



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

FIRST SECTION

CASE OF PAPAKOKKINOU v. CYPRUS

(Application no. 20429/02)

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 Papakokkinou 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. 20429/02) 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 two Cypriot nationals, Mrs Aleka Papakokkinou and Mrs Vereggaria Papakokkinou (“the applicants”), on 25 April 2002.

2. The second applicant was represented by the first applicant, a lawyer practising in Nicosia. 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 7 January 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicants were born in 1945 and 1930 respectively and live in Nicosia.

5. The applicants lodged two separate civil actions before the District Court of Paphos on 19 September and 8 November 1985 (actions 1621/85 and 1961/85). In both actions the applicants sought remedies against two defendants in respect of trespass and nuisance to their respective properties.

6. From the institution of the proceedings until 1 January 1989 the court dealt with applications by the applicants for substituted service of the writs,

and two applications by the second applicant in her action for an interim order and in respect of a boundary dispute. The pleadings in both actions were completed in October and November 1987.

7. On 9 January 1989 the actions were fixed for directions and were then adjourned to give more time to the parties to decide on whether an inspection of the property should be carried out.

8. On 20 February 1989, with the consent of all the parties, the district court ordered the inspection of the properties concerned by the District Land Office (DLO). Consequently, the actions were adjourned sine die pending the inspection to be fixed on the application of either party upon completion.

9. Following an application by one of the defendants to the court for the joining of the actions on 19 November 1991, and the opposition by the first applicant thereto, the court decided to join the actions on 31 March 1992. Within this period two adjournments took place at the applicants' request.

10. In view of the fact that the inspection had not been completed yet, the actions were adjourned sine die.

11. Although the actions were fixed for trial several times between 13 January 1995 and 19 October 1995, no hearing took place pending the findings of the DLO. Within this period, three adjournments took place due to the first applicant's absence.

12. It appears that the parties and the court were informed on 26 September 1995 that the inspection had been carried out.

13. On 19 October 1995 the hearing was adjourned at the applicants' request.

14. The hearing of the actions commenced on 30 January 1996. From that date until 11 June 1998 approximately sixteen hearing sessions were held, two of which were adjourned and one cut short at the applicants' request. In the meantime, it appears that the DLO's inspection was annulled and following another examination of the matter the parties were informed on 3 October 1996 that the DLO's findings were ready.

15. On 10 December 1998 the Paphos District Court delivered its judgment dismissing the actions with costs to be paid by the applicants.

16. On 9 January 1999 the applicants lodged an appeal with the Supreme Court challenging the above judgment. Within their grounds of appeal, the applicants alleged that the excessive length of the proceedings was in breach of the Cypriot Constitution and European Convention on Human Rights. Consequently, they claimed that the first instance decision should be set aside.

17. Meanwhile, on 8 March 1999, the applicants also applied to the District Court of Paphos challenging the assessment of legal costs they were required to pay. This application was dismissed on 9 July 1999.

18. The records concerning the first instance proceedings were transmitted to the Supreme Court on 29 June 1999 and the parties were

notified on 31 August 1999 that the appeal had been fixed for pre-trial directions on 26 October 1999. The appeal was adjourned four times at the applicants' request for the purposes of amending their notice of appeal.

19. Their amended notice was filed on 30 June 2000 and the filing of the address outlines was completed by 6 November 2000.

20. The hearing of the appeal took place on 23 January 2001 and judgment was delivered on 1 November 2001 dismissing the appeal with costs against the applicants. The Supreme Court having examined, *inter alia*, the applicants' complaint as to the length of the proceedings, considered that in the circumstances of the case the delay in the examination of the actions did not affect the applicants' rights and did not justify the annulment of the first instance judgment. In this context the Supreme Court noted that the delays in the first part of the proceedings lasting until the beginning of the actual trial, were mainly due to the long time the DLO took in carrying out the inspection and completing its report and, secondly, to delays by the parties, particularly the applicants, in submitting their pleadings (between 1985 and 1989). Following the start of the trial, the court noted the complexity of the issues raised in the actions that involved the examination of numerous witnesses and the adjournments requested primarily by the applicants.

THE LAW

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

21. The applicants 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...".

22. The Government contested that argument. They maintained that the domestic authorities had handled the applicants' case with due diligence and pointed out that long delays were attributable to the parties, in particular the applicants.

23. The Court notes that the first set of proceedings commenced on 19 September 1985 and the second set on 8 November 1985. The actions were joined on 31 March 1992. The period to be taken into consideration began on 1 January 1989, when the recognition by Cyprus of the right of individual petition took effect and ended on 1 November 2001 when the Supreme Court dismissed the applicants' appeal. It thus amounted to twelve years and ten months for two levels of jurisdiction.

24. However, the Court reiterates that, in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 1 January 1989 (see, among other authorities, *Styrkowski v. Poland*, no. 28616/95, § 46, ECHR 1998-VIII; *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 18, § 53). Therefore, by 1 January 1989, the proceedings in both actions had already been pending for more than three years.

A. Admissibility

25. The Court notes that the remainder of 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

26. 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 following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

27. 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).

28. 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 into account the applicants' conduct (see paragraphs 9, 11, 13, 14 and 18 above) and the Supreme Court's findings in this respect (see paragraph 20 above), it considers that these are not sufficient to justify the protracted length of the proceedings. In particular, it observes that it took the DLO more than six years to complete its inspection and report. No explanations have been given in this regard. 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

29. 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

30. The applicants claimed a total of 20,532 Cypriot pounds (CYP) for pecuniary damage in the form of costs and expenses incurred before the domestic courts and CYP 8,000 in respect of non-pecuniary damage.

31. The Government contested these claims.

32. The Court notes that the applicants' claims concerning pecuniary damage essentially concern costs and expenses and thus, will be examined under that head. Further, the Court considers that the applicants must have sustained non-pecuniary damage and that the sum claimed under this head should be awarded in full.

B. Costs and expenses

33. The applicants also claimed a total of CYP 20,532 for the costs and expenses incurred before the domestic courts. This sum included (a) CYP 11,022 as reimbursement for the costs of the defendants the applicants had to pay on the basis of the domestic decisions (difference between the costs they paid and the amount they considered they should have paid) and CYP 2,400 as reimbursement of appearance costs; (b) CYP 5,610 in respect of costs and expenses incurred by the first applicant for the handling of her own case; and (c) CYP 1,500 for various other procedural and legal expenses. The applicants submitted receipts concerning the costs paid to the defendants. Furthermore, the applicants claimed CYP 3,000 for the costs and expenses incurred before the Court without furnishing any bills or receipts in this connection.

34. The Government contested the applicants' claim only as concerning costs and expenses before the district court but left the remainder of the claim to the Court's discretion.

35. 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).

36. In so far as the costs before the domestic courts are concerned, the Court notes that the duration of the proceedings can increase a litigant's

legal expenses, a point which should be taken into account when assessing an applicant's claim under this head (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, p. 15, § 37). In the present case, however, the Court notes that the applicants have not submitted any particular evidence in support of their claims for costs and expenses incurred in the domestic proceedings whilst their claim concerning the costs paid to the defendants is based on their own calculations. It therefore rejects the applicants' claims under this head. It considers however reasonable to award the applicants jointly the sum of EUR 500 for the proceedings before the Court.

C. Default interest

37. 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 remainder of 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, CYP 8,000 (eight thousand Cypriot pounds) in respect of non-pecuniary damage, and EUR 500 (five hundred euros) for costs and expenses, to be converted into Cypriot pounds at the applicable rate at the date of settlement, plus any tax that may be chargeable on those amounts;
 - (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 applicants' 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