



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

FIRST SECTION

CASE OF CLERIDES & KYNIGOS v. CYPRUS

(Application no. 35128/02)

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 Clerides & Kynigos 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. 35128/02) 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 Phoebus Clerides and Mr Eleftherios Kynigos (“the applicants”), on 12 September 2002.

2. The applicants were 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 18 May 2004 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect 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 1925 and 1937 respectively and live in Limassol.

5. On 30 April 1990 a civil action was lodged against the applicants before the District Court of Nicosia, in their capacity as administrators of the estate of Mr K. Kynigos, concerning a contract of sale of property the latter had concluded with the plaintiffs.

6. The pleadings were completed by 7 December 1990.

7. Between the above date and 12 May 1997, the case was continuously adjourned. Two adjournments were at the applicants' request; four took place due to the failure of the applicants' lawyer to appear before the court and six at the request of both parties. Further, within this period the case was adjourned five times by the court itself, namely in 26 March 1993 until 6 April 1993, on 19 November 1993 until 11 April 1994 and then again to 13 October 1994; on 11 October 1995 the court adjourned the case until 4 March 1996 and then again until 30 September 1996.

8. The hearing commenced on 12 May 1997 and was completed after several sessions on 6 July 1999, with two adjournments at the plaintiffs' request and three at the applicants'.

9. On 30 November 1999 the district court delivered its judgment finding in favour of the plaintiffs.

10. On 11 January 2000 the applicants filed an appeal against the judgment.

11. The file of the case was transmitted to the Supreme Court on 8 February 2001.

12. The appeal was dismissed on 8 June 2001 by the Supreme Court for failure of the applicants to submit their outline address within the required time-limit.

13. On 17 July 2001 the applicants lodged an application for the reinstatement of the appeal.

14. The appeal was heard on 1 February 2002 following one adjournment by the court and on 21 May 2002 the Supreme Court dismissed the applicants' application.

THE LAW

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

15. 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..."

16. The Government contested that argument.

17. The period to be taken into consideration began on 30 April 1990 and ended on 21 May 2002. It thus lasted twelve years and twenty-four days for two levels of jurisdiction.

A. Admissibility

18. 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

19. 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).

20. 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).

21. 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 7 and 8 above), it considers that this is not sufficient to justify the protracted length of the proceedings, in view of the periods of inactivity that occurred due to the court's adjournments and the delay in providing the Supreme Court with the file of the case. 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

22. The applicants complained of a lack of an effective remedy within the meaning of Article 13 of the Convention in respect of their 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."

A. Admissibility

23. 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

1. The submissions before the Court

24. The Government submitted that effective remedies were available to the applicants at the domestic level concerning the claim under Article 6 § 1 of the Convention.

25. In particular, 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.

26. 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. In that case, the Supreme Court found that claims for human rights violations were actionable rights that could be pursued in the civil courts. According to the Government, the remedies that could be granted in the sphere of the civil court's jurisdiction included damages for both pecuniary and non-pecuniary loss, prohibitory and mandatory orders, a declaratory judgment that the complainant's rights were violated by the Republic and other related remedies.

27. The Government also contended that ever since the adoption of the above judgment a number of persons had filed civil actions (seven in total) 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) against the State 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. In this connection, they pointed out that the applicants' representative was the lawyer who had lodged the above-mentioned action before that district court.

28. The applicants contested the Government's arguments. They submitted that no effective remedy existed in relation to their 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.

29. As regards the other actions referred to by the Government, the applicants noted that the initiations of such procedures could not be considered as proof of the existence of an effective remedy in relation to their complaints. These cases were still pending. In particular, civil action no. 3216/02 that had been lodged on 8 April 2002 was still pending before the district court. In this context, they also pointed out that in that action the Government through their agent, namely, the Attorney-General, in their defence claimed that the district court was not competent to deal with the case as it could not judge its own acts and omissions.

30. In any event, according to the applicants it was inappropriate for the judicial authorities, against which a length of proceedings complaint would be directed, to judge the issue. In this context they noted the absence of a legal framework and of an independent authority dealing with alleged violations due to excessive length of proceedings.

2. *The Court's assessment*

31. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

32. In the present case, the Court notes that although the examples cited by the Government 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 (*Kudla v. Poland* [GC], no. 30210/96, § 159, ECHR 2000-XI).

33. In these circumstances, the Court considers that the Government have failed to show that an effective domestic remedy was available to the applicants in respect of the length of the domestic proceedings.

There has accordingly been a breach of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed 4,016 Cypriot pounds (CYP) in respect of pecuniary damage. This amount represented the difference between the costs they actually paid before the first instance court and the costs they would have paid had there not been a delay in the proceedings. The applicants also claimed the amount of CYP 10,000 for non-pecuniary damage.

36. The Government contested these claims.

37. 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 and that the sum claimed under this head should be awarded in full.

B. Costs and expenses

38. The applicants claimed CYP 6,037.50 for the costs and expenses incurred before the Court. They furnish an invoice and a receipt of payment of the above amount.

39. The Government left the matter to the Court’s discretion.

40. 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, although the Court does not doubt that the fees claimed were actually incurred, they appear to be excessive. Accordingly, 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 costs and expenses in respect of the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

41. 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* that there has been a violation of Article 13 of the Convention;
4. *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 10,000 (ten thousand Cypriot pounds) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) for costs and expenses, to be converted into Cypriot pounds at the rate applicable 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 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 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