CONSEIL
DE L'EUROPE

COUNCIL
OF EUROPE

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

SECOND SECTION

CASE OF GEORGIADIS v. CYPRUS

(Application no. 50516/99)

JUDGMENT

STRASBOURG

14 May 2002

FINAL

14/08/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Georgiadis v. Cyprus,

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

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 23 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 50516/99) 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 Kostas Georgiadis (“the applicant”), on 19 July 1999.

2. The applicant was represented before the Court by Mrs E. Vrahimi, a lawyer practising in Nicosia. The Cypriot Government (“the Government”) were represented by their Agent, Mr A. Markides, Attorney General of the Republic of Cyprus.

3. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings instituted against him.

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 that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. On 10 May 2001 the Chamber declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 9 December 1992 a criminal action was filed against the applicant and two other defendants with the Nicosia District Court. The applicant was charged with the offences of forging official documents, circulating forged documents, fraudulently avoiding customs duties and corrupting a public officer. The Charge Sheet contained 48 charges but 28 were withdrawn at the close of the prosecution case. The witness list attached to the Charge Sheet contained 61 names and was amended to add another three, although the actual number of witnesses ultimately called was 37.

9. On 18 January 1993 the lawyer of one of the co-accused of the applicant asked for an adjournment of the case so that he could study the file and advise his client.

10. The applicant refused to enter a plea to the charges and asked for an adjournment until 28 January 1993, which was granted. On that date, the applicant's lawyer (Mr Triantafyllides) asked for another adjournment and informed the District Court that he would be abroad between 16 and 22 February 1993. The Attorney General informed the District Court that he would also be away between 22 and 28 February 1993. The hearing was set for 2 March 1993 and then adjourned until 23 March 1993 at the request of the lawyer (Mr Clerides) of another defendant.

11. On 23 March 1993 Mr Clerides submitted a preliminary objection which concerned the discretion of the Attorney General to prefer a Charge Sheet in accordance with the Criminal Code. The trial judge dismissed the objection on 28 May 1993 and set the hearing for 29 September 1993.

12. On 5 July 1993 the accused asked the District Court to reserve the question of law for the Supreme Court as to whether the Attorney General had a discretion to launch criminal proceedings in such a case. The Attorney General objected to that request. This resulted in four days of hearing (10, 16 and 24 June and 1 July 1993) before the District Court granted the request. On 18 November 1993 the Supreme Court held that the fact that the investigations were carried out by the Customs Office did not prevent the Attorney General from preferring the Charge Sheet.

13. Following this decision, the accused entered a plea of "not guilty".

14. The case was referred back to the District Court and the hearing was listed for 11 March 1994. On that date the applicant's co-accused invited the District Court to postpone the hearing until the completion of another hearing in criminal proceedings no. 21341/92, to which all the defendants were also parties. The District Court granted the request and adjourned the examination of the case until 8 June 1994. However, as proceedings no. 21341/92 had not been completed on that date (they were concluded on

18 January 1995), the hearing was further adjourned until 26 October 1994 and then until 3 February 1995 (because the Attorney General was otherwise engaged before the Supreme Court), 8 May 1995 (because witnesses for the prosecution were unavailable) and 30 October 1995.

15. On 30 October 1995 the lawyers for all the defendants submitted a preliminary objection as regards the competence of a newly appointed judge, who replaced the judge to whom the case had been initially assigned and who had in the meantime retired. The objection was dismissed on 6 November 1995 and the hearing set for 4 December 1995.

16. The hearing started on 4 December 1995 and continued on 5 and 11 December 1995. On that last date the lawyer of one of the defendants objected to the submission of a document and the District Court reserved its ruling for 18 December 1995. The hearing continued on 21 December 1995, 12 January 1996, 18 January 1996, 1 February 1996, 5-6 February 1996, 8 March 1996 and 11-13 March 1996.

17. On 15 March 1996 the applicant's lawyer made an interlocutory application requesting the return of some of the applicant's documents which had been confiscated during the investigation. The hearing on that application started on 22 March 1996 and continued on 27 March 1996. It was further scheduled to continue on 3 April 1996, but the lawyer of a co-defendant asked for an adjournment. On 29 April 1996 the District Court dismissed the application.

18. On 4 June 1996 the judge informed the parties that he had been appointed to the District Court of Paphos. Since it was impossible to conclude the case before his transfer, the Attorney General having informed the court that he intended to present a further 60 witnesses, the case was adjourned to be tried afresh before a new judge.

