



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

FIRST SECTION

CASE OF PAPAKOKKINOU v. CYPRUS

(Application no. 4403/03)

JUDGMENT

STRASBOURG

14 December 2006

FINAL

14/03/2007

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 Papakokkinou 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 23 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 4403/03) 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 two Cypriot nationals, Mrs Aleka Papakokkinou and Mrs Vereggaria Papakokkinou (“the applicants”), on 20 May 2003.

2. The second applicant was represented by the first applicant, a lawyer practising in Nicosia. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 18 October 2005 the Court decided to communicate the complaint concerning the length of the proceedings. 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 applicants were born in 1945 and 1930 respectively and live in Nicosia.

5. The facts of the case, as submitted by the parties and as derived from the minutes of the proceedings, may be summarised as follows.

A. Proceedings before the District Court of Nicosia

6. On 26 March 1993 the applicants lodged a civil action (no. 2633/93) before the District Court of Nicosia against three persons, requesting damages for trespass that had occurred in April 1989 over certain premises occupied by them, by virtue of a tenancy agreement and used for storing various military clothing and material. The police had stopped the defendants following a trespass complaint but had not brought criminal proceedings against them. On the one hand, the applicants maintained that the defendants had trespassed the said premises and had taken away some of the clothing and material, causing damage to their property. On the other hand, the defendants claimed that they had entered the applicants' premises under the false assumption that these premises were covered by a tenancy agreement they had just concluded.

7. Between 26 March 1993 and 9 January 1995 the parties filed their pleadings.

8. On 11 January 1995 the case was set for directions for 15 February 1995 and then for hearing for 23 October 1995. The case was then adjourned on the application of one of the defendants until 1 November 1995 and then, until on 14 February 1996, following the failure of the parties to reach an agreement in order to limit the trial issues.

9. On 14 February 1996 the case was adjourned until 6 June 1996 following an application by one of the defendants for amendment of their statement of defence.

10. On 6 June 1996 the applicants requested an adjournment and in the absence of objection on the defendants' part, the case was fixed for hearing on 4 November 1996. From that date, the court itself adjourned the case twice until 17 April 1997. On that date the defendants requested an adjournment in view of the fact that in the meantime they had filed an application for the amendment of their statement of defence and an application raising a preliminary objection. The applicants objected to the adjournment but since the court also considered that it did not have time to hear the case, it adjourned the case until 13 June 1997. The applicants then requested that the case be fixed on an earlier date since it was an old case but the court stated in reply that this was the only free date and that, in particular, in the month of May it was dealing with actions that had been filed before the present one.

11. Until 17 September 1997 the court dealt with the defendants' applications and objections thereto. By an interlocutory decision dated 27 June 1997 the court dismissed the defendants' application raising a preliminary objection and, further, by an interlocutory decision dated 17 September 1997, it granted the defendants leave to amend their defence.

12. Following a request by the applicants for a hearing date, the case was set for 27 October 1997. On that date, the hearing was adjourned by the

court itself until 28 November 1997. The hearing of the case commenced on that date and was then set for 5 December 1997. On the latter date, it was adjourned at the applicants' request until 15 December 1997, in the light of an application that they had in the meantime filed for the amendment of their statement of claim. Taking into account the fact that the defendants intended to file an objection to the application, the court set the case for hearing for 22 January 1998. On the latter date, the defendants informed the court that they would not be filing an objection and thus, the application was granted. The case was then set for hearing for 9 March 1998 and was adjourned until 6 April 1998 at the defendants' request.

13. From 6 April 1998 until 20 October 1998 the court dealt with four interlocutory applications: two were lodged by the defendants for the amendment of their statement of defence and two were lodged by the applicants concerning the amendment of the title of the action by adding a fourth defendant and the dismissal of the defendants' amended statement of defence as being out of time. The court accepted the first three applications and rejected the last one. Amended pleadings were also filed within this period.

14. On 20 October 1998 the case was set for hearing for 1 December 1998 in view of the filing of additional pleadings by the fourth defendant and the parties.

15. The hearing of the case was resumed on 1 December 1998 and was concluded on 28 May 1999. Extensive evidence was given, in particular by the applicants. Furthermore, during the final addresses, the applicants withdrew the action against the second defendant.

16. In its judgment of 30 September 1999 the District Court found that trespass had occurred by the third and fourth defendants. However, it dismissed the applicants' version of the facts, to the extent that it contradicted the defendants' version, as being unsubstantiated and that the testimony that had been given by the second applicant had not been precise or credible. The court further noted that the examination of the case by the police had been limited.

17. The court awarded the applicants the amount of 700 Cyprus pounds (CYP) for trespass to the premises, CYP 250 for the removal of certain clothing and CYP 50 for damage caused to the front door, plus costs and expenses. Interest was awarded on the above amounts. The court considered that the behaviour of the defendants did not justify an award of punitive or exemplary damages since their wrongdoing had been marginal. The action was dismissed with regard to the first and second defendants and costs were awarded in their favour.

B. Proceedings before the Supreme Court

18. On 10 November 1999 the applicants lodged an appeal with the Supreme Court (civil appeal no. 10659). The applicants' appeal notice contained sixty-six grounds of appeal in which they essentially challenged the findings of the first instance court, its assessment of the evidence and its award of damages and costs. The applicants further claimed that the District Court's judgment had not been adequately reasoned and that the police had been negligent handling the case by not taking the third defendant's fingerprints.

19. By letter dated 11 November 1999 the Registrar of the Nicosia District Court informed the Chief Registrar of the Supreme Court that the minutes of the proceedings would be prepared and sent to the Supreme Court by May 2000.

