



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

FIRST SECTION

CASE OF PASTELLIS v. CYPRUS

(Application no. 19106/03)

JUDGMENT

STRASBOURG

2 March 2006

FINAL

02/06/2006

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 Pastellis 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 9 February 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 19106/03) 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 Savvas Pastellis (“the applicant”), on 9 June 2003.

2. The applicant was represented by Mr A. Andreou and Mr A. Zachariou, lawyers practising in Larnaca. The Cypriot Government (“the Government”) were represented by their Agent, Mr Petros Clerides, Attorney-General of the Republic of Cyprus.

3. On 3 March 2005 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 FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1946 and lives in Larnaca.

A. Proceedings before the District Court of Larnaca

5. On 1 November 1985 the applicant lodged a civil action (no. 2891/85) before the District Court of Larnaca concerning the payment of the

remainder of the price agreed under the contract of sale of his enterprise in South Africa. The total claim was 60,000 South African Rand (ZAR), which was the equivalent of 30,000 Cypriot pounds (CYP) at the relevant time.

6. Between the above date and 1 January 1989 the Court dealt with the submission of the parties' pleadings and several applications for their amendment, for the purposes of which a number of adjournments or requests for extensions took place. Approximately five adjournments took place in this period, one at the applicant's request, two at the defendant's request and two by the court itself.

7. On 20 February 1989 the case was adjourned until 9 June 1989 on the parties' request. The hearing of the case commenced on that date and was fixed to continue on 26 June 1989 but following an adjournment requested by the applicant it was fixed for 27 September 1989. On the latter date the defendant raised an objection challenging the jurisdiction of the Larnaca District Court since the contract between the parties had been concluded in South Africa. The court fixed the hearing in respect of the objection for 14 October 1989. Following two adjournments at the defendant's request the hearing took place on 10 November 1989.

8. On 30 January 1990 the court dismissed the defendant's objection pertaining to its jurisdiction and fixed the hearing for 6 March 1990.

B. Proceedings before the Supreme Court: appeal on issue of jurisdiction

9. On 13 February 1990 an appeal (no. 8052) was filed against the district court's ruling of 30 January 1990, concerning its jurisdiction to try the case. Consequently, the case was taken off the trial list pending the result of the appeal.

10. On 21 February 1990 the defendant was served with a notice by the Registrar of the Supreme Court requesting him to pay the due fee for the preparation of the record of the first instance proceedings. The court's record was sent by the Larnaca District Court to the Supreme Court on 22 March 1990.

11. On 23 November 1992 the parties were notified by the Chief Registrar of the Supreme Court that the appeal was fixed for hearing on 15 December 1992. On that date however the case was adjourned to enable the applicant to file a cross-appeal.

12. On 27 April 1993 the Supreme Court found that the Larnaca District Court had jurisdiction to try the action and dismissed the appeal.

C. Continuation of the first instance proceedings before the District Court of Larnaca

13. On 7 June 1995 the applicant applied for a date of mention concerning the continuation of the proceedings and the case was fixed for this purpose for 7 July 1995. On that date it was fixed to be heard on 5 December 1995.

14. Between the above date and 20 December 1996 the case was adjourned several times. Approximately three of these adjournments were at the applicant's request, four at the parties' request and one at the defendant's.

15. On 20 December 1996 the Larnaca District Court reserved its judgment. This was delivered on 30 January 1997 dismissing the applicant's action.

D. Appeal proceedings before the Supreme Court

16. On 3 March 1997 the applicant filed an appeal (appeal no. 9912) against the first instance judgment.

17. The notice of the appeal was sent by the Registrar of the Larnaca District Court on 13 March 1997 to the Supreme Court indicating that the file of the case had been given for the purposes of typing the record of the proceedings and that this would be available in ten months due to the excessive volume of work. The record was necessary in order for the appeal to be fixed for hearing. On 2 April 1997 the applicant paid the fee due for the court's record.

18. On 9 February 1998 the Chief Registrar notified the parties that the appeal was fixed for directions for 24 February 1998. On that date the parties were instructed to file their outline addresses.

19. On 9 November 1998 the Chief Registrar sent a notice to the parties informing them that the appeal was fixed for hearing on 17 December 1998. On that date the parties' addresses were heard and judgment was reserved.

20. On 26 January 1999 the Chief Registrar of the Supreme Court informed the parties that due to the resignation of one of the presiding judges, the appeal had to be retried. Following two adjournments on the basis of the respondent's request, the parties' addresses were heard on 21 June 1999 and judgment was reserved.

21. On 30 September 1999 the Supreme Court delivered its judgment setting aside the first instance decision and ordering a retrial. The costs of both the first instance trial and the appeal were awarded in favour of the applicant. The parties were then notified that the case file had been returned to the Larnaca District Court on 6 October 1999 and they were requested to file an application to that court for the case to be fixed.

