



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

FIRST SECTION

**CASE OF DOUGLAS v. CYPRUS**

*(Application no. 21929/04)*

JUDGMENT

STRASBOURG

17 July 2008

**FINAL**

***01/12/2008***

*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 Douglas v. Cyprus,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 June 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 21929/04) 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 Mr Derek Douglas (“the applicant”), who is a British and Cypriot national, on 1 June 2004.

2. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 11 January 2006 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government of the United Kingdom were also given notice of the application. They informed the Court that they did not wish to intervene in the proceedings.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1949 and lives in Nicosia. The applicant was married on 2 June 1974 in Nicosia. His marriage was dissolved on 16 March 1998.

5. On 6 August 1999 his former wife lodged an application (no.143/99) with the Nicosia Family Court for adjudication of certain property disputes between her and the applicant. On the same date the court issued an interim

injunction prohibiting the applicant from selling, transferring or otherwise disposing of certain of his properties consisting of an apartment, a plot of land and two bank accounts. On 7 January 2000 the applicant submitted his defence and counter-claims. He claimed that he and his former wife had entered into an agreement in 1997 for the settlement of any potential property dispute. On 3 April 2000 his former wife filed her response to the applicant's defence, and her defence in respect of his counter-claim.

6. The case was adjourned on at least two occasions at the request of the applicant. The hearing of the interim order application began on 8 March 2002. On 19 November 2002 it was decided that the prohibitory injunction would remain in force pending the final determination of the proceedings. An amendment was made in respect of the applicant's plot of land, which would only be bound in respect of two thirds of the undivided share of the property.

7. On 28 November 2002, the applicant lodged an appeal against the injunction. He maintained that the court had erred in law in issuing it solely on the basis of the affidavit of his former wife and without further evidence substantiating her allegations. In another ground of appeal he complained about the delay that had occurred in the proceedings, which had severely restricted his professional activities.

8. On 12 March 2004 the Supreme Court dismissed the appeal and upheld the injunction as the applicant's former wife had entered into sufficient detail in her affidavit to justify non inclusion of further relevant documents. The court nevertheless expressed its concern about the delay in the proceedings.

9. The examination of the main application (no.143/99) by the Nicosia Family Court began on 26 September 2003. Of the 29 sittings held between 23 October 2003 and 18 November 2004 at least one was adjourned at the applicant's request.

10. On 11 March 2005, the Nicosia Family Court ordered the applicant to pay 41,000 Cypriot pounds (CYP) plus interest to his former wife. The court dismissed the applicant's submission that an agreement had been concluded between himself and his former wife. The counter-claim lodged by the applicant was dismissed in its entirety. Moreover, the court considered that the applicant's evidence had been unreliable and given in bad faith. It noted that he had been unable to control himself during the proceedings and had become disrespectful towards the court and his former wife's counsel.

11. On 11 April 2005, the applicant lodged an appeal with the Supreme Court.

12. On 13 April 2005, the applicant's former wife lodged with the Nicosia Family Court an application by summons requesting a 'garnishee order' (third party debt order). The application was set for hearing on

22 April 2005. On 28 April 2005 the applicant filed an objection and maintained that the application had been filed in bad faith.

13. On 28 April 2005 the applicant applied for suspension of the execution of the court's decision dated 11 March 2005, until the examination of his appeal. This was set for hearing on 19 May 2005. On 16 May 2005 the applicant's wife objected to his application as the applicant had not complied with the aforementioned court order.

14. On 17 June 2005 the Nicosia Family Court, following a hearing, dismissed the application for suspension of the court's decision dated 11 March 2005. The court declined to grant the requested order in light of the applicant's unreliability and the evident danger that his former wife would remain without a remedy in the event that the order was granted. The court rejected the applicant's allegations that the application was made in bad faith and found his claim that he would face considerable financial difficulties in the event of non suspension unsubstantiated. The application was accordingly dismissed with legal costs awarded to the applicant's former wife.

15. On the same date the court granted the garnishee order. Accordingly the applicant's bank was ordered to pay his former wife the amount of CYP 41,000 with 8% interest from 6 August 1999 until payment and expenses. The court ordered the applicant's former wife to guarantee the return to the applicant of the whole amount payable upon the execution of the court's decision dated 11 March 2005 in the event that his appeal was successful. The guarantee would be renewable until the completion of the appeal proceedings. On 27 June 2005, the applicant lodged an appeal with the Supreme Court against the decision of the Nicosia Family Court dated 17 June 2005.

16. On 23 March 2007 the Supreme Court granted the applicant's appeal against the family court's judgment of 11 March 2005 and against its order of 17 June 2005. It noted that the first-instance court had found the applicant an absolutely unreliable witness and his evidence was, as such, dismissed in its entirety. It further noted that the first-instance court had based its conclusion as to the applicant's reliability as a witness on various factors including his behaviour in and outside the court room. It was held that the first-instance court ought not to have taken those factors into account in the assessment of the applicant's evidence and therefore the case was remitted for a retrial, but only in respect of the former wife's claim over the applicant's plot of land.

17. On 29 February 2008 judgment was issued by the family court in favour of the applicant's former wife. The court noted that the proceedings had been delayed by the applicant, who failed to appear before the court on two occasions. It was found that no agreement had been concluded between the applicant and his wife as to any potential property dispute. Given his former wife's contribution to his enrichment during the period of their

wedlock it was held that she was entitled to a third of the value of his plot of land.

18. On 14 March 2008 the applicant lodged an appeal against the decision of the family court before the Supreme Court. These proceedings are currently pending.

## THE LAW

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

19. 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 6 August 1999 and has not yet ended. It has thus lasted 8 years and approximately 10 months for three levels of jurisdiction while a number of interim decisions were adopted at first instance and on appeal.

#### A. Admissibility

22. 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

23. 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).

24. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

25. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of justifying the delay in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

27. The applicant also complained under Article 8 of the Convention and Article 1 of Protocol No. 1 that the proceedings had infringed his right to the peaceful enjoyment of his possessions. He also invoked Articles 3, 6 § 3 (c), 7 and 13 of the Convention without further explanation and at the time of submission of his just satisfaction awards.

28. Having regard to all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the applicant’s rights and freedoms set out in the Convention or its Protocols.

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

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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.”

31. The applicant claimed CYP 671,200 in respect of pecuniary damage and CYP 200,000 in respect of non-pecuniary damage.

32. The Government contested these claims.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It also considers the applicant’s claim in respect of non-pecuniary damage excessive. Ruling on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage.

### C. Default interest

34. 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 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 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), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President