



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

FIRST SECTION

CASE OF MYLONAS v. CYPRUS

(Application no. 14790/06)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

06/07/2009

This judgment may be subject to editorial revision.

In the case of Mylonas v. Cyprus,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 14790/06) 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 Costas Mylonas (“the applicant”), on 3 April 2006.

2. The applicant was represented by Mr Ch. 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 13 September 2007 the President of the First Section decided to communicate the applicant’s complaint under Article 6 § 1 of the Convention concerning the length of the proceedings and the lack of remedies in that respect. Furthermore, the Court decided to communicate to the Government the applicant’s complaints as to the alleged repercussions of the length of the proceedings on the applicant’s rights under Articles 6 of the Convention (access to court) and 1 of Protocol No. 1. Applying Article 29 § 3 of the Convention, the Court 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 was born in 1952 and lives in Nicosia.

A. First instance proceedings

5. On 31 August 1995 the applicant filed an action before the District Court of Nicosia (no. 7992/95) under the Property Relations of Spouses and other Related Matters Law of 1991 (hereinafter “Law 232/91”) claiming recovery of part of the increase in his wife’s property by reason of his contribution during their marriage. An interim injunction was granted on that date in his favour.

6. In his affidavit of 31 August 1995 the applicant stated that the separation had started in June 1992 even though he and his wife were still living in the same house.

7. On 5 April 1996, following an amendment to Law 232/91 (see paragraph 49 below) the Nicosia Family Court became the competent court to adjudicate on the application. On 9 May 1996 the action was transferred to that court by virtue of (Amending) Law 34(1)/96, as an application (application no. 46/96; hereinafter “main application”).

8. On 13 June 1996 the main application and the interim injunction were adjourned until 19 September 1996 at the parties’ request. On that date the main application was adjourned until 17 October 1996.

9. On 17 October 1996 the court made the injunction absolute and fixed the case for mention for 21 November 2006. It ordered that the applicant file his statement of claim by that date.

10. On 21 January 1997 the applicant filed his statement of claim, on 26 June 1997 his former wife (hereinafter “the respondent”) filed her defence and counter-claim and on 14 October 1997 the applicant filed his reply and his defence to the counter-claim. It appears from the court record of the proceedings that the main application was fixed for mention several times in order to give time to the parties to file their pleadings.

11. In his statement of claim the applicant alleged that he had separated from his wife on the 22 September 1995. The respondent in her defence and counter-claim stated that the applicant had abandoned the family home on or around 22 September 1995 but that they had been separated since the summer of 1992 despite living under the same roof.

12. In the meantime, on 21 January 1997 a divorce order was issued by the Nicosia Family Court (divorce jurisdiction) dissolving the marriage.

13. On 16 October 1997 the court, at the parties’ request, fixed the main application for hearing for 15 January 1998. On the latter date, again at the parties’ request, the main application was fixed for mention for 19 February 1998. On the latter date it was adjourned three consecutive times until 12 November 1998, always at the parties’ request.

14. In the meantime an interim application was filed by the respondent on 9 November 1998.

15. On 12 November 1998 the interim application was fixed for mention for 19 November 1998 in order to settle the matter of the composition of the

court. It was fixed for mention, for the same reason, twice more until 3 December 1998 and then for 18 March 1999 at the parties' request. The main application was also fixed for hearing on the latter date.

16. On 18 March 1999 the hearing of the main application was adjourned until 10 June 1999 and the interim application was fixed for 13 May 1999 and then, on that date, for 10 June 1999.

17. On the latter date the interim application was fixed for hearing for 10 September 1999. The main application was also adjourned to 12 November 1999 as the applicant's lawyer had to attend another hearing.

18. On 10 September 1999 the parties requested that the interim application be fixed for mention the same day as the hearing of the main application. It was therefore adjourned until 12 November 1999.

19. On the above date the parties requested that the main application be fixed for scheduling for the purposes of reaching a friendly settlement. The court set down the main application for 20 January 2000.

