



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

1959 · 50 · 2009

FIRST SECTION

CASE OF CHRISTODOULOU v. CYPRUS

(Application no. 30282/06)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

16/10/2009

This judgment may be subject to editorial revision.

In the case of Christodoulou 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, *judges*,

Costas Pamballis, *ad hoc judge*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 30282/06) 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 two Cypriot nationals, Ms Elsa Christodoulou and Ms Lydia Christodoulou (“the applicants”), on 18 July 2006.

2. The applicants were represented by C. Melas and Associates, lawyers practising in Limassol. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 10 July 2007 the Court decided to communicate the complaints concerning the length of the proceedings and the fairness of the costs order made by the Supreme Court to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. Mr G. Nicolaou, the judge elected in respect of Cyprus, was unable to sit in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Mr C. Pamballis to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1964 and 1936 respectively and live in Paphos.

A. First instance proceedings before the Rent Control Tribunal

6. The applicants rented a souvenir shop together in Paphos. On 2 March 2001 they filed an application (K2/01) before the Rent Control Tribunal ("the RCT") challenging the amount of rent they paid the respondents and seeking its reduction.

7. On 22 March 2001 the RCT ordered that the application be served abroad on the respondents in Athens.

8. On 11 April 2001 the respondents filed their defence.

9. Upon completion of the pleadings, the applicants, on 27 April 2001, requested the RCT to list the application for mention.

10. The application was listed for directions six times between 21 June 2001 and 20 December 2001. No court records are available for this period.

11. On 25 February 2002 the respondents filed an application for discovery and inspection of documents.

12. On 28 February 2002 the respondents requested that the RCT carry out a local survey. With the applicants' agreement, this was carried out on the same day.

13. The case was listed for a directions hearing to be held on 7 March 2002 with a view to setting a hearing date after the parties' lawyers had the opportunity to inform the court of their decision regarding the manner in which the court's expert would testify.

14. On the above date the respondents requested leave to amend their valuation.

15. The application was set down to be heard on 25 April 2002 and the court directed that its expert would testify and be cross-examined on that day.

16. The hearing started on the above date. Following the expert's testimony, the respondents requested that cross-examination take place on another date to allow their expert to assess the evidence given and prepare their cross-examination. The applicants' lawyer objected.

17. The court granted the adjournment and set the case down for 23 May 2002 after discussing the suitability of that date for the lawyers. Costs were ordered against the respondents.

18. The hearing continued on the above date with the cross-examination of the RCT's expert by the respondents' lawyer. When this finished the hearing was adjourned to 13 June 2002 at the applicants' request.

19. The hearing continued on 13 June 2002 with the cross-examination of the RCT's expert by the applicants' lawyer. At the end of the hearing the respondents requested the court to join the application with another three applications (K10/00, K12/00 and K13/00) as they all concerned the determination of the rental value of shops which were situated in the same complex. The parties agreed and the court issued an order joining the applications. As the lawyers considered there was not enough time for the testimony and cross-examination of the respondents' expert the hearing was fixed for 19 September 2002, following the summer vacation.

20. On the above date the court accepted the parties' request that the evidence of the expert be given at the same time for all the cases followed by separate cross-examination by each lawyer. After the examination-in-chief of the first witness, the examination-in-chief of the second witness was interrupted due to that witness's ill health.

21. The hearing continued on 24 October 2002 and was then adjourned to 12 December 2002. It was further adjourned, however, on that date, as the respondents' expert could not attend due to a health problem.

22. The hearing was then listed for 20 February 2003. It continued on that date and then on 22 April 2003. The hearing was initially due to continue the next day but was instead adjourned to 19 and 24 June 2003 in order to allow the lawyer in one of the applications to prepare his client's defence.

23. On 12 June 2003, however, the court cancelled the first session as one of the trial judges would be abroad. It further issued an order separating the applications (see paragraph 18 above) and stated that separate decisions would be delivered.

24. On 24 June 2003 the parties' lawyers addressed the court.

25. On 27 November 2003 the court rejected the evidence given by the respondents' expert and, on the basis of the evidence of the expert it had appointed, ordered a reduction in the rent paid by the applicants. Costs were awarded in favour of the applicants.

B. Appeal proceedings before the Supreme Court

26. On 7 January 2004 the respondents lodged an appeal before the Supreme Court.

27. By letter dated 9 January 2004 the Registrar of the RCT of Paphos informed the Chief Registrar of the Supreme Court that the records of the proceedings would be transcribed and sent to the Supreme Court by 31 March 2004.

28. By a letter dated 9 March 2004 the Supreme Court informed the appellants that their appeal had been entered in the register (appeal no. 11939).

29. By letter 12 May 2004 the Registrar of the RCT of Paphos sent the case file, the court records, the judgment and the list of exhibits to the Supreme Court.

