CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

CASE OF GREGORIOU v. CYPRUS

(Application no. 62242/00)

JUDGMENT

STRASBOURG

25 March 2003

FINAL

09/07/2003

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 Gregoriou v. Cyprus,

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

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

Having deliberated in private on 4 June 2002 and on 4 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 62242/00) 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 Andreas Gregoriou ("the applicant"), on 18 May 2000.

2. The Cypriot Government ("the Government") were represented by their Agent, Mr A. Markides, Attorney General of the Republic.

3. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings before the Nicosia District Court and the Supreme Court.

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. 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 (Rule 52 § 1).

5. By a decision of 4 June 2002 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1928 and lives in Nicosia.

1. Background to the case

7. The applicant was recruited in September 1946 by the Bank of Cyprus ("the Bank"). He retired from the Bank on 31 December 1988. To enhance his career prospects, he continued his studies while working, studying through distance-learning programmes run by British colleges. In 1960 he was granted two-years' unpaid educational leave to study in London. When he returned he was promoted deputy to the Chief Inspector with the prospect of succeeding the latter. In 1963 the Government established the Central Bank (the State issuing Bank), which published its vacant posts. Interested in one of the four advertised managerial posts, the applicant contacted the Central Bank's Governor who offered him a post entailing responsibility for banking operations.

8. On hearing about the Central Bank's offer, the applicant's Bank, in 1964, offered him orally the post of Chief Inspector on the condition that he followed a six-month training course in London. When the applicant returned from his training, the Bank promoted him to the lower post of Head of Department. In 1967 the Bank amended its Conditions of Service. The applicant was kept in the same grade. In the same year the applicant was transferred on promotion to take charge of the Bank's Paphos Branch. In 1969 he was again promoted (but not to the post allegedly agreed on). In 1970 he was transferred back to the Head Office, where he alleges he was given various duties below managerial status.

9. The applicant alleges that in 1983 the Chairman of the Bank, in the course of a private meeting, stated that the reason for not promoting him to the post agreed on in 1964 was that the Board of Directors had received from a group of shareholders a number of anonymous letters criticising the Board for bad administration. The Board suspected that these letters had been sent by the applicant. The applicant further alleges that, following this information, he tried hard for almost two years to convince the Bank of his innocence, but to no avail.

10. The applicant claims that in 1987, nineteen months before his retirement, the Bank offered him 32,000 Cyprus pounds with a year's increment in salary and threatened him that, if he did not accept, the Bank would demote him from Sub-Manager to Head of Department. The applicant refused the offer.

11. In 1988 the Disciplinary Committee of the Bank ordered the applicant's dismissal with stay of execution.

12. Considering that the Bank had not respected its commitment to appoint him to a senior management position, the applicant instituted proceedings before the District Court of Nicosia claiming damages.

2. The proceedings before the District Court of Nicosia and the Supreme Court sitting as an appeal court

(a) The hearing of the action

13. The applicant lodged an action for damages (no. 7439/85) with the District Court of Nicosia on 12 August 1985. On 22 October 1985 he filed his statement of claim and on 15 April 1986 he filed an amended version.

14. On 27 June 1986 the applicant applied for the action to be set down for a hearing. The hearing was fixed for 7 October 1986. One month before the hearing the applicant replaced his lawyer and, following the request of both parties, the hearing was adjourned to 19 February 1987 and then to 10 June 1987. On 3 March 1987 the applicant filed an application to amend further his statement of claim. This application was granted on 23 May 1987.

15. On 6 June 1987 the applicant filed his amended statement of claim. However, on 3 July 1987 the defendant filed an application to have certain parts of the application struck out. The application was fixed for hearing on 21 September 1987, but the hearing had to be adjourned to 20 October 1987 because the applicant failed to file an opposition. On that date it was adjourned again because the applicant had in the meantime replaced his lawyer. On 14 December 1987 the District Court ordered the striking out of certain parts of the statement of claim. On 5 January 1988 the defendant filed its statement of defence. The action was fixed for hearing on 10 March 1988. On 6 February 1988 the applicant's lawyer withdrew from the case and the hearing had to be again adjourned to 4 May 1988. The applicant appeared in person. On 16 May 1988 he applied for a further adjournment in order to appoint a new lawyer. On 6 June 1988 the new lawyer applied for a further adjournment in order to study the file. On 8 August 1988 the applicant's lawyer applied for a further adjournment because the applicant was ill. However, the court dismissed the request. The applicant's lawyer withdrew from the case.

16. On 30 July 1988 the District Court delivered judgment and dismissed the action.

(b) The appeal

17. The applicant appealed against this judgment to the Supreme Court. He alleged a violation of Article 30 of the Constitution and of Article 6 of the Convention.

18. The appeal was fixed for hearing for 25 November 1991 but adjourned to 12 January 1992 because the applicant was ill. It had to be adjourned again to 20 March 1992 because the applicant's lawyer had other commitments.

