



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

FIRST SECTION

CASE OF OUZOUNIAN BARRET v. CYPRUS

(Application no. 2418/05)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

09/07/2007

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 Ouzounian Barret 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 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 2418/05) 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, Ms Alice Ouzounian Barret (“the applicant”), on 7 January 2005.

2. The applicant was represented by Mr C. Clerides, 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 16 January 2006 the Court decided to communicate the complaints concerning the length of the proceedings complaints 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 lives in Nicosia.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. The applicant is the registered owner of immovable property adjacent to a salt lake in the district of Larnaca. In 1981 the applicant's property was included in a planning zone (Z4) with a building density coefficient applicable for development purposes of only 1 per cent. Subsequently, on

1 December 1990, on the basis of the Law on Town Planning and Residential Land Use and the Larnaca Town Planning Scheme, the property was included in a different zone (*4α2*) with a higher building density coefficient of 5 per cent and was classified as a town park.

A. Proceedings concerning the planning permit

7. On 16 October 1991 the applicant applied to the District Planning Office of Larnaca for a planning permit for the construction of a house that would cover 17 per cent of the relevant plot.

8. On 25 November 1991 the District Planning Office rejected her application on the grounds that the coefficient of the proposed construction was higher than that permitted by the Larnaca Town Planning Scheme.

9. On 6 December 1991 the applicant lodged a hierarchical recourse with the Ministry of Interior. The applicant was informed by letter dated 29 March 1993 that the Ministerial Council had dismissed her recourse on 18 February 1993 for the same reasons.

B. Proceedings concerning compensation

1. Proceedings before the Ministry of Interior

10. On 28 June 1993 the applicant filed a claim for compensation before the Ministry of the Interior. The applicant claimed damages for the diminution in the value of her property due to the authorities' refusal to grant her a planning permit. Her claim was dismissed by the Ministry on 31 October 1996. In its decision the Ministry noted that, on the basis of the examination of an evaluation of the property prepared by the District Land Office and her application, it found that there had not been any diminution in the property's value because of the authorities' refusal to grant her a planning permit and consequently, by the application of the Law on Town Planning and the Larnaca Town Planning Scheme. Finally, it noted that the property had been included in a planning zone with a higher coefficient.

2. Proceedings before the District Court of Larnaca

11. On 3 January 1997 the applicant filed a civil action (*no. 55/97*) with the District Court of Larnaca against the Attorney-General of the Republic and the Ministry of Interior. The applicant claimed the amount of 24,330 Cypriot pounds (CYP) as damages in respect of the diminution in the value of her property which was caused by the application of the Law on Town Planning and Land Use and/or the Larnaca Town Planning Scheme and/or due to the restrictions imposed. She invoked Article 23 of the Constitution in respect to the latter.

12. On 3 January 1997 the applicant also filed her statement of claim. Following the defendants' failure to file their defence within the set fourteen day time-limit, the Registrar sent a notice to the defendants on 16 September 1999 informing them that upon failure to file their defence within fourteen days after the giving of the notice, a decision could be issued in the applicant's favour. By letter dated 5 October 1999 the defendants requested an extension of twenty days. This was granted by the court. On 20 April 1999 the defendants filed an *ex parte* application requesting an additional extension. The application was set for hearing for 10 May 2000. On that date the court granted the application giving the defendants until 28 June 2000 to file their defence. This was filed on 26 June 2000.

13. On 24 July 2000 the applicant requested the court to fix the case for hearing. On 11 August 2000 the court set the case for instructions for 27 September 2000 and on the latter date it fixed the case for hearing for 1 February 2001.

14. On 1 February 2001 the case was adjourned until 14 May 2001 at the defendants' request. The applicant consented to the adjournment and the court noted that it also had another case to deal with that day. The case was then adjourned twice until 5 November 2001 at the applicant's request in view of the fact that her lawyer was unable to attend: one was requested on 14 May 2001 and the court adjourned the case until 9 October 2001 and one was requested on 8 October 2001 and the court adjourned the case until 5 November 2001. On the latter date the hearing of the case commenced.

