



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

THIRD SECTION

CASE OF LOUKA v. CYPRUS

(Application no. 42946/98)

JUDGMENT

STRASBOURG

2 August 2000

FINAL

02/11/2000

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 case of Louka v. Cyprus,

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

Mr J.-P. COSTA *President*,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mrs H.S. GREVE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 October 1999 and 11 July 2000,

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

PROCEDURE

1. The case originated in an application (no. 42946/98) 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, Maro Louka (“the applicant”), on 27 July 1998.

2. The applicant was represented by Christos Theodoulou, a lawyer practising in Larnaca (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 the proceedings she had instituted in connection with a civil claim were not fair and that her case had not been heard within the “reasonable time” required by Article 6 § 1 of the Convention.

3. 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).

4. 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.

5. By a decision of 12 October 1999 the Chamber declared the application partly admissible as to the length issue.

THE FACTS

6. On 12 September 1987 the applicant instituted civil proceedings against K.M. before the District Court of Larnaca, claiming CYP 4,720. The money had been paid to K.M. by the applicant's father as a loan.

7. On 27 December 1991 the District Court granted the applicant's claim.

8. On 21 January 1992 the defendant filed an appeal against this judgment. The parties were informed that the appeal would be heard on 21 March 1996. On that date the Supreme Court adjourned the hearing at the parties' request.

9. On 11 April 1996 K.M. applied to amend his grounds of appeal. On 9 May 1996 the applicant opposed this request. The hearing was fixed on 25 June 1996. On that date the Supreme Court ordered an adjournment until 18 July 1996 at the defendant's request. On 28 February 1997 the Supreme Court allowed the defendant to amend his grounds of appeal.

10. On 6 March 1997 the defendant filed new grounds of appeal.

11. The Supreme Court heard the case on 17 December 1997. On 19 February 1998 it ordered a retrial and sent the case back to the Larnaca District Court.

12. On 23 February 1998 the defendant died.

13. On 11 September 1998, in the context of a settlement reached between the applicant and the administrator of the estate of the deceased K.M., it was declared before the Larnaca District Court that the case had been fully settled.

14. On 11 May 1999 the action was brought before the Larnaca District Court to enable the parties to declare on the record that a settlement had been reached. The applicant's counsel failed to appear before the Court, therefore the Court dismissed her action.

THE LAW

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

15. The applicant complains that she has been subjected to excessive procedural delays, in violation of her right to a hearing within a reasonable time prescribed by Article 6 § 1 of the Convention, which provides:

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

16. The Government submit that the proceedings in issue satisfied the requirements of Article 6.

A. Period to be taken into consideration

17. The proceedings concerned started on 12 September 1987, when the applicant filed an action with the District Court of Larnaca, and ended on 11 May 1999. They lasted eleven years and almost eight months.

B. Reasonableness of the length of the proceedings

24. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among many other authorities, the *Monnet v. France* judgment of 27 October 1993, Series A no. 273-A, p. 11, § 27).

25. In the first place, the Court notes that the case was not complex and that the applicant's conduct did not substantially contribute to the length of the proceedings. It then observes that there were two long periods during which the proceedings stagnated, namely from 12 September 1987 to 27 December 1991 and from 21 January 1992 to 21 March 1996.

26. Such delays are 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. Accordingly, the Court cannot consider that the period of time which elapsed in this case was "reasonable".

In conclusion there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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. Pecuniary damage

19. The applicant submits that, after the judgment in her favour, she was obliged to give a bank guarantee for which she had to pay a commission of

881,01 Cypriot pounds (CYP). She also contracted two loans for which she paid monthly instalments. In total, the applicant claims CYP 5,000 for pecuniary damage.

20. The Government submit that the applicant did not suffer any pecuniary damage as a result of the length of the proceedings.

21. The Court considers that the applicant has not substantiated any causal link between the breach established and the alleged pecuniary damage. It therefore dismisses her claim.

B. Non-pecuniary damage

22. The applicant maintains that the unreasonable length of the proceedings took a heavy toll on her physical and mental health and claims CYP 20,000 in this respect.

23. The Government contend that the length of the proceedings was mostly attributable to adjournments requested by the parties' lawyers and to which the applicant did not object. The applicant's overall conduct in the proceedings contradicts her allegations of having been subjected to suffering and distress, and weakens her credibility. The Government submit that the mere finding of a violation would constitute adequate just satisfaction for the non-pecuniary damage claimed.

24. 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 4,500 under this head.

C. Costs and expenses

25. The applicant claims CYP 9,500 for the proceedings before the Supreme Court of Cyprus. She also claims reimbursement of costs and expenses amounting to CYP 12,782.60 which she had incurred before the Court.

26. 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 in the circumstances.

27. The Court considers that the costs claimed in respect of the domestic proceedings cannot be said to have been incurred to prevent the violation found by the Court. It consequently dismisses this part of the claim. As regards the costs and expenses claimed in respect of the proceedings before the Convention institutions, the Court awards the sum of CYP 1,000, plus any value-added tax that may be chargeable.

C. Default interest

28. 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 applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - 4,500 (four thousand five hundred) Cypriot pounds in respect of non-pecuniary damage, and
 - 1,000 (a thousand) Cypriot pounds for costs and expenses, plus 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 2 August 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President