



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

FIRST SECTION

CASE OF CHARALAMBIDES v. CYPRUS

(Application no. 37885/04)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

15/04/2009

This judgment may be subject to editorial revision.

In the case of Charalambides v. Cyprus,

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

Christos Rozakis, *President*,

Nina Vajić,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 37885/04) 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 Michael Charalambides (“the applicant”), on 12 October 2004.

2. The applicant was represented by Mr A. Eftychiou, a lawyer practising in Nicosia, Cyprus. 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 give notice of the application 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 1951 in Moutoullas, Cyprus and lives in Nicosia.

5. On 12 March 1996 the police received complaints to the effect that the applicant had been involved in fraudulent behaviour in February 1994. The police then commenced their investigation and on an unspecified date they obtained a written statement from the applicant. On 23 September 1996

the results of the investigation were submitted to the Attorney-General to decide whether to prosecute the applicant. On 3 November 1996 he decided not to proceed with prosecution. Following the receipt of further complaints against the applicant's conduct, the investigation file was sent for a second time to the Attorney-General. On 15 May 1998 the Attorney-General issued new instructions to the police to commence a new cycle of investigations. On 16 June 1998 the applicant and his wife were charged with several counts of forgery and obtaining funds through misrepresentation. On 18 September 1998 criminal proceedings were brought against them before the District Court of Nicosia.

6. On 14 October 1998 the applicant and his wife pleaded not guilty, and the case was set for hearing on 20 November 1998. On that date the case was adjourned, on the applicant's request, for 13 January 1999. On the basis of the applicant's request it was further adjourned for 19 February 1999 and then for 8 March 1999. The case was adjourned on two subsequent occasions. On 19 March 1999 the applicant changed his lawyer and requested an adjournment so that his new lawyer could prepare his case. The hearing was set for 25 May 1999. A further adjournment was requested by the applicant for the same reasons and the case was set for 30 June 1999. The hearing was then adjourned twice due to the change of judge and on the request by the prosecution. A further adjournment request was made by the applicant on 11 November 1999 and the case was set for hearing on 23 November 1999. On that date the applicant's new lawyer had to withdraw from the proceedings and the applicant requested a further adjournment to appoint a new lawyer.

7. The case was thus set for directions on 29 November 1999. On that date a new lawyer appeared on behalf of the applicant who requested an adjournment of the case so that he could prepare the applicant's defence. The case was adjourned for 6 December 1999 when the applicant requested an adjournment. On 14 December 1999 the applicant appeared without a lawyer and requested an adjournment until 17 December 1999 so that he could find another lawyer. On 17 December 1999 the applicant's new lawyer requested another adjournment so that he could file a request for the applicant's discharge due to the unreasonable delay in the proceedings. On 23 December 1999 the court heard the parties' addresses in this respect. On 21 January 2000 the court issued an interim decision by which it rejected the applicant's request for discharge.

8. The hearing of the case eventually commenced on 28 February 2000 but was subsequently adjourned on several occasions. On 29 November 2000 the applicant argued that his written statement should not be admitted in trial and the issue was examined in a trial within trial. The court issued its interim decision in this respect on 4 April 2001 when the main trial was resumed. Following a number of adjournments the hearing was completed on 9 July 2002. Judgment was delivered on 6 November 2002, finding the

applicant guilty of certain of the charges brought against him and on 11 November 2002 he was sentenced to fifteen months' imprisonment. The court accepted that there had been unjustified delay in the proceedings but noted that it was not of such an exceptional nature as to require the applicant's discharge. The length of the proceedings was taken as a mitigating factor in the imposition of the sentence. In this regard it was noted that given the seriousness of the offences committed by the applicant a sentence of imprisonment was required. From a maximum sentence of three years' imprisonment a sentence of fifteen months' imprisonment was imposed. Counsel for the applicant accepted in his plea for mitigation that the delay was not such as to require the applicant's discharge.

9. On an unspecified date the applicant lodged an appeal against his conviction and sentence, and contended, *inter alia*, that there had been a violation of his right to determination of the criminal charges brought against him within a reasonable time.

10. The Supreme Court delivered its judgment on 1 June 2004, by which it dismissed the applicant's appeal. The court held in its majority judgment that there had been no violation of his right to a fair trial within reasonable time. The period to be taken into account had started on 16 June 1998 when the applicant was charged and finished when his criminal liability had been determined, on 6 November 2002. It had thus lasted for four years and five months. Having established that the case was of a complex nature, the Supreme Court noted that a significant part of the delay was to be attributed to the applicant, who had only managed to find a representative after a period of fourteen months had elapsed, and had requested at least eleven adjournments of the hearing of the case; there had been no period of inactivity.

11. A dissenting judge found that the applicant's right to a fair trial within reasonable time had been violated and noted that, in his view, the applicant should have been discharged.

THE LAW

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

12. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

13. The applicant argued that the relevant period started when the complaints against him had been lodged with the police and not when he had been formally charged.

