

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

THIRD SECTION

CASE OF KRASHIAS AND OTHERS v. CYPRUS

(Application no. 52551/18)

JUDGMENT

STRASBOURG

20 June 2023

This judgment is final but it may be subject to editorial revision.



In the case of Krashias and Others v. Cyprus,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President*,
Georgios A. Serghides,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 52551/18) 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") on 26 October 2018 by four Cypriot nationals ("the applicants"), whose details are listed in the appended table and who were represented by Mr A. Angelides and Mr S. Angelides, lawyers practising in Nicosia;

the decision to give notice of the complaint concerning the length of the criminal proceedings to the Cypriot Government ("the Government"), represented by their Agent, Mr George L. Savvides, Attorney General of the Republic of Cyprus, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 30 May 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the length of criminal proceedings brought against the applicants by the Director of the Customs Department of the Republic of Cyprus ("the Director").

2. By a letter of 29 June 2007, the Director informed the first three applicants of a debt consisting of duties (import and anti-dumping) and taxes totalling 323,189 euros (EUR) which they owed to the State in their capacity as directors of the fourth applicant, a company.

3. The applicants were informed of the content of the letter on 26 July 2007. They unsuccessfully challenged the imposition of the aforementioned duties and taxes by means of a recourse (judicial review proceedings; recourse no. 1353/07) and by a subsequent appeal (no. 142/09) which was dismissed on 26 November 2013.

4. In the meantime, on 27 April 2011 the Director brought criminal proceedings (no. 9646/11) in the District Court of Nicosia in connection with the applicants' failure to pay those amounts. Under section 94 of the Customs Code Law of 2004 (L. 94(I)/2004) as in force at the relevant time, the offence of non-payment of a duty owed to the Director carried a fine of up to 5,000 Cypriot pounds ((CYP) – approximately EUR 8,742.33) or a sentence of up to one year's imprisonment, or both.

5. The case was set down for hearing for the first time on 9 June 2011. A series of delays ensued, however. Between 9 June 2011 and 1 December 2011, the applicants sought the adjournment of the case. Between 1 December 2011 and 3 May 2012, 8 January 2013 and 21 March 2013, and from 8 July 2015 until 12 August 2015 the case was adjourned either at the request of the applicants only, or of the applicants and the prosecution jointly. The case was also adjourned between 3 May 2012 and 6 December 2012, and from 27 June 2013 until 17 October 2013 on account of the court's inability to hear it. In addition, the case was adjourned from 17 October 2013 until 19 February 2015, but the reasons for those adjournments are unclear as the District Court's registry did not keep readable verbatim records of the proceedings.

6. During the hearings which did take place, three witnesses were heard, and the court issued two interim decisions, on 28 March 2013 and 23 April 2015.

7. On 6 October 2015 the court delivered its judgment, in which it found the applicants guilty of the offences. It did not accept the applicants' argument that the case should be dismissed owing to the delay in the proceedings, reasoning, *inter alia*, that they could not claim to have been under any uncertainty concerning their case as it had been clear to them all along that the prosecuting party would insist on collecting the unpaid duties and taxes. The court noted that even after the Director's decision had been upheld on appeal in the above-mentioned civil proceedings they had chosen not to pay the money owed and had continued to dispute the decision, even though they admitted that they had not paid the amounts in question and had known of their obligation to pay since 26 July 2007. The court further stated, however, that "[t]he delay that [had] occurred [might] be taken into account for the calculation of the sentence".

8. Between 5 November 2015 and 2 December 2015, the court heard the parties on the issue of the mitigation of the sentence.

9. On 2 December 2015 the court issued its decision regarding the applicants' sentence. It noted, *inter alia,* that "the delay that [had] occurred both in the lodging of the criminal case and in the subsequent trial [would] be taken into account". It finally imposed a fine of EUR 400 on each applicant and issued a payment order against them ordering them to pay jointly or severally the total amount of EUR 323,189 to the Director.

10. On 14 December 2015 the applicants lodged an appeal (no. 336/15) with the Supreme Court and on 16 December 2015 the prosecution cross-appealed (nos. 332-335/15), challenging the sentence as insufficient and the court's decision not to order the applicants to pay statutory interest on the amount due.

11. On 14 April 2016 the Supreme Court received the requisite verbatim records of the first-instance proceedings and on 27 April 2016 it instructed the parties to submit outlines of their written arguments.

12. Between 17 May 2016 and 2 February 2017, the proceedings were delayed pending the submission of the applicants' outlines of their written arguments. They had applied for an extension of the original deadline owing to a delay in their receiving the verbatim records from the District Court. Between 6 March 2017 and 25 May 2017, the proceedings were delayed pending the submission of the prosecution's written arguments following that party's request for an extension of the relevant deadline. On 14 November 2017 counsel for the applicants requested the adjournment of the hearing for personal reasons. The case was set down for hearing on 14 February 2018 but on that date, it was adjourned by the court until 4 April 2018, when the hearing did eventually take place.

