

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

THIRD SECTION

CASE OF SAVVIDES v. CYPRUS

(Application no. 14195/15)

JUDGMENT

STRASBOURG

14 December 2021

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Savvides v. Cyprus,

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

María Elósegui, *President,*
Darian Pavli,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 14195/15) 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 Makis Savvides ("the applicant"), on 16 March 2015;

the decision to give notice to the Cypriot Government ("the Government") of the complaints under Articles 6 and 13 concerning the refusal of the Family Court of Appeal to examine the applicant's appeal owing to an irregularity in the title of the notice of appeal;

the parties' observations;

Having deliberated in private on 23 November 2021,

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

INTRODUCTION

1. The case concerns the refusal of the Family Court of Appeal to examine the applicant's appeal on the merits owing to an irregularity in the title of the notice of appeal, and the consequences thereof on the applicant's right of access to a court under Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1945 and lives in Limassol. He was represented by Mr Ch. Clerides and Mr N. Pirilides, lawyers practising in Nicosia.

3. The Government were represented by their Agent, Mr C. Clerides, Attorney General of the Republic of Cyprus, and subsequently by Mr G. Savvides, his successor.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 7 March 2012, in the context of maintenance proceedings (no. 265/06), the Limassol Family Court ordered the applicant to pay maintenance for his former wife.

6. On 22 March 2012 the applicant, represented by a lawyer, lodged a notice of appeal challenging that decision. The phrase "Supreme Court" appeared on the top left of the notice of appeal, while on the top right the phrase "maintenance: 265/06" had been added in handwriting.

7. On 18 April 2012 the registry of the Family Court of Appeal informed the parties in writing that the appeal was registered with number 12/2012. The phrase "Supreme Court of Cyprus, Family Court of Appeal" appeared on the top right corner of that court record.

8. From then on, any instructions to the parties, including extensions to the time-limit for submitting their pleadings were issued by the Family Court of Appeal and communicated to the parties through the registrar on a court record titled "Supreme Court of Cyprus, Family Court of Appeal".

9. On 11 March 2014 the appeal was scheduled for a hearing. A judge sitting on the bench remarked that the notice of appeal had been submitted to the Supreme Court, and not the Family Court of Appeal. The case was adjourned.

10. On 24 March 2014 the applicant lodged an application to amend the title of the notice of appeal to add the phrase "Family Court of Appeal" below the existing "Supreme Court". The application was based, *inter alia*, on Article 6 of the Convention.

11. The applicant submitted that there had been no law or procedural rule specifying the form of the notice of appeal to the Family Court of Appeal. As a result, parties customarily used the form provided for appeals to the Supreme Court. He stressed that since he had lodged the notice of appeal, various procedural steps had been taken before the Family Court of Appeal (see paragraph 8 above), without objection from the court or the opposing party. His failure to include the phrase "Family Court of Appeal" on the notice of appeal had been a bona fide mistake.

12. On 25 September 2014 the Family Court of Appeal dismissed the application. In brief, applying its case-law (see paragraph 19 below) the court held that in view of the mistake, there was no valid appeal to it, and the fact that other procedural steps had been taken was irrelevant.

13. Following the dismissal of the application, the Family Court of Appeal listed the main case for directions hearing on 7 October 2014. On that day the applicant argued that the court should examine the compatibility of its case-law with Articles 6 and 13 of the Convention and sought permission to address the court. The court dismissed the request and the appeal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGAL FRAMEWORK

A. Family Courts Law of 1990 (Law no. 23/1990) as amended

14. Under section 21(1) of the Law, judgments of Family Courts are subject to appeal to the Family Court of Appeal.

15. Section 21(2) of the Law provides that until the establishment of separate procedural rules, Family Courts shall follow the Civil Procedure Rules.

B. Family Courts Procedural Rules

16. In accordance with Rule 10 of the Family Courts Procedural Rules (2/1990), as it applied at the time of the events of the present case, the Civil Procedure Rules apply by analogy as regards appeal proceedings.

17. Order 35, Rule 3 of the Civil Procedure Rules provides that all appeals must be by way of a rehearing and must be brought by written notice of appeal lodged within the appropriate period with the registrar of the court appealed from, together with an office copy of the judgment or order complained of (Form 28 - notice of appeal). Form 28 is a standard form with the title "Notice of Appeal", "Supreme Court".