19. On 4 July 1996 the case was put before another judge in order to set a date for the re-hearing. The new judge fixed the hearing for 16 September 1996, but some days before that date he informed the President of the District District Court that he would be unable to meet that schedule due to his workload. As a result, the President assigned the case to another judge.

20. On 16 September 1996 all parties appeared before the District Court and requested that the case be adjourned until November because of a number of other engagements of all counsel, including the Attorney General who was to be away from Cyprus between 22 September and 3 October 1996, and the applicant had a trip scheduled to the Far East. On 4 November 1996, when the hearing was to start, the applicant's lawyer alleged that, because of the time which had elapsed between the initiation of the proceedings and the time of the hearing, the proceedings should be struck out because their continuation would contravene Article 30 § 2 of the Constitution. On 14 November 1996 the District Court dismissed the applicant's objection as follows:

> “It is after the completion of the hearing that the results of the delay are examined, which takes the question as to what can be regarded as reasonable at the end of the hearing. The results of the delay constitute a matter which is accounted for when punishment is imposed.”

21. On 15 November 1996 the District Court dismissed another request by the defendants to adjourn the hearing. On 21 November 1996 the hearing was again adjourned until 21 January 1997 because the lawyer of one of the co-defendants contested the validity of the accused’s testimony. On 24 January 1997 the lawyer of another of the co-defendants asked for a further adjournment, because he aleady had an unrelated hearing before the Assize Court and because a second “trial within a trial” should be conducted to determine the validity of the testimony of that co-defendant. On 24 and 29 January the same lawyer reiterated the request.

22. The hearing continued on 6, 12 and 17 February 1997. On 18, 19, 24 and 25 February 1997 the District Court adjourned the hearing on the request of the lawyer of one of the accused, and on 4, 5 and 6 March 1997 further adjournments were granted on the request of the Attorney General. The hearing continued on various dates in March and April 1997.

23. On 10 April 1997 the lawyer of one of the co-defendants invited the District Court to reserve a question of law on the admissibility of two documents. As the court dismissed the application, the lawyer asked for permission to withdraw from the case. However, the lawyer changed his mind and the hearing continued on 16, 17 and 22 April 1997, and then on 6, 13 to15, 17 and 19 May 1997. It also continued on 3 to 5, 9, 18 and 20 June 1997, 24, 28 and 29 July, 5 to 6 and 11 to 13 August 1997 and 23 September 1997. It was adjourned on 7 to 8 May, 11 June, 12 August and 29 to 30 September 1997 of the court’s own motion.

24. On 24 September 1997 the judge informed the accused that he had been appointed to the Assize Court and that the case would have to continue outside normal working hours. He asked for the co-operation of all parties to the proceedings.

25. On 1 to 5, 8 to 9 and 25 to 26 September 1997, the hearing was adjourned at the request of the Attorney General.

26. The hearing continued on 2 and 3 October 1997, but was adjourned on 8, 14 and 23 October 1997 of the court’s own motion.

27. On 4 and 9 December 1997 it was adjourned at the request of the lawyer of one of the accused.

28. The hearing continued on 22, 23 and 29 December 1997, on 7, 14 and 21 January 1998, on 17 and 26 February 1998, on 26 March 1998, on 16 April 1998 and on 8 and 11 May 1998. The court reserved its decision for 11 June 1998.

29. The District Court delivered its judgment on 25 June 1998. It concluded that there was no prima facie case for any of the accused to answer.

30. Within fourteen days of that judgment, the Attorney General lodged an appeal, but on 21 January 1999 he withdrew it.

THE LAW

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

31. The applicant alleges a violation of Article 6 § 1 of the Convention which, insofar as relevant, provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

32. The Government first maintain that the case was very complex. The complexity is evident from the Charge Sheet which contained 48 counts, and from the number of witnesses proposed by the prosecution - 64 in all. There were also three accused, represented by three different lawyers, each one presenting different objections at different stages of the proceedings.

33. The Government submit that the re-hearing of the case following the change of three trial judges was unavoidable, by virtue of the case-law of the Supreme Court. The judicial authorities made every effort to set the case down for trial before the new judge and expedite the commencement of the hearing. Even if the change of these judges had not interfered with the progress of the case, the overall duration of the proceedings would not have been significantly shorter.