E. Retrial proceedings before the District Court of Larnaca

22. On 4 February 2000 the applicant applied to the Registrar of the Larnaca District Court requesting that the case be fixed for retrial.

23. On 20 June 2002 an application was lodged by the applicant requesting that the case be fixed for directions. In the relevant court records of 4 July 2002, the court stated that the case should be given priority and that the Registrar should inform the court why the case was not put before it on 4 February 2000 when the applicant had applied for the case to be fixed. In the relevant court records of 5 July 2002, the Registrar noted that the file of the case had been returned to the Supreme Court for the assessment of costs which took place on 4 April 2000 and that it was not known why the case had not been put before a judge. However, the Registrar pointed out that the applicant's lawyers had not pursued the application for two years.

24. The case was then fixed for 14 and 15 November 2002 but following an adjournment at the defendant's request it was postponed until 11 and 12 December 2002. On 11 December 2002 the case was settled between the parties with a decision in the applicant's favour for the amount of CYP 2000 plus the costs and expenses that had been awarded by the Supreme Court.

THE LAW

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

25. 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..."

26. The Government contested that argument.

A. Admissibility

1. Applicability of Article 6

(a) The submissions before the Court

27. The Government submitted that the proceedings regarding the trial of the preliminary issue of jurisdiction of the Larnaca District Court and the appeal lodged against the decision of that court in this respect should be excluded from the period concerned in determining the overall period of the

proceedings. They relied on the case of *Buchholz v. Germany* (judgment of 6 May 1981, Series A no. 42) which in their view was applicable in the present case, since the courts were not called on to determine the dispute between the parties; their ruling did not relate to the right claimed by the applicant against the defendant. Therefore, they argued that these proceedings did not fall within the ambit of Article 6 of the Convention.

28. The applicant did not comment on the Government's submissions.

(b) The Court's assessment

29. The Court notes that the proceedings before the Larnaca District Court and Supreme Court concerning the preliminary question of jurisdiction took place in mid-course of the main action and not after its conclusion as in the case of *Buchholz v. Germany* (cited above). Furthermore, the district court had to rule on whether or not it had jurisdiction before proceeding to try the case. As the question concerned a preliminary issue which was decisive for the outcome of the action, the district court took the case off the trial list and waited for the judgment of the Supreme Court on the point (see among others the *Ruiz-Mateos v. Spain*, judgment of 23 June 1993, Series A no. 262, pp. 19-20, §§ 35-37).

30. The Court accordingly finds that the period to be taken into consideration includes these proceedings.

31. This being so, the overall length of proceedings amounted to seventeen years, one month and thirteen 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 11 December 2002 when the parties reached a friendly settlement. It thus amounted to thirteen years, eleven months and twelve days for four instances over two levels of jurisdiction.

32. 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 approximately three years and two months.

2. Exhaustion of Domestic Remedies

(a) The submissions before the Court

33. 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.

34. 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.

35. 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 this connection they noted that this judgment constituted precedence that covered all human rights' violations and was not limited to the facts of the particular case.

36. The Government also contended that ever since the adoption of the judgment in *Yiallourou v. Evgenios Nicolaou* 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. According to the Government, the remedies that could be granted in the sphere of the civil court's jurisdiction included damages for pecuniary and non-pecuniary loss, prohibitory and mandatory orders and other common law and equitable remedies.

37. The applicant contested the Government's arguments. He submitted that he had exhausted all domestic remedies. He noted that the applicant's case was different to those cases referred to by the Government out of which many had not yet been tried but were pending before the domestic courts. There was no legal precedent in Cyprus that unreasonable delay in proceedings was actionable or could be pursued by way of a civil action before the Cypriot Courts. Finally, he submitted that it would be highly unlikely for an action against the Republic to be successful in view of the fact that the judiciary was completely independent from the executive by virtue of the Constitutional doctrine of separation of powers.

(b) The Court's assessment

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

39. 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).

40. 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.

41. 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.

42. Finally, 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

43. 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).

44. 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).

45. 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. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed CYP 9,347.53 in respect of pecuniary damage suffered due to the decrease in the value of the South African Rand against the Cyprus pound following the filing of the action. He attached a letter from the Central Bank of Cyprus confirming the value of the South African Rand against the Cyprus pound at various dates during the trial. The applicant did not claim a specific sum in respect of non pecuniary damage. He noted however that he had experienced great anxiety due to the protracted length of the proceedings, including the fact that the proceedings had to be reheard, and the continuous loss of value of the South African Rand he was forced to accept a settlement.

48. The Government contested these claims.

49. 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 8,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

50. The applicant made no claim for costs and expenses.

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 the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount, 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 2 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President