18. Rule 10 of the Family Courts Procedural Rules was amended on 28 November 2016 (7/2016). This amendment introduced a new form (Form 2 – notice of appeal) to replace Form 28, and to be used solely for appeals to the Family Court of Appeal. The title of Form 2 begins with the phrase "Family Court of Appeal" and continues with "appeal against the decision of the Family Court in application no. ...".

II. PRACTICE BY THE DOMESTIC COURTS

19. At the time in question, it had been the well-established practice of the Family Court of Appeal to dismiss, owing to a lack of jurisdiction, appeals which were lodged with the indication "Supreme Court" instead of "Family Court of Appeal" (see *Popi Theodorou v. Mariou Theodorou*, appeal no. 39, Family Court of Appeal, 15 March 1995; *Diamando Christodoulou v. Panikkou Christodoulou*, appeal no. 41, Family Court of Appeal, 29 November 1996; and *Kallistheni Mariou Theodorou v. Aristocli Andrea Neofytou*, appeal no. 41, Family Court of Appeal, 15 October 2013).

20. In *Klitou v. Mappourou* (appeal no. 16/2010, 7 June 2016), the Family Court of Appeal allowed an appeal despite the fact that reference was made only to the Supreme Court in the title of the appeal. It did so in acknowledgment of the fact that there was no provision for any specific form of the notice of appeal regarding appeals from the Family Courts. Nor was there any form other than Form 28 available at the registries of the District Courts, the Family Courts or the Supreme Court.

21. On 18 February 2020, with reference to an application to amend the title of the notice of appeal in *Heys v. Philippides* (appeal no. 41/2015), the Family Court of Appeal departed from its previous case-law. It held, *inter alia*, that it would be formalistic to consider that the appeal did not exist, simply because of the failure to cross out the phrase "Supreme Court" and

replace it with "Family Court of Appeal", as that conclusion would deprive the applicant of her right to appeal. The court further acknowledged that a common form was used for both civil and family court appeals. It also noted that in recognition of the problems that this created, the Supreme Court had amended Rule 10 of the Family Courts Procedural Rules. With reference to the Court's case-law concerning access to a court, the court accepted the application to amend the notice of appeal.

THE LAW

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

22. The applicant complained that the refusal of the Family Court of Appeal to examine his appeal on the merits owing to the irregularity in the title of the appeal breached his right of access to a court, under Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

23. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

24. The applicant reiterated the submissions he made before the domestic courts (see paragraph 11 above). He further argued that the cases of *Klitou* and *Heys* (see paragraphs 20 and 21 above) confirmed that the domestic courts' approach had shifted, acknowledging the fact that the previous case-law had been excessively formalistic and unjust.

25. The Government argued that the decision of the Family Court of Appeal to respect and apply in a foreseeable manner its previous well-established and long-standing case-law (see paragraph 19 above) served legal certainty, the proper administration of justice and precedent.

26. The Government further contended that the applicant's right had not been disproportionately restricted. The dismissal of the appeal had been the foreseeable consequence of his lawyer's error when lodging the appeal. That error was avoidable and was attributable to the applicant, who should bear the burden of its adverse consequences. As a result, the Government submitted that the applicant's complaints should be dismissed as manifestly ill-founded.

27. The Court reiterates the general principles concerning the right of access to a court and on access to the superior courts, as recently expounded in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-79, 5 April 2018).

28. In the present case, the Supreme Court, applying its case-law (see paragraph 19 above), dismissed the applicant's appeal on account of the lawyer's failure to replace and/or add to the existing phrase "Supreme Court" on the notice of appeal, the phrase "Family Court of Appeal".

29. The Court notes firstly that the Family Court of Appeal had established the practice of dismissing, owing to lack of jurisdiction, appeals which were lodged with the indication "Supreme Court" instead of "Family Court of Appeal" (see paragraph 19 above). The restriction can therefore be considered foreseeable, and the applicant has not raised any arguments to the contrary.