19. On 20 March 1992 the applicant informed the court that he had dismissed his lawyer and requested a three-month adjournment of the hearing. The hearing was adjourned to 15 October 1992. On that date the applicant appeared in person.

20. On 10 November 1992 the Supreme Court delivered its judgment. It held that the failure of the trial court to grant the adjournment which the applicant had requested on 8 July 1988 had, in the circumstances, led to a violation of the applicant's right to a fair hearing.

21. The Supreme Court quashed the judgment of 30 July 1988 and ordered a re-trial by another District Court.

(c) The second hearing

22. The action was fixed for hearing for 14 December 1992, but on that date the applicant applied for an adjournment in order to appoint another lawyer. On 16 March 1993 the hearing was adjourned to 2 July 1993 with the consent of both parties, and then to 29 October 1993 at the request of the applicant. On that date the court did not proceed with the hearing because the applicant had filed an application for the production of documents. The defendant objected to that application, but its objection was dismissed on 7 December 1993. On 17 December 1993 the applicant applied for an amendment of his statement of claim. His application was granted.

23. On 25 January 1994 the applicant filed an application for disclosure of documents in the defendant's possession. The application was fixed for directions on 21 February 1994. As the defendant objected to the application, a hearing was fixed. On 20 April 1994 the court granted the application.

24. The hearing of the action commenced on 21 June 1994. The applicant applied for an adjournment because he intended to file an application for amendment of his statement of claim. As a result, the hearing was adjourned to 20 September 1994, and then to 17 October 1994 and 28 November 1994. The application was granted on 19 January 1995 and the hearing of the action continued on 6 February 1995.

25. During the hearing the court issued two interlocutory rulings on procedural matters. On 27 March 1995 the applicant filed two appeals against these rulings with the Supreme Court. He also filed an application for a stay of the proceedings until the determination of the appeals and the

conclusion of the investigation of a complaint he had lodged with the police against the defendant. On 8 May 1995 the court dismissed both applications for a stay of the proceedings. The hearing of the action continued on 17 May 1995.

26. On 11 June 1995 judgment was reserved. However, by that time one of the judges of the bench had retired and thus the action had to be re-heard by another bench.

(d) The third hearing

27. On 28 March 1996 the hearing of the action was resumed before another bench of the court. However, on 6 May 1996 one of the judges was appointed to the Supreme Court and thus the hearing had to be adjourned to 1 July 1996 in order to be recommenced before a different bench.

(e) The fourth hearing

28. The hearing before a different bench was fixed for 12 September 1996, but was adjourned to 22 October 1996.

29. On 11 October 1996 the applicant filed an application to stay the hearing of the action until private criminal proceedings he had initiated against the defendant had been determined. On 11 November 1996 the court dismissed the application.

30. On 23 December 1996 the hearing of the action was concluded and the court reserved its judgment.

31. On 14 January 1997 the applicant filed an application for the re-opening of the action in order to submit further arguments. On 24 January 1997 the court dismissed the application.

32. On 20 March 1997 the District Court dismissed the applicant's civil claims.

2. The proceedings before the Supreme Court

33. On 15 April 1997 the applicant appealed to the Supreme Court. The hearing was fixed for 18 July 1997, but was adjourned to 24 September 1997, and then to 25 November 1997 and 28 January 1998 because the transcript of the trial was not ready yet. The written addresses of both parties were submitted on 17 June 1998. The hearing took place on 22 September 1998 and was concluded on 24 March 1999. Judgment was reserved. However, as one of the judges had resigned, the appeal was assigned to another bench of the Supreme Court, which re-heard the case and delivered judgment on 29 November 1999.

34. The introductory paragraph of the judgment read as follows:

> "The action, which resulted in the judgment from which appeal is made, was filed in August 1985. The course of the case was exceptionally unfortunate. The responsibility lies, to a much greater extent, upon the court. The trial commenced three times before

different benches of the Full Court without resulting in a determination of the dispute. Here we have the appeal against the judgment in the fourth trial."

THE LAW

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

35. The applicant alleges a violation of Article 6 § 1 of the Convention, which in so far 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..."

36. In their observations on the admissibility and merits of the application, the Government conceded that the length of the proceedings amounted to a breach of the "reasonable time" requirement. Furthermore, they maintained that the applicant should not be entitled to any award by way of just satisfaction in view of his own dilatory conduct throughout the proceedings.

37. However, in their comments on the applicant's claims for just satisfaction, the Government submitted that no violation of the reasonable time requirement had occurred in the present case. During the first set of proceedings (12 August 1985 – 10 November 1992), there had been only one period of apparent inactivity, and this was due to the applicant's own fault since he waited until 12 June 1991 before filing an application to have the appeal fixed for hearing. As for the remaining four-year period, the delay was also due to the applicant's conduct because he had repeatedly amended his statement of claim and replaced the lawyers appearing for him.

