FIRST SECTION

DECISION

Application no. 16873/24
Andreas KYRIAKOU PANOVITS
against Cyprus

The European Court of Human Rights (First Section), sitting on 27 March 2025 as a Committee composed of:

Raffaele Sabato, *President*,
Frédéric Krenc,
Alain Chablais, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 16873/24) 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 13 June 2024 by a Cypriot national, Mr Andreas Kyriakou Panovits, who was born in 1982 and lives in Limassol ("the applicant") and was represented by Mr A. Clerides, a lawyer practising in Nicosia;

the withdrawal of Georgios A. Serghides, the judge elected in respect of Cyprus from sitting in the case (Rule 28 § 3 of the Rules of Court);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's inability to restore his criminal record ("expungement") after a judgment of the Court in his favour finding violations of his rights under Articles 6 §§ 1 and 3 (c) of the Convention (see *Panovits v. Cyprus*, no. 4268/04, 11 December 2008) owing to his failure to lodge the relevant application for expungement on time.

2. The applicant, a minor at the relevant time, was convicted of murder in 2000 by the Limassol Assize Court. The Supreme Court confirmed his conviction upon appeal in 2003. In *Panovits* (cited above, §§ 77, 86 and 101) the Court found that during his criminal trial there had been: a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 on account of the lack of

legal assistance in the initial stages of police questioning; a violation of Article 6 § 1 of the Convention due to the use of the applicant's confession in his main trial; and a violation of Article 6 § 1 on account of the way the Assize Court handled the confrontation with the applicant's defence counsel (see the facts of *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 14-27, ECHR 2005-XIII, and *Panovits*, cited above, §§ 17-22).

3. By Resolution CM/ResDH (2013)104 adopted on 6 June 2013, the Committee of Ministers declared itself satisfied that all individual and general measures required by Article 46 § 1 of the Convention had been adopted by the respondent Government and decided to close the examination of the execution of the Court's judgment in *Panovits*.

4. It transpires from the documents submitted to the Court by the applicant that he lodged civil action no. 3619/2009 against the Attorney General claiming compensation for the violation of his rights. In 2017 the District Court ordered the payment of 10,000 euros (EUR) in the applicant's favour. The applicant appealed against the first instance judgment alleging that the amount of compensation had been inadequate. The appeal is still pending before the Supreme Court.

5. In 2015 the Parliament of the Republic of Cyprus passed Law 23(I)/2015 ("Law Providing for the Restoration of Persons Convicted in Criminal Cases in the Light of Judgments of the European Court of Human Rights"). The law entered into force on 25 February 2015, and it grants the possibility to victims of violations of the Convention in criminal matters to seek, by way of an application to the Supreme Court, restoration of their criminal record or a re-trial of their criminal case, subject to certain substantive requirements foreseen in section 3(1)(a).

6. As regards issues of procedure, section 3(1)(b) provides that such applications should either be submitted within three months from the date of the Court's judgment concerning the affected person became final, or within three months from the entry into force of the law if the relevant Court's judgment had been issued prior to 25 February 2015. The second sentence of section 3(2) grants the Supreme Court discretion in deciding to examine late applications. It foresees the following:

> "The Supreme Court may examine a request which is not submitted within the above-mentioned deadlines, where it considers that under the circumstances, it was not reasonably possible that the request had been submitted within those deadlines."

7. On 6 December 2023 the applicant filed a request (the first one under this law) to the Supreme Court seeking the annulment of the domestic decisions convicting him so that he could benefit from a clearance of his criminal record. He explained that the eight-year delay in lodging the request was due, *inter alia,* to the fact that he had not been aware of the existence of Law 23(I/2015). He submitted that after the Court's judgment in his favour and throughout the years, he had employed many lawyers for, *inter alia,* the purpose of his expungement but that they all eventually lost interest in his

case. Therefore, he had not managed to lodge the application within the deadline set by the law. At the same time, he blamed the Attorney General for not having informed him about the law, despite the judgment in his favour in civil action no. 3619/2009. The applicant argued that he still suffers the consequences of having been convicted for murder because he is stigmatised, he cannot find a job and has serious financial difficulties which bring further challenges vis-à-vis the domestic authorities. The applicant alleged that the Supreme Court should have taken into account the seriousness of the consequences for him and the legal novelty of his situation.

8. On 8 February 2024 the Supreme Court refused the applicant's request as out of time. It found that according to the law, it must be clear from the circumstances of the case that it had not been reasonably possible for the applicant to have lodged the request in time. The court was not convinced by the reasons presented by the applicant to justify the eight-year delay in submitting his request and therefore did not exercise its discretion under section 3(2) in his favour. It further observed that the essence of the justifications provided by the applicant for the delay was that he did not know of or that he had not been informed about the existence of the law. The Supreme Court ruled that "the ignorance of the law cannot form the basis for the creation of a right."

