CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF ALITHIA PUBLISHING COMPANY v. CYPRUS

(Application no. 53594/99)

JUDGMENT

STRASBOURG

11 July 2002

FINAL

11/10/2002

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 Alithia Publishing Company v. Cyprus,

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

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs H.S. GREVE, *judges*,
Mr A.N. LOIZOU, ad hoc *judge*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 53594/99) 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 company registered in Cyprus which publishes the daily morning newspaper *Alithia* and the editor in chief of the newspaper, Mr Alecos Constantinides ("the applicants"), on 21 December 1999.

2. The applicants were represented by Mr A. Demetriades and Mr C. Porgourides, lawyers practising in Nicosia. The Cypriot Government ("the Government") were represented by their Agent, Mr P. Clerides, Deputy Attorney-General of the Republic of Cyprus.

3. The applicants alleged, in particular, a violation of Article 6 § 1 of the Convention (length of proceedings).

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. Mr L. Loucaides, the judge elected in respect of Cyprus, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr A.N. Loizou to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a partial decision of 7 November 2000, the Court declared inadmissible the applicants' complaints under Articles 9 and 10 of the Convention.

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

7. On 6 December 2001, the Court declared admissible the remainder of the application.

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

THE FACTS

9. On 22 October 1985, just before the 1986 elections, the first applicant published an Article entitled “The capon and self-esteem - Short portrait of Mr Tassos Papadopoulos - Archives, Gigolo, Computer and Specimen of writing”, of which the second applicant was the author.

10. On 26 October 1985 Mr Papadopoulos filed a civil action for libel with the District Court of Nicosia. The applicants filed a memorandum of appearance to the writ on 5 November 1985. The plaintiff's statement of claim, which, by virtue of Order 20 r.1 of the Civil Procedure Rules, ought to have been filed within ten days after the appearance, was delivered to the applicants on 3 February 1988. Although on 6 November 1987 the District Court had fixed a time-limit of twenty-one days for the filing of the statement of claim, the plaintiff requested and obtained on 11 January 1988 an extension until 29 January 1988. On that date, as the statement of claim was not yet filed, the District Court did not fix the case anew, but gave instructions to the Registrar to bring the case before it, after 1 February 1988, in order to dismiss it for want of prosecution.

11. On 16 September 1988 and 17 January 1989 the applicants filed two similar applications whereby they sought to obtain an order of the court striking out or amending paragraph 8 of the plaintiff's statement of claim, as tending to embarrass or delay the fair examination of the action or as being unnecessary or scandalous. The hearing of the applications was fixed for 7 November 1988, but on that date it was adjourned until 14 December 1988 at the request of both parties and then, *ex officio*, until 9 January 1989, when it was dismissed for want of prosecution. On 17 January 1989 the applicants filed a third similar application which was subsequently withdrawn on the date of the hearing on 21 April 1989, in the light of a statement made by the plaintiff's lawyer.

12. On 31 May 1989 the applicants applied to the District Court for an adjournment of the time-limit to file their defence, on the ground that it had not been possible to do it in time owing to the numerous applications which were submitted in the action. An adjournment was granted until 7 June 1989 but the applicants did not file their defence until 12 September 1989.

13. On 15 February 1990 the applicants applied to the District Court to expedite proceedings. The court fixed the case for mention on 16 March 1990 and for hearing on 9 November 1990. On that date the hearing was

adjourned *ex officio* until 21 March 1991 and 15 November 1991, and then until 28 May 1992 and 13 January 1993. On that last date the applicants failed to appear because the plaintiff's lawyer had omitted to notify them of the date of the hearing.

14. On 21 June 1993 the hearing was adjourned again until 4 February 1994, owing to the lack of time by the court, and again until 16 September 1994, following a request from the applicants. On three occasions the hearing was adjourned *ex officio*: on 16 September 1994, 1 March 1995 and 18 September 1995 and, following a further request from the applicants, again on 12 January 1996.

