



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

FIRST SECTION

CASE OF ARESTI CHARALAMBOUS v. CYPRUS

(Application no. 43151/04)

JUDGMENT

STRASBOURG

19 July 2007

FINAL

19/10/2007

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 Aresti Charalambous 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 N. VAJIĆ,

Mr A. KOVLER,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 28 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 43151/04) 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 Aresti Charalambous (“the applicant”), on 17 November 2004.

2. The applicant was represented by Drakos S. & Associates, lawyers 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 under Articles 6 § 1 and 12 of the Convention 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1972 and lives 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 Family Court of Nicosia

6. On 14 August 1997 the applicant married a Romanian citizen. On 28 September 1998 he filed a petition for divorce (no. 382/98) with the Family Court of Nicosia.

7. On 16 October 1998 the applicant filed an *ex parte* application for leave to publish the divorce petition in an English daily newspaper. Leave was granted by the court on 19 October 1998.

8. On 24 November 1998 the court fixed the case for mention for 21 December 1998 and instructed the counsel of the applicant's former wife (hereinafter "the respondent") to file her defence by that date. This was filed on 2 March 1999.

9. On 15 December 1999 the respondent filed an application raising certain preliminary points of law to be tried before the main petition. The application was set for 21 December 1999 and then for 31 January 2000. In the meantime, on 27 January 2000, the applicant filed an objection to the application.

10. From 31 January 2000 until 23 October 2000 both the main divorce and interim proceedings were adjourned eight times. Two of these adjournments were by the court itself: from 15 May 2000 until 22 May 2000 and from 23 September 2000 until 23 October 2000. It appears that the remaining adjournments were by the parties' mutual agreement.

11. During the above period, on 21 July 2000, a deportation order was issued against the respondent by the immigration authorities. On 4 September 2000 the respondent filed an administrative recourse before the Supreme Court (first instance administrative jurisdiction) challenging the order, requesting an interim application for the suspension of the deportation order in order to be able to attend the divorce proceedings and testify before the Family Court and a declaration recognising her right to have her residence permit renewed.

12. On 23 October 2000 the respondent withdrew her application of 15 December 1999 and upon agreement by both parties the hearing of the divorce petition was adjourned until 19 December 2000.

13. The hearing of the petition commenced on 19 December 2000 and was completed on 13 March 2001. Three hearing sessions were held with one adjournment at the request of the respondent's lawyer.

14. In the meantime, on 5 March 2001, the Supreme Court delivered an interlocutory judgment and rejected the respondent's recourse. The Supreme Court noted that the respondent's residence permit had expired on 7 September 1998 and that since then she had been staying in Cyprus without a permit. Nonetheless, she had not been deported pending the proceedings in another recourse she had filed against the administrative authorities' decision not to grant her another permit. This recourse had been rejected by the Supreme Court on 5 July 2000 and this was the reason that

the deportation order of 21 July 2000 had been issued. Furthermore, the Supreme Court observed that to grant the respondent her application for an interim order for the suspension of the deportation order would in essence result in the grant of permission to stay, which was outside the competence of the Court. The right of any person, whether Cypriot or alien, to be present at proceedings before a court, was not related to the question of permission to stay. The applicant, in her recourse, had linked the two, but the need for her to be present at the trial before the Family Court would be regulated by the requirements of the trial and not according to a general obligation of the Republic to grant her permission to stay in the Republic for the duration of the trial, as she asserted.

15. The respondent was deported on 7 March 2001.

16. On 13 March 2001 the Nicosia Family Court issued an ex-tempore decision granting the applicant's divorce petition.

B. Proceedings before the Supreme Court

17. On 23 April 2001, the applicant's former wife who had been deported (hereinafter “the appellant”), filed an appeal (no. 137/01) before the Supreme Court (Family Court Appeal Jurisdiction). The minutes of the first instance proceedings were received by the Supreme Court on 23 July 2001.

18. On 3 October 2001 the applicant filed an application for security of costs. The court fixed this application for hearing for 9 November 2001. On the latter date, the court fixed the application for further directions for 5 December 2001 and instructed the appellant to file her written objection by the above date. This was filed on 4 December 2001.