13. On 30 April 2018 the Supreme Court delivered its judgment. It rejected the applicants' appeal and upheld the findings of the criminal court concerning the fine imposed. However, the Supreme Court partly allowed the prosecution's criminal appeals by ordering the applicants to pay statutory interest on the amount due to the Director.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

14. The question of whether the applicants have been deprived of their status as victims within the meaning of Article 34 of the Convention, as raised by the Government, is closely linked to the substance of the applicants' complaint under Article 6 § 1 of the Convention. The Court therefore joins this issue to the merits of the application (see, for example, *Ommer v. Germany* (no. 1), no. 10597/03, § 50, 13 November 2008) and notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

15. The general principles concerning the length of criminal proceedings have been summarised in the cases of *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 110, 12 May 2017, and *Georgiadis v. Cyprus*, no. 50516/99, §§ 40-41, 14 May 2002.

16. The Court disagrees with the applicants' submission that the length of the proceedings should be calculated from the date on which they were informed of the Director's letter, namely 26 July 2007 (see paragraph 3 above). The applicants' situation was not affected in any way and no measures which could be considered as a "charge" were taken against them at that time. The Court therefore considers that the proceedings lasted for seven years and three days over two levels of jurisdiction, starting on 27 April 2011 with the applicants' indictment (see paragraph 4 above) and ending on 30 April 2018 with the Supreme Court's judgment (see paragraph 13 above).

17. The proceedings were brought in relation to strict-liability offences, they were not complex and three witnesses were heard in total. The applicants were responsible for delays of approximately one year and four months (see paragraphs 5 and 12 above) over the course of both sets of proceedings. They cannot be held responsible for the period in which they were waiting for the preparation of the first-instance verbatim records (see paragraph 12 above); had these not been necessary for the appeal, as suggested by the Government, the court, which is responsible for ensuring the reasonable expedition required under Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 30, 5 February 2004), should not have granted the request. Nor can any delays be attributed to the applicants for the period between 17 October 2013 and 19 February 2015 in the absence of verbatim records of the proceedings to substantiate the Government's claims (see paragraph 5 above).

18. The Court notes that for a period of over one year and seven months the proceedings were adjourned at the request of the prosecution, or because of the courts' inability to hear the case or the delay in the preparation of the verbatim records of the first-instance proceedings. Even discounting the period of approximately one year and four months which was attributable to the applicants, the Court considers that the reasonable-time requirement was exceeded on the basis of the length of the remaining proceedings, which came to approximately five years and eight months over two levels of jurisdiction (see *Xofaki v. Greece,* no. 78778/12, § 27, 20 April 2017) for a case of no particular complexity concerning strict-liability offences.

19. Lastly, in view of the criminal nature of the case in question, which could conceivably have led to a sentence of imprisonment, the outcome of the proceedings was important for the applicants.

20. Having examined all the material submitted to it and having regard to its case-law on the matter, the Court concludes that, in the present case, the length of the proceedings in question was excessive and that the "reasonable time" requirement was not complied with.

21. Turning to the Government's assertion that the applicants had lost their victim status as they had received a lenient sentence (a fine of EUR 400 for each applicant compared with the maximum fine of CYP 5,000 or one year's imprisonment, or both) on account of the length of the proceedings, the Court reiterates the general principles concerning the loss of victim status in cases concerning the length of criminal proceedings on account of a reduction of sentence, as summarised in the case of *Chiarello v. Germany*, no. 497/17, § 54-55, 20 June 2019. While the first-instance court stated that the delay that had occurred "[would] be taken into account", the applicants' sentence was not reduced on account of the length of the proceedings in an express and measurable manner (ibid., §§ 18 and 57-58; see also *Ščensnovičius v. Lithuania*, no. 62663/13, §§ 51 and 92, 10 July 2018, and *Malkov v. Estonia*, no. 31407/07, §§ 29 and 60, 4 February 2010). The duration of the proceedings was one of many aspects considered by the court

when determining the sentence and does not seem to have been the predominant reason for mitigation (contrast with *Beck v. Norway*, no. 26390/95, §§ 14 and 28, 26 June 2001). In addition, the court failed to assess the prosecution's actions throughout the proceedings, while the applicants were considered not to have suffered any uncertainty (compare and contrast with *Menelaou v. Cyprus* (dec.), no. 32071/04, 12 June 2018).

22. Accordingly, the Court dismisses the Government's objection regarding the applicants' loss of victim status and finds that there has been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the length of the criminal proceedings admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 20 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Darian Pavli President

APPENDIX

List of applicants:

Application no. 52551/18

No.	Applicant's name	Year of birth/registration	Nationality/place of registration	Place of residence
1.	Pavlos KRASHIAS	1933	Cypriot	Nicosia
2.	Charalambos KRASHIAS	1944	Cypriot	Nicosia
3.	Michael KRASHIAS	1939	Cypriot	Nicosia
4.	KRASHIAS FOOTWEAR INDUSTRY	1977	Cyprus	Nicosia