CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42946/98
by Maro LOUKA
against Cyprus

The European Court of Human Rights (Third Section) sitting on 12 October 1999 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mrs F. Tulkens,
Mr K. Jungwiert,
Mrs H.S. Greve, *Judges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 27 July 1998 by Maro Louka against Cyprus and registered on 26 August 1998 under file no. 42946/98;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 10 June 1999 and the observations in reply submitted by the applicant on 13 July 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Cypriot national, born in 1948 and living in Larnaca. She is represented before the Court by Mr Christos Theodoulou, a lawyer practising in Larnaca.

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

On 12 September 1987 the applicant instituted civil proceedings against K.M. before the District Court of Larnaca, claiming CYP 4,720. The money had been paid to K.M. by the applicant's father as a loan.

On 27 December 1991 the District Court granted the applicant's claim.

On 21 January 1992 the defendant filed an appeal against this judgment. The parties were informed that the appeal would be heard on 21 March 1996. On that date the Supreme Court adjourned the hearing at the parties' request.

On 11 April 1996 K.M. applied for an amendment of the grounds of his appeal. On 9 May 1996 the applicant opposed this request. The hearing was fixed on 25 June 1996. On that date the Supreme Court ordered an adjournment until 18 July 1996 at the defendant's request. On 28 February 1997 the Supreme Court allowed the defendant to amend the grounds of his appeal.

On 6 March 1997 the defendant filed the new grounds of his appeal.

The Supreme Court heard the case on 17 December 1997.

On 19 February 1998 the Supreme Court ordered a retrial and sent the case back to the Larnaca District Court.

On 23 February 1998 the defendant died.

On 11 September 1998, in the context of a settlement reached between the applicant and the administrator of the estate of the deceased K.M., it was declared before the Larnaca District Court that the case was fully settled.

On 11 May 1999 the action was brought before the Larnaca District Court to enable the parties to declare on the record that a settlement had been reached. The applicant's counsel failed to appear before the Court, therefore the Court dismissed her action.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the unfairness of the proceedings.

2. The applicant further complains under Article 6 § 1 of the Convention of the length of the proceedings.

PROCEDURE

The application was introduced before the European Commission of Human Rights on 27 July 1998 and registered on 26 August 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

On 16 March 1999 the Court decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 10 June 1999. The applicant replied on 13 July 1999.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the unfairness of the proceedings. In particular, the applicant complains that on 25 June 1996 the Supreme Court adjourned the case, granting the defendant's request to amend his grounds of appeal, whereas if it had heard the case it would have certainly rejected the latter's application. The applicant also complains that the Larnaca District Court dismissed her action on 11 May 1999 despite of the fact that it was known that a settlement had been reached between the parties.

Article 6 § 1 of the Convention, insofar as relevant, provides 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 ... ."

According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see the Garcia Ruiz v. Spain judgment of 21 January 1999, to be published in *Reports of Judgments and Decisions* 1999, §28).

In the present case, the Court notes that the applicant had the benefit of adversarial proceedings. At the various stages of those proceedings she was able to submit the arguments she considered relevant to her case. The Court does not discern any arbitrariness in the decisions of the domestic courts. There is no indication that the proceedings in issue were not fair for the purposes of Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 et 4 of the Convention.

2. The applicant further complains under Article 6 § 1 of the Convention of the length of the proceedings.

The Government submit that the proceedings in issue satisfied the requirements of Article 6. The applicant contest the arguments of the respondent Government.

The Court considers that, in the light of the criteria laid down in its case-law concerning "reasonable time" (the complexity of the case, conduct of the parties and conduct of the authorities dealing with the case), the complaint concerning the length of the proceedings raises serious issues of fact and law which cannot be resolved at the present stage of the examination of the application, but calls for an examination of the merits.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint that her case was not heard within a reasonable time;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

N. Bratza
President