From 16 March 1990 until 14 March 1996, when the hearing actually started, the hearing was adjourned on eight occasions, due to lack of time of the Court: from 16 March 1990 to 9 November 1990, from 9 November 1990 to 21 March 1991, from 21 March 1991 to 15 November 1991, from 15 November 1991 to 28 May 1992, from 28 May 1992 to 13 January 1993, from 13 January 1993 to 21 June 1993, from 21 June 1993 to 4 February 1994, from 4 February 1994 to 16 September 1994 (not attributed to the Court), from 16 September 1994 to 1 March 1995, from 1 March 1995 to 18 September 1995, from 18 September 1995 to 10 January 1996 (not attributed to the Court), from 10 January 1996 to 13 March 1996 (not attributed to the Court) and from 13 March 1996 to 14 March 1996.

15. The hearing commenced on 14 March 1996 and involved seven sessions: on 14 March 1996, 2 April 1996, 22 April 1996, 29 May 1996, 30 May 1996, 12 June 1996 and 13 June 1996. On 14 March 1996, at the end of the morning session, the lawyers of both parties declared that they were unable to continue in the afternoon or the following week due to other court engagements. The applicants' lawyer refused to resume the hearing on 5 April 1996 because he had to appear before another court, and on 23 April 1996 because he was engaged in a pre-election meeting of his party. The hearing thus continued after the parliamentary elections held on 26 May 1996.

16. On 28 January 1997 the District Court delivered its judgment. It found that the applicants had committed libel and ordered them to pay the plaintiff 12,000 Cypriot pounds in damages.

17. The District Court rejected the applicants' claim that the proceedings were null and void because they had exceeded a reasonable length. The District Court noted, on the one hand, that the plaintiff had delayed filing his claims, but, on the other hand, that the applicants had not complained of this delay prior to the hearing.

18. On 27 February 1997 the applicants appealed to the Supreme Court. They relied on two grounds: the excessive length of the proceedings and the amount of the award. On 8 April 1997 the plaintiff filed a cross-appeal whereby he sought higher compensation.

19. The Supreme Court fixed the hearing on 22 December 1998 but on that date adjourned it until 12 May 1999.

20. On 22 July 1999 the Supreme Court rejected the applicants' appeal and increased the award of damages to 20,000 Cypriot pounds.

21. As regards the length of the proceedings, the Supreme Court held that much of the delay was due to the applicants' requests for adjournments. It acknowledged, however, that it took 28 months for the plaintiff to file his claims because of his frequent trips abroad, and that the District Court had adjourned the hearing several times for lack of time. In particular, the Supreme Court noted the following: on 16 September 1988 the applicants had invited the District Court to strike out part of the plaintiff's claims but, as they did not appear for the hearing of that matter, the District Court rejected the application. The applicants then asked for an extension of the time-limit to file their observations, which were submitted on 12 September 1989. On 23 August 1991 the applicants' lawyers withdrew, and on 11 November 1991 the new lawyer requested the District Court to adjourn the hearing because he was obliged to appear before another court. On 1 March 1995 the applicants' lawyer was not present. On 13 September 1995 he asked for a new adjournment. Finally, the hearing started on 14 March 1996 and was completed on 13 June 1996. During that period, the applicants' lawyer obtained two more adjournments.

THE LAW

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

22. The applicants allege a violation of the "reasonable time" guaranteed by Article 6 § 1 of the Convention, which insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. The parties' submissions

1. The Government

23. The Government contend that the applicants failed to apply at any time after the expiry of the ten day period after their appearance in 1985 for an order requiring the plaintiff to submit his statement of claim within the time-limits prescribed by law. In particular, the applicants could have

pressed for the filing of such a statement or have the action dismissed for want of prosecution. The filing of the statement of claim was the result of steps taken by the court and not by the applicants, who never objected to the plaintiff's repeated requests for adjournments.

24. The Government stress that the applicants persisted in making three applications for an amendment of the plaintiff's statement of claim which were ultimately withdrawn, but which caused several months' delay. It is clear that a period of almost four years, starting with the introduction of the action on 23 October 1985 and ending with the applicant's defence on 12 September 1989, cannot be attributed to the judicial authorities. Following the close of the written pleadings, neither the applicants nor the plaintiff applied to the Registrar to fix the date of the hearing. Moreover, the applicants could have applied for the dismissal of the action for want of prosecution, invoking Article 30 § 2 of the Constitution and Article 6 § 1 of the Convention.

