

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

FIRST SECTION

CASE OF A. J. HADJIHANNA BROS (TOURIST ENTERPRISES) LTD & HADJIHANNAS v. CYPRUS
(Application no. 34579/05)

JUDGMENT

STRASBOURG

18 January 2007

FINAL

18/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A. J. Hadjihanna Bros (tourist Enterprises) Ltd & Hadjihannas. v. Cyprus,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 34579/05) 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 company, A. J. Hadjihanna Bros (Tourist Enterprises) Ltd, and a Cypriot national, Mr A. Hadjihannas, on 8 September 2005.

2. The applicants were represented by Mr P. Petrakis, 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 11 January 2006 the Court decided to communicate the complaint concerning the length of the proceedings 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

4. The first applicant is a company registered under Cypriot law. The second applicant was born in 1941 and lives in Paralimni.

5. The facts of the case, as submitted by the parties and as derived from the minutes of the proceedings, may be summarised as follows.

A. Proceedings before the District Court of Nicosia

6. On 23 September 1997 a civil action (*no. 11581/97*) was lodged against the applicants before the District Court of Nicosia for the payment of the amount of 15,000 Cypriot pounds (CYP), plus interest at a rate of 9 per cent from 31 December 1990 until discharge of the debt. The above amount was allegedly due by the applicants on the basis of a loan which the plaintiff had granted to them and which was evidenced by a bond signed in the customary form. The second applicant had signed the relevant bond as a guarantor.

7. On 17 November 1997 the plaintiff filed the notice of appearance.

8. On 8 January 1998 the plaintiff filed an application for a summary judgment in view of the applicants' failure to file their defence. On 30 January 1998 the application was fixed for mention for 20 February 1998 and then for proof for 13 March 1998. In the meantime, on 9 March 1998, the applicants filed an objection to the above application. On 13 March 1998 the application was fixed for hearing for 22 May 1998 but was adjourned on that date following a written request which had been in the meantime submitted by the plaintiff. The application was fixed for 28 September 1998 and then for 13 November 1998. It was dismissed on the latter date.

9. On 27 November 1998 the applicants filed their defence and on 8 December 1998 the plaintiff applied to the court for the case to be fixed. On the same day the plaintiff filed his reply to the applicants' defence.

10. On 14 December 1998 the case was fixed for 27 January 1999. On the latter date it was set for hearing for 1 June 1999. In the meantime, on 25 May 1999, a notice for admission of documents was filed by the plaintiff.

11. From 1 June 1999 until 22 November 2000 the case was adjourned three times. On the latter date, it was fixed for programming for 15 December 2000 due to the trial judge's absence. On 15 December 2000 the court fixed the hearing for 8 May 2001 and on that date for 23 October 2001. On the latter date the case was adjourned by the court until 11 February 2002 due to the appointment of a new lawyer by the plaintiff.

12. On 11 February 2002 the court set the case for 19 June 2002 since it had continuing hearings in two criminal cases. On the latter date the case was adjourned until 10 December 2002 due to a continuing hearing in a criminal case which the Supreme Court had instructed should be tried on a daily basis.

13. In the meantime, on 29 November 2002, the plaintiff filed an *ex parte* application for summoning witnesses. The court issued an order in this respect on the same day.

14. The hearing of the case commenced on 10 December 2002 and was then set for 22 January 2003. On that date it was adjourned until

25 February 2003 at the plaintiff's request for the reason that his lawyer was ill. The applicants' lawyer did not object to the adjournment but requested costs. These were granted by the court.

15. The hearing of the case was concluded on 18 April 2003. It appears that, in total, four hearing sessions were held. Judgment was reserved on the above date.

16. Furthermore, within this period, both parties filed notices for admission of documents at the hearing and the applicants filed an *ex parte* application for the summoning of witnesses. The court issued an order in respect of the latter application on the same day of its lodging.

17. The Nicosia District Court delivered its judgment on 25 November 2004. It held that the relevant bond was valid and, thus, the applicants had to pay the plaintiff the amount of CYP 15,000 with interest at a rate of 9 per cent per annum. The interest was to be paid from 12 April 1990 until the aggregate interest reached the sum of CYP 15,000 and not until settlement of the amount. In accordance with the legislative provisions in force at the relevant time the amount of interest could not exceed the amount owed on the basis of the original loan.

