



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

FIRST SECTION

CASE OF CICHOWICZ v. CYPRUS

(Application no. 6470/02)

JUDGMENT

STRASBOURG

19 January 2006

FINAL

19/04/2006

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 Cichowicz v. Cyprus,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 6470/02) 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 Polish national, Mr Janusz Cichowicz (“the applicant”), on 30 January 2002.

2. The Cypriot Government (“the Government”) were represented by their Agent at the time, Mr S. Nikitas, Attorney-General of the Republic of Cyprus.

3. On 17 September 2002 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time. The Government of Poland were given notice of the application. They informed the Court that they did not wish to exercise their right to intervene in the proceedings.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1959 and lives in Świnoujście, Poland.

5. From 1990 until 1992 the applicant worked for a company in Cyprus as a technician for the installation of elevators in a hotel that was under construction at the time. On 1 June 1992 he was seriously injured following a work related accident and was hospitalised for 40 days.

6. The Cypriot Ministry of Labour instituted criminal proceedings against the company that was found guilty of offences relating to the accident by the District Court of Paphos (31 March 1994) and on appeal by the Supreme Court (23 June 1996).

7. On 17 September 1997 the applicant filed compensation proceedings before the District Court of Paphos against his employers (civil action no. 3449/97).

8. Between 28 November 1997 and 23 October 2000 the case was continuously adjourned and no hearing was held. In particular, two adjournments were granted at the request of the applicant, one at the parties' request and four at the defendants' request. The adjournments were mainly for procedural reasons, primarily, the submission of pleadings and various applications and objections thereto. Further, there was a delay regarding the medical examination of the applicant by the defendants' lawyers.

9. The case was also adjourned by the court itself four times in the above period, *inter alia*, from 18 October 1999 until 14 March 2000 and from 13 April 2000 until 23 October 2000. Furthermore, within this period, two new judges were appointed to the case.

10. The hearing began on 23 October 2000. Subsequently, between 24 October 2000 and 23 October 2001 the case was adjourned a total of ten times: once at the defendants' request, once due to the absence of the applicant's lawyer and eight times at the applicant's request.

11. On 24 October 2001 the hearing of the second application of the applicant for amendment of his statement of claim was held. The judge set 29 November 2001 as the date of delivery of the decision concerning the application. However, the relevant decision was not ready on that date and thus, the case was set *sine die*.

12. On 23 May 2002 the decision on the application for amendment was delivered and the trial judge also informed the parties that a new judge would be appointed suggesting therefore that the trial should start anew.

13. Between 23 May 2002 and 2 September 2002 the case was adjourned once due to the absence of the applicant's lawyer.

14. On 2 September 2002 the parties agreed that the case should be tried anew.

15. On 10 September 2002 the case was put before a new judge and the case was set for mention on 27 September 2002.

16. The case was subsequently adjourned twice so that the parties could reach an agreement on a sum to be deposited as security of costs subsequent to an application by the applicant in this respect and an objection thereto by the defendant. On 22 October 2002 the court set the hearing for 4 and 5 February 2003.

17. On 20 February 2003 the judge recorded an out-of-court settlement that was concluded by the parties for the payment of 16,500 Cypriot pounds (CYP) as damages for the injuries sustained by the applicant plus CYP 3,000 for legal costs.

II. RELEVANT DOMESTIC LAW AND OTHER RELEVANT MATERIAL

18. Article 30 (2) of the Cypriot Constitution in so far as relevant provides as follows:

(2) “In the determination of his civil rights and obligations ..., every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent court established by law.

19. On 30 July 2001 the Supreme Court adopted “The Rule of Judicial Practice” which provides as follows:

“During the Court’s meeting of 3 July 2001 and before the Court proceeds with its judicial work, the President announced the issuing of the following Judicial Rule of practice.”

The President of the Supreme Court Mr G.M. Pikis stated as follows:

“With the unanimous agreement of all the Judges of the Supreme Court, the following Rule of Practice is issued:

It is acknowledged that the duty for the trial of cases within reasonable time is the individual duty of the trial judge and a collective duty of the judicial function. The establishment of rules for the conduct of a trial within reasonable time and the supervision of the procedures towards preventing delays is the responsibility of the Supreme Court. Its performance must be regulated in a way which secures, not only in advance but also during the course of the trial of cases, that the safeguards set by Article 30.2 of the Constitution and the principles governing the good administration of Justice, as set out in circulars of the Supreme Court, are complied with. For achieving this purpose, the present Rule of Practice is adopted.

Whenever it comes within the knowledge of the Supreme Court (either through the Registries or following representations made by any person having an interest in the trial of the case without delay) that the trial of the case is being delayed, or it appears from the arrangements made – for its trial– that it is possible for the trial to be delayed, or where it appears that the hearing is not conducted uninterruptedly as determined by the circulars of the Supreme Court, the Supreme Court may issue directions for preventing delays in the hearing of the case and for the uninterrupted trial of the case as it thinks fit. The responsibility of observing the conduct of cases undergoing trial, for the purpose of briefing the Supreme Court of delays noted or envisaged in the trial of civil and criminal cases, shall be vested with the Registrar, who will serve at the Supreme Court. The gathering of information on this matter shall be regulated by the Chief Registrar in due course”.

THE LAW

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

20. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1 of the Convention, which 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...”

21. The Government contested that argument.

22. The period to be taken into consideration began on 17 September 1997 and ended on 20 February 2003. It thus lasted five years, five months and five days for one level of jurisdiction.

A. Admissibility

1. *The submissions before the Court*

23. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention and consequently, that the application should be declared inadmissible.