30. The Court notes, secondly, that it is not in dispute between the parties that the error was committed by the applicant's lawyer. However, the Court cannot ignore the absence, at the time in question, of a specific form to be used solely for appeals to the Family Court of Appeal (see paragraph 17 above). The Court observes in this regard that – as the applicant points out (paragraphs 11 and 24 above), and the Government does not contest – the Family Courts Procedural Rules did not contain any information concerning the requirement to cross out the phrase " Supreme Court" and have it replaced with the "Family Court of Appeal". This was apparently a practice that developed over time through case-law (see paragraph 19 above).

31. The absence of a specialised form for appeals to the Family Court of Appeal was a factor taken into account by the domestic courts in subsequent case-law (see paragraphs 20 and 21 above) which seems, at least implicitly, to acknowledge that the absence of a specialised form may have been conducive to the error. The domestic courts concluded in these subsequent cases that it would be too formalistic to consider that an appeal did not exist on account of such error. In this connection, the Court notes the subsequent creation of Form 2, currently used for appeals to the Family Court of Appeal (see paragraph 18 above).

32. The Court cannot therefore accept that solely the applicant should bear the adverse consequences of the error made in lodging the appeal.

33. Lastly, the Court notes that the Family Court of Appeal penalised the applicant by dismissing the appeal, despite the fact that the omission of the indication "Family Court of Appeal" on the notice of appeal did not jeopardise the identification of the appeal as one belonging to the Family Court of Appeal (see, *mutatis mutandis, Sotiris and Nikos Koutras ATTEE v. Greece*, no. 39442/98, § 23, ECHR 2000-XII). Specifically, the appeal was registered with the Family Court of Appeal and the registrar of the court treated it as being validly submitted to that court - as per the title of the court records sent to the parties (see paragraphs 7 and 8 above).

Similarly, unhindered by the omission in question, the court granted the litigants an extension of the time-limit for submitting their pleadings and listed the case for a hearing (see paragraphs 8 and 9 above).

34. The foregoing considerations enable the Court to conclude that in the present case, the applicant was disproportionately hindered in his access to a court owing to the excessively formalistic approach followed by the Family Court of Appeal.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicant complained that he had not had an effective remedy before a national court in respect of his complaint, contrary to Article 13 of the Convention.

37. Having examined the parties' submissions under this head, the Court considers that the complaint is admissible.

38. The Court notes that the applicant's complaint under Article 13 is essentially based on the lack of access to a court, which has already been found to have given rise to a violation of Article 6 § 1 (see paragraph 34 above). In these circumstances, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13, since its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI)

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 81,345 euros (EUR) in respect of pecuniary damage, this being the total of the sums that he paid as a result of the Family Court's judgment. He additionally claimed compensation in respect of non-pecuniary damage, or in the alternative, that he should be allowed the above amount in respect of non-pecuniary damage if the Court does not award that amount in respect of pecuniary damage.

41. The Government contested the applicant's claim. They submitted, in brief, that the claims had been excessive and not directly linked to the alleged violation.

42. The Court does not discern any causal link between the violation found and the pecuniary damage alleged, as the applicant's claim is hypothetical and based on the premise that had the appeal been allowed it would also have been successful. The Court therefore rejects this claim. On the other hand, it awards the applicant EUR 9,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

43. The applicant also claimed EUR 10,144.22 for the costs and expenses incurred before the first-instance court (maintenance application no. 265/06), plus EUR 1,945.13 for the costs and expenses incurred in respect of his appeal. He further claimed an additional EUR 7,000 as costs paid to the opposing side, plus EUR 15,000 for the costs and expenses incurred before the Court.

44. The Government submitted that the applicant could not recover the costs and expenses relating to the first-instance proceedings as they had not been actually and necessarily incurred to prevent or redress the alleged violation. They further submitted that the applicant could not recover the costs and expenses related to the appeal proceedings for which he had not provided itemised bills. Alternatively, they submitted that the applicant's claim should be limited to those costs incurred for his application to amend the title of the notice of appeal, in the amount of EUR 600, as calculated by the registrar of the Family Court of Appeal.

45. 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 were actually and necessarily incurred in the applicant's attempt to seek redress for the violation of the Convention and are reasonable as to quantum. Rule 60 of the Rules of Court further requires that an applicant submit itemised particulars of all claims, together with any relevant supporting documents.

46. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 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

47. The Court considers it appropriate that the default interest rate 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 application admissible;

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

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts at the rate applicable at the date of settlement:
      (i) EUR 9,600 (nine thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 14 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President