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

FIRST SECTION

CASE OF WALDNER v. CYPRUS

(Application no. 38775/02)

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 Waldner 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 as adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38775/02) 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 German nationals, Mr Norbert Paul Eugen Waldner and Mrs Jutta Renate Rosemarie Waldner ("the applicants"), on 18 October 2002.

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 16 February 2004 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 Government of Germany, having been informed by the Registrar of the right to intervene (Article 36 § 1 of the Convention and Rule 44 § 2 (a) of the Rules of Court), did not avail themselves of this right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1937 and live in München.

5. On 28 March 1989 a civil action was filed by the applicants before the District Court of Paphos in respect of a contract of sale of a flat in Paphos that had been concluded between them and a building development

company, the defendants. They sought a declaratory judgment to the effect that the contract had been annulled. They also sought damages totalling 35,305 Cypriot pounds (CYP), plus interest. The defendants filed a counterclaim against the applicants for damages amounting to CYP 31,200.

6. On 26 May 1989 the submission of pleadings was completed.

7. From the latter date until 21 October1991 the case was adjourned or set at a later date at the applicants' request five times. The case was rescheduled twice by the court, once for a period of approximately five months and once only for six days.

8. The hearing of the action commenced on 21 October 1991 and following several hearing sessions, it was completed on 5 June 1992.

9. On 18 November 1992 the Paphos District Court delivered judgment in favour of the applicants awarding them damages amounting to CYP 32,000 and CYP 800 as costs with interest at 6% from the date of the judgment. The defendants however were awarded CYP 1,650 as damages in respect of their counterclaim, for the period during which the applicants remained in occupation of the flat following the termination of the contract.

10. On 23 December 1992 the defendants filed an appeal against the first instance judgment before the Supreme Court.

11. On 15 January 1993 the appellants filed an application for a stay of execution concerning the payment of damages. On 2 February 1994, the applicants entered a written agreement with the appellants agreeing to the stay on certain conditions.

12. The records of the Supreme Court of 3 and 13 December 1996 reveal that the appeal was dismissed on 23 March 1993 in view of the fact that the appellants had not applied to the Registry for the minutes within the prescribed three month time-limit. Yet, at the time, on 7 May 1993, the Chief Registrar had informed the appellants that if they wished to pursue their appeal they had to pay the fees required for the minutes. The appellants submitted their application for the minutes and the fees on 10 June 1993. On 7 February 1996 the Chief Registrar notified them that the case had been set for hearing on 22 April 1996 and that the minutes were ready. The proceedings commenced on the latter date and the hearing on 25 September 1996. The Registrar brought the dismissal of the appeal to the attention of the court and the parties on 3 December 1996.

13. On 13 December 1996 the court examined the matter and on 20 December 1996 the appellants filed an application for the reinstatement of their appeal. Following the filing of an opposition by the applicants, the case was adjourned *sine die* on 27 January 1997 pending the outcome in a number of other cases before the Supreme Court concerning the question of reinstatement of appeals in similar cases.

14. On 31 March 1997 the Supreme Court delivered its judgment allowing reinstatement of the appeal and following the appellants'

application to the Registrar to fix their case before the court, the appeal was reinstated on 18 April 1997.

15. Hearing sessions were held on 28 August and 29 October 1997.

16. On 19 February 1998 the Supreme Court delivered its judgment setting aside the district court's decision in part regarding the expenses awarded and interest thereto, in view of an agreement reached between the parties in this respect during the appeal proceedings. The court ordered a retrial regarding the issue of quantum of damages in relation to the breach of the contract. The rest of the judgment was upheld.

17. On 27 May 1998 the applicants applied to the Registrar of the District Court of Paphos to schedule the case for hearing in respect of the determination of the amount of damages.

18. Two hearing sessions were held on 14 December 1998 and 19 March 1999 with judgment reserved on that date. The case was adjourned once within this period at the applicants' request.

19. On 3 April 2000, approximately one year following the conclusion of the proceedings before the district court, the Supreme Court, subsequent to sending a letter to the Senior District Judge concerning the delay in the delivery of the judgment, fixed the case before it for this purpose (Rules of Procedure concerning the prompt delivery of court judgments (1986)). On 30 June 2000, the Supreme Court adopted a decision in this respect, emphasising the importance of providing justice within a reasonable time, and directed the Senior District Judge to deliver his judgment by 31 December 2000. The Government stated that the extension was given to avoid an order for retrial.

20. In the meantime the judge retired and on 1 December 2000 the case was assigned to another judge for retrial, who fixed the case for hearing on 2 February 2001.