9. Furthermore, according to the Supreme Court, the 2017 judgment of the District Court in civil action no. 3619/2009 made explicit mention of Law 23(I)/2015. It therefore considered that the applicant's argument as to his ignorance of the law had not only been unacceptable as a matter of principle or law but as a matter of fact as well.

10. The applicant complained under Article 6 § 1 of the Convention that because of the Supreme Court's refusal to examine his late application for expungement, his right of access to court had been violated. He further complained under Article 13 about the alleged absence of an effective remedy to have his criminal record expunged.

THE COURT'S ASSESSMENT

11. The Court, being the master of characterisation to be given in law to the facts of the case, considers that both above-mentioned complaints (see paragraph 10) fall to be examined under Article 6 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), noting also that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*.

12. The applicant alleged that the way the Supreme Court exercised its discretion in interpreting and applying section 3(2) of the law had been excessively formalistic and had placed a disproportionate limit on his right of access to court. As regards the reasons for the delay, he reiterated before the Court the allegations he made domestically.

13. The Court notes that the crux of the applicant's complaint is that his alleged right to have a late application under the law examined had been violated. A question arises as regards the applicability of Article 6 of the Convention. It is questionable whether Article 6 guarantees a right to have an application submitted outside the time-limit admitted to a court for examination on the merits. This is especially so in the light of the wide discretion allowed by the law to the Supreme Court to decide on the issue of late applications. More generally, the Court recalls that Article 6 does not apply to proceedings for the reopening of a criminal case because a person whose sentence has become final and who applies for his case to be reopened is not "charged with a criminal offence" within the meaning of that Article (see *Franz Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI). Similarly, Article 6 does not apply to a request for the reopening of criminal proceedings following the Court's finding of a violation (see *Franz Fischer*, cited above and *Öcalan v. Turkey* (dec.), no. 5980/07, 6 July 2010). Only any new proceedings, after the request for reopening has been granted, can be regarded as concerning the determination of a criminal charge (see *Löffler v. Austria*, no. 30546/96, §§ 18-19, 3 October 2000).

14. Regardless, even assuming that Article 6 is applicable, and examining the applicant's complaint from the angle of a restriction on his right of access to court, the Court does not discern any shortcomings in the way the Supreme Court exercised its discretion, nor in the existence of the three-month time-limit in the law. The refusal of the Supreme Court to examine the applicant's request, which had been lodged more than eight years after the foreseen deadline, cannot be said to have disproportionately or excessively burdened the applicant for the following reasons.

15. The Court reiterates that the "right to a court" and the right of access are not absolute. They may be subject to limitations which do not restrict or reduce access in such a way or to such an extent that the very essence of the right is impaired (see *De Geouffre de la Pradelle v. France*, 16 December 1992, § 28, Series A no. 253-B, and *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 114, 15 March 2018). The right by its very nature calls for regulation by the State (see *Philis v. Greece (no. 1)*, 27 August 1991, § 59, Series A no. 209). Furthermore, a limitation is not incompatible with Article 6 § 1 if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 129, 21 June 2016, and *Naït-Liman*, cited above, § 115).

16. The Court notes that general time-limits for introducing any action before domestic courts, such as the one set by section 3(1)(b) of Law 23(I)/2015, are legitimate procedural limitations on access to a court and are necessary for ensuring legal certainty and clarity within domestic jurisdictions.

17. As regards the way the Supreme Court decided, the Court does not find that in the circumstances of the case it had been arbitrary or manifestly unreasonable. Indeed, the applicant was afforded the opportunity to present his case before the court and specifically to explain why he had delayed over eight years in lodging the application. The Supreme Court assessed whether it had not been reasonably possible for him to have lodged the request earlier. After having heard and examined each one of these reasons, it explained why it had remained unconvinced by the explanations of the applicant. The court also pointed out that the existence of the law had been communicated to him in 2017, and that he nonetheless failed to provide a convincing explanation on why he waited to lodge his application for expungement a further six years after that. The Court finds no reason to depart from the reasoning of the Supreme Court.

18. In the light of a delay of eight years to file an application under Law 23(I)/2015, the fact that the applicant was by his own admission in touch with various lawyers over the years, as well as the fact that he had been informed at least in 2017 of the existence of the law and the possibility to have his record expunged, the Court does not find that the way the Supreme Court exercised its discretion had been excessively formalistic or that it had not been in line with the demands of legal certainty and the proper administration of justice (see *Zubac v. Croatia* [GC], no. 40160/12, § 98, 5 April 2018).

19. It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2025.

Liv Tigerstedt Deputy Registrar	Raffaele Sabato President