CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF GAVRIELIDES v. CYPRUS

(Application no. 15940/02)

JUDGMENT

STRASBOURG

1 June 2006

FINAL

01/09/2006

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 Gavrielides 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 11 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 15940/02) 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 a Cypriot national, Mr Andreas Gavrielides ("the applicant"), on 10 April 2002.

2. The applicant was represented by Mr A. Demetriades, 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 7 January 2003 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Limassol.

5. The applicant is the owner of immovable property in the area of Tseri-Gerovounos.

6. On 30 September 1994 the applicant applied to the Director of the Nicosia District Land Registry for the provision of a right of way to his plot, which was enclaved, via adjacent properties.

7. On 9 January 1995 the director carried out the required local inquiry.

8. On 9 January 1996 the director delivered his decision determining the right of way.

9. On 8 February 1996 the owner of the affected property (of the servient tenement) filed an appeal before the District Court of Nicosia against both the applicant and the director, challenging the latter's decision concerning the course and extent of the right of way granted to the applicant (*appeal no. 86/96 Anna Moeseos v. Director of Land and Surveys of the District Land Office and Andreas Gavrielides*).

10. All the pleadings were completed by 29 April 1996 and the case was fixed for directions for 13 May 1996.

11. On 13 May 1996 the case was adjourned until 12 June 1996 at the parties' request. From the latter date until 8 November 1996 it was adjourned three times at the appellant's request. On 8 November 1996 the court fixed the case for 5 February 1997 but on that date it was adjourned at the appellant's request until 4 March 1997. When the last adjournment was requested, the applicant strongly objected and complained to the court about the continuous adjournments. The court stated that this would be the final time it would fix the court for mention.

12. On 3 March 1997 the case was fixed for hearing for 20 June 1997.

13. The case was then adjourned until 30 June 1997 due to the applicant's absence and to 22 September 1997 with the parties' agreement for the purposes of a possible friendly settlement. On the latter date the case was set for hearing for 9 December 1997.

14. On the above date the hearing was adjourned following a preliminary objection by the director's lawyer in that the director should not be a party to the proceedings and his request for a hearing in this connection.

15. On 19 December 1997 the district court issued an interim decision ruling that a written application should be made for a preliminary trial and the case was set for mention for 23 January 1998. It was then adjourned however to 16 February 1998 since service of the application to the applicant had not taken place and then fixed for mention for 10 March 1998.

16. On 11 March 1998 the proceedings against the director were dismissed by the district court and the appeal was fixed for hearing for 3 July 1998.

17. Subsequently, the hearing was adjourned twice at the appellant's request; from 3 July 1998 to 22 December 1998 and on that date until 8 January 1999. The applicant was absent on both occasions. The hearing was held on the latter date in the applicant's absence and the district court

upheld the appeal and annulled the director's decision awarding costs in favour of the appellant.

18. On 18 February 1999 the applicant filed an application before the district court requesting that the judgment be set aside. He alleged that he had been unable to attend two of the hearing dates for health reasons (he had, *inter alia,* been abroad for treatment) and submitted medical certificates in this respect. He also claimed that he had not received the notification for the third hearing date in due time. At the material time the applicant was not represented by a lawyer.

19. On 3 June 1999 the appellant consented to setting the judgment aside but objected to the applicant's claim as to costs.

20. On 1 July 1999 the district court set the judgment aside ordering the applicant to pay costs.

21. From 26 July 1999 until 22 January 2002 several adjournments took place; approximately three at the applicant's request (one of these was for the purpose of appointing a lawyer), two at the appellant's request and one at the parties' request for the purposes of a friendly settlement. The court also dealt with an application filed by the applicant for review of the assessment of costs, which was settled between the parties on 14 June 2000. Within this period, the court adjourned the case three times – once for a period of nearly three months- and fixed it six times for directions (two of these were for the purpose of allowing the parties to reach a friendly settlement).

22. On 22 January 2002 the proceedings were concluded by withdrawal of the appeal by the appellant with costs in favour of the applicant.

23. During the proceedings, the applicant had sent letters, *inter alia*, to the Attorney-General, the Registrar of the Nicosia District Court and the Ombudsman complaining about the length of the proceedings.

II. RELEVANT DOMESTIC LAW

24. Articles 30 (2) and 35 of the Cypriot Constitution in so far as relevant provide as follows:

> 30 (2) "In the determination of his civil rights and obligations ..., every person is entitled to a ... hearing within a reasonable time by [a] ... court ...".

> 35 "The legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competency the efficient application of the provisions of this Part".

