



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

FIRST SECTION

CASE OF LERIOS v. CYPRUS

(Application no. 68448/01)

JUDGMENT

STRASBOURG

23 March 2006

FINAL

23/06/2006

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 Lerios 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. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 2 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 68448/01) 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 Stelios Lerios (“the applicant”), on 5 April 2001.

2. The applicant was 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. The applicant alleged a violation of his rights under Articles 6 § 1 and 13 of the Convention due to the length of the civil proceedings that had been instituted against him and the lack of an effective remedy with regard to their protracted length.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 2 December 2003 the Court declared the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

8. The applicant was born in 1954 and lives in Paphos.

A. Background to the case

9. The applicant is a gynaecologist. On 10 October 1994, a pregnant woman, Mrs A., died at the hospital of Paphos after being transferred there from a private clinic. The applicant, who had been her medical practitioner, had taken the decision to transfer her to hospital because he had been unable to detect at the clinic the cause of a haemorrhage from which she had been suffering.

B. Proceedings before the District Court of Paphos

10. On 7 August 1995 the administrators of the estate of the deceased lodged a civil action against the applicant before the District Court of Paphos claiming damages for alleged medical negligence on his part.

11. The parties' pleadings were completed between 4 September 1995 and 22 December 1995. Within this period the court dealt with an application by the applicant for dismissal of the action for want of prosecution on the basis of the plaintiffs' failure to deliver their statement of claim within the required time. This application was withdrawn by the applicant and then dismissed by the court once the plaintiffs filed their statement of claim.

12. On 9 January 1996, the applicant filed an application requesting that a preliminary point of law be examined before the hearing of the action. In particular, the applicant claimed that the action ought to have been dismissed on the ground that another action, that had been filed earlier and concerned the death of the same person, was also pending before the same district court. Initially, the plaintiffs were granted time to file an objection to the application but when they subsequently withdrew the action they had previously lodged, the applicant proceeded on 22 May 1996 to withdraw his own application claiming his costs. Accordingly, the court dismissed the application, awarding the applicant his costs.

13. On 22 August 1996 the plaintiffs applied to the court to fix the case for mention or hearing. Subsequently, on 5 September 1996 the district court fixed the action for mention for 27 September 1996 and then for hearing for 5 December 1996. However, on that date the court adjourned the hearing until 28 February 1997, at the plaintiffs' request and with the applicant's consent, in view of the fact that one of their witnesses was unable to attend and testify for their case on that particular date.

14. The hearing commenced on 28 February 1997 and was completed on 17 July 1997 with the parties' final addresses. Approximately ten hearing

sessions were held in this period involving the hearing of testimony and the cross-examination of sixteen witnesses. Within this period two short adjournments took place, one by the court itself and one at the plaintiffs' request. The applicant did not object to these adjournments.

15. On 9 October 1997 the Paphos District Court delivered its judgment. It held that the applicant was liable for medical negligence causing death, and ordered him to pay by way of damages an amount of 46,200 Cypriot pounds (CYP) plus interest to the deceased's dependants, as well as one third of the plaintiffs' costs.

C. Proceedings before the Supreme Court

16. On 19 November 1997 the applicant appealed to the Supreme Court against the first instance judgment. He based his appeal on a total of thirty one grounds pertaining to the appraisal of the evidence given at first instance as well as the damages awarded.

17. In this connection, the applicant stated that on 24 November 1997 he applied to the Supreme Court to have the appeal fixed for hearing (and provides a copy of this application) whereas the Government maintained that none of the parties made such an application and that on 10 September 1998 the Supreme Court fixed the appeal, *ex proprio motu*, for pre-trial directions for 27 October 1998.

18. On 27 October 1998, the Supreme Court gave directions to the parties to file the outlines of their addresses. Accordingly, the applicant filed the outline of his address on 8 December 1998. On 25 January 1999 the Supreme Court fixed the hearing for 22 March 1999. In the meantime, the plaintiffs asked for an extension of forty-five days for submitting their own address. This was granted and the plaintiffs filed their address on 18 March 1999. On 14 June 1999 the parties were notified by the Registrar of the Supreme Court that the appeal was fixed for a hearing for 27 September 1999. On that date the hearing was adjourned at the plaintiffs' request. On 15 November 1999 the parties were notified by the court that the hearing would take place on 21 January 2000. Finally, after an adjournment decided *ex officio* by the court on 21 January 2000, the hearing was held on 25 January 2000.

19. On 14 July 2000, the Supreme Court partially upheld the appeal and ordered a new trial as well as a reduction in the amount of damages that had been set by the district court.

D. Retrial proceedings

20. On 5 September 2000 the case was assigned to a Senior District Judge who subsequently fixed it for directions on 27 September 2000 and then for 26 October 2000. On that date, with the parties' consent, the

hearing was set for 1 December 2000. However, on 3 November 2000, the plaintiffs' lawyers applied for an adjournment of the hearing since they had hearings in other cases on 1 December 2000 and, also, certain of their key witnesses could not be present. The applicant proceeded to file a written objection dated 25 November 2000 in which he stressed that the adjournment was a contrary to Article 6 of the Convention in view of the fact that his case was old and pressing. On 29 November 2000 the Supreme Court issued an interim decision upholding the plaintiffs' application. Accordingly, the hearing was adjourned and was fixed for 8 and 12 January 2001.

