiety and stress to the applicant in this particular case, and deciding on an equitable basis, the Court awards the sum of CYP 2,500 under this head.

B. Costs and expenses

32. The applicant also claimed reimbursement of costs and expenses amounting to CYP 2,630 which he had incurred before the Court and which he itemised.

33. The Government stated that, if the Court were to find a breach of Article 6 § 1 of the Convention, they were prepared to pay the applicant's costs and expenses provided that the amounts claimed were shown to have been actually and necessarily incurred and were reasonable as to quantum.

34. The Court finds the amount claimed reasonable and grants it in its entirety, together with any value-added tax that may be chargeable.

C. Default interest

35. According to the information available to the Court, the statutory rate of interest applicable in Cyprus at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - 2,500 (two thousand five hundred) Cypriot pounds in respect of non-pecuniary damage, and
 - 2,630 (two thousand six hundred and thirty) Cypriot pounds for costs and expenses, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 8% shall be payable on the said sums from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 21 March 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

N. BRATZA
President