19. On 5 December 2001 the application was fixed for hearing for 11 January 2002.

20. In the meantime, on 23 December 2001, the appellant filed the outline of her address.

21. On 11 January 2002 the court heard the appellant's objection to the security of costs application and it reserved its decision on the matter. It also fixed the appeal proceedings for pre-trial for 8 November 2002.

22. In the meantime, on 27 June 2002, the court delivered its decision concerning the application for security of costs.

23. On 5 November 2002 the appellant filed her application for leave to amend her grounds of appeal. This was granted by the court on 8 November 2002. On the latter date, the parties were also directed to file their amended notices of appeal and the outlines of their addresses.

24. The appellant filed her amended grounds of appeal on 18 November 2002 and the applicant filed his written address outline on 6 February 2003.

25. On 27 May 2003 the Supreme Court fixed the appeal case for hearing for 29 May 2003. On the latter date the appellant's counsel made an

oral request for the exclusion of one of the judges from the composition of the court. The specific judge had rejected her administrative recourse against the deportation order (see paragraph 14 above). Consequently, the hearing was adjourned until 8 July 2003 at the appellant's request.

26. On 7 July 2003 the appellant's counsel requested a fifteen-day adjournment because of health problems. On 9 July 2003 the Supreme Court granted the adjournment until 11 September 2003.

27. On 18 September 2003 the Supreme Court rejected the appellant's request of 29 May 2003.

28. The appeal was heard on 2 October 2003.

29. On 4 December 2003 the court delivered its judgment. It upheld the appeal and set aside the first instance judgment. It found that the appellant's right to a fair trial had been violated. This was due to the fact that the immigration authorities had not allowed her to remain in Cyprus for the purposes of the trial whilst the Nicosia Family Court had continued with the case despite having being informed of the respondent's deportation. The Supreme Court noted that the Family Court should have adjourned the case and indicated to the immigration authorities to allow the respondent to return for a few days to Cyprus in order to enable her to be present at the proceedings and to defend her case. The Supreme Court ordered a retrial by a different composition of the Family Court.

C. Retrial Proceedings before the Family Court

30. On 23 December 2003 the applicant's counsel applied for a retrial of the divorce petition.

31. On 27 January 2004 the hearing of the divorce petition was set for directions for 10 February 2004.

32. In the meantime, on 4 February 2004, the respondent filed an application for leave to amend her defence.

33. On 10 February 2004 the court fixed the interim application and the divorce petition for directions for 17 February 2004.

34. In the meantime, on 13 February 2004, the respondent filed a second application for leave to amend her defence. On 17 February 2004 she withdrew her application of 4 February 2004 and the court granted her application of 13 February 2004. Subsequently, the court fixed the main divorce proceedings for hearing for 16 March 2004.

35. The amended defence and counter-claim were filed on 1 March 2004.

36. From 16 March 2004 until 18 May 2004 the proceedings were adjourned twice consecutively. Both adjournments were at the request of the respondent's lawyer because his client could not appear before the court as the immigration authorities had not made the necessary arrangements for her to come to Cyprus.

37. A hearing was held on 18 May 2004 and the court granted the divorce petition on the same day.

THE LAW

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

38. 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...”

39. The Government contested that argument.

40. The period to be taken into consideration began on 28 September 1998 and ended on 18 May 2004. It thus lasted five years, seven months and twenty-one days for three instances over two levels of jurisdiction.

A. Admissibility

41. 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

42. The applicant complained about the protracted length of the proceedings. Amongst other things, he noted that the divorce petition would have been easily and quickly determined if not for the errors committed by the domestic authorities in handling the deportation of the applicant's former wife.

43. The Government submitted that the domestic courts had examined the case with reasonable efficiency and that there had not been any unreasonable delay.

