CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF TSAGGARIS v. CYPRUS

(Application no. 21322/02)

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 Tsaggaris 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. 21322/02) 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 Andreas Tsaggaris ("the applicant"), on 21 May 2002.

2. The applicant was represented by Dr C. Clerides, 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 21 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Limassol.

5. On 10 February 1986 the applicant filed a civil action (no. 702/86) before the District Court of Limassol against three individuals and a company in respect of a contract of sale of an apartment.

6. On 11 September 1987 the case was taken off the trial list, following a request by the applicant's lawyer and the accord of the defendants' lawyer, in view of the fact that an application for a winding-up order of the defendant company was pending before the District Court of Nicosia. The court in particular stated that "by consent the action is taken off the trial list to be fixed afresh on the application of either side to the Registrar when the case [was] ready to be heard".

7. On 29 October 1987 the lawyer of the first three defendants notified the court that the winding-up order had been issued against the defendant company and that the applicant could only continue the action against the latter with the leave of the court.

8. On 19 March 1988 the Official Receiver requested the court not to grant leave for the continuation of the action at that particular time. Thus, the proceedings remained suspended.

9. The action was fixed for a hearing following a letter sent on 9 February 1995 to the court by the lawyer of the first three defendants.

10. Between the above date and 7 March 2002, only two hearing sessions were held. The case was adjourned several times. Five of these adjournments were at the applicant's request, two due to the absence of his lawyer, three at the parties' and two at the defendants' request. The adjournments related to, *inter alia*, amendments to pleadings and objections thereto and appointment of administrators and new lawyers. The applicant had requested an additional adjournment within this period, which had been rejected by the court. Further, the case was adjourned on the basis of proceedings pending before the Supreme Court, namely, on 15 September 1998 by an order of the Supreme Court pending its determination of applications by the applicant for *certiorari* and *prohibition* until the decision was adopted on 18 March 1999, and, secondly, pending the determination of an appeal lodged by the applicant on 6 February 2001 against the decision by the district court dismissing an application for an amendment of his statement of claim. The Supreme Court rejected his latter appeal on 21 February 2002. The case also appears to have remained dormant from 14 May 1996 and 31 October 1997.

11. From 8 March 2002 until 26 March 2002 three hearing sessions took place and one session of oral submissions.

12. By a judgment dated 23 May 2002, the District Court dismissed the action concerning three of the defendants but found in favour of the applicant regarding the defendant company.

13. On 2 July 2002 the applicant filed an appeal against the first instance judgment. The appeal was heard on 21 March 2003, following one adjournment at the defendants' request with the applicant's consent.

14. On 21 April 2003 the Supreme Court rejected the appeal and confirmed the findings of the district court.

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. 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 hearing of cases within a reasonable time is the individual duty of the trial judge and a collective duty of the judicial function. The establishment of rules for conducting 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 proper 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 – in respect of its trial– that it is possible that the trial 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 deems 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

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.

19. The overall length of proceedings amounted to seventeen years, two months and thirteen days for two levels of jurisdiction. 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 21 April 2003 when the Supreme Court delivered its judgment. It thus amounted to fourteen years, three months and twenty-one days.

20. 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, *Styranowski 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 had already been pending for more than two years and ten months.

A. Admissibility

1. The submissions before the Court

21. 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.

22. 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.

23. 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.

24. According to the Government, the remedies that could be granted in the sphere of the civil court's jurisdiction include damages, prohibitory and mandatory orders and other related remedies.

25. Finally, the Government referred to the "Rule of Judicial Practice" issued on 3 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 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).

26. The applicant contested the Government's arguments. He submitted that no effective remedy existed in relation to his complaint. This was evident from the lack of case-law in respect of violations by the State of the right to trial within a reasonable time. 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. In any event, according to the applicant, it was inappropriate for the judicial authorities, against which a length of proceedings complaint would be directed, to judge the issue.

27. The applicant also noted the absence of a legislative framework or specific rules of civil procedure creating a particular mechanism for the lodging of actions for damages in respect of violations due to excessive length of proceedings. Finally, with regard to the "Judicial Rule of Practice", the applicant contended that the duty to ensure the hearing of cases within a reasonable time lay with the judicial authorities.

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 to the "Rule of Judicial Practice", the Court observes 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 Government and in light of the above considerations, the remainder of the application cannot be rejected for failure to exhaust domestic remedies. The Court thus dismisses the Government's objection on this point.

33. Finally, the Court notes that the 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

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 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).

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. The Court has taken note of the parties' conduct and, in particular, that of the applicant (see paragraphs 6, 10 and 13 above). In this respect it notes that the applicant bore responsibility for the prolongation of the proceedings. Amongst others, the Court notes that during the period that the case had remained off the trial list the applicant remained inactive and that it was the defendants' lawyer who requested that the case be fixed for hearing. Notwithstanding, having examined all the material submitted to it, the Court considers that this is not sufficient to justify the overall length of the proceedings before the District Court of Limassol, the latter also being responsible, *inter alia*, for failing to review the progress of the case when it was off the trial list. Thus, having regard to its case-law on the subject and the proceedings as a whole, 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

37. 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

38. The applicant claimed 25,000 Cypriot pounds (CYP) in respect of non-pecuniary damage.

39. The Government contested the claim.

40. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 10,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant also claimed CYP 6,000 for the costs and expenses incurred before the Court. He furnished an invoice/statement of account signed by his lawyer according to which this amount was calculated on the basis of an hourly rate of CYP 100.

42. The Government left the matter to the Court's discretion. They pointed out however that no particulars had been submitted by the applicant.

43. 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). In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court plus any tax that may be chargeable on that amount.

C. Default interest

44. 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten 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;

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