20. On 18 January 2000 the respondent appointed a new lawyer.

21. On 20 January 2000 the applicant's lawyer requested additional time in order to examine the friendly settlement proposals made by the respondent. The main application was set for scheduling for 10 February 2000. On that date the applicant's lawyer informed the court that the friendly settlement negotiations had failed and requested that the application be set for hearing. At the parties' request the court fixed the main application for hearing on 21 April 2000.

22. On 10 March 2000 the applicant appointed a new lawyer.

23. On 20 April 2000 the court rescheduled the main application for 12 May 2000.

24. In the meantime, on 7 April 2000 the respondent filed an interim application which she withdrew on 12 May 2000. On the latter date the applicant requested additional time in order to file an application for the amendment of his statement of claim and that the main application be fixed for scheduling on 8 June 2000.

25. On 24 May 2000 the respondent filed another interim application.

26. On 8 June 2000 the applicant requested additional time in order to file an opposition to the interim application. The court fixed the main application and the interim application for scheduling on 22 June 2000. On that date the applicant requested an extension for filing the opposition. Both applications were then fixed for 30 June 2000.

27. On 30 June 2000 the applicant filed an application by summons to amend his statement of claim and requested an extension in order to file an opposition. The respondent also requested time to consider the possible amendment of the interim application. The court fixed the interim applications and the main application for 28 September 2000.

28. On the above date the court adjourned the main application for scheduling on 6 October 2000 as the presiding judge was absent for health reasons.

29. On 6 October 2000 the parties were granted leave to file amended pleadings and the main application was fixed for scheduling on 8 November 2000. At the parties' request the interim application of 24 May 2000 was also adjourned to 8 November 2000 for mention.

30. The applicant filed his amended statement of claim on 16 October 2000. In this it was stated that the parties had lived under the same roof until 22 September 1995 when the applicant abandoned the family home and that the parties had been separated since that date.

31. On 8 November 2000 the respondent withdrew her interim application of 24 May 2000. The main application was then adjourned twice until 31 January 2001 at the respondent's request, to allow her to appoint a new lawyer.

32. On 29 January 2001 the court rescheduled the main application for 22 February 2001.

33. The respondent appointed a new lawyer on 30 January 2001.

34. On 22 February 2001 the respondent's new lawyer requested time in order to file the defence and counter-claim to the amended statement of claim. The main application was then fixed for 16 March 2001. The respondent asked for additional time to file her defence. With no objection on the part of the applicant, the main application was adjourned to 11 April 2001.

35. On 5 April 2001 the respondent filed an *ex parte* application for an order of the court granting her an extension of one month for the purpose of filing her defence to the amended statement of claim. However, the respondent withdrew the application on 11 April 2004 and asked the court for an extension of ten days to file her defence. There was no objection on the applicant's part. The main application was then fixed for 24 April 2001 and then for hearing on 28 June 2001.

36. The respondent filed her defence to the amended statement of claim and her counter-claim on 19 April 2001. In this she claimed that the applicant had abandoned the family home on 22 September 1995 and that the separation had occurred on that date.

37. On 24 April 2001, the applicant filed his reply and defence to the counter-claim.

38. On 28 June 2001 the applicant's lawyer requested an adjournment. With the consent of the respondent, the hearing of the main application was set for 8 and 9 November 2001. On that date the hearing was adjourned until 29 November 2001 at the applicant's lawyer's request.

39. The hearing of the main application commenced on 9 November 2001 and was concluded on 29 July 2003. During this period the Court held approximately twenty-nine hearing sessions (on average two sessions per

month). The hearing was adjourned seven times: four times at the applicant's request, twice at the respondent's request and once because the respondent's lawyer arrived two hours late for the hearing. Furthermore the hearing was rescheduled once for a week but the reasons for this do not appear in the court record.

40. During the proceedings a total of fifty-three witnesses were heard and seventy-seven exhibits were put before the court.