15. The hearing was fixed for 10 December 2001 and then was adjourned at the applicant's request until 14 January 2002 since her lawyer was unable to attend due to hearings he had in other cases. The court was reluctant in granting the request in view of the fact that the case had been pending before it for a while. It noted that the hearing had been fixed to take place more than a month before and that the applicant's lawyer should have informed the court at the time that he had other hearings or he should not have taken on other hearings on the same date giving priority to the present case which had been pending for a longer time before the courts.

16. On 14 January 2002 the case was adjourned until 18 February 2002 at the parties' request. The hearing continued on the latter date and was concluded on 21 June 2002. Within this period four adjournments took place; two at the defendants' request, one at the applicant's request and one at the parties' request.

17. The only oral evidence heard at the trial was that of the applicant's valuation expert. This expert gave evidence as to his assessments of the diminution in the property's value due to the limitations imposed and of the compensation that should be granted. Using the comparative method of analysis, the expert concluded that if the property had been granted the same building density coefficient applicable to neighbouring plots, its value would have been CYP 29,224. However, the actual market value of the plot

was CYP 4,895 due to the lower coefficient. Consequently, the property's value had diminished by CYP 24,329.

18. The defendant authorities contested the applicant's argument that the value of the plot had been diminished and the manner in which the applicant's expert had carried out his assessment.

19. On 13 December 2002 the District Court of Larnaca delivered its judgment. The court pointed out that the requested planning permit had been refused because the proposed construction would cover 17 per cent of the relevant plot. This exceeded the building density coefficient applicable for development purposes. The applicant had not proved that it was this refusal that caused diminution in the property's value. She had not put forward any evidence establishing that the planning authorities had acted outside the scope of the provisions of the Town Planning Scheme or applied this scheme disproportionately so as to cause her damage by refusing her application. Furthermore, the applicant had not challenged the Town Planning Scheme. The court considered that any reduction in the property's value had been due to its inclusion in 1981 in Zone Z4. However, it was an established fact that the applicant had not challenged this. Moreover, the property was subsequently included in a zone with a higher coefficient allowing for better chances of development from what was previously envisaged. Therefore, the value of the property had not been reduced due to the change in the applicable zones.

20. In addition, the court considered that applicant's expert's valuation was not safe. In this connection it noted that it did not provide an estimate of the property's value before its inclusion in the planning zone where it was at the relevant time or determined the value of the property on the market at the relevant time and that comparisons were made with plots in different zones with higher building density coefficients.

21. Finally, the court observed that the defendants had not pursued their claim that the property had been affected by expropriation; during the hearing it had been admitted that no part of the property had been registered in the Government's name due to expropriation.

3. Proceedings before the Supreme Court

22. On 20 January 2003 the applicant lodged an appeal (*no. 11571*) with the Supreme Court challenging the findings of the first instance court. The applicant claimed, *inter alia*, that the failure of the authorities to award her compensation was contrary to Article 23 of the Constitution and Article 1 of Protocol No. 1 to the Convention.

23. The appeal was heard on 25 June 2004.

24. On 20 December 2004 the Supreme Court delivered its judgment upholding the findings of the District Court of Larnaca. The court found that it had not been established that a possible reduction was the consequence of the rejection of the applicant's application for a planning permit. If any reduction had occurred to the property's value this would have been due to

its prior inclusion in Zone Z4 in 1981 and thus, before the application of the Town Planning Scheme of 1990 on which the District Planning Office had based its decision to dismiss the application. However, the applicant had never contested the inclusion of the property in the above zone on the basis of Article 23 of the Constitution guaranteeing the right to property. Furthermore, the court noted that the applicant had not contested the lawfulness of the decision to establish zones before it nor before the first instance court. It also observed that it was an established fact that the neighbouring properties which were located opposite the applicant's property towards the beach, belonged to a different planning zone, with much higher building density coefficients ranging from 20 to 30 per cent. Finally, the court considered that it was unnecessary to examine the ground of appeal concerning the calculations of the applicant's expert, in view of its findings that there had not been a reduction in the value of the property.

II. RELEVANT DOMESTIC LAW

25. Article 23 of the Cyprus Constitution, in so far as relevant, provides as follows:

“(1) Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such a right. The right of the Republic to underground water, minerals and antiquities is reserved.