20. Two reminders were sent by the Chief Registrar to the District Court on 9 June 2000 and 11 August 2000 respectively, noting the delay and requesting that the minutes be sent immediately.

21. On 3 September 2000, Judge Kallis, instructed that the Chief Registrar contact the President of the District Court with regard to the minutes and that, in the absence of a reply within one week, the matter be put before the Supreme Court. A notice dated 5 September 2000 was sent by the Registrar of the Department of Civil and Criminal Appeals to the Chief Registrar. The latter then sent a letter dated 18 September 2000 to the President of the District Court requesting that the minutes be sent to the Supreme Court by 9 October 2000 to enable it to proceed with the examination of the appeal. The minutes were sent to the Supreme Court on 28 September 2000.

22. The appeal was fixed for first appearance on 23 November 2000. On that date the applicants requested additional time for the filing of the outline of their address. The court granted an extension of fifteen days to the parties and fixed the hearing of the appeal for 20 June 2001. In the meantime, on 27 March 2001, the applicants requested an adjournment of the hearing until the end of the summer holidays. The court then set the case for 20 September 2001.

23. Subsequently, the case was adjourned twice: once at the applicants' request for health reasons and once by the court itself due to the absence of one of the judges for health reasons.

24. The hearing of the appeal took place on 28 May 2002 and judgment was reserved.

25. On 22 November 2002 the Supreme Court delivered a detailed judgment dismissing the appeal and upholding both the factual and legal findings of the first instance court and its assessment of damages and costs. Amongst other things, it found that the District Court had correctly evaluated the evidence before it and had come to the right conclusions. It

also found that the applicants' argument that the District Court's judgment was not adequately reasoned was manifestly ill-founded. In this connection, it pointed out that the judgment had been exhaustive and duly reasoned. Finally, although the court observed that the investigation carried out by the police had not been complete, it concluded that the fact that the police had not taken the third defendant's fingerprints did not affect the conclusions of the first instance court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

26. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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 fair ... hearing within a reasonable time by [a] ... tribunal...”

27. The Government contested that argument.

28. The period to be taken into consideration began on 26 March 1993 and ended on 22 November 2002. It thus lasted nine years, seven months, and thirty days for two levels of jurisdiction.

A. Admissibility

29. 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

30. The applicants alleged that there had been long periods of delay in the proceedings attributable to the domestic courts and that the overall length of proceedings was excessive.

31. The Government argued that the domestic courts had examined the case with reasonable efficiency and that there had not been any unreasonable delay attributable to the authorities.

32. The Court notes that the applicants were responsible for certain of the delays in the proceedings by requesting adjournments and lodging

various interlocutory applications (see paragraphs 10, 12, 13 and 22 above). The Court considers however, that the applicants' conduct does not in itself justify the length of the proceedings on the whole.

33. The Court observes that the case does not appear as such to have been particularly complex factually and legally. Furthermore, before the District Court of Nicosia there were at least two periods of significant inactivity due to adjournments attributable to the court itself: a period of approximately eight months when on 15 February 1995 the court set the case for hearing for 23 October 1995 and a period of more than five months following two consecutive adjournments by the court from 4 November 1996 until 17 April 1997 (see paragraph 10 above).

34. Finally, although the appeal before the Supreme Court was lodged on 10 November 1999, the minutes of the first instance proceedings were sent to the Supreme Court on 28 September 1999 despite the reminders which were sent to the Registrar of the District Court by the Registrar of the Supreme Court for this purpose (see paragraphs 19-21 above). This delay has not been explained. As a result there was a period of inertia following the lodging of the appeal amounting to more than ten months. This in itself presents a substantial delay in the proceedings (see also in this regard the case of *Waldner v. Cyprus*, no. 38775/02, § 42, 19 January 2006). In this respect the Court recalls that Article 6 § 1 of the Convention 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, among many other authorities, *Frydlender*, cited above, § 45, and *Massa v. Italy*, judgment of 24 August 1993, Series A no. 265-B, § 31).

35. The Court finds, having regard to all the circumstances of the case and having taken into account the overall duration of the proceedings, that in the instant case the length of the proceedings before the domestic courts was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

Admissibility

36. The applicants also complained of a violation of their rights under Articles 6 and 13 of the Convention and 1 of Protocol No. 1, in respect of the fairness of the proceedings, the award of damages by the domestic courts, the protection of their property rights and the alleged lack of a remedy for their claims.

37. In the light of all the material in its possession, and in so far as the matters complained are within its competence, the Court considers that the

present case does not disclose any appearance of a violation of any of the above Articles of the Convention and its Protocols.

38. In view of the above, it follows that these complaints are inadmissible under Article 35 § 3 of the Convention as being manifestly ill-founded, pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicants claimed CYP 18,000 in respect of pecuniary damages for loss caused, *inter alia*, by the delays on the part of the police and the domestic courts in dealing with the case, the adjournments and interruptions of the hearings and the loss of important exhibits from the Registry of the Nicosia District Court which they intended to use as evidence. The applicants further claimed the sum of CYP 16,000 for non-pecuniary damage.

41. The Government contested these claims.

42. 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. Ruling on an equitable basis, it awards them EUR 7,000 each under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicants also claimed CYP 9,000 for costs and expenses incurred in the proceedings in general; they did not request a specific sum for those incurred before the domestic proceedings and those incurred before the Court. Furthermore, the costs were not itemised and no bills of costs or receipts were submitted.

44. The Government contested the claim.

45. 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 (see paragraph 43 above) and the above criteria, the Court rejects the applicants' claim for costs and expenses.

C. Default interest

46. 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 complaint under Article 6 § 1 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 7,000 (seven thousand euros) in respect of non-pecuniary damage, to be converted into Cyprus pounds at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 December 2006 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President