30. The appeal was listed for a preliminary hearing on 22 October 2004. On that date directions were given for the submission of written outlines of submissions to be made at the appeal hearing.

31. These were filed on 6 December 2004.

32. On 14 January 2005 the applicants informed the court that they had appointed a new lawyer.

33. On 15 April 2005 the appeal was submitted to the Supreme Court but in the absence of an available date it was not set down for hearing.

34. On 23 August 2005 the Chief Registrar of the Supreme Court informed the parties that the appeal had been set down for hearing on 22 November 2005. Following an exchange on the matters raised between the court and the parties the hearing was adjourned at the parties' request until 20 December 2005.

35. On the latter date the parties addressed the court and judgment was reserved. The applicants' lawyer stated that he was in complete agreement with the first-instance judgment.

36. On 27 January 2006 the Supreme Court upheld the appeal and set aside the RCT's decision. It ordered a retrial of the case. The Supreme Court found that the RCT had erred in its assessment of the evidence that had been put before it. In this connection, it noted that the RCT had failed to take into account the average rental rate of the shops in the area and relevant factors such as the age, condition and facilities of those shops when assessing the rental value of the shop in question. Secondly, it found substantial errors in the valuation made by the RCT's expert which included the failure to make the necessary adjustments when comparing different properties and to determine the advantages and disadvantages of the properties compared. The court considered that the valuation given by the RCT's expert had been ill-founded and unreliable and that therefore the RCT should not have relied on it. Similarly, the court found that the valuation of the respondents' expert (the appellants at the appeal stage) had been unsound. In this connection, it noted that this valuation had defined the area in question very narrowly and as a result had not taken into account other nearby shops which should have been considered for comparison purposes. The Supreme Court therefore concluded that overall no evidence had been put forward which would enable the determination of a fair rent in respect of the applicants' shop.

37. Finally, the Supreme Court ordered that the costs of both the first instance and appeal proceedings be paid by the applicants (the respondents at the appeal stage).

C. Retrial proceedings before the Rent Control Tribunal

38. Following a request by the Registrar of the RCT of Limassol-Paphos, the Supreme Court, in a letter dated 16 March 2006, gave directions for the retrial of the application.

39. On 6 April 2006 the application was brought before a newly composed RCT and was listed for a directions hearing on 16 May 2006 in view of the possibility of a friendly settlement.

40. On the latter date the application was fixed for hearing on 21 September 2006. On that date the respondents requested that they be given time to consider the court's proposals with regard to a settlement. With the applicants' agreement the application was set down for hearing on 19 October 2006. On the latter date the parties informed the court that they accepted its proposals concerning determination of the rent. The applicants' lawyer claimed his costs [for the retrial] and the respondents' lawyer claimed the costs of the first trial and appeal.

41. On that date the court determined the rent as agreed and ordered that the respondents pay the retrial costs, as assessed by the Registrar and approved by the court, unless the parties reached a different agreement.

D. Other steps taken by the applicants for the recovery of costs

42. During the retrial proceedings, by letter dated 24 May 2006, the applicants' lawyer requested the Attorney-General to consider whether it would be possible for the State to pay the costs of the proceedings in view of the fact that the errors for which the case was sent back for retrial had not been committed by the applicants.

43. By letter dated 31 May 2006 the Attorney-General replied that this was not possible since the proceedings in question concerned a trial between private parties and, further, that it was for the courts to take into account all relevant circumstances when determining the matter of costs.

II. RELEVANT DOMESTIC LAW

44. Section 43 of the Courts of Justice Law 1960 (Law no. 14/1960, as amended) provides as follows:

“The costs of, and incident to, any civil proceedings, in any court, shall, unless otherwise provided by any law in force for the time being, or any subsidiary legislation, be in the discretion of the court and the court shall have full power to determine by whom and to what extent such costs shall be paid”.

45. Order 59 of the Civil Procedure Rules sets out the rules concerning costs. Rule 1 of this Order provides as follows:

“Subject to the provisions of any law or Rules, the costs of, and incident, to any proceeding shall be in the discretion of the Court or Judge, who may authorise an executor, administrator or trustee who has not unreasonably instituted, or carried on, or resisted any proceeding, to have his costs paid out of a particular estate or fund.”

46. Regulation 13 (a) of the Rent Control Rules of 1983 provides:

“The award of costs is a matter in the discretionary power of the court. The outcome of the case is not the sole factor for the award of costs but all the circumstances of the case must be taken into account.”

47. Section 5 of the Rent Control Law 23/1983 (as amended) provides that the procedure before the Rent Control Tribunal is a summary procedure not bound by the rules of evidence.

THE LAW

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

48. The applicants 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 fair... hearing within a reasonable time by [a] ... tribunal...”