21. Subsequently five adjournments took place, two at the defendants' request and three at the applicants' request. The hearing commenced on 27 June 2001 and was concluded on 19 September 2001. In total three hearing sessions were held and addresses were given on 23 October 2001. The court delivered its judgment on 23 December 2002 awarding the applicants damages for breach of contract amounting to CYP 28,720 plus legal interests and costs to be assessed by the Registrar.

22. On 17 April 2003 the applicants' lawyer submitted his bill of costs for assessment by the Registrar amounting to CYP 2,120.60.

23. On 8 May 2003 the costs were assessed by the Registrar at CYP 927 plus interest at 8% per annum from 29 November 1996 and VAT at CYP 139.50.

II. RELEVANT DOMESTIC LAW

24. 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 ...".

25. 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

26. 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..."

27. The Government contested that argument.

28. The period to be taken into consideration began on 28 March 1989 and ended on 23 December 2002 with the Supreme Court's judgment. It thus lasted thirteen years, eight months and twenty-nine days for three levels of jurisdiction.

A. Admissibility

29. The Government submitted that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention and consequently, that the application should be declared inadmissible.

30. 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. They maintained that such an action was likely to provide redress for the applicants' complaint, constituting thus a sufficient and effective remedy in respect of the alleged violation. The remedies that could be granted in the sphere of the civil court's jurisdiction included compensatory damages, restitution in integrum and also injunctions and mandatory orders.

31. 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 (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.

32. Finally, as regards the delay in the delivery of the first instance judgment, the Government averred that neither the applicants nor the defendants 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 district court judge to deliver his judgment within reasonable time.

33. The applicants stated that they had never been informed of the existence of any domestic remedies they could have had recourse to.

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

35. 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).

36. 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 applicants did not make such an application to the Supreme Court cannot be considered as a failure on their behalf to exhaust domestic remedies in relation to the protracted length of the proceedings.

37. 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 applicants' complaint cannot be rejected on this basis.

38. Accordingly, the Court concludes that, in the absence of convincing explanations from the respondent 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 respondent Government's objection on this point.

39. The Court notes that 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

40. 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).

41. 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).

42. 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 applicants' conduct (paragraphs 7, 18 and 21 above), it considers that this is not sufficient to justify the protracted length of the proceedings. In particular, it notes the significant delay of nearly three years in the preparation of the minutes of the proceedings before the district court, and further, that although the appeal had been dismissed on 23 March 1993, this was only brought to the attention of the Supreme Court and the parties, approximately three years and eight months later and once the appeal proceedings had already commenced. In addition, even though the Court has taken note of the Supreme Court's intervention in respect of the delivery of the district court's judgment following the retrial proceedings, there was significant delay of a period of approximately one year and nine months following the reservation of that judgment, which in the end was not delivered. The case was then reheard by another judge who delivered judgment approximately two years afterwards.

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

43. 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

44. The applicants claimed several amounts in respect of pecuniary damage. In particular, they claimed: (a) 19,721.05 euros (EUR) for the loss sustained due to changes in the exchange rate since the date of the purchase of the property and, in particular, the devaluation of the Cypriot pound in comparison to the German mark when payment of damages was paid; (b) CYP 5,976.80 for losses resulting from the fact that Cypriot law does not provide for compound interest; (c) CYP 7,838.70 in respect of the award of damages granted to the defendants with which they disagreed. The applicants did not claim a specific sum in respect of non-pecuniary damage. However, they stated that they experienced frustration because of the protracted length of the proceedings and the conduct of the Cypriot authorities in the handling of their case.

45. The Government contested these claims.

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

B. Costs and expenses

47. The applicants claimed CYP 5,538.25 for the costs and expenses incurred before the domestic courts. This amount comprised CYP 5,086 in respect of legal fees for which they submitted copies of a cheque, receipt, invoice and payment order (all concerning the period between 1996 and 1998), and CYP 452.25 for valuation fees, for which they submitted a copy of an invoice and a bank transfer (dated 1992 and 1998 respectively). They claimed that the damages awarded by the domestic courts did not cover these costs. The applicants finally claimed CYP 599 for costs incurred for the filing of his application to the Court, when they were initially represented before the Court by a lawyer. They submitted a copy of an invoice in this respect.

48. The Government contested the applicants' claims in respect of the expenses incurred before the domestic courts. They did not contest the remainder of the applicants' claims.

49. 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).

50. 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 does not consider that the applicants have demonstrated that they have incurred the costs claimed before the domestic courts because of the length of the proceedings. It therefore rejects this part of the applicants' claim. As to the legal costs and expenses incurred before it, the Court considers that the sum claimed was actually and necessarily incurred, and reasonable as to quantum. Accordingly, it awards the sum claimed in full.

C. Default interest

51. 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*
   (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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, and to the applicants jointly, CYP 599 (five hundred and ninety nine Cypriot pounds) for costs and expenses, 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;

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