34. The Government further claim that the applicant's conduct, as well as that of the co-accused with whom the applicant was in total agreement, contributed substantially to the overall length of the proceedings. The delays imputable to the applicant arise from the following:

- all the accused refused for almost a year to enter a plea to the charges and it was only after the decision of the Supreme Court on 18 November 1993 that they pleaded "not guilty";
- all the accused agreed that the hearing should be postponed until case no. 28410/92, in which only one of them was a party, was concluded and that delayed the proceedings for one year and six months;
- all the accused objected to the competence of the newly appointed judge in October 1995;
- the applicant's request for the return of certain personal documents;
- the adjournment of 16 September 1996 and the absence abroad of the applicant from 18 September to 25 October 1996;
- the objections of the applicant's co-accused as to the validity of their testimonies on 21 November 1996 and 23 January 1997;

- the adjournments of 18, 19, 24 and 25 February 1997 and of 21 May 1997; and
- the objection of 13 March 1997.

35. The applicant contends that the Government's summary of the facts of the case does not give a fair and accurate account of the proceedings; the summary is riddled with serious factual errors, with selective references to facts of little or no significance.

36. Except for two short adjournments requested by the applicant's co-accused and by the applicant himself, at least 43 scheduled hearings were cancelled or adjourned. The Attorney General was wholly or jointly responsible for 15 of them. Another 12 adjournments were decided by the District Court of its own motion, mostly because it was engaged in other business. On only 5 occasions was an adjournment granted on the sole request of the defence. A number of other adjournments were granted, the exact reason for which cannot be ascertained because the relevant transcript is not available.

37. The applicant further submits that, of all the witnesses called, only the evidence of thirteen of them was specifically considered and referred to in the judgment of the District Court. Most of the testimonies were of a merely formal nature: in most cases, witnesses were required to identify a single document or their own signatures or writing on a document. The volume of the evidence presented is an indication not of the complexity of the case, but of its inherent weakness, which resulted in the indiscriminate presentation on behalf of the Attorney General of large volumes of circumstantial evidence of no significance, in an attempt to found a conviction by some means or other. None of the legal issues relating to the offences with which the applicant was charged could in any way be described as complex.

38. Finally, the withdrawal of the Attorney General's appeal raises strong inferences that the appeal was filed without due consideration of its possible merits. By doing so, the Attorney-General proceeded without due regard to the interests of the applicant and delayed the proceedings for seven more months.

A. Period to be taken into consideration

39. The Court notes that the proceedings began on 9 December 1992 when a criminal action was filed against the applicant, and ended on 21 January 1999 when the Attorney General withdrew his appeal against the applicant's acquittal. They thus lasted six years, one month and twelve days over two instances.

B. Reasonableness of the length of the proceedings

40. 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, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among other authorities, the Styranowski v. Poland judgment of 30 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3376, § 47).

41. The Court reiterates that the aim of the reasonable time requirement in criminal matters is to ensure that accused persons are not subjected to a charge for too long a period and that the charge is determined. The period to be taken into consideration in applying this provision lasts at least until acquittal or conviction, even if this decision is reached on appeal (see the Wemhoff v. Austria judgment of 27 June 1968, Series A no. 5, § 18).

42. The Court notes that a number of adjournments and preliminary objections, which – as the Government claim – slowed the progress of the proceedings, were due to the conduct of the applicant's co-accused. However, the Court considers that they may be taken into account in the present case because all the defendants were charged with the same offences and these procedural points were adopted by the applicant.

43. In that respect the Court reiterates that an applicant cannot be blamed for making full use of the remedies available to him under domestic law, but his behaviour is an objective fact; it cannot be attributed to the respondent State and must be taken into account for the purpose of determining whether or not the reasonable time has been exceeded (see the Lechner and Hess v. Austria judgment of 23 April 1987, Series A no. 118, § 49).

44. In the Court's view, the applicant and his co-accused did indeed take a series of steps which complicated the proceedings: the preliminary objection relating to the jurisdiction of the Attorney General to institute proceedings, that relating to the violation of Article 30 § 2 of the Constitution (as a result of the delay in the determination of the case) and that relating to the question whether the co-accused testified under duress. However, the determination of the first objection by the District Court required two months, the second - ten days, and the third - about two months. Therefore, the impact of these objections on the overall length of the proceedings was limited.

45. Moreover, the Court notes that nine months elapsed from the conclusion of the hearing in proceedings no. 21341/1991 until the commencement of the hearing in the present case (18 January 1995 – 30 October 1995). During that period two scheduled hearings were adjourned at the request of the prosecution.

