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

FIRST SECTION

CASE OF KYRIAKIDIS AND KYRIAKIDOU v. CYPRUS

(Application no. 2669/02)

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 Kyriakidis and Kyriakidou 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. 2669/02) 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, Mr Savvas Kyriakidis and Mrs Fanoula Kyriakidou (“the applicants”), on 29 May 2001.

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 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 applicants were born in 1952 and 1964 respectively and live in Nicosia.

5. On 22 January 1998 the applicants filed a civil action before the District Court of Nicosia against the Bank of Cyprus Ltd concerning a deposit they had allegedly made to the latter in 1993. The applicants stated that, before filing the action, they had complained to the police and to the

Attorney-General of the Republic, who they maintained, refused to investigate their case.

6. The pleadings were completed on 16 November 1998 following five adjournments at the defendant's request, with the applicants' consent, in relation to the filing of its defence.

7. From 16 November 1998 until 24 February 2003 the case was adjourned four times at the defendant's request and with the applicants' consent, twice at the parties' and once at the applicant's request. Further, the court adjourned the case six times mainly for the purpose of dealing with other civil actions. For example the case was adjourned from 30 April 1999 until 7 October 1999 and then to 1 February 2000; from November 2000 to 26 March 2001 and from 24 September 2001 until 28 February 2002 for directions. Within this period, the court also dealt with an interlocutory application filed by the defendant in the proceedings.

8. The hearing of the case commenced on 24 February 2003 and concluded on 22 April 2003. Within this period a total of four hearing sessions were held and an interim decision was delivered.

9. On 23 May 2003 the district court delivered its judgment dismissing the applicants' action with costs to be paid by them.

II. RELEVANT DOMESTIC LAW

10. 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 ...".

11. 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 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 CONCERNING THE LENGTH OF THE PROCEEDINGS

12. 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 fair hearing within a reasonable time by [a] ... tribunal..."

13. The Government contested that argument.

14. The period to be taken into consideration began on 22 January 1998 and ended on 23 May 2003. It thus lasted five years and four months for one level of jurisdiction.

A. Admissibility

1. The submissions before the Court

15. The Government submitted that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

16. They maintained that the applicants could have filed a civil action in the domestic courts against the Government, alleging a violation of their right under Article 30 of the Cypriot Constitution to have their 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.

17. 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.

18. 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.

19. 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). Therefore, the applicants could have brought the alleged delay in the determination of their action to the attention of the Supreme Court.

20. The applicants disputed the Government's arguments.

2. The Court's assessment

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

22. Concerning the Government's claim that the applicants could have raised their 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 applicants 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).

23. As regards 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.

24. 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 applicants in respect of the length of the domestic proceedings or that the applicants, 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.

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

26. 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

27. 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).

28. 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).

29. 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 parties' conduct, in particular that of the applicants (see paragraphs 6 and 7 above), it considers that this is not

sufficient to justify the protracted length of the proceedings and the significant periods of inactivity that occurred due to the district court's adjournments. 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 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS AND THE FIRST INSTANCE JUDGMENT

30. The applicants also complained that the first instance proceedings had not been fair and, in particular, that the Nicosia District Court's judgment had been wrong, unfair and biased. In this connection, they stated that they had not been able to lodge an appeal against the judgment for financial reasons.

31. They invoked Article 6 § 1 in this respect.

A. Admissibility

32. Leaving aside the question of whether or not the applicants have, in respect of this complaint, exhausted domestic remedies, the Court finds that there is nothing in the case file which indicates unfairness of the court proceedings or that the court lacked impartiality. The mere fact that the applicants are dissatisfied with the outcome of the litigation cannot in itself raise an issue under Article 6 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

33. The applicants complained under this provision that the authorities, namely the police and Attorney-General, had refused to investigate their case, and secondly, that the district court's judgment deprived them of their money.

Article 1 or Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

34. Concerning the first part of the complaint, the Court recalls that the Convention does not guarantee a right to have criminal proceeding instituted against third persons. As regards the second part of the complaint, the Court points out, leaving aside the question of whether or not the applicants have, in respect of this complaint, exhausted domestic remedies, that in dispute between private parties the decisions of the domestic courts do not generally give rise to an interference with property rights under Article 1 of Protocol No. 1 as it is their function to determine the nature and extent of the parties' mutual duties and obligations. There is nothing in the present case that would warrant a departure from this principle.

It follows that the complaints under this provision must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicants claimed approximately 23,000 Cypriot pounds (CYP) in respect of pecuniary damage, namely, the loss of interest and profits arising from the deprivation of the money which was the subject-matter of the action for over five years. They also claimed CYP 10,000 in respect of non-pecuniary damage. In this connection, they maintained that the protracted length of the proceedings caused stress and anguish that seriously affected their health.

37. The Government contested these claims.

38. 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 applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 4,000 each under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. The applicants also claimed CYP 7,838.50 for the costs and expenses incurred before the domestic courts. This sum included CYP 3,000 in respect of the costs and expenses they personally incurred and CYP 4,838.50 in respect of lawyers' fees. The applicants submitted receipts only in relation to the latter. The applicants also claimed CYP 1,500 for costs and expenses incurred before the Court without furnishing any bills or receipts in this connection.

40. The Government contested these claims.

41. 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).

42. 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, regard being had to the information in its possession and the above criteria, the Court considers that the duration of the domestic proceedings had to some extent increased the applicants' legal expenses in these proceedings. It therefore considers it reasonable to award them jointly the sum of EUR 1,000 under this head, plus any tax that may be chargeable on that amount. As to the legal costs and expenses incurred before it, the Court notes that the applicants were not legally represented before the Court. Making its own assessment, the Court considers it reasonable to award the applicants jointly EUR 500, plus any tax that may be chargeable on that amount.

C. Default interest

43. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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 each of the applicants, 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 and, to the applicants jointly, 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 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 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 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