25. Applicants have failed for about two years, out of a total period of four years as from the filing of the writ of summons, and until 11 March 1990, when the Court gave directions for trial of the action to take place on 9 November 1990, to use procedural means that were available to them to prevent or put a stop to the delay in the proceedings. An application under Order 26 r.6 would have been an expression of a will on their part to have the dispute decided upon expeditiously. The present case is a characteristic one of libel in Cyprus courts and it would not be fair on the judicial authorities to bear the blame or the cost for indifference or unwillingness exhibited by both parties to the dispute.

26. From 9 November 1990 when the action was set for hearing, until 4 March 1996, when the hearing commenced, it was adjourned twice (on 28 May 1992 and 13 January 1993) owing to the failure of the applicants' lawyer to appear before the court, twice as a result of requests for adjournments by the same lawyer (on 12 January 1990 and 4 February 1997) and on one occasion (on 15 November 1991) due to both of lack of time by the court and a new request for adjournment.

27. Over a period of about ten years from the commencement of the proceedings on 23 October 1985, and about seven years from 1 January 1989 (when the Convention entered into force with respect to Cyprus), until the date of the commencement of the hearing, only a delay of three years was attributable to the District Court. At no time did the applicants protest about the delay and there was no indication whatsoever, until 12 June 1996, the date of their lawyer's final address to the court and after completion of the hearing of testimony of witnesses, that they were in a hurry to obtain a judgment. After the commencement of the hearing, and despite clear indications that the court disapproved of requests for adjournments, the applicants not only continued to lodge such requests but also failed twice to appear before the court.

28. As regards the proceedings before the Supreme Court, the Government submit that the delay was not excessive (the proceedings lasting but two years), and was due to the preparation of the transcript of proceedings before the District Court, which involved 280 pages of stenography.

29. Although the Government acknowledge that part of the delay was attributable to the first-instance court, they contend that the applicants were primarily responsible for the length of the proceedings. Finally, the Government maintain that the nature of the case, proceedings for libel with a view to obtaining compensation, did not require special diligence by the courts on account of the possible consequences which the length of the proceedings could have had.

2. The applicants

30. The applicants stress that the case was not complex and that libel cases should not be treated differently than any other case. Libel cases are of the utmost importance to the applicants in view of the fact that the first applicant is a newspaper publishing company and the second the editor in chief of that newspaper. They involve issues relating to the freedoms of thought and of expression, which include the right of the public to receive information. Such rights are fundamental in a democratic system and claims arising within this framework must be dealt with without undue delay.

31. The applicants submit that they had to endure proceedings which took thirteen years and eight months to complete. Between 17 January 1989 and 16 March 1990, certain procedural matters had to be settled in order for the case to be fixed for hearing. From 9 November 1990 to 14 March 1996, when the hearing actually started, the case was adjourned twelve times, essentially because the District Court had no time or a particular judge was busy with another case. The applicants' failure to appear on 9 January 1989 did not delay the proceedings for more than three months. The adjournment of 28 May 1992 was due to the fact that the judge was about to retire and it was left to the plaintiff's lawyer to notify the applicants of the new date of the hearing; however, the former failed to do so. Considerable delay was caused before the Supreme Court because the District Court was unable to prepare the transcript of the case.

32. The respondent has been responsible for an unjustifiable delay of more than 7 years and a half within the period after 1 January 1989, date on which the Republic has accepted the right of individual petition. The fact that the applicants took no steps to apply to strike out the proceedings due to the plaintiffs delay in filing a statement of claim does not absolve the Government from the responsibility of doing so, especially in view of the fact that the relevant Civil Procedural Rules provide for such an action.

33. The applicants further point out that eight of the adjournments have not received any detailed explanation from the Government. The applicants

stress that the Cypriot courts are overloaded and cannot cope with their workload, a matter for which only the Government is accountable.

B. The Court's decision

1. Period to be taken into consideration

34. The Court notes that the period to be considered did not begin to run when the action for libel was first brought before the District Court, on 23 October 1985, but only when, on 1 January 1989, the Cypriot declaration accepting the right of individual petition took effect. The period ended on 22 June 1999, when the Supreme Court delivered its judgment. The proceedings thus lasted ten years, five months and twenty days. However, in order to determine whether the time which elapsed following 1 January 1989 was reasonable, it is necessary to take account of the stage which the proceedings had reached at this point.