41. Furthermore, at one point during the proceedings the applicant claimed that the date in his statement of claim determining the date of separation had been wrong and that the court should make an amendment to this effect *ex officio*.

42. On 23 January 2004 the Nicosia Family Court dismissed the main application as premature since none of the conditions provided for in section 14 (1) of Law 232/91 were satisfied when the applicant filed the action on 31 August 1995: the parties had not been divorced or separated at the time. In this respect it noted, firstly, that the divorce had come through in 1997 and secondly, that the parties had separated on 22 September 1995. The court found that it had been clear from the parties' pleadings and their oral evidence before it that separation had actually taken place on 22 September 1995. It held that the court could not amend the statement of claim *ex officio*, as suggested by the applicant, since the date of separation was the crucial time for the calculation of the increase in property and all the evidence provided by the parties' valuation experts had taken as the time of termination the date when the parties had separated, namely, 22 September 1995. Furthermore, no evidence had been put before the court with regard to any other date of separation. The court also noted that it had pointed out this issue to the parties in good time so if the applicant had so wished he had had the time to file an application to amend his statement of claim. However, he did not file such an application. Finally, the court dismissed the respondent's counter-claim as being unsubstantiated.

B. Appeal proceedings

43. On 2 March 2004 the applicant filed an appeal (no. 193) before the Family Court of Appeal against the first instance judgment. The applicant raised a number of issues in his grounds for appeal, including the following: the first instance court's finding that his application had been premature was incorrect since it had been clear from the evidence that he had separated from his wife well before September 1995; the first instance court had erred in its evaluation of the evidence in this respect and had not taken all the evidence into account; the undue length of the proceedings had "deprived the appellant of numerous and significant ... procedural rights" in violation of the right to a fair trial within a reasonable time.

44. On 6 October 2005 the Family Court of Appeal dismissed the appeal. The court upheld the findings of the first instance court. It rejected the applicant's argument that the conclusion as to the date of separation was wrong. It noted that this argument, as stated in the grounds of appeal, had been vague and unsubstantiated and that as a result the court had had to verify all the minutes of the evidence taken. In this respect the court observed that it had been clear from the minutes that both parties had stated, when asked during oral evidence, that they had separated in September 1995. The court observed in this connection that the evidence given by the parties themselves as to when separation occurred was a significant element in determining the time of separation, especially when, as in the present application, the parties agreed.

45. Addressing the applicant's complaint concerning the length of the proceedings, the court found that the trial at first instance had been long and laborious as the parties, instead of accepting in a civilised manner the breakdown of their marriage and seeking a reasonable and fair solution to their property disputes or other matters which resulted from the break-up of the relationship, had found in the court procedure an arena for the display of an antagonistic and selfish attitude towards each other. Although the proceedings had been long and slow, this had been exclusively due to the parties' conduct. In this connection, the court noted, *inter alia*, that the parties had been tardy in the filing of their pleadings, had filed a number of interim applications and that the trial dates had been set on dates to facilitate the lawyers' attendance. Furthermore, extensive evidence had been put before the court. The Family Court of Appeal therefore found that the applicant's allegations in this respect had been wrong and unfair. Finally, it observed that the applicant's claims before it as to the consequences of the length of the proceedings, in particular, that "if the trial had been conducted within a reasonable time the applicant would have had access to elements which would have helped him with his application", had been vague.

II. RELEVANT DOMESTIC LAW

A. The Constitution

1. The right of access to court and to a fair trial

46. Article 30 of the Constitution provides as follows, in so far as relevant:

"1. No person shall be denied access to the court assigned to him by or under this Constitution. ...

“In the determination of his civil rights and obligations ..., every person is entitled to a ... hearing within a reasonable time by an independent, impartial and competent court...”

