



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

FIRST SECTION

CASE OF JOSEPHIDES v. CYPRUS

(Application no. 2647/02)

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 Josephides 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. 2647/02) 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 Nicos Josephides (“the applicant”), on 1 October 2001.

2. The applicant was represented by Mr C. Josephides, a lawyer practising in Athienou. 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 24 September 2002 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1945 and lives in Nicosia.

5. On 20 October 1987 the applicant filed a civil action in the District Court of Paphos against two private individuals and the Government requesting damages in respect of unlawful trespass to his property and the increased costs he incurred as a result.

6. The pleadings were completed around February/March 1989. Subsequently the case was fixed twice for mention and then for hearing on 3 October 1989, at the parties' request for a hearing date after the summer holidays. The hearing, however, was adjourned on the latter date following an application by the applicant to that effect.

7. On 14 November 1989, following an application by the applicant, the court issued an order for an inspection to be carried out by the Land Registry Office. The case was left *sine die* pending the outcome of the inspection.

8. On 8 January 1993 the Land Registry informed the court that their report was ready.

9. Between 8 January 1993 and 18 March 1997 the case was adjourned several times. Once at the applicant's request and three times due to the failure of his lawyer to appear before the court, once by one of the defendants, three times at the request of all parties and once by the court itself. Within this period, the court also dealt with, *inter alia*, an interlocutory application filed by the defendant Government on 12 October 1995 for the dismissal of the case on the basis of lack of jurisdiction. On 8 November 1995 the court dismissed this application. An appeal was lodged by the defendant Government with the Supreme Court which was withdrawn on 21 February 1997.

10. On 18 March 1997 the case returned to the District Court of Paphos and was set for hearing on 30 June 1997. Following two adjournments, one at the applicant's request and the other at one of the defendant's request, the hearing of the case commenced on 10 December 1997.

11. The hearing was completed on 22 October 1998. Within this period, approximately ten hearing sessions were held.

12. On 20 September 1999 the district court delivered its judgment in favour of the applicant concerning his claims against the first two defendants and awarding him costs and nominal damages. The court dismissed the action in so far as the Government was concerned.

13. On 1 November 1999 the applicant lodged an appeal with the Supreme Court.

14. The appeal was heard on 24 April 2001 and on 26 June 2001 the Supreme Court rejected his appeal with costs to be paid by him.

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 thirteen years, eight months and six days. 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 26 June 2001 when the Supreme Court dismissed the applicant's appeal. It thus amounted to twelve years, five months and twenty-five days for two levels of jurisdiction.

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, *Styranski 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 over one year and two 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 disputed the Government’s arguments submitting that he had exhausted all available remedies. In this regard he noted that the “Rule of Judicial Practice” referred to by the Government was issued after the proceedings pertaining to his case had been completed. In any event, he averred that both under the rule and in general it was the responsibility of the judicial institutions to ensure that cases were conducted within a reasonable time.

2. The Court’s assessment

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

28. 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).

29. As regards the “Rule of Judicial Practice”, the Court notes firstly that this Rule was issued after the relevant proceedings had been completed. In any event, it 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.

30. 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.

31. 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.

32. Finally, 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

33. 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).

34. 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).

35. 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 applicant's conduct in the proceedings (see paragraphs 6, 9 and 10 above), it considers that this is not sufficient to justify the protracted length of the proceedings, in particular the delay concerning the report of the Land Registry Office and the hearing of the appeal. 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

36. 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

37. In his application the applicant submitted several distinct claims for pecuniary damages. In particular, he claimed between 50,000-70,000 Cypriot pounds (CYP) in respect of works he had to carry out on his property, CYP 30,000-40,000 in respect of the trespass to his property and CYP 20,000-30,000 for the resulting impediments to the development of his property. He also claimed CYP 20,000 in respect of non-pecuniary damage.

38. The Government did not express an opinion on the matter.

39. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. 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 12,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

40. In his application the applicant claimed between CYP 12,000-17,000 for costs and expenses incurred before the domestic courts without furnishing any bills or receipts in this connection. He also claimed costs and expenses incurred before the Court but without specifying an amount.⁴¹ The Government did not express an opinion on the matter.

42. 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).

43. 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 applicant has not submitted any particular evidence in support of his claims for costs and expenses incurred in the domestic proceedings. It therefore rejects this part of the applicant's claim. As regards

the costs and expenses incurred before the Court, it notes that the applicant appointed a lawyer on 13 October 2004, that is, subsequent to the filing of the observations in the case. Making its own assessment, the Court considers it reasonable to award the applicant EUR 500, 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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, and EUR 500 (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 applicable rate 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;
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