25. Section 11A of the Immovable Property (Tenure, Registration and Valuation) Law Cap. 224, in so far as relevant provides as follows:

> "(1) Notwithstanding the provisions of this Law, if any immovable property is for any reason, in such a way landlocked as to be lacking the necessary access to a public road, or if the existing access is inadequate for its proper use, development or

utilisation, the owner of such immovable property shall be entitled to claim an access over the adjacent immovable properties on payment of a reasonable compensation.

(2) The route of the access and the extent of the right to the use thereof, as well at the compensation payable shall be determined by the Director after previous notice to all interested parties; if however following such notice, any of the interested parties fails to attend the local inquiry as notified, the Director may proceed with any necessary action in the absence of that interested party.

...".

26. Sections 80 and 81 of the Immovable Property (Tenure, Registration and Valuation) Law Cap. 224, in so far as relevant provide as follows:

80...Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the court and the court may make such order thereon as may be just but, save by way of appeal as provided in this section, no court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law.

...

81. When an appeal is made to the court as in section 80 of this Law provides, the order of the court shall be final and conclusive and no appeal shall lie therefrom save where a question of personal status is involved or where the amount in dispute exceeds twenty-five pounds.

Provided that any person, including the Director, aggrieved by any order of the court on any appeal under section 80 of this Law, may appeal therefrom to the Supreme Court on any point of Law".

27. In accordance with domestic law in order to acquire a right of way, a person must first of all apply to the Director of the Land Registry. In line with the Regulations adopted under Section 11A of the Immovable Property (Tenure, Registration and Valuation) Law, the director, after carrying out a local inquiry and an examination of all the relevant issues, determines the course of the right of way and the extent of the use thereof in such a way as to cause the least possible damage, inconvenience and hardship to the owner of the servient tenement. The director also determines the compensation payable to the latter. The Regulations set out the procedures that need to be followers with regard to the notification of the interested parties and the local inquiry.

28. In its jurisprudence, the Supreme Court has defined the director as being an administrative organ who has a wide range of competences under law, including Cap. 224. Although certain of the director's acts fall within the scope of public/administrative law, the director's powers on the basis of Section 11A pertaining to the regulation of private rights on immovable property come within the ambit of private law and are subject to appeal

before the district court (*Andreas Efthymiou v. A. Georghiou and S. Constantinidi, Supreme Court judgment of 20 June 1997, Kafieros & Another v. Theocharous & Others (1978) 1 C.L.R 619*). Further, the Supreme Court has described the director's role as that of an arbitrator in a quasi-judicial capacity (*Constantinos Nicolaou Georghiou v. Evangelia HadjiGeorghiou Hjiphesa, 1970 1 C.C.R. 58*). In view of the quasi-judicial nature of his duties the director is under an obligation on the basis of the relevant regulations to give a reasoned decision and to abide by the rules of natural justice and evidence (*Eleni Nikou Savva et al v. Ourania Georghiou Costa (2003) 1 A.A.D. 1944*, *Andreas Efthymiou v. A. Georghiou* and *S. Constantinidi*).

29. According to Section 80 of the above law, any person aggrieved by any, *inter alia*, decision of the director, taken under the provisions of Cap. 224 may lodge an appeal to the district court. Following the judgment of the district court a further appeal can be lodged to the Supreme Court.

THE LAW

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

30. 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..."

31. The Government contested that argument.

A. Admissibility

32. 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.

33. The applicant disputed the Government's arguments and argued that no effective remedy existed in relation to his complaint.

34. The Court considers that the Government's objection concerning non-exhaustion of domestic remedies is closely linked to the substance of the applicant's complaint under Article 13, and should thus be joined to the merits.

35. Accordingly, the Court notes that this part of 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

1. Period to be taken into consideration

36. The Government argued that the proceedings had begun on 8 February 1996 when the owner of the servient tenement filed an appeal before the District Court of Nicosia against the director's decision and not before that. The dispute concerning the right of way had only arisen following the director's decision and it had been therefore for the district court to determine and not for the director.

37. The applicant contested the Government's arguments. In his view the proceedings started on 30 September 1994 when he had applied to the director for a right of way.

38. The Court observes that under domestic law in order to acquire a right of way, a person must firstly lodge an application with the Director of the Land Registry. The director's decision therefore is a necessary preliminary for bringing the case before a tribunal. However, the Court considers that the "dispute" within the meaning of Article 6 § 1 did not start when the applicant filed his request for a right of way. The Court finds that on the facts of the case the dispute arose on 8 February 1996 when the owner of the servient tenement filed an appeal against the director's decision granting the applicant a right of way over her property (see *mutatis mutandis*, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 98, *Morscher v. Austria*, no. 54039/00, § 38, 5 February 2004 and *Nowicky v. Austria*, no. 34983/02, § 47, 24 February 2005).