B. Proceedings before the Supreme Court

18. On 4 January 2005 the applicants lodged an appeal with the Supreme Court against the first instance judgment (civil appeal no. 2/05). In their grounds of appeal the applicants challenged the first instance judgment and the District Court judge's jurisdiction. In respect to the latter, they maintained that the trial judge had awarded an amount which exceeded his jurisdiction under law.

19. These proceedings are currently pending. In this respect the applicants stated that the appeal had not yet been fixed for hearing.

C. Concurrent proceedings concerning stay of execution

20. In the meantime, on 21 January 2005, the applicants filed an application for stay of execution of the judgment of the District Court of Nicosia, pending the determination of their appeal or, alternatively, any other order and/or remedy. On the same day, the court granted a temporary stay of execution until the hearing of the application.

21. On 14 February 2005 and 3 March 2005 the applicants filed notices of objection to the above application. On 7 March 2005 the plaintiff filed an *ex parte* application concerning the cross-examination of the applicants.

22. The application was heard on 4 March 2005 and was dismissed on 28 March 2005. The court considered that when balancing the facts and the conflicting rights at stake, if the plaintiff ended up winning the appeal, he would not receive more than the amount he would have taken with the

execution of the first judgment in the light of the applicable law restricting interest to less than the total amount of capital owed. The court thus found that granting the application would in effect deprive the plaintiff, who had won at first instance, of the benefits of his success. Moreover, the court considered the applicants' prospects of success regarding their appeal in the main proceedings and found that the applicants had failed to establish that they had a good chance of succeeding. The court considered that their grounds of appeal were, at least *prima facie*, unfounded. In this connection, the court noted that the applicants had not put forward any evidence proving that the first instance judge had not had jurisdiction when he had tried the case. Furthermore, the court noted the second applicant had made a very negative impression when he had given testimony. His allegations had been held to be false and unreliable. Finally, the court emphasised that none of the applicants' arguments raised significant issues.

23. On 11 April 2005 the applicants filed an application by summons with the Supreme Court for stay of execution of the judgment of the District Court of Nicosia pending the determination of their appeal. On 20 April 2005 the plaintiff gave notice that he would object to the application.

24. On 22 April 2005, the applicants filed an *ex parte* application with the Supreme Court requesting the temporary stay of execution of the judgment until the hearing of their application by summons for stay was determined. The *ex parte* application was heard and dismissed on 25 April 2005. The Supreme Court noted that an application by summons had been already filed with the same reasoning and the hearing of which had been fixed for 23 June 2005 in order for the plaintiff/respondent to lodge an objection. The court found that in view of the fact that the plaintiff/respondent had been given a right to be heard in relation to the application by summons, the *ex parte* application could not be accepted.

25. On 23 June 2005 the applicants informed the Supreme Court that the first instance judgment had been executed following the dismissal of their application for a temporary stay. Consequently, the applicants withdrew their application of 11 April 2005. Costs were granted in the plaintiff's/respondent's favour.

THE LAW

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

26. 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..."

27. The Government contested that argument.

28. The period to be taken into consideration began on 23 September 1997 and has not yet ended. According to the last information received by the Court on 16 October 2006, the proceedings were still pending before the Supreme Court on that date. They have thus already lasted nine years and twenty-five days for two levels of jurisdiction.

A. Admissibility

29. 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

30. The applicants alleged that there had been long periods of delay in the proceedings attributable to the domestic courts and that the overall length of proceedings was excessive.

31. The Government argued that the domestic courts had examined the case with reasonable efficiency and that there had not been any unreasonable delay in the proceedings.

32. 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).

33. The Court observes that the case does not appear as such to have been particularly complex factually or legally. Furthermore, there were no major delays attributable to the applicants. The Court finds, however, that considerable delays occurred especially in the first instance proceedings

which were attributable to the court itself. In particular, it notes that from 27 January 1999 until 10 December 2002, the court continuously re-fixed the case for hearing and/or adjourned the case (see paragraphs 10-12 above). As a result, for a period of approximately four years the case was not dealt with. In addition, the Court observes that it took the District Court more than one year and seven months to deliver its judgment (see paragraphs 15 and 17 above). This appears to be an unreasonably long period of time and no explanations have been given by the Government in this respect.