(2) No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

(3) Restrictions or limitations which are absolutely necessary in the interests of public safety or public health or public morals, or town and country planning or the development and use of any property for the promotion of the public benefit or for the protection of the rights of others, may be imposed by law on the exercise of such a right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of the property; in case of disagreement, such compensation is to be determined by a civil court”.

THE LAW

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

26. The applicant 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 ... hearing within a reasonable time by [a] ... tribunal...”

A. Admissibility

27. The applicant considered that all the proceedings amounted to one set of proceedings and, thus, that they should all be taken into account when assessing the length of the proceedings.

28. The Government considered that the proceedings started on 6 December 1991 when the applicant lodged a hierarchical recourse with the Council of Ministers.

29. The Court notes that there are in fact two sets of proceedings at issue in the present case. The first set of proceedings took place before the District Planning Office and the Ministry of the Interior which examined her application for a planning permit. The second set of proceedings concerned the applicant's application for compensation in respect of loss suffered due to the refusal of her application for a planning permit.

30. Although both sets of proceedings concerned the applicant's property they constituted distinct proceedings with a different cause of action and were examined separately by the authorities. Accordingly, the Court cannot accept the applicant's argument in this respect and will proceed to examine each set of proceedings individually.

1. *Proceedings concerning the planning permit*

31. The Court observes that these proceedings began on 16 October 1991 with the filing of the application for a planning permit and ended on 18 February 1993 with its dismissal by the Ministry of Interior (see paragraph 9 above).

32. It follows that this part of the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

2. *Proceedings concerning compensation*

33. The Court considers that the period to be taken into consideration began on 3 January 1997 when the applicant lodged a civil action (no. 55/97) before the District Court of Larnaca challenging the decision of the Ministry of the Interior refusing her claim for compensation, as it was only then that a “dispute” within the meaning of Article 6 § 1 arose, (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). It ended on 20 December 2004 when the Supreme Court delivered its judgment dismissing her appeal. It thus lasted seven years, eleven months and eighteen days for two levels of court jurisdiction.

34. The Court finds 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

35. The applicant complained about the protracted length of the proceedings. In this respect, she argued, *inter alia*, that the Cypriot judicial system suffered from certain weaknesses that prevented it from dealing with cases within reasonable time. In particular, the applicant pointed out that the domestic courts had limited working hours, were unable to try cases on a day-to-day basis, granted extensive adjournments and allowed excessive time to parties to comply with interim steps such as the filing of pleadings. She further noted that there were not enough judges to deal with the increasing case load.

36. The Government maintained that the case had been complicated and that the applicant had contributed to the duration of the proceedings.

37. 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).

38. As regards the first instance proceedings, the Court notes that although the case was pending before the Larnaca District Court for just under six years, the applicant contributed considerably to the prolongation of the proceedings. In particular, the Court observes that several adjournments were granted at her lawyer's request and at the request of both parties (see paragraphs 14-16 above).

39. Furthermore, the Court notes that it took the defendants over three years and five months to file their defence (see paragraph 12 above). In this connection, the Court notes that the plaintiff did not at any time apply for a judgment against the defendants in default of pleading. However, it considers that the District Court was responsible to a great extent for this delay. It took the Registrar of that court approximately two years and four months to send a notice to the defendants concerning their failure to file their defence (*ibid*). Following this the court granted both adjournments requested by the defendants (*ibid*). As a consequence there was a significant period of inactivity in the proceedings.

40. In respect of the appeal proceedings, the Court observes that although the appeal was lodged on 20 January 2003, the case was heard approximately one year and five months afterwards, on 25 June 2004 (see paragraphs 22-23 above). This delay has not been explained by the Government. The above period presents a substantial delay, bearing in mind

the overall length of the appeal proceedings of one year and eleven months, including the time it took the Supreme Court to prepare and deliver its judgment (see paragraph 24 above).

41. In conclusion, having taken into account the circumstances of the case and the overall duration of the proceedings, the Court finds, 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

42. The applicant complained of a lack of an effective remedy within the meaning of Article 13 of the Convention in respect of the excessive length of the 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

43. 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

44. The Government submitted that effective remedies were available to the applicant at the domestic level concerning her claim under Article 6 § 1 of the Convention. They noted that there was an established remedy resorted to by many litigants. They did not provide further details in this respect.