21. On 8 January 2001, the parties' lawyers informed the court that they had reached an agreement settling their dispute. In particular, taking into account the circumstances of the case, they agreed on an *ex gratia* basis that the applicant would pay the plaintiffs, without any admission of liability, CYP 23,000, plus CYP 750 for legal and expert costs. Accordingly, the Supreme Court issued a judgment against the applicant ordering him to pay the above amounts to the plaintiffs, with a stay of execution of the judgment for twelve months on condition that the applicant paid the above amounts by monthly instalments of CYP 2,000 as from 1 February 2001.

THE LAW

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

22. The applicant complained that the length of 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..."

23. The Government contested that argument.

A. Period to be taken into consideration

24. The period to be taken into consideration began on 7 August 1995 and ended on 8 January 2001. It thus lasted five years, five months and four days for three instances, two of them of the same level of jurisdiction.

B. Reasonableness of the length of the proceedings

25. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

26. 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 *Pélissier and Sassi* and *Frydlender* cited above).

27. The Court notes that while the total length of proceedings over three instances, two of them of the same level, does not appear on the face of it to be excessive, it considers that the delays which occurred at the appeal stage contributed significantly to the prolongation of the proceedings. In this connection it finds that there were two specific periods of delay that were attributable to the Supreme Court. In the first place, a period of approximately eleven months elapsed between 19 November 1997, when the applicant lodged his appeal, and 27 October 1998, when the Supreme Court fixed the case for pre-trial directions (see paragraph 17 above). The Government have not provided a satisfactory explanation in this respect whereas the applicant has provided the Court with a copy of this application filed on 24 November 1997 requesting that the appeal be fixed for hearing. Secondly, there was a period of inactivity of nearly three months, between 18 March 1999, when the plaintiffs filed their address, and 14 June 1999, when the parties were notified by the registrar that the appeal had been fixed for hearing for 27 September 1999 (see paragraph 18 above). As a result of the above the hearing of the appeal commenced more than two years after its lodging and more than ten months following the filing of the parties' addresses. In the Court's opinion this was an unjustified delay bearing in mind that what was at stake in these proceedings was undoubtedly of considerable importance for the applicant. Finally, the Court observes that the present case concerns the applicant's professional reputation which would require special diligence to be shown by the domestic courts.

28. In respect to the above, the Court recalls that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements (see *Pélissier and Sassi*, § 74 and *Frydlender*, § 45, cited above).

29. Having examined all the material submitted to it, 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

30. The applicant further complained about the lack of an effective remedy with regard to the excessive length of the proceedings contrary to Article 13 of the Convention that provides 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.”

1. *The submissions before the Court*

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

32. In particular, 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.

33. 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 courts’ 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. Further, the Government distinguished the instant application from the case of *Kudla v. Poland* ([GC], no. 30210/96, ECHR 2000-XI), in that in the present case there was a specific effective domestic remedy available to the applicant within the meaning of Article 13 of the Convention and in line with the Court’s case-law.

34. The Government also contended that ever since the adoption of the judgment in the case of *Yiallourou* 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 applicant's representative was the lawyer who had lodged the above-mentioned action before that district court.

35. The applicant contested the Government's arguments. He submitted that no effective remedy existed in relation to his 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 *Yiallourou* 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.

36. As regards the other actions referred to by the Government, the applicant 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, he 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.

37. In any event, according to the applicant it was inappropriate for the judicial authorities, against which a length of proceedings complaint would be directed, to judge the issue. In this context he 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

38. 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 *Kudła v. Poland*, § 156, cited above).

39. 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 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*, § 159, cited above).

40. In these circumstances, the Court considers that the Government have failed to show that an effective domestic remedy was available to the applicant 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

41. 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

42. The applicant claimed 138,800 Cypriot pounds in respect of pecuniary damage. In this respect he claimed that the delay in the proceedings had caused serious damage to his professional image and this resulted in a great loss of income. The above sum included a loss of income of CYP 60,000 due to a reduction of births in the period the case was against him, CYP 54,000 due to a reduction in his medical appointments, CYP 1,800 due to the fact that he had to be absent from the clinic for a total of forty days and finally, CYP 23,000 in compensation for having to enter a compromise in order to restore his family, social and professional life. The applicant submitted a handwritten chart covering births from 1994-2003, indicating a decrease in the number of births at the commencement of the proceedings and an increase following their conclusion. He also submitted statements by two gynaecologists, his secretary at the clinic, his lawyer and himself.

43. The applicant further claimed CYP 30,000 as non-pecuniary damage. In this respect, he maintained that the case had received extensive publicity in Cyprus, and in the small and very conservative town of Paphos it took huge dimensions. The unjustified prolongation of the proceedings had aggravated the social and professional marginalisation of the applicant, causing him severe stress and anxiety, negatively affected his family life and struck a serious blow to his professional reputation. He submitted a statement from his wife and a friend as well as copies of press reports concerning the death of Mrs A.

44. The Government contested these claims.

45. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

46. As to compensation in respect of non-pecuniary damage, the Court considers that a finding of a violation of Article 6 § 1 of the Convention

constitutes in itself sufficient just satisfaction taking into account the periods of inactivity.

B. Costs and expenses

47. The applicant also claimed CYP 6,960 for the costs and expenses incurred before the Court. He submitted a bill of costs and four receipts in this respect.

48. The Government left the matter to the Court's discretion.

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). In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

50. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 13 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *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 2,500 (two thousand five hundred euros) in respect of costs and expenses, to be converted into Cypriot pounds at the applicable rate at the date of settlement plus any tax that may be chargeable;

(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 23 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President