



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

FIRST SECTION

CASE OF MARANGOS v. CYPRUS

(Application no. 12846/05)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/05/2009

This judgment may be subject to editorial revision.

In the case of Stavros Marangos 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, *judges*,

Takis Eliades, *ad hoc judge*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 12846/05) 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, Mr Stavros Marangos (“the applicant”), on 15 March 2005.

2. The applicant, who had been granted legal aid, was represented by Mr S. Drakos, 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. The applicant alleged, in particular, that he had been denied access to court due to the lack of legal aid.

4. By a decision of 17 March 2006, the Court gave notice of the complaint concerning Article 6 of the Convention to the Government. It also decided, under Article 29 § 3 of the Convention, to examine the merits of the application at the same time as its admissibility.

5. Mr G. Nicolaou, the judge elected in respect of Cyprus, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed T. Eliades to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and lives in Nicosia. He is currently employed on a temporary basis at the Statistical Service of the Republic of Cyprus.

7. On 3 July and 9 August 2000 he made two applications for appointment in different sections of the civil service. On 10 July 2001 and 11 September 2001 both of his applications were refused by the Civil Service Commission on the ground that he had not performed his military service or been legally exempted from it.

8. On 21 September 2001 the applicant lodged a judicial review application before the Supreme Court challenging the relevant decisions of the Civil Service Commission. He contended, *inter alia*, that he had refused to perform his military service with the Cypriot National Guard as he was a homosexual and that for the determination of his sexual orientation he would have been subjected to degrading treatment contrary to Article 3 and 8 of the Convention.

9. In its interim decision of 24 February 2003 the court rejected an application for amendment of the applicant's pleadings. It noted that whether or not the applicant was entitled to be exempted from military service was not a contested issue in the pending proceedings and, as such, could not be examined. The issue under dispute in the proceedings before the court was the lawfulness of the decision by the Civil Service Commission dismissing the applicant's application for lack of fulfilment of the requirement of completion of military service.

10. On 17 October 2003 the Supreme Court rejected the judicial review application and made an order for costs against the applicant. It justified the rejection by referring to the reasons set out in its previous interim decision and, in particular, that the applicant did not meet one of the basic requirements for appointment to the Civil Service.

11. On 28 November 2003, the applicant lodged an appeal before the Supreme Court against its first-instance judgment. The grounds of appeal had been drafted by the applicant's representative. On 30 July 2004 the applicant filed his skeleton argument which had also been prepared by his representative. The appeal was set for a hearing on 9 October 2006.

12. Until that stage of the proceedings, the applicant was being represented by a lawyer of his choice, but due to his inability to settle outstanding legal fees he had to stop receiving legal assistance from his lawyer.

13. On 2 August 2004 he filed an application for legal aid claiming that the proceedings concerned the protection of his human rights and thus fell

within the scope of proceedings for which the grant of legal aid was envisaged by the Legal Aid Law 165 (I) of 2002.

14. On 4 October 2004, his application for legal aid was rejected by the Supreme Court, acting in a panel of five judges, which referred to the relevant provisions of the Legal Aid Law and explained that legal aid could only be provided in criminal proceedings, civil proceedings that concern determination of a litigant's human rights and proceedings lodged before the family courts. The proceedings introduced by the applicant, who sought judicial review under Article 146 of the Constitution of a decision refusing to appoint him in the civil service, did not constitute civil proceedings and, as such, his legal aid application had to be refused.

15. On 3 November 2006 the Supreme Court dismissed the applicant's appeal. The court referred to the arguments developed by the applicant's lawyer in the proceedings. It found that the issue of unconstitutionality had not been raised by the applicant's lawyer in accordance with the requirements set out in the relevant procedural provisions and case-law given that it had only been set out in a vague and imprecise manner in the application seeking judicial review. The court further took into account the points raised by the applicant's lawyer in his written address to the Court. It found that the vague suggestions made concerning unconstitutionality had no legal foundation and were irrelevant to the subject-matter of the judicial review application. No other ground for annulment of the relevant decision had been raised or shown.

II. RELEVANT DOMESTIC LAW

16. Article 146 of the Constitution of the Republic of Cyprus provides as follows:

“1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.

3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

4. Upon such a recourse the Court may, by its decision-

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned.

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared there under that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.”

17. Law 165 (I) of 2002 on Legal Aid provides, in so far as relevant, as follows:

“3. Legal aid shall be granted free of charge in the proceedings provided for in sections 4, 5 and 6 below, to the extent and under the conditions laid down therein.

