



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

FIRST SECTION

CASE OF PAROUTIS v. CYPRUS

(Application no. 20435/02)

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 Paroutis 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,

Mrs E. STEINER,

Mr K. HAJIYEV,

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. 20435/02) 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 Cypriot national, Mr Sozos Paroutis (“the applicant”), on 16 May 2002.

2. The applicant was represented by Mr D. Papadopoulos, 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 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 FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Limassol.

5. On 12 November 1993 he filed a civil action before the District Court of Limassol claiming compensation for pecuniary and non-pecuniary damages in respect of personal injuries suffered when he was hit by a car driven by the defendant on 7 December 1991.

6. The parties’ pleadings were completed by 10 February 1995 and the applicant applied to the registrar to have the action fixed on 14 April 1995.

7. Until the commencement of the trial on 9 May 1997, the case was adjourned four times, once by the court, once by the defendant and twice at the request of both parties.

8. From 9 May 1997 until the trial's conclusion on 8 October 1998 nine hearing sessions were held and the case was adjourned three times by the court.

9. On 8 October 1998 judgment was reserved.

10. Approximately nine months following the conclusion of the proceedings the Supreme Court took steps, *ex proprio motu*, under the Rules of Procedure concerning the prompt delivery of court judgments (1986) with regard to the delay in the delivery of the first instant judgment. The case was set before the Supreme Court several times for this purpose, some letters were sent by that court to the presiding district judge and an order was issued requiring the latter to deliver judgment.

11. The district court delivered its decision on 29 June 2000 in favour of the applicant awarding damages thereto (amounting to CYP 110,000 plus interest).

12. On 8 August 2000 the defendant filed an appeal with the Supreme Court.

13. The Supreme Court was provided with the records of the first instance proceedings on 2 April 2001.

14. The proceedings were concluded on 21 November 2001 by means of a settlement. Through the settlement the applicant was paid damages amounting to CYP 130,000 along with CYP 6,000 as expenses and interest on both amounts.

II. RELEVANT DOMESTIC LAW

15. 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 ... hearing within a reasonable time by [a] ... court ...".

16. The Rule of Procedure concerning the prompt delivery of court judgments (1986 – in force from 1 January 1987) in so far as relevant provides as follows:

“...

3 (a) Every judgment must be delivered as soon as possible following the conclusion of the proceedings and must not be reserved for any period exceeding 6 months.

(b) When a court fails to comply with the provisions of the abovementioned subparagraph (a) any affected party may by way of application to the Supreme Court request any remedy referred to in paragraph 5 of the present Rule.

4. If a judgment that was reserved following the publication of the present Rule remains reserved for a period of time exceeding 9 months, the case will be set *ex proprio motu* before the Supreme Court for the purposes of issuing an order deemed necessary in the circumstances, in accordance with paragraph 5 of the present Rule.

5. During the hearing of an application filed on the basis of paragraph 3(b) or when the Supreme Court addresses the case in accordance with paragraph 4, the Supreme Court may:

- (a) order a retrial of the case before another competent court;
- (b) order the delivery of the judgment within a specific time-limit and, in the event of failure to comply, a retrial of the case before another competent court;
- (c) issue any other order deemed necessary for the proper administration of justice”.

THE LAW

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

17. 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...”

18. The Government contested that argument. They maintained that the domestic authorities had handled the applicant’s case with due diligence. *Inter alia*, they emphasised that the Supreme Court had taken measures in order to secure the delivery of the first instance judgment.

19. The period to be taken into consideration began on 12 November 1993 and ended on 21 November 2001. It thus lasted eight years and nine days for two levels of jurisdiction.

A. Admissibility

1. The submissions before the Court

20. 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 instant application should be declared inadmissible.

21. 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. They maintained that such an action was likely to provide redress for the applicant's complaint, constituting thus a sufficient and effective remedy in respect of the alleged violation.

22. 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.

23. Finally, as regards the delay in the delivery of the first instance judgment, the Government averred that neither the applicant nor the defendant had availed themselves of the right to apply to the Supreme Court for an order under the relevant procedural rule seeking one of the remedies available thereunder. It had been the Supreme Court that had acted *ex proprio motu* in view of the failure of the first instance judge to deliver his judgment within reasonable time.