2. Referral of questions of constitutionality to the Supreme Court

47. Article 144 reads as follows:

“1. A party to any judicial proceedings, including proceedings on appeal, may, at any stage thereof, raise the question of the unconstitutionality of any law or decision or any provision thereof material for the determination of any matter at issue in such proceedings and thereupon the Court before which such question is raised shall reserve the question for the decision of the Supreme Constitutional Court and stay further proceedings until such question is determined by the Supreme Constitutional Court.

2. The Supreme Constitutional Court, on a question so reserved, shall, after hearing the parties, consider and determine the question so reserved and transmit its decision to the Court by which such question has been reserved.

3. Any decision of the Supreme Constitutional Court under paragraph 2 of this Article shall be binding on the court by which the question has been reserved and on the parties to the proceedings and shall, in case such decision is to the effect that the law or decision or any provision thereof is unconstitutional, operate as to make such law or decision inapplicable to such proceedings only.”

48. When issues of constitutionality arise before the Family Courts, these are to be referred to the Supreme Court in accordance with the above provision (*Application by Nausika Nicolaou and an other (1991) 1 C.L.R. 1045*).

B. Relevant Family Law provisions

49. In accordance with the Property Relations of Spouses and other Related Matters Law (Law 232/91) which came into force on 30 December 1991 property disputes between spouses were heard by the District Court. Amending legislation which came into force on 5 April 1996 gave this competence to the Family Courts (Amending Law 34(I) of 1996).

50. By virtue of section 3 of Law 34(1)/96 interim provision was made for the referral of actions, such as the one in the present application, from the District Court to the Family Court:

“Proceedings pending on the date when this law comes into force whose subject matter concerns property disputes on the basis of Article 2 of the Family Courts Law, as amended by the Family Courts (Amending) Law of 1996, remain and are completed before the District Courts provided that the hearing process before them has commenced with the statements of witnesses, otherwise they are referred at the stage which they are at to the competent Family Court.”

51. Section 14 of Law 232/91 (as amended by Law 49(1)/95) provided as follows:

“14. (1) In the case where the marriage has been dissolved or annulled, or in the case of separation of the spouses, and the property of the one spouse has increased since the marriage was solemnised, the other spouse, provided that he or she has contributed in any way whatsoever to this increase, is entitled to bring an action before the Court and to claim recovery of the part of the increase which comes from his/her contribution.”

52. By the Family Courts (Amending) law of 1996 (Law 33(1)/96) the following definition of “property relations” was added:

“property relations” means the relations which concern the movable and immovable property which was acquired after marriage by either one of the spouses, in accordance with the provisions of the Law on the Regulation of the Property Relations of Spouses.”

53. Under section 15, actions provided for by section 14 have to be filed within two years after the dissolution or annulment of the marriage.

54. Section 4 of Amending Law 25(I)/1998 made special provision for the filing of claims after dissolution of marriage where a claim which had previously been filed before the District Court after separation was pending before that court on 16 April 1998, that is the entry into force of the amending law, or before the Family Court, following referral under the 1996 transitional provisions. According to section 4:

“Irrespective of the provisions of section 15 (a), claims under section 14 which are or were the subject-matter of a procedure which is pending before the District Court or before a Family Court to which it had been referred by a District Court in accordance with the provisions of section 3 of the Regulation of Spouses’ Property relations (Amendment) Law of 1996, can be submitted to the Family Courts within one year from the date of entry into force of the present law”.

55. This provision covers property contribution claims under section 14 which had been filed by spouses before District Courts after their separation, and following the 1996 transfer of jurisdiction from those courts to the Family Courts, they either continued by virtue of the 1996 transitional provisions to be dealt with by the District Courts if at the hearing stage, or were transferred to Family Courts.

THE LAW

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

56. 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...”

57. The Government contested that argument.

58. The period to be taken into consideration began on 31 August 1995 when the applicant filed the action before the Nicosia District Court and ended on 6 October 2005 when the Family Court of Appeal’s judgment on appeal was delivered. The proceedings therefore lasted ten years, one month and eight days for two levels of jurisdiction.