45. The applicant contested the Government's arguments. She submitted that no effective remedy existed in relation to her complaint. In this connection, she referred to the Court's judgment in the case of *Tsaggaris v. Cyprus* (no. 21322/02, 19 January 2006) in which the Court rejected the Government's submissions that an effective domestic remedy was available for length complaints.

2. The Court's assessment

46. 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).

47. In the present case, the Court notes that the Government have only made very general statements concerning the availability of remedies in respect of the applicant's complaint, without specifying what these remedies actually are. They have not referred to any legal provisions or cited any examples of established case-law on the availability of relief -either preventive or compensatory- for the delays that occurred in the proceedings and their consequences (*Kudła v. Poland* [GC], no. 30210/96, § 159, ECHR 2000-XI).

48. In these circumstances, the Court considers that the Government have failed to show that an effective domestic remedy was available to the applicants in respect of the length of the domestic proceedings.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant complained that the extensive restrictions imposed on her property were tantamount to unlawful *de facto* expropriation of her property and/or disproportionate control of its use without compensation, contrary to Article 1 of Protocol No. 1. She further complained of a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 since the restrictions imposed on her property were not imposed on neighbouring properties which, in contrast to her property, had a building density coefficient of 30 per cent and could be used for residential purposes. Finally, she claimed that there was no effective remedy as required by Article 13 of the Convention in respect of her aforementioned complaints.

Admissibility

50. As regards the applicant's complaint under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14, the Court notes that in so far as the complaint concerns the refusal of the authorities to grant her a planning permit, the applicant did not challenge the decision of the Ministry of the Interior by way of administrative recourse to the Supreme Court. Consequently, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

51. To the extent that the applicant is complaining about the lack of compensation for the diminution in the value of her property as a result of the refusal of the planning permit application, the Court notes that the domestic courts found that such a diminution had not been established. On the contrary they held that if any diminution had occurred at any time that would have been when the property had been included in zone Z4 in 1981. However, the applicant failed to challenge the inclusion of the property in

that planning zone by way of an administrative recourse at the relevant time invoking Article 23 of the Constitution or before the courts in the proceedings currently under examination. She also failed to challenge the subsequent inclusion of the property in zone Δα2 in 1990 and the lawfulness of the Town Planning Scheme in this respect. Furthermore, the domestic courts pointed out that the plot's subsequent inclusion in the latter zone on the basis of the Town Planning Scheme had actually improved its development prospects since this zone was characterised by a higher building density coefficient.

52. Having regard to the above, the Court considers this part of the application does not disclose any appearance of a violation of the Convention and must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

53. Finally, the Court notes that Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (*Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p.23 § 52; *Voyager Limited v. Turkey* (dec.), no. 35045/97, 4 September 2001, and *Ivison v. the United Kingdom* (dec.), no. 39030/97, 16 April 2002). The Court has found above that the applicant's complaints under Articles 14 of the Convention and 1 of Protocol No. 1 are manifestly ill-founded. For similar reasons, the applicant does not have an “arguable claim” for the purposes of Article 13 of the Convention, and the latter provision is therefore inapplicable in the present case (see, *Ellersiek v. Germany* (dec.), no. 77151/01, 23 June 2005).

54. Accordingly, this complaint is also manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed restitution of her rights under Article 1 of Protocol No. 1 to the Convention. She claimed the amount of CYP 24,330 plus interest in respect of pecuniary damage. This sum represented the diminution in the value of the applicant's property. She further claimed CYP 25,000 plus interest as non-pecuniary damage.

57. The Government contested these claims.

58. The Court does not discern any causal link between the violations 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 her EUR 4,000 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant also claimed CYP 10,000 plus interest for the costs and expenses incurred before the domestic courts, which included legal fees, fees for valuation and costs that had been granted against her. She further claimed CYP 5,750 for those incurred before the Court. In her observations, the applicant included an itemised breakdown of the work involved and further, submitted two receipts for the total amount of CYP 550 and a letter from her lawyer requesting her to pay the sum of CYP 5,200.

60. The Government contested these claims.

61. 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.

C. Default interest

62. 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 complaints under Articles 6 § 1 and 13 of the Convention concerning the length of the proceedings and the lack of remedy in this respect 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* that there has been a violation of Article 13 of the Convention;
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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) for costs and expenses, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President