4.- (1) This section applies-

(a) In criminal proceedings before a court, against any person, for an offence that he may have committed in violation of any legislative provision, for which an imprisonment sentence exceeding one year is provided for and includes preliminary interrogation and every other stage of interrogation or other procedure taking place before the commencement of subsequent criminal proceedings that relate to it;

(b) Except for the criminal proceedings provided for in paragraph (b) of subsection (1) of section 5 below, in any other proceedings before a court exercising its criminal jurisdiction.

(2) For the purposes of the application of this section, the term “court” means the District Court, Assize Court, Military Court and includes the Supreme Court, when examining any issue raised in criminal proceedings, in exercising its first- or second-instance jurisdiction.

(3) In the proceedings provided for in subsection (1) above, legal aid will be granted free of charge, and will include advice, assistance and representation.

5. (1) For the purposes of the application of this section, the term “proceedings for determined violations of human rights” means any:

(a) Civil proceedings before a court, at any stage, lodged against the Republic for damages sustained by a person due to determined violations of human rights; or

(b) Criminal proceedings lodged by any person where the offence in examination concerns determined violations of human rights.

(2) Legal aid will be granted, free of charge, to proceedings concerning determined violations of human rights.

(3) Legal aid granted by virtue of this section:

(a) In the case of civil proceedings lodged in the Republic or criminal proceedings, will include advice, assistance and representation; and

(b) In civil proceedings lodged outside the Republic, will include only advice.

(4) The Ministerial Council may, by an order published in the Official Gazette of the Republic, amend the Table.

6. (1) For the purposes of this section, the term “proceedings before a family court” means:

(a) Proceedings raised in respect of family relations on the basis of provision of bilateral or multilateral treaties to which the Republic has acceded; or

(b) Proceedings concerning parental care, alimony, recognition of a child, adoption, proprietary relations of spouses and any other marital or family dispute.

(2) Free legal aid is provided for in proceedings before a family court, and includes advice, assistance and representation.”

THE LAW

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

18. The applicant complained that the denial of legal aid deprived him of a fair trial within the meaning of Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

19. The Government contested that argument.

A. Admissibility

1. The parties' submissions

20. The Government maintained that the applicant had not exhausted all effective domestic remedies as required by Article 35 § 1 of the Convention which states:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

21. They maintained that the applicant could have filed an appeal against the Supreme Court’s judgment of 4 October 2004 but failed to do so. They argued that the Supreme Court, in examining the legal aid application, albeit in a panel of five judges, was in fact exercising its first-instance jurisdiction. The applicant could have filed an appeal against that decision, which could have been determined by the Supreme Court composed of at least five other judges exercising the Supreme Court’s appellate jurisdiction. They therefore invited the Court to declare the application inadmissible for non-exhaustion of the available domestic remedies.

22. The applicant maintained, in reply, that the course of action proposed by the Government was erroneous as no appeal lies under the domestic legal order against a decision of five judges of the Supreme Court. He stated that the Government had referred to an unknown and hypothetical procedure which was contradicted by the relevant judgment of the Supreme Court itself, which stated clearly on its first page that it was adopted by its secondary jurisdiction, from which no appeal lies. The applicant explained that on this occasion the Supreme Court had exercised its functions on a first- and second-instance jurisdiction simultaneously, as was common practice in Cyprus. Hence, he invited the Court to dismiss the Government’s objection.

2. *The Court’s assessment*

23. The Court is mindful that the principle that an applicant must first make use of the remedies provided by the national legal system before applying to the European Court is an important aspect of the machinery of protection established by the Convention (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV). The European Court of Human Rights is intended to be subsidiary to the national systems safeguarding human rights (*ibid.*, §§ 65-66) and it is appropriate that the national courts should initially have the opportunity to determine questions of the compatibility of domestic law with the Convention and that, if an application is nonetheless subsequently brought to Strasbourg, the European Court should have the benefit of the views of the national courts, as they are in direct and continuous contact with the forces of their countries. Moreover, it considers that it is the domestic courts which are in a position to interpret the relevant requirements of the domestic legislation and procedures.

24. However, the Court takes note that the Supreme Court’s judgment explicitly specified that it was acting at a second-instance level, which makes it clear, for the purposes of the relevant national law, that the Supreme Court had acted as a court of final instance adopting a decision

which was not subject to any appeal. Moreover, the Government have failed to provide the Court with any domestic case-law showing that the course of action that they referred to had been, in fact, possible under the relevant domestic procedure.

25. The Court therefore rejects the Government's objection on grounds of non-exhaustion of domestic remedies. Moreover, no other ground for declaring it inadmissible has been established. It therefore declares the application admissible.