59. The Government submitted that it was clear from the court record that the delay in the proceedings had been attributable to the parties. In this respect they argued that the parties had applied for adjournments either separately or jointly and had filed a number of interim applications. The hearing dates had been fixed by the court to accommodate the parties. Furthermore, in 2000, the applicant had made extensive amendments to his statement of claim. Finally, the Government pointed out that during the hearing of the case, the Family Court had heard testimony from a substantial number of witnesses and that numerous exhibits had been filed.

60. The applicant disputed the Government’s submissions. He claimed that the adjournments and time extensions granted by the court had been considerable, that the hearing of the case should have been conducted on a day-to-day basis and that it had taken the Family Court six months to deliver its judgment. The applicant considered that the overall delay in the proceedings could not be justified by the adjournments requested on his part and the delay in the filing of pleadings. The applicant relied on the findings of the court in the case of *Ouzounian Barret v. Cyprus* (no. 2418/05, §§ 37-41, 18 January 2007).

A. Admissibility

61. 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

62. 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).

63. At the outset the Court observes that the main delay occurred at first instance, where the proceedings lasted about eight years and five months.

From the documents in the file, no delay can be identified in the proceedings before the Family Court of Appeal, which lasted about one year and seven months.

64. From the evidence adduced it can be seen that the case remained dormant only for one period: from 31 August 1995, when the action was filed before the Nicosia District Court of Nicosia, until 9 May 1996 when it was transferred, following the amendment in the applicable law, to the Nicosia Family Court (see paragraphs 5 and 7 above). Otherwise, the adjournments or rescheduling of the case by the court were limited and of short duration (see paragraphs 15, 16, 23, 28 and 32 above).

65. It is clear from the court record of the proceedings that the applicant, either alone or jointly with the respondent, requested numerous adjournments. The Court takes note of the findings of the Family Court of Appeal concerning the conduct of the parties throughout the proceedings and their responsibility for the ensuing length (see paragraph 45 above). In the Court's view the applicant and the parties in general contributed considerably to the prolongation of the proceedings before the Family Court.

66. However, as the Family Court of Appeal stated in its judgment, the trial dates had been set on dates to facilitate the lawyers's attendance. It also appears from the court record that the first instance court granted adjournment and extension requests to the parties incessantly. In this connection, the Court recalls that the domestic courts retain an obligation to ensure compliance with the guarantees of Article 6 § 1 of the Convention (see, for example, *Scopelliti v. Italy* 23 November 1993, § 25, Series A no. 278) and that this provision 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, including the obligation to hear cases within a reasonable time (see, for example, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II; *Frydlender*, § 45, cited above; and *König v. Germany*, 28 June 1978, § 100, Series A no. 27). Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1 (see *Pafitis and Others v. Greece*, 26 February 1998, § 93, *Reports of Judgments and Decisions* 1998-I). In the present case the first instance court did not ensure that the proceedings were conducted efficiently and allowed the parties largely to determine their progress.

67. As a result, the proceedings before it lasted over eight years (see paragraph 61 above), a period which cannot be regarded as "reasonable".

68. In view of the above, and 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION AS TO THE LENGTH OF THE PROCEEDINGS

69. 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.”

70. The Government made no submissions concerning Article 13 of the Convention as, in their opinion, the applicant’s complaint about the length of the proceedings was manifestly ill-founded.

71. The applicant claimed that there was no effective domestic remedy in relation to his complaint and relied on the judgment in the case of *Ouzounian Barret v. Cyprus* (cited above, §§ 46-48) in which the Court found a violation of this provision in respect of the length of the proceedings in that case.

A. Admissibility

72. The Court notes that this complaint is linked to the one examined above and must, therefore, likewise be declared admissible.

B. Merits

73. 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).

74. The Court notes that the Government have not made any submissions at all concerning the availability of such a remedy.