34. Finally, the Court notes that although the appeal was lodged on 4 January 2005, according to the last information received by the Court on 16 October 2006, it had not yet been fixed for hearing (see paragraph 19 above).

35. In conclusion, having taken into account the circumstances of the case and the overall duration of the proceedings, the Court finds, that in the instant case the length of the proceedings before the domestic courts was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

Admissibility

36. The applicants complained that the proceedings had not been fair contrary to Article 6 § 1 of the Convention. In this respect, they firstly complained that the Supreme Court, by delivering its decision in the *ex parte* application for stay of execution, had denied the opportunity to both parties, especially the plaintiff, to be heard on the application by summons for the stay of execution of the first instance judgment. They considered that the Supreme Court had had a duty to preserve the *status quo* until it had heard both parties. Secondly, the applicants claimed that the District Court judge had awarded an amount which exceeded his jurisdiction under law.

37. As regards the first complaint, the Court notes that the proceedings for stay of execution, being an interim relief procedure in which no decision on the merits of the case is made, do not involve the determination of a civil right or obligation within the meaning of Article 6 § 1 of the Convention (see, *inter alia*, *APIS a.s. v. Slovakia* (dec.), no. 39754/98, 10 January 2000, unrepa orted and *Moura Carreira and Lourenço Carreira v. Portugal* (dec.), no. 41237/98, ECHR 2000-VIII, both with further references). It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

38. With regard to the applicants' second complaint, the Court observes that the applicants have raised the issue of the trial judge's jurisdiction before the Supreme Court on appeal (see paragraph 18 above). However, in view of the fact that these proceedings are still pending (see paragraph 19 above), this complaint is premature.

39. It follows that the above complaint is also inadmissible under Article 35 § 3 of the Convention as being manifestly ill-founded, pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed CYP 7,500 in respect of pecuniary damage. They stated that this amount represented half the amount they had had to pay to the plaintiff by way of interest. In this connection, they argued that due to the unreasonable delay in the proceedings the plaintiff's original claim had doubled because of interest.

42. The applicants further claimed CYP 15,000 by way of non-pecuniary damage.

43. The Government contested these claims.

44. The Court notes that the applicants have not substantiated their claim in respect of pecuniary damage. Furthermore, it observes that it is still possible that the national courts, before which the action remains pending, may make reparation for the financial consequences, if any, of failing to try the case within a reasonable time (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 48, § 25). That being so, and in the circumstances of the case, it would appear appropriate, to dismiss the applicants' claim under this head. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award them EUR 7,000 each under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

45. The applicants claimed CYP 8,000 for the costs and expenses incurred before the domestic courts and before the Court. In respect of the

former claim, the applicants requested the amount of CYP 4,304 that they were ordered to pay to the plaintiffs as costs by the district court. They provided the court's order for costs in support of their claim. The applicants did not provide any supporting documents concerning their claim for expenses incurred in the proceedings before the Court.

46. The Government contested the applicants' claims concerning the proceedings before the domestic courts. As regards the applicants' claims for the costs before the Court, the Government noted that this claim had not been specified and that such costs were not recoverable without proof that they had been incurred.

47. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). 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. Even though the applicants have not submitted any documentary evidence of the expenses incurred in the proceedings before the Court, the Court acknowledges that they must have incurred certain expenses in those proceedings, particularly since they were represented by a lawyer (see *Migoń v. Poland*, no. 24244/94, § 95, 25 June 2002, and *H.L. v. the United Kingdom*, cited above, § 152). Accordingly, having regard to its case-law, and making its own assessment of the reasonableness of her costs and expenses, the Court awards the applicants EUR 800 jointly for the proceedings before the Court, plus any tax that may be payable on that amount.

C. Default interest

48. 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 with regard to the length of the proceedings;

3. *Holds*

(a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, and to the applicants jointly, EUR 800 (eight hundred euros) for costs and expenses, to be converted into Cyprus pounds at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts;

(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 18 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President