B. Merits

1. The parties' submissions

(a) The Government

26. The Government maintained that the Supreme Court had rightly dismissed the applicant's legal aid request since legal aid was not available under the domestic law for administrative proceedings. They submitted that Article 6 § 1 did not place an obligation to provide legal aid for every dispute relating to a "civil right". The issue to be determined in the present case was whether the lack of legal aid deprived the applicant of a fair trial and breached his right to present his case effectively in the appeal proceedings he had lodged. However, none of the factors set out in the Court's relevant case-law were applicable in the present circumstances, where the lack of legal aid did not operate to deprive the applicant of a fair trial.

27. The applicant had had legal representation throughout the first-instance proceedings. He had applied for legal aid for the first time only after the filing of his appeal, at a stage where the only remaining steps were the filing of the skeleton argument of his address to the court and the hearing. His notice of appeal and his written skeleton argument had already been prepared by his lawyer who had appeared before the Supreme Court at the pre-trial stage of the appeal proceedings. The domestic law did not require representation by counsel in appeal proceedings and, therefore, the applicant could appear at the hearing of his case in person. The hearing would be restricted to the grounds set out in the notice of appeal and in the written skeleton argument that had been prepared by the applicant's counsel. The appeal procedure concerning the hearing was not difficult to follow and the applicant was a well-educated person perfectly capable of comprehending the procedure and formulating arguments when addressing the court at the hearing. Moreover, the case was not complex as it did not involve disputed facts, witnesses or questions of admissibility or evaluation of evidence. The subject matter of the judicial review application was the

legality of the decision of the administrative authorities to refuse the applicant's application for appointment to the public service on the ground that he had neither completed nor been discharged from his military obligations: a fact that was not disputed by the applicant.

28. Judicial review proceedings under Article 146 of the Constitution did not usually require the appearance of witnesses; the procedure was simple and entailed the filing of an application and opposition followed by written addresses and oral clarifications. All material concerning the first-instance proceedings had been placed before the appellate court, which was to determine whether the first-instance judgment was wrong on the grounds alleged in the applicant's notice of appeal and expounded in his written outline prepared by counsel. Hence, the lack of legal aid did not, in the present circumstances, infringe the very essence of the applicant's right of access to court.

29. In not providing for legal aid in respect of judicial review actions challenging administrative decisions the law intended to achieve the legitimate aim that the provision of public funds be prioritised so as to ensure its availability in proceedings in which an applicant was most likely to be in need of legal representation. Because of the nature of such proceedings, the court could examine certain matters *ex officio*, such as the legality and competence of the administrative authority to take the impugned decision. The court furthermore could, at any stage of the proceedings, order the production of any documentary or other evidence which it considered relevant for the proper exercise of its jurisdiction. In addition, the lack of legal aid in administrative judicial proceedings was counterbalanced by low legal fees, which ensured effective access to court.

(b) The applicant

30. The applicant agreed with the Government that the relevant test according to the Court's case-law was whether provision by the State of assistance of a lawyer was indispensable for effective access to court because of the complexity of the procedure or of the case. He stated, however, that in fact the administrative proceedings had been complex, as had the merits of his case. Although he was educated, he was not familiar with court proceedings and had never represented himself in any court of law.

31. The fact that the Government had limited financial resources could not be a permissible reason for restriction of the applicant's right of access to court. Given the fact that the applicant had had to meet the costs of his lawyers and, in the eventuality that he lost his case, also the costs of the Attorney General's Office, meant in reality that without legal aid he had been deprived of effective access to court.

2. *The Court's assessment*

32. The Court reiterates that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to a court in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32). It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side (see, among many other authorities, *De Haes and Gijssels v. Belgium*, 24 February 1997, § 53, *Reports of Judgments and Decisions* 1997-I).

33. The right of access to a court is not, however, absolute and may be subject to restrictions, provided that these pursue a legitimate aim and a reasonable relationship of proportionality exists between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93). It may, therefore, be acceptable to impose conditions on the grant of legal aid based, *inter alia*, on the financial situation of the litigant or his or her prospects of success in the proceedings (see *Munro v. the United Kingdom*, no. 10594/83, Commission decision of 14 July 1987, DR 52). In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired.

34. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants the above rights. The institution of a legal aid scheme constitutes one of those means but there are others, such as for example simplifying the applicable procedure (see *Airey*, cited above, § 26, and *McVicar v. the United Kingdom*, no. 46311/99, § 50, ECHR 2002-III).

35. The question whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts and circumstances of each case and will depend, *inter alia*, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively (see *Airey*, § 26; *McVicar*, §§ 48 and 50; *P., C. and S. v. the United Kingdom*, no. 56547/00, § 91, ECHR 2002-VI; and also *Munro*, cited above).

36. Moreover, it is not incumbent on the State to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the adversary (see *De Haes and Gijssels*, § 53, and also *McVicar*, §§ 51 and 62, both cited above).