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

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints under Articles 6 (access to court) and 13 of the Convention and Article 1 of Protocol No. 1

76. The applicant complained under Articles 6 of the Convention and 1 of Protocol No. 1 that, due to the excessive length of the proceedings, he had been time-barred from bringing a new application and, consequently, from raising his relevant property claims before the domestic courts. He further complained under Article 13 of the Convention about the lack of an effective remedy in respect of the above complaints.

77. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention and, consequently, that his complaints under these provisions should be declared inadmissible. In particular, they noted that it was clear from the applicant's notice of appeal and from the appeal judgment that the applicant had not raised these complaints before the Family Court of Appeal. The applicant's grounds of appeal had been confined to the alleged excessive length of proceedings and did not extend to the complaint that the length of the proceedings had a bearing on his right of access to court and property rights by reason of the expiry of the applicable time-limit. As a consequence, the Family Court of Appeal had been denied the opportunity to examine and determine these complaints.

78. As to the substance of the complaints, the Government submitted that the applicant should have submitted a claim for property contribution before the Family Court on the basis of section 4 of Amending Law 25 (I)/1998 (see paragraphs 54-55 above) since his marriage, at the time of the entry of the force of that provision, had already been dissolved. However, the applicant had failed to do so. In the Government's view there was no causal link between the applicant's right to make a claim under section 14 of Law 232/91 and the length of the proceedings.

79. In reply the applicant disputed the Government's submissions and claimed that he had not been able to raise his complaints before the Family Court of Appeal since, on appeal, that court only dealt with points of law related to the first instance proceedings. Furthermore, he submitted that if the first instance court had decided his case expeditiously he would have been able to file a new application in time. Finally, he argued that he had been estopped from initiating new proceedings while the proceedings on essentially the same matter had been pending.

80. The Court considers that it need not determine the question of exhaustion of domestic remedies as, in any event, it finds that the applicant's complaints are inadmissible for the following reasons.

81. The applicant filed the application under Law 232/91, before his marriage had been dissolved, on the basis of his separation from his wife. His divorce came through on 21 January 1997 while the proceedings were still pending (see paragraph 12 above). The statutory time-limit for bringing an application under Law 232/91 following the dissolution of the marriage expired in 1999: on 21 January 1999 if calculated on the basis of section 15 of the above Law or on 16 April 1999 if calculated on the basis of section 4 of Amending Law 25(I)/1998 (see paragraphs 54 and 55 above); so approximately three and a half years after the filing of the application. On 23 January 2004 the application was dismissed at first instance because it had been premature, a conclusion reached on the basis of the parties' pleadings and evidence as to the date of separation (see paragraph 42 above). The applicant, who was represented by an advocate throughout the proceedings, did not at any point take any steps to remedy the shortcomings of his application. In this connection it is noted, amongst other things, that in both his statement of claim of 21 January 1997, filed on the day the applicable time-limit started to run, and his amended statement of claim of 16 October 2000, he stated that the separation had started on 22 September 1995 (see paragraphs 10, 11 and 30 above), even though he had filed the application before that. It is further noted that it was also open to the applicant at any moment to withdraw his application and file a new one following the dissolution of his marriage.

82. The Court finds therefore that, in the circumstances, the applicant has not established that there was a causal link between the length of the proceedings and the lapsing of his right to bring a new application before the domestic courts. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

83. As regards the applicant's complaint under Article 13, the Court recalls that this Article 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*, 27 April 1988, § 52, Series A no. 131; *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 Article 6 of the Convention and Article 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). Accordingly, this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Remaining Complaints

84. The applicant complained under Article 6 of the Convention about the fairness of the proceedings. In particular, he complained that the Family Court of Appeal had failed to consider all the evidence before it regarding the exact date of the parties' separation and had erred in its conclusions in this respect.

85. Furthermore, the applicant complained under Article 6 of the Convention and Article 1 of Protocol No. 1 that the time-limit of two years set by section 15 of Law 232/91 was unduly short. Under the latter provision, he also complained that the time-limit was much shorter than that provided by the domestic law in relation to other types of property complaints.