2. Reasonableness of the length of the proceedings

35. The Court notes that the District Court delivered its judgment on 28 January 1997, that is, almost 11 years after the introduction of the proceedings. Although the plaintiff submitted his claims 27 months after the introduction of the proceedings and the applicants invited the court on some occasions to adjourn the examination of the case, the Supreme Court itself noted that the District Court had adjourned the hearing several times, mostly after the entry into force of the Convention with respect of Cyprus. In effect, the proceedings were adjourned *ex officio* because of the lack of available time of the District Court, or for reasons independent of the applicants' will on the following dates: 9 November 1990, 21 March 1991, 15 November 1991, 28 May 1992, 13 January 1993, 21 June 1993, 16 September 1994, 1 March 1995 and 13 March 1996. In addition to their number, all these adjournments accounted for approximately 58 months of delay. Such a period appears unreasonable, particularly in view of the fact that the proceedings had started in 1985.

36. As regards the proceedings before the Supreme Court, the Court notes that they lasted approximately two years and four months and the reason for that delay was the impossibility for the District Court to prepare the record of the proceedings quickly. In this respect, the Court recalls that Article 6 § 1 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, the Massa v. Italy judgment of 24 August 1993, Series A no. 265-B, § 31).

37. Furthermore, the Court notes that in their reply to a written question put by the Court, the applicants indicated that in libel cases there is no

practice nor can it be considered desirable that proceedings be dormant. In this connection, the Court considers that expeditious proceedings were necessary in the present case, in order to prevent the applicants – a newspaper and its editor in chief – from remaining in a state of protracted uncertainty in a libel case, which could have prejudicial effect on the reputation, credibility and circulation of the newspaper.

38. In these circumstances, the Court considers that the delays which have been noted were sufficiently substantial for the overall length of the proceedings to be regarded as excessive.

39. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. For pecuniary damage the applicants claim 8,000 Cypriot pounds (CYP). They submit that they were unjustifiably treated in terms of the level of damages, as though the libel had taken place in 1999 and not in 1985. The length of the proceedings had as a result an increase in the amount of damages and that is the reason why the Supreme Court increased it from CYP 12,000 to CYP 20,000.

42. The Court agrees with the Government that the increase in the amount of damages to be paid by the applicants decided by the Supreme Court has no causal link with the violation found and considers that no award should be made under this head.

B. Non-pecuniary damage

43. For non-pecuniary damage the applicants claim CYP 10,000 (CYP 5,000 for each). They point out that they have paid to the plaintiffs CYP 20,000 and this is a factor that should be added to the stress and anguish that this very long period has inflicted upon them. Furthermore, the credibility and the effectiveness of the newspaper have been affected by the prolonged exposure to the possibility of a finding against them for libel. This is much more relevant to the second applicant who suffered obvious stress and anguish.

44. The Government submit that the applicant's conduct in the proceedings is not indicative of the presence of any “stress and anguish” having been suffered, as alleged, owing to the length of the proceedings. They maintain that the finding of a violation would constitute sufficient just satisfaction for non-pecuniary damage.

45. The Court accepts that the applicants suffered some distress that could have been avoided had the proceedings been brought to an end within a reasonable time. In this connection, the Court reiterates that a commercial company may be awarded compensation for non-pecuniary damage (*Comingersoll S.A. v. Portugal* [GC], n° 35382/97) CEDH 2000-). Deciding on an equitable basis, the Court awards the applicants jointly EUR 9,000 in respect of non-pecuniary damage.

C. Costs and expenses

46. For costs and expenses the applicants claim CYP 1,559.52 for the domestic proceedings (CYP 864 before the District Court and CYP 695.52 before the Supreme Court) and CYP 1,993.90 for the Strasbourg proceedings.

47. The Government contend that only the costs and expenses claimed for the proceedings before the Supreme Court and the Court are referable to the applicants' attempts to prevent or obtain redress for the violation of the Convention and could be recoverable provided that they were actually and necessarily incurred and reasonable as to quantum.

48. The Court considers that the legal costs and expenses have been actually and necessarily incurred, are reasonable as to quantum and are, as such, recoverable under Article 41 of the Convention (*Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). The applicants are therefore to be reimbursed their legal costs and expenses jointly in the sum of EUR 4,652 (inclusive of VAT).

D. Default interest

49. The Court considers that the default interest rate should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

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 jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention,
   i. EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   ii. EUR 4,652 (four thousand six hundred and fifty-two euros) for costs and expenses, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 11 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President