39. That being so the Court considers that the period to be taken into consideration in the present case began on 8 February 1996 and ended on 22 January 2002 when the appeal before the Supreme Court was withdrawn. It thus lasted five years, eleven months and fifteen days before one level of jurisdiction.

2. Reasonableness of the length of the proceedings

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 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).

41. The Government submitted that the applicant had been primarily responsible for the delay in the proceedings. Hearings and other procedures

had been adjourned due to the applicant's failure to appear or on the motion of either or both parties. Further, delays had taken place due to the use of interim applications by the applicant.

42. The applicant contested the Government's arguments and emphasised that he had repeatedly expressed his dissatisfaction for the delay in the proceedings. He considered that the court had been too lenient with the appellant who had continuously requested adjournments and that it had fixed the case at long intervals.

43. The Court has taken note of the applicant's conduct (see paragraphs 13, 17 and 21 above). However, it considers that this is not sufficient to justify the protracted length of the proceedings. The Court considers that the time taken by the district court in examining the case appears to be exceptionally lengthy especially in light of the fact that the case did not involve any particular legal complexity. In this connection it notes that the intervals between adjournments or fixing the case had a serious impact on the overall length. Having regard to its case-law on the subject and the proceedings as a whole, 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

44. The applicant complained of a lack of an effective remedy within the meaning of Article 13 of the Convention in respect of his 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

45. 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

46. 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.

47. 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. They maintained that such an action was likely to provide redress for the applicant's 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.

48. In support of their arguments, the Government relied on the judgment of the Supreme Court in the case of *Takis Yiallouros v. Evgenios Nicolaou* (8 May 2001, civil action no. 9931) finding that the violation of the plaintiff's right to the private life and the right to secrecy of correspondence and communications, as guaranteed by the Cypriot Constitution, provided him with an actionable right. They also referred to a civil action pending before the District Court of Nicosia (civil action no. 3216/02), in which the plaintiffs 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.

49. The applicant contested the Government's arguments. He submitted that no effective remedy existed in relation to his complaint. He noted that he had complained about the unreasonable delay in the proceedings on several occasions before the court and other competent authorities but to no avail. In view of this, it was evident that the Government were incapable under the existing mechanism of preventing or terminating the violation complained of. As regards the case of *Yiallouros*, the applicant noted that not only was the judgment in that case issued fourteen months after the lodging of the present application but also that its facts were completely unrelated. In this connection, the applicant pointed to the absence of judicial practice granting damages for violations due to excessive length of proceedings. In any event, the applicant claimed that he should not be obliged to seek redress through a judicial system that had already kept him in proceedings for such a long time.

2. The Court's assessment

50. 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* [GC], no. 30210/96, § 156, ECHR 2000-XI).

51. In the present case, the Court notes that although the case of *Takis Yiallouros v. Evgenios Nicolaou* illustrates the possibility of recourse before the domestic courts in respect of allegations concerning violations of rights protected under the Cypriot Constitution and the Convention, it does 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).

52. 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.

There has accordingly been a breach of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 3,100 Cyprus pounds (CYP) in respect of pecuniary damage. This claim was in respect of the loss of value of his land caused by the delay in obtaining access thereto and the expenses related to the planting of more that one hundred and sixty-six trees thereon which were destroyed due to lack of irrigation. The applicant alleged that the Government had refused to give him permission to drill a waterhole because of the lack of access to his land. He submitted a receipt of purchase of the trees, the details of the application for the waterhole and cost thereof, the title deed stating the price the applicant bought his land, and, finally, a valuation report that had been submitted to the district court during the domestic proceedings concerning the value of his land at the relevant time.

Furthermore, the applicant claimed CYP 7,000 in respect of non-pecuniary damage. He claimed legal interest at an annual rate of 8 % on the above amounts.

55. The Government contested these claims.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers however that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court, awards him EUR 4,000 under that head, plus any tax that maybe chargeable on that amount.

B. Costs and expenses

57. The applicant also claimed CYP 6,210 for the costs and expenses incurred before the domestic courts. This included the fees paid to his lawyers (official bill of costs provided) amounting to CYP 1,316.90, expenses paid to the appellant and his personal costs and expenses for the appearances he had to make himself before he had appointed a lawyer. The applicant also claimed CYP 1,467.70 for those incurred before the Court and provided bills of costs in this respect. He also claimed legal interest at an annual rate of 8 % on all the above amounts.

58. The Government contested the applicant's claim for costs and expenses incurred before the domestic courts but left the remainder of the claims to the Court's discretion.

59. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,500 for the proceedings before the Court, plus any tax that maybe chargeable on that amount.

C. Default interest

60. 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. *Decides* to join to the merits the Government's objection concerning exhaustion of domestic remedies;

2. *Declares* the remainder of the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Cyprus pounds at the rate applicable 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President