49. The Government contested that argument.

50. The period to be taken into consideration began on 2 March 2001 and ended on 19 October 2006. It thus lasted approximately five years and seven months for two levels of jurisdiction at three instances.

51. The Government observed that the applicants’ application before the RCT had been joined with another three applications and that there had been a great volume of evidence and a large number of witnesses. Lengthy examinations-in-chief and cross-examinations had taken place. Furthermore, the Government noted that there had not been any significant periods of inactivity. Any intervals had been during the summer vacations when the courts were closed. Lastly, they pointed out that the parties in the proceedings, and the applicants in particular, had applied for adjournments and had not acted diligently, being therefore to a great extent responsible for the length of the proceedings.

52. The applicants submitted that the overall length of the proceedings had been excessive, in particular considering their simple nature. During the

first set of proceedings before the RCT the case had been listed for directions several times. The Government, however, had not been able to provide the Court with the relevant records explaining these delays. There had been long intervals between hearing dates set by the RCT. For example on 24 October 2002 it fixed the hearing for 12 December 2002, then one for 20 February 2003 and then one for 22 April 2003. They further observed that the judge of the RCT sat in Paphos, only on Thursday. They pointed out that proceedings before the RCT were of a summary nature with the object of speedy and effective administration of justice. Finally, they submitted that there had been substantial delays in the appeal proceedings. In particular, the hearing of the appeal had begun more than one year and eleven months after it had been lodged. This delay had not been explained by the Government.

A. Admissibility

53. 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

54. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

55. The Court finds, firstly, that the case was not complex and that there were no major delays attributable to the applicants during the proceedings. During the first-instance proceedings, however, there was one period of delay between 21 June 2001 and 20 December 2001 for which the Government have not been able to account (see paragraph 10 above). Moreover, the accumulation of intervals between subsequent adjournments had the effect of prolonging these proceedings.

56. The Court further finds that unjustifiable delay occurred in the proceedings before the Supreme Court. These proceedings lasted just over two years with the case remaining dormant for most of this period. The Court notes that the case was set down for hearing one year and ten months following the lodging of the appeal and that a period of more than eleven months elapsed from the filing of the parties' outlines on 6 December 2004 until 22 November 2005 (see paragraphs 31-34 above) when the hearing had been due to take place. Even though after this date the proceedings were

concluded promptly, the judgment being delivered approximately only a month following the hearing, the Court cannot ignore the overall delay that occurred in these proceedings.

57. Bearing in mind that the questions before the RCT were relatively simple and that the tribunal applied a summary procedure (see paragraph 47 above), the Court finds that the total length of proceedings at three instances, two of them at the same level, was excessive. In particular, the delay which occurred at the appeal stage contributed significantly to the prolongation of the proceedings and was unwarranted.

58. In this connection, the Court states that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements (see *Frydlender*, § 45, cited above).

59. The Court therefore considers that in the instant case the length of the proceedings failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE FAIRNESS OF THE PROCEEDINGS

1. As to the fairness of the costs order

60. The applicants complained under Article 6 of the Convention that the proceedings had been unfair. In particular, they complained that costs had been unfairly ordered against them, in view of the fact that they had not been responsible for the errors committed by the first-instance court. Furthermore, they complained that they had not been heard in relation to this matter and that the Supreme Court’s judgment had not been reasoned in this respect.

61. The Government submitted that, considering the limited and technical nature of the issues arising in costs proceedings, Article 6 of the Convention was not applicable. In any event the applicants had not raised the question of costs before the court or addressed the Supreme Court on this matter, although they had had the right to do so at any stage of the hearing of their appeal or in their written addresses. The applicants had known that the Supreme Court would decide on the issue of costs at the end of its judgment. The Government referred to the judgment of the Supreme Court in the case of *Kypros Economides and Christos A. Theodoulou v. the Republic of Cyprus through the Council of Ministers, the Minister of the Interior and Director of Town Planning* (appeal no. 3196, 4 July 2007) in which the appellants had raised the issue of costs before the Court in their written pleadings and the Supreme Court had addressed the matter in its

judgment and applied the general rule that costs follow the outcome of the case.

62. Furthermore, the Government claimed that the applicants had not paid the costs ordered by the Supreme Court, as could be seen from the terms of the final settlement. In the Government's view they could not therefore claim to be "victims" within the meaning of Article 34 of the Convention. Finally, the Government pointed out that the applicants had adopted the valuation of the RCT's expert in its entirety and, on appeal, had adopted both the valuation and the first-instance judgment. It could therefore be said that this expert had also acted as their valuer in so far as the substance of the case was concerned. The retrial had been ordered because of defects in that valuation.