44. 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). In cases

relating to civil status, what is at stake for the applicant is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

45. The Court finds, firstly, that the nature of the case was not, as such, complex. Furthermore, although certain of the adjournments, in particular during the first instance proceedings, were by the parties' mutual agreement (see paragraph 10 above), on the whole there were no major delays attributable to the applicant. As regards the conduct of the authorities, the Court notes that although the retrial proceedings were particularly prompt (four months and twenty five days), there were considerable delays at the first instance and appeal stages. In particular, in the first instance proceedings there was one significant period of inactivity of more than nine months between 2 March 1999 and 15 December 1999 (see paragraphs 8-9 above). No explanations have been given by the Government in this respect. Furthermore, at the appeal stage, there was a period of inactivity in the proceedings of approximately ten months between 11 January 2002 and 5 November 2002 (see paragraphs 21 to 23 above). The only event that appears to have happened within this period was the delivery of the Supreme Court's interim decision on the applicant's interim application for costs (see paragraphs 21 and 22 above). Even in this regard the Court notes that it took the Supreme Court over five months to deliver this decision. In addition, the Court observes that the intervals between fixing the appeal also had an impact on the overall length of the appeal proceedings (see paragraphs 17, 18, 24 and 25 above).

46. The Court notes that while the total length of proceedings over three instances, two of them of the same level of jurisdiction, does not appear on the face of it to be excessive, it considers that the periods of inactivity which occurred both at first instance and at the appeal stage contributed significantly to the prolongation of the proceedings. In the Court's opinion this was an unjustified delay particularly bearing in mind the nature of the proceedings and the particular diligence required in such cases (see paragraph 44 above).

47. 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 *Frydlender*, § 45, cited above).

48. 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 8 OF THE CONVENTION

49. The applicant complained that as a result of the excessive length of the divorce proceedings his right to respect for his family life under Article 8 of the Convention was violated. In particular, he submitted that he had not been able to re-marry and have a family. This provision reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

50. The Court reiterates that failure to try an action within a reasonable time can on occasions have repercussions as regards respect for some other right guaranteed by the Convention (see, *inter alia*, *Buchholz v. Germany*, judgment of 6 May 1981, Series A no. 42, p. 22, § 65).

51. In the present case, the applicant complains he had not been able to re-marry and establish a new family life during the divorce proceedings. In this connection, the Court observes that by guaranteeing the right to respect for family life, Article 8 of the Convention presupposes the existence of a family (see, amongst other authorities, *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, p. 14, § 31). However, the applicant does not make any reference to an existing family for which he could claim the right to respect under this provision (see for example, *Berlin v. Luxembourg*, no. 44978/98, § 64, 15 July 2003).

52. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 12 OF THE CONVENTION

53. The applicant complained of a violation of his right to marry and found family under Article 12 of the Convention as a result of the protracted length of the proceedings. This provision provides as follows:

“Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

54. The applicant claimed that throughout the divorce proceedings he had been considered as married to the respondent. Consequently, he had been unable to remarry and found a family with his partner at the time during this long period. He submitted that his relationship had ended because he was unable to determine when he could remarry.

55. The Government contested that argument. In this respect, they submitted that Article 12 did not include the right to have one's marriage dissolved. In the alternative, they argued that the applicant could not assume that the divorce proceedings in his case would have resulted in the dissolution of his marriage nor had he submitted any evidence in support of his allegations that he had entered into a relationship with another woman who had then terminated the relationship for reasons related to the divorce proceedings.

56. The Court notes that if national legislation allows divorce, which is not a requirement of the Convention, Article 12 secures for divorced persons the right to remarry without unreasonable restrictions (see *F. v. Switzerland*, judgment of 18 December 1987, Series A no. 128, p. 18, § 38). The Court would not exclude that a failure to conduct divorce proceedings within a reasonable time could in certain circumstances raise an issue under Article 12 of the Convention. However, in the present case, bearing in mind all the circumstances and the overall length of the proceedings, the Court finds that the applicant's situation was not such that the very essence of that right was impaired.

57. Therefore, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 20,000 Cyprus pounds (CYP) in respect of non-pecuniary damage. He did not make a claim in respect of pecuniary damage.

60. The Government contested the claim.

61. The Court considers that the applicant must have suffered some non-pecuniary damage, such as frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, it awards the applicant EUR 4,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

62. The applicant claimed CYP 10,356 for the costs and expenses incurred before the domestic courts. He provided the Court with three bills of costs in this respect. The applicant also claimed CYP 12,050 for the costs and expenses incurred before the Court and provided a bill of costs in this respect. Finally, the applicant claimed VAT at a rate of 15 % on the above amounts.

63. 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.

64. 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 may be chargeable on that amount.

C. Default interest

65. 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 concerning the 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 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 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 amounts 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 19 July 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President