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

THIRD SECTION

DECISION

Application no. 24308/17
Xiaodan LIU
against Cyprus

The European Court of Human Rights (Third Section), sitting on 5 September 2017 as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 March 2017,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

1. The applicant, Ms Xiaodan Liu, is a Chinese national, who was born in 1978 and lives in Nicosia. She was represented before the Court by Mr L. Vrahimis, a lawyer practising in Nicosia.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant had a child out of wedlock. On 17 February 2004 she brought paternity recognition proceedings before the Nicosia Family Court (application no. 4/2004) which gave judgment dismissing the application on 22 December 2009.

4. The applicant lodged an appeal with the Family Court of Second Instance (appeal no. 2/2010). On 9 June 2011 the court upheld the appeal: it set aside the first instance judgment and ordered a retrial.

5. Following a retrial, on 3 April 2015 the Nicosia Family Court gave judgment in the applicant's favour, recognising the respondent as the father of her child.

6. The respondent appealed to the Family Court of Second Instance (appeal no. 13/2015). His appeal was rejected on 5 October 2016.

B. Subsequent developments

7. By a letter dated 29 June 2017 the applicant's lawyer informed the Court that on 28 June 2017 the applicant, who had been granted legal aid by the Nicosia District Court, lodged a civil action seeking damages for a violation of her right to a trial within a reasonable time under Article 30(2) of the Constitution and Article 6 of the Convention (no. 2634/17).

C. Relevant domestic law

8. In order to ensure the effective protection at domestic level of the principle of the right to a trial within a reasonable time and to provide effective domestic remedies in relation to breaches of that right, the Law Providing For Effective Remedies for Exceeding the Reasonable Time Requirement for the Determination of Civil Rights and Obligations, Law no. 2(I)/2010, was passed. This Law entered into force on 5 February 2010. The relevant legal provisions are set out in the Court's decision in *Panayi* v. *Cyprus* (dec.), no. 46370/09, 23 September 2010.

9. This Law applies to complaints concerning the length of proceedings in all civil and administrative cases. Throughout its text the Law refers to district court and Supreme Court cases. Section 2, which contains the interpretation of the terms used in the law, provides, in so far as relevant, as follows:

> " 'Supreme Court case' means every case and procedure, with the exception of criminal, which by virtue of the Constitution, the Administration of Justice (Miscellaneous Provisions) Law, the Courts of Justice Law or any other laws, is examined by the Supreme Court or any judge or judges of it,
>
> 'district court case' means every case and procedure, with the exception of criminal, which pursuant to the Courts of Justice Law or any other laws, is examined by a district court and includes every case which is examined by a family court, industrial disputes court or rent control court".

10. The family courts were established by the Family Courts Law of 1990 (Law no. 23/1990, as amended). By virtue of section 21(1) of this Law, orders, decisions and judgments of the first instance family courts are subject to appeal before the Family Court of Second Instance which has exclusive jurisdiction. This court is distinct from the Supreme Court which was established by the Administration of Justice (Miscellaneous Provisions) Law of 1964 (Law no. 33/64). The Family Court of Second Instance

consists of three judges of the Supreme Court who are appointed by the Supreme Court for a period of two years.

COMPLAINTS

11. The applicant complained under Article 6 of the Convention about the length of the proceedings before the family courts which in her view were excessive. Further, relying on Article 13 she complained of a lack of an effective remedy in respect of her complaint.

THE LAW

12. The applicant complained that the length of the proceedings before the family courts had been incompatible with the "reasonable time" requirement under Article 6 of the Convention. She also complained of a lack of an effective remedy under Article 13 of the Convention. In this connection, she submitted in general that Law no. 2(I)/2010 excluded proceedings before the family courts, both first instance and appeal. The applicant's lawyer maintained this position in his letter of 29 June 2017 in explaining why civil action no. 2634/17 was not brought under Law no. 2(I)/2010 (see paragraph 7 above).

13. The above provisions read, in so far as relevant, as follows:

Article 6 § 1

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

14. The Court recalls that pursuant to Article 35 § 1 of the Convention:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...".