63. The applicants disputed the Government's submissions. They firstly submitted that although it was general practice that costs on appeal followed the result, in the event that the Supreme Court ordered a retrial the general practice was that the costs followed the result of the retrial. The applicants relied on three judgments of the Supreme Court in which that court had upheld the appeal, ordered a retrial of the case and where the costs of the first-instance and appeal proceedings consisted of trial costs following the retrial proceedings (*Antonis Papaioannou v. Nikou Nicolaou*, appeal no. 11744, 15 June 2005; *A. Athanasiou v. Loizias & Sons Contracting & Building (Overseas) Ltd*, appeal no. 8120, 3 December 1993; and *Ellis Simillidou v. Demetris Stergiou and another*, appeal no. 9048, 18 November 1996). The applicants therefore submitted that there had been no reason to raise the issue before the Supreme Court. Furthermore, they observed that although they had been given the costs of the retrial as part of the friendly settlement they had concluded (see paragraph 40 above), they had had to pay the costs of the first-instance and appeal proceedings. The applicants submitted a receipt by the respondents' lawyer dated 14 January 2008 confirming that the applicants had paid the costs of both the first-instance and the appeal proceedings. Finally, the applicants argued that the RCT's expert could not be considered as their valuer.

64. The Court reiterates that Article 6 § 1 is applicable to costs proceedings, provided that the legal costs which form the subject matter of the proceedings were incurred during the resolution of a dispute which involved the determination of civil rights and obligations (see *Beer v. Austria*, no. 30428/96, § 12, 6 February 2001, and *Baumann v. Austria*, no. 76809/01, § 48, 7 October 2004). Since the costs order in the present case was clearly related to the principal civil claim, Article 6 § 1 of the Convention is also applicable to the costs procedure.

65. The Court reiterates that it is not its function to act as a court of appeal, or as a court of fourth instance, from the decisions taken by domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural or substantive law (see, amongst many

authorities, *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34, and *Fehr v. Austria*, no.19247/02, § 32, 3 February 2005).

66. In the present case the Supreme Court ordered a retrial of the case and granted the costs of both the first-instance and appeal proceedings against the applicants. However, there was no basis on which the applicants could claim a right as such to obtain a costs order, the domestic courts enjoying a wide measure of discretion in this area. Nor does the Court find in the circumstances that the costs order was arbitrary. First of all, the applicants did lose the case on appeal regardless of the retrial order. Secondly, and most importantly, the applicants have not argued that the costs order against them deprived them of effective access to a court, and no such conclusion can be drawn from the facts of the case.

67. Furthermore, insofar as the applicants impugn the allegedly unfair procedure before the Supreme Court and lack of sufficient reasoning in its decision on costs, the Court would note that the parties could make any submissions they thought fit on costs during the Supreme Court's proceedings. Moreover, costs' issues are of an ancillary and largely technical nature to which the guarantees of Article 6 of the Convention must apply with due flexibility, particularly in the higher courts (see, *mutatis mutandis*, *Sutter v. Switzerland*, 22 February 1984, § 30, Series A no. 74, and *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI).

68. Having regard to the foregoing, the Court finds that there is no indication in the present case that the costs order issued by the Supreme Court infringed the fairness requirement of Article 6 § 1 of the Convention.

It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. As to the lack of a further appeal

69. The applicants further complained under the same provision that they did not have the right to appeal against the Supreme Court's judgment. In this connection they maintained that there was no third judicial instance in Cyprus before which they could complain about the Supreme Court's errors.

70. The Court reiterates that neither Article 6 nor any other provision of the Convention or its Protocols guarantee a right to have a civil case heard by three judicial instances (see, amongst other authorities, *Miedzyzakladowa Spoldzielnia Mieszkaniowa Warszawscy Budowlani*, no. 13990/04, decision of 26 October 2004). Furthermore, the Cypriot Constitution does not guarantee such a right.

71. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicants claimed 7,553.98 euros (EUR) in respect of pecuniary damage. These were the costs of the first-instance and appeal proceedings they had had to pay to the other party. The applicants submitted a bill of costs in this respect and the receipt of payment. Furthermore, the applicants claimed EUR 10,000 for non-pecuniary damage.

74. The Government contested these claims.

75. 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 considers that the applicants must have sustained non-pecuniary damage because of the unreasonable length of the proceedings. Ruling on an equitable basis, it awards them EUR 3,200 each under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

76. The applicants also claimed EUR 5,000 for the costs and expenses incurred before the Court. They submitted an invoice in this respect.

77. The Government submitted, in general, that a claim for costs incurred before the Court was not recoverable without the requisite proof.

78. 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 considers it reasonable to award the sum of EUR 1,500 jointly for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

79. 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 as to the length of the proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,200 (three thousand two hundred euros) each in respect of non-pecuniary damage and EUR 1,500 (one thousand and five hundred euros) jointly in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President