14. He further complained that the protracted length of the proceedings constituted such prejudice that rendered the proceedings unfair. Hence, the breach of his right to a fair trial entailed that he should have been discharged or that the imprisonment sentence imposed ought to have been suspended.

15. The Government contested the applicant's arguments. They argued that the applicant had no victim status to complain about the length of the proceedings, given that any delay had been taken into account as a mitigating factor in the imposition of his sentence. They further endorsed the Supreme Court's finding of no violation of the applicant's right to a fair trial within a reasonable time, for the reasons stated in that court's decision of 1 June 2004.

A. Admissibility

16. The Court observes that the applicant's complaint about the fairness of the proceedings was twofold: firstly, he claimed that the length of the proceedings had denied him a fair trial within a reasonable time, and, secondly he asserted that the length of the proceedings had prejudiced their fairness in such a manner that the only equitable remedy was an order for his discharge or suspension of the imposed imprisonment sentence.

17. With regard to the latter allegation, the Court observes that where there has been such prejudice caused to an applicant by the delay in proceedings, that it interferes with his or her right to a fair trial in some manner that cannot otherwise be remedied, then a stay of proceedings could be appropriate. However, Article 6 § 1 of the Convention does not require that in excessively lengthy criminal proceedings an accused should be discharged or that the proceedings should be stayed (see *Menelaou v. Cyprus* (dec.), no. 32071/04, 2 June 2008). The domestic courts would be required to explore in each case whether other possible remedies, like the way in which the evidence is approached or the mitigation of any sentence imposed, would be appropriate.

18. Turning to the facts of the present case, the Court observes that the applicant merely made a vague allegation that the length of the proceedings had prejudiced their fairness, without pointing to any specific shortcomings in the proceedings. Moreover, the Court notes that the applicant's counsel admitted in his plea of mitigation that the excessive delay in the proceedings did not constitute such prejudice as to require a stay of the proceedings. Having regard to the conduct of the proceedings as a whole, the Court finds that the decision not to discharge the applicant or suspend his sentence of imprisonment did not impair the fairness of the proceedings.

19. Accordingly, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

20. As to the complaint concerning the length of the proceedings, the Court notes that the Government argued that the applicant had lost his victim status as any delay in the proceedings had been taken into consideration as a mitigating factor in the imposition of his sentence. In this respect the Court recalls that the mitigation of a sentence on the account of the excessive length of the proceedings does not, in principle, deprive the individual concerned of his status as victim within the meaning of Article 34 of the Convention. This general rule is subject to an exception when the national authorities have acknowledged the failure to observe the reasonable time requirement in a sufficiently clear way and have afforded redress by reducing the sentence imposed in an express and measurable manner (see, *inter alia*, *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001).

21. Applying these principles in the present case, the Court notes that the Supreme Court in its judgment of 1 June 2004 held that there had been no violation of the applicant's rights to a fair trial within reasonable time. In such circumstances the Court finds it clear that the applicant may still claim to be a victim within the meaning of Article 34 of the Convention. Furthermore, the Court finds that the complaint concerning the protracted length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

22. As regards the relevant period to be taken into consideration, the Court does not accept the applicant's argument that the relevant period commenced on 12 March 1996, when the police commenced its first investigation, given the decision of the Attorney-General not to prosecute the applicant at that stage. The applicant was only charged following the conduct of new investigation by the police which had been pursued on the basis of new instructions by the Attorney-General. The applicant has failed to show that he had been continuously affected by the conduct of the two cycles of investigation. Accordingly, the Court considers that the relevant period started running from 16 June 1998, when the applicant was charged, and ended with the delivery of the judgment on appeal on 1 June 2004. The proceedings have thus lasted approximately six years for two levels of jurisdiction.

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 (see, among many other

authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

24. The Court takes note of the fact that certain delay in the proceedings could be attributed to the applicant given that it took him approximately 14 months to appoint a lawyer that would ultimately pursue his defence. However, notwithstanding the applicant's conduct, the domestic authorities were required to organise the trial efficiently and ensure that the Convention guarantees were fully respected in the proceedings. Having regard to the circumstances of the instant case and to its case-law on the subject, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

25. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 98,000 Cyprus pounds (CYP) in respect of pecuniary damage representing an alleged loss of income due to the proceedings. He further claimed CYP 80,000 in respect of non-pecuniary damage.

28. The Government contested these claims.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

B. Costs and expenses

30. The applicant also claimed CYP 7,521 for the costs and expenses incurred before the domestic courts and CYP 3,450 for those incurred before the Court.

31. The Government contested these claims.

32. 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 are reasonable as to quantum. In the present case, regard being had to the information in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,850 covering costs under all heads of the applicant's claim plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

33. 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 two thousand (2,000 euros) in respect of non-pecuniary damage and EUR one thousand eight hundred and fifty (1,850 euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President