38. The applicant contested his alleged responsibility for the length of the proceedings. He claimed that the defendant, the largest bank on the island, succeeded in depriving him of continuous legal representation, with the result that he had to handle his case himself. The defendant also succeeded in making matters worse by influencing the Attorney General and the courts. The defendant had every reason to impede the normal judicial procedure, given that its ultimate intention was to compel him to abandon his case by exerting psychological and financial pressure on him. As regards his applications to amend his statements of claim, he submitted that amendments were necessary for two reasons: firstly, because of the passage of time and, secondly, because of his repeated need to change lawyers as a result of the reprehensible conduct of the defendant. The request for the adjournment of the hearing of 19 February 1987 was made by the defendant, and not by both sides. On 12 October 1993 he had filed an application for the production of documents by the defendant from his

personal employment file, a motion which the defendant had strenuously opposed.

39. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties, the conduct of the authorities dealing with the case and what was at stake for the applicant (see *Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

40. The Court notes that the proceedings commenced on 12 August 1985, when the applicant lodged an action for damages with the District Court of Nicosia, and ended on 29 November 1999, with the judgment of the Supreme Court. They lasted fourteen years, three months and seventeen days over three levels of jurisdiction.

41. The Court notes in the first place that the District Court dismissed the applicant's action on 30 July 1988. However, the applicant's appeal was set down for a hearing before the Supreme Court on 25 November 1991, almost three and a half years later. This delay has not been explained. Furthermore, after the Supreme Court, on 10 November 1992, had quashed the judgment of 30 July 1988 and ordered a re-hearing by another District Court, it took the latter more than four years and three hearings, each time before a different bench, for the District Court to decide the case.

42. The Court considers that the Supreme Court in the first set of appeal proceedings, as well as the District Court following the quashing of its original judgment, failed to ensure the speedy conduct of the proceedings in a case which could not be considered complex in terms of its subject matter.

43. It is true that the applicant's conduct may have contributed to some extent to slowing down the course of the proceedings. However, the Court cannot but note the statement contained in the Government's pleadings regarding the length of the proceedings as well as the observations of the Supreme Court in its final judgment on where, in its view, responsibility lay for much of the protracted nature of the litigation (see paragraphs 34 and 36 above).

44. Accordingly, the Court concludes that there has been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 97,665 Cyprus pounds ("CYP") for loss of emoluments in the period 1964-1988, including interest thereon corresponding to the rate of inflation in Cyprus. He also claimed CYP 89,137 for loss of his retirement gratuity. Given that he had rejected an offer of a senior managerial post made to him by the Lombard Natwest Bank, he also claimed CYP 200,000 for loss of salary and/or profits. Finally, he claimed CYP 9,970 for the loss of his annual entertainment allowance.

As to non-pecuniary damage, the applicant claimed CYP 50,000 based on the pain and suffering he had had to endure on account of the protracted nature of the proceedings, which had taken a toll on his physical and psychological heath.

47. The Government stated that there was no causal link between the applicant's pecuniary claims and the alleged violation. As for non-pecuniary damage, the Government submitted that the "suffering" invoked by the applicant was the result of the Bank's conduct during his employment and could not engage the responsibility of the State.

48. The Court agrees with the Government that no causal link has been established between the applicant's alleged pecuniary loss and the violation found. The Court thus dismisses the applicant's claim under this head.

As regards non-pecuniary damage, the excessive length of the proceedings (which lasted over 14 years) may reasonably be considered to have caused the applicant anxiety, frustration and tension. Making its assessment on an equitable basis, the Court awards him 10,000 euros (EUR) under this head.

B. Costs and expenses

49. The applicant claimed CYP 3,386.50 (of which CYP 2,465 corresponded to lawyers' fees). He also submitted that he should be entitled to two thirds of the fees which he would have had to pay to a barrister for representation at the 47 court sessions in which he had to appear in person. Finally, he claimed CYP 483 for fees which he had had to pay to a professional typist in order to file documents during the proceedings.

50. The Government submitted that no award should be made under this head. In particular, the applicant should not be entitled to any award simply because he had to plead his own case at a number of court hearings. The Government further submitted that some of the domestic court costs had been awarded to the applicant, and that the applicant had withdrawn some of his appeals without any order being made as to costs.

51. According to the Court's case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It also must be shown that the costs were actually and necessarily incurred by the applicant and that they are reasonable as to quantum (see *Philis v. Greece (No. 1)*, judgment of 27 August 1991, Series A no. 209, p. 25, § 74). In the present case, the Court notes that the costs incurred in the domestic proceedings have no connection with its finding of a violation of the "reasonable time" requirement in Article 6. Furthermore, the Court notes that the applicant, who was not represented by a lawyer in the proceedings before the Court, has not submitted any claims in connection with the Convention proceedings. Consequently, the Court rejects the applicant's claims under this head.

C. Default interest

52. 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 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, EUR 10,000 (ten 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;

(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;

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

Done in English, and notified in writing on 25 March 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President