15. The rule of exhaustion of domestic remedies in Article 35 § 1 requires applicants to use the remedies provided by the national legal system thus dispensing States from answering before this Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption reflected in Article 13 of the Convention - with which Article 35 § 1 has close affinity -

that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems' safeguarding of human rights (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV.

16. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014).

17. In so far as proceedings under Law no. 2 (I)/2010 are concerned, the Court notes that in its decision in *Panayi* (cited above) it examined the remedies provided by this Law for the purposes of Article 35 § 1 of the Convention and found that applicants were required to make use of them in relation to complaints of excessive length of proceedings before the Cypriot courts in civil and administrative cases. The applicant's position is that this Law does not apply to proceedings before the family courts.

18. Although Law no. 2(I)/2010 throughout its main text uses the terms "district court case" and "Supreme Court case", section 2 of the Law gives a broad definition of these terms (see paragraph 9 above). In accordance with that section, the term "District court case" also includes cases which are examined by other courts, including family courts. First instance family proceedings are therefore clearly covered by the Law. Furthermore, section 2 defines the term "Supreme Court case" as covering every case and procedure, with the exception of criminal, which is examined by virtue of the Constitution, the Administration of Justice (Miscellaneous Provisions) Law, the Courts of Justice Law or any other laws by the Supreme Court or any judge or judges of that court. It therefore includes cases examined on the basis of any domestic law by the Supreme Court or any of its judges. It is true that this definition does not refer expressly to the Family Court of Second Instance, which albeit being separate from the Supreme Court, consists of three judges of the Supreme Court. Any possible doubts, however, as to the interpretation of this definition and the application of Law no. 2(I)/2010 to proceedings before the Family Court of Second Instance are a matter for the domestic courts to rule on (see paragraph 10 above).

19. The Court observes in this respect that doubts about the prospects of a remedy which appears to offer a reasonable possibility of redress are not a sufficient reason to eschew it (see, *inter alia*, *Tsonev v. Bulgaria* (dec.), no. 9662/13, § 62, 30 May 2017; *Avotiņš v. Latvia* [GC], no. 17502/07,

§ 122, ECHR 2016; and *Gherghina v. Romania* (dec.), no. 42219/07, § 106, 9 July 2015). This is especially so if the legal provision on which the remedy is based has been specifically put in place to allow a grievance under the Convention to be aired domestically (see, for example, *Tsonev*, cited above, § 62; *Tiralongo and Carbe v. Italy* (dec.), no. 4686/06, § 46, 27 November 2012; *Gürceğiz v. Turkey*, no. 11045/07, § 31, 15 November 2012; and *Demir v. Turkey* (dec.), no. 51770/07, § 32, 16 October 2012). The Court further reiterates that when the proper construction of a new legal provision is yet to be settled, the domestic courts must be given the opportunity to dispel any doubts (see *Tsonev*, § 63 and *Gherghina*, §§ 101 and 106; both cited above).

20. The Court notes that the impugned proceedings terminated on 5 October 2016, the date the Family Court of Second Instance gave its final judgment in the case. As an action for a breach of the right to determination of civil rights and obligations within a reasonable time may be instituted within one year of the date of the final court judgment it is still open to the applicant in the present case to avail herself of this remedy (section 5 (1) of Law no. 2(I)/2010; see paragraph 8 above and *Panayi*, cited above) and give the domestic courts the opportunity to examine her complaint as well as dispel any doubts concerning the application of Law no. 2(I)/2010 to proceedings before the Family Court of Second Instance.

21. The Court does not find any exceptional circumstances absolving the applicant from the obligation to exhaust the above remedy.

22. The Court points out that should the applicant be unsuccessful, it would be open to her to lodge a fresh application with the Court within a period of six months from the date on which the final domestic decision was taken.

23. In so far as civil action no. 2634/17 is concerned (see paragraph 7 above), the Court notes that the proceedings are still pending. Consequently, any matter relating to this remedy is premature.

24. It follows that applicant's complaint under Article 6 is inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and must be rejected pursuant to Article 35 § 4 thereof.

25. In view of this conclusion, the Court finds that complaint under Article 13 of the Convention is inadmissible as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President