24. The applicant contested the Government's arguments. He submitted that no effective remedy existed in relation to his complaints. This was evident from the total lack of case-law in respect of violations by the State of the right to trial within a reasonable time. He pointed out that the Government had not provided any examples from domestic practice showing how the applicant could have obtained redress either by way of prevention or compensation. The case of *Yiallouros* was a civil action where damages had been sought for the violation of constitutional rights between individuals and not between individuals and the State as in the instant case. With regard to the statement of claim relied on by the Government, the applicant stated that this was a pending case which has not been decided and thus could not be considered as case-law proving the existence of an effective remedy. The applicant also noted the absence of an operative legal framework or specific rule of civil procedure creating a particular mechanism for the lodging of actions for damages in respect of violations due to excessive length of proceedings.

25. Finally, the applicant pointed out that the rule of procedure referred to by the Government was ineffective and could not actually provide a litigant with a remedy. Under the rule a judge could not be forced to deliver judgment and proceedings could not be expedited. The remedy available was an order for retrial by another court that would inevitably cause further delay to the proceedings. In the applicant's view, the failure on the part of a judge to deliver judgment in due time was a matter to be dealt with by the Supreme Court and not litigants.

2. The Court's assessment

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

27. 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).

28. The procedural rule invoked by the Government is very specific dealing solely with delays in the delivery of judgments by first instance courts. It 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. Further, the provisions of the rule do not appear to give litigants a personal right to compel the Supreme Court to exercise its powers there under. The fact that the applicant did not make such an application to the Supreme Court cannot be considered as a failure on his behalf to exhaust domestic remedies in relation to the protracted length of the proceedings.

29. 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.

30. Accordingly, the Court concludes that, in the absence of convincing explanations from the Government and in the light of the above considerations, the application cannot be rejected for failure to exhaust

domestic remedies. The Court thus dismisses the Government's objection on this point.

31. Finally, the Court notes that this complaint 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

32. 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 applicant and 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).

33. 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).

34. 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. The Court notes, *inter alia*, that the first instance proceedings lasted six years, seven months and seventeen days. No convincing explanation has been given by the Government to justify this delay. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant complained of a lack of an effective remedy within the meaning of Article 13 of the Convention in respect of his complaint about the excessive length of proceedings. This provision reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

36. The Government contested that argument. In this respect, they invoked the same arguments concerning non-exhaustion of domestic remedies.

A. Admissibility

37. The Court notes that this complaint 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

38. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the arguments put forward by the Government have been rejected in its examination of the admissibility of the application pertaining to exhaustion of domestic remedies. The Court considered that the Government had failed to show that at the relevant time, an effective domestic remedy was available to the applicant in respect of the length of the proceedings.

39. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby, at the time when he lodged his application, the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. 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. Damage

41. The applicant claimed 26,280 Cypriot pounds (CYP) in respect of pecuniary damage. In this connection he claimed that in view of the prospects of further delays in the proceedings before the Supreme Court and the risk of a retrial, he was forced to compromise and thus, accepted CYP 26,280 less than the award granted by the trial judge. The applicant also claimed CYP 10,000 in respect of non-pecuniary damage. In this connection he invoked the extent and severity of his personal injuries and

disability resulting therefrom and the effects of the excessive length on his health and family life.

42. The Government contested these claims.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers however that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 7,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

44. The applicant claimed CYP 575 for costs and expenses incurred during the proceedings before the Supreme Court for appearances made in court in relation to the delivery of the first instant judgment and CYP 4,630 for those incurred before the Court. He submitted two bills of costs in this respect.

45. The Government contested the applicant's claim concerning costs and expenses before the Supreme Court but left the remainder of the claim to the Court's discretion.

46. 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).

47. 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, although the expenses claimed relate to the delay of the first instance court to deliver its judgment, the applicant was awarded legal expenses in respect of the domestic proceedings as part of the settlement reached with the defendants (see paragraph 14 above). It therefore rejects this part of the applicant's claims. As regards the costs and expenses incurred before the Court, regard being had to the information in its possession, the Court considers it reasonable to award the sum of EUR 1,500 covering costs for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

48. 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* that there has been a violation of Article 13 of the Convention;
4. *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 7,000 (seven thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) for costs and expenses, plus any tax that may be chargeable on those amounts, to be converted into Cypriot pounds 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *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