24. They maintained that the applicant could have filed a civil action in the domestic courts against the Government, alleging a violation of his right under Article 30 of the Cypriot Constitution to have his civil rights and obligations determined within a reasonable time and claiming damages. Article 35 of the Cypriot Constitution imposed an obligation on, *inter alia*, the judicial authorities to ensure the efficient application of all fundamental rights and freedoms guaranteed under the Constitution.

25. In support of their arguments, the Government relied on the judgment of the Supreme Court in the case of *Yiallourou v. Evgenios Nicolaou* (8 May 2001, civil action no. 9931) finding a violation of the right to the plaintiff’s private life, as guaranteed by the Cypriot Constitution. The Government also contended that ever since the adoption of the above judgment a number of persons had filed civil actions against the Republic claiming damages for human rights violations. By way of example, the Government referred to a civil action pending before the District Court of Nicosia (civil action no. 3216/02) in which the plaintiffs had complained of a violation of their right to a fair hearing due to the protracted length of proceedings under Articles 30 of the Cypriot Constitution and 6 § 1 of the Convention.

26. Finally, the Government referred to the “Rule of Judicial Practice” issued in July 2001, according to which the Supreme Court could issue directions *ex proprio motu* or upon application by an interested party to the

action, in order to prevent delays and interruptions from occurring during the course of the hearing of cases. They stated that the above Judicial Rule had been applied by the Supreme Court on several occasions and mentioned a case in which that court had directed the relevant district court to proceed with the case exclusively and as a matter of priority (*Federal Bank of Lebanon v. Nicos Shacolas*, civil action no. 747/86).

27. The applicant did not submit any pleadings in relation to the preliminary objection raised by the Government.

2. The Court's assessment

28. The Court considers that the Government's assertions are general and cannot suffice to justify the objection they have raised.

29. Concerning the Government's claim that the applicant could have raised his complaint about the length of the proceedings by filing a civil action against the Government, the Court notes that although the cited examples illustrate the possibility of recourse before the domestic courts in respect of allegations concerning violations of rights protected under the Cypriot Constitution and the Convention, they do not indicate whether the applicant in the present case could in reality obtain relief – either preventive or compensatory – by having such recourse in respect of his length complaint. Furthermore, the Government have not made reference to specific, established case-law on the availability of adequate damages for delays already suffered and their consequences, or on the possibility of such an action being preventative of further delay (*Kudła v. Poland* [GC], no. 30210/96, § 159, ECHR 2000-XI).

30. As regards the "Rule of Judicial Practice", the Court notes that when the Supreme Court is informed either through a court's registry or an interested party that the trial of a case has been or will possibly be delayed, it may issue directions to the relevant court concerning the prevention of delays and the continuation of the hearing forthwith. While accepting that such directions may have the effect of speeding up the course of the proceedings if the court in question acts upon them immediately, the Court notes that this rule does not lay down any practical steps the Supreme Court can take to expedite the proceedings complained of or any sanction for failure of the relevant court to comply with the specific directions. Finally, the Court observes that this remedy advocated by the Government does not give litigants a personal right to compel the Supreme Court to exercise its supervisory powers.

31. In these circumstances, the Court considers that the Government have failed to show that, at the relevant time, an effective domestic remedy was available to the applicant in respect of the length of the domestic proceedings or that the applicant, at this stage, should be required to go back to the national courts and attempt to make use of them. Thus, the applicant's complaint cannot be rejected on this basis.

32. Accordingly, the Court concludes that, in the absence of convincing explanations from the respondent Government and in light of the above considerations, the application cannot be rejected for failure to exhaust domestic remedies. The Court thus dismisses the respondent Government's objection on this point.

33. Finally, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

34. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

35. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

36. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although, the Court has taken note of the applicant's conduct in the proceedings (see paragraphs 8, 10 and 13 above), it considers that this is not sufficient to justify the protracted length of the proceedings. In this connection it observes that there were at least three significant periods of inactivity: from 18 October 1999 until 14 March 2000 and from 13 April 2000 until 23 October 2000 due to adjournments by the judges who had continued hearings in other actions; and between 29 November 2001 and 23 May 2002 during which the case was set *sine die* pending the decision concerning the application for the amendment of the statement of claim.

37. Thus, having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant’s claims in respect of pecuniary damage were vague. He claimed that he should have received CYP 67,500 as compensation from the Cypriot courts but only received CYP 15,500 due to the out-of-court settlement. He also stated that he had to sell family belongings in order to cope with the expenses incurred. The applicant did not claim any particular sum concerning non-pecuniary damage. However, he stated that he and his family had suffered hardship due to the protracted length of the proceedings and experienced disappointment because of the conduct of the Cypriot authorities in the handling of his case.

40. The Government contested the applicant’s claims.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicant’s claim in this respect. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

42. The applicant stated that the amount he received as a result of the settlement did not include the medical examinations he had undergone in Cyprus. According to his own calculations, the costs in this respect amounted to about CYP 1,000. Furthermore, he maintained that he had paid an amount of CYP 500 as security of costs in respect of the domestic proceedings. Finally he claimed that he had paid a number of air tickets for trips to Cyprus, some of which had not been refundable and which he had had to cancel due to adjournments in the proceedings. He provided three receipts/invoices/reservations by Polish travel agencies in this respect.

43. The Government contested the applicant’s claims. They contended that the applicant did not adequately substantiate his claims under this head. As regards the amount given by the applicant security of costs, they maintained that this would be refunded to him by the Government in view of the outcome of the case.

44. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

45. In the present case, the Court notes that the applicant has not adequately substantiated his claims. Consequently, no award is made under this head.

C. Default interest

46. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President