86. In addition, the applicant complained of discriminatory treatment in violation of Article 14 taken in conjunction with Article 13 of the Convention, Article 1 of Protocol No. 1, Article 5 of Protocol No. 7 and Article 1 of Protocol No. 12. In particular he complained that Law 232/91 drew a distinction between divorcees and persons who had separated by applying a time-limit to the former but not the latter. In connection with this he argued that if he had not been divorced at the time the first instance judgment was delivered he would have been able to file a new property claim.

87. Lastly, the applicant complained under Article 13 of the Convention of a lack of an effective remedy in respect of his above Convention complaints.

88. As regards the applicant's first complaint concerning the fairness of the proceedings, the Court reiterates that its function is not to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain*, cited above).

89. In the present application, the Court notes that the Family Court of Appeal's judgment was fully reasoned. Having examined the record of the first instance proceedings and the judgment, the Family Court of Appeal found that it was clear from all the evidence that had been submitted before the first instance court that the date of the parties' separation had been 22 September 1995. Both parties, when giving oral evidence before the court, had stated that they had separated then. It therefore rejected the applicant's arguments in this respect and upheld the first instance judgment (see paragraph 44 above). In that judgment the first instance court had noted

that the applicant had never filed an application to amend his statement of claim in this respect and that all the evidence that had been submitted by the parties' valuation experts had been based on 22 September 1995 as the date of separation. Although the applicant had suggested that the court amend the statement of claim *ex officio* this could not be done since the date of separation was the crucial time for the calculation of the increase in property and all the evidence provided by the parties' valuation experts had taken as the time of termination the date when the parties had separated. No evidence had been submitted with regard to any other date of separation (see paragraph 42 above).

90. The Court finds no indication of any unfairness or arbitrariness on the part of the Family Court of Appeal. It therefore considers that the applicant's complaint under this provision is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

91. To the extent that the applicant raises Article 13 of the Convention in relation to this complaint, the Court notes that in the light of its conclusions above, and consequently the absence of an arguable claim under Article 6 in this respect, Article 13 is not engaged (see *Boyle and Rice v. the United Kingdom*, cited above). Accordingly, the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

92. As regards the applicant's remaining complaints, which concern the length and nature of the time-limit imposed by section 15 of Law 232/91, and the manner in which it is applied, the Court notes that the complaints made under the Convention would raise corresponding issues of constitutionality which the applicant ought to have raised before the Family Court of Appeal. In this respect, it is observed that when issues of constitutionality arise before the Family Courts, these are referred to the Supreme Court under Article 144 of the Constitution (see paragraphs 47 and 48 above and *Phinikaridou v. Cyprus*, no. 23890/02, §§ 9-11, ECHR 2007-... (extracts)).

93. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

94. It further follows that the applicant's complaint under Article 13 in this respect is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention as he had a remedy at his disposal which was compatible with the guarantees of Article 13 of the Convention (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* 1996-IV).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 366,795 euros (EUR) in respect of pecuniary damage with interest at a rate of 6% until 1996 and then at 8% from 1996 onwards. He further claimed EUR 40,000 in respect of non-pecuniary damage.

97. The Government contested these claims.

98. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

99. The Court, however, considers that the applicant must have sustained non-pecuniary damage which cannot sufficiently be compensated by the finding of a violation. Bearing in mind its findings as to the conduct of the applicant in the proceedings and the reasons for which it has found a violation of Article 6 § 1 of the Convention, it awards the applicant EUR 3,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

100. The applicant also claimed EUR 3,873 for the costs and expenses incurred before the domestic courts and EUR 5,130 for those incurred before the Court. He submitted copies of the “client account statements” showing invoice and payment history.

101. The Government contested these claims and submitted that they were unsubstantiated.

102. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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. 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 to the applicant on that amount.

C. Default interest

103. 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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on that amount;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President