46. Finally, the repeated changes of the judges slowed down the proceedings, because the re-hearing of the case was necessary each time, according to the case-law of the Supreme Court. However, this cannot exonerate the State, which is responsible for ensuring that the administration of justice is properly organised. In particular, the transfer of the trial to the Paphos District Court delayed the proceedings for about twelve months (30 October 1995 – 4 November 1996). Furthermore, the Court takes into account the fact that the third judge who was appointed and then posted to the Assize Court decided to hold the hearings in the present case outside normal hours. As a result twenty-one sittings were necessary for the parties to present their case.

47. In these circumstances and having regard to the overall length of the proceedings, the Court concludes that the domestic courts have not conducted the present case with all due diligence and, accordingly, there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant submits that at the material time he was an importer, retailer and wholesaler of electrical goods, and enjoyed an excellent reputation in the local market. During the investigations, the customs officers visited his offices and confiscated all invoices, receipts, customs documents, account books and other documents relating to his business. Two warehouses of the applicant were sealed and the applicant was prohibited from dealing with any of the goods stored there, and whose value was 1,500,000 Cypriot pounds(CYP). Thus the goods became dated, no longer marketable and part of the stock was sold at 1/3 of its value at a public auction. A part of the stock remained in the applicant's warehouse and is unsaleable. As a result, the loss suffered by the applicant in relation to his stock exceeds 2,000,000 CYP. After his acquittal, the applicant was unable to rebuild his business and is now a pensioner receiving 220 CYP. He maintains that the loss of his business exceeds the sum of 5,000,000 CYP.

50. For non-pecuniary damage, the applicant claims 50,000 CYP. He maintains that as a result of the excessive length of the proceedings he

suffered serious distress and anxiety and had to seek medical treatment for depression. The proceedings had a devastating effect on his social life, as the case was given publicity in the newspapers. He was obliged to withdraw his membership of the Lions Club and to stay for two months in a monastery in order to avoid any social contacts.

51. The Government contend that the pecuniary damage claimed by the applicant is exaggerated and in no way connected to the alleged violation. The applicant does not provide any evidence to prove his allegation that because of the investigation the bank cancelled letters of credit which they had issued. Furthermore, the applicant does not provide the Court with accounts of the goods sold at the auction or the amount that he received from the sale. As regards the amount claimed for the loss of his business, the Government stress that the bank statements submitted by the applicant disclose a healthy picture of his accounts and that his business was operating until the year 2000.

52. The Government maintain that the alleged violation concerned the length of the proceedings which has nothing to do with the publicity given to the applicant's case. The publicity given to the investigation carried out by the custom's office only lasted three days. The Government submit that the finding of a violation would constitute sufficient just satisfaction for non-pecuniary damage.

53. The Court cannot speculate as to the state of the applicant's business had the investigation not taken place and had the proceedings been concluded in a shorter period. It considers it reasonable, however, to hold that on account of the breach found in the present judgment, the applicant suffered, in the circumstances of the case, a loss of opportunities in relation to the management of his business justifying an award of 12,000 EUR. As regards non-pecuniary damage, the Court considers that the finding of the violation does not of itself constitute sufficient just satisfaction and awards the applicant 6,000 EUR under this head.

B. Costs and expenses

54. The applicant claims the reimbursement of his lawyer's fees in the domestic proceedings. He specifies that he had originally agreed to pay him 13,000 CYP for the whole case. However, as a result of the excessive length of time that it took for the conclusion of the proceedings, he was charged with an additional 17,000 CYP in fees.

55. The Government submit that the applicant cannot recover the domestic costs because they were not incurred in order to prevent or avoid the violation of the Convention.

56. Like the Government, the Court takes the view that the costs incurred in Cyprus cannot be reimbursed.

57. Finally, although the applicant's lawyer stated that the applicant's claims extended to the fees for the Convention proceedings, he supplied no particulars of that expenditure. However, it is clear that the applicant incurred some legal fees, given the observations submitted by his lawyer to the Court. Making an assessment on an equitable basis, the Court awards the applicant 1,500 EUR for costs and expenses.

C. Default interest

58. 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:
      (i) EUR 12,000 (twelve thousand euros) in respect of loss of opportunities;
      (ii) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
      (iii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
      (iv) all sums to be converted into Cypriot pounds at the rate applicable at the date of settlement;
   (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President