37. The Court must examine the facts of the present case with reference to the above criteria.

38. The Court notes firstly that the applicant was represented at the first-instance proceedings by the representative of his choice, who continued to represent him at the initial stages of the proceedings on appeal. The applicant's representative had, in fact, drafted the applicant's grounds of appeal and skeleton argument for his address before the appellate court. The latter contained the only issues pending for determination before that court. The Court also takes note of the fact that the applicant was entitled to appear in person before the Supreme Court and could address the court on the basis of the skeleton argument which had already been drafted by his representative.

39. Lastly, the Court considers that the applicant has failed to point to any particular detriment he had suffered as a result of not being represented at the hearing of his appeal or at any subsequent stage of the appeal proceedings. It further notes that the Supreme Court referred extensively to the arguments raised by the applicant's lawyer at an earlier stage of the proceedings before proceeding to dismiss the appeal.

40. In view of these considerations, the Court concludes that in the present circumstances the applicant was indeed afforded reasonable opportunity to present his case and, as such, had not been deprived of the essence of his right of access to a court.

41. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Malinverni, joined by Judges Kovler and Spielmann is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE MALINVERNI,
JOINED BY JUDGES KOVLER AND SPIELMANN

(Translation)

1. I voted with all my colleagues against finding a violation of Article 6 for the reasons set out, in particular, in paragraphs 32 to 41 of the judgment. In the instant case the applicant was indeed represented by a lawyer at first instance and during the initial stages of the appeal proceedings. The lawyer also outlined for him the main arguments on which to base his address before the court (see paragraphs 38-41).

2. I am, nevertheless, of the opinion that the judgment does not address the most important issue raised by this case, namely the granting of free legal assistance in proceedings before the administrative courts.

3. The reason advanced by the Supreme Court for refusing legal aid to the applicant was that, under the “relevant provisions of the Legal Aid Law ... legal aid could only be provided in criminal proceedings, civil proceedings that concern determination of a litigant’s human rights and proceedings lodged before the family courts”. The Supreme Court went on to find that “[t]he proceedings introduced by the applicant, who sought judicial review under Article 146 of the Constitution of a decision refusing to appoint him in the civil service, did not constitute civil proceedings and, as such, his legal aid application had to be refused” (see paragraph 14).

4. The same argument was put forward by the Government in their memorial to the Court, in which they stated that: “the Supreme Court had rightly dismissed the applicant’s legal aid request since legal aid was not available under the domestic law for administrative proceedings” (see paragraph 26).

5. Hence, the Cypriot legislation on legal aid, although it dates back only to 2002, rules out the granting of legal aid in public-law proceedings. In my view, a question arises as to the conformity of such legislation with the requirements of Article 6 of the Convention as regards the determination of civil rights and obligations, within the autonomous meaning of that expression.

6. Admittedly, Article 6 of the Convention does not make explicit provision for free legal assistance except in criminal proceedings (Article 6 § 3 (c)). However, since the right to such assistance is designed to guarantee equal opportunities for the parties before the courts, so that the latter are accessible to all citizens irrespective of their financial situation, there is *a priori* no reason why it should not be made available in spheres other than criminal law.

7. For that reason the Court, on the basis of Article 6 § 1 of the Convention, has accepted that “despite the absence of a similar clause [to Article 6 § 3 (c)] for civil litigation, Article 6 § 1 may sometimes compel

the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court” (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32; see also *Aerts v. Belgium*, 30 July 1998, §§ 57-60, *Reports of Judgments and Decisions* 1998-V, and *Gnahoré v. France*, no. 40031/98, § 38, ECHR 2000-IX).

8. In truth, the right to free legal assistance should not depend either on the legal nature of the applicable provisions or on the procedural sphere concerned. It should be granted for all types of proceedings. In other words, the right to legal aid should depend solely on whether the applicant needs it in order to be in a position to defend his or her rights effectively.

9. In recent decades, administrative law has increased in importance and complexity, with the result that not only individuals, but also the administrative authorities, have an interest in ensuring that the former are represented in difficult cases by a competent lawyer.

10. In addition, the impartiality of the administrative authorities is often overestimated, if we consider that they are being asked to defend the public interest and at the same time to ensure that the individuals involved in the proceedings do not suffer damage as a result.

11. Finally, there is no justification for the lack of equality between impoverished persons involved in criminal or civil proceedings, who have access to the courts free of charge, and impoverished persons engaged in administrative proceedings, who have to pay their lawyers’ fees.

12. All these arguments militate in favour of extending legal aid to administrative-law proceedings, provided of course that Article 6 of the Convention is applicable under its civil head and legal aid is indispensable in order to ensure effective access to a court by reason of the complexity of the procedure or of the case, or where for any other reason the interests of justice so require.