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. 39972/98
by Christos PAPADOPOULOS
against Cyprus

The European Court of Human Rights (Third Section) sitting on 28 September 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 9 February 1998 by Christos Papadopoulos against Cyprus and registered on 20 February 1998 under file no. 39972/98;

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 4 January 1999 and the observations in reply submitted by the applicant on 22 march 1999;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Cypriot national, born in 1952 and living in Limassol. He is an Information Technology Manager.

He is represented before the Court by Mr C. Clerides and Mr N. Pirilides, lawyers practising in Cyprus.

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

On 19 July 1994 the applicant filed an action in the District Court of Limassol against four defendants claiming, inter alia, arrears of salary, payment for services rendered and damages for unfair dismissal. Because of the amount claimed, the action had to be heard by the Full Court which, moreover, had to be composed of the President of the District Court and another District Court judge.

The first hearing of the case was set for 17 October 1995. After a number of adjournments at the behest of the parties, and more than ten hearings, on 28 February 1997 the court heard the final addresses of all parties concerned. Judgment was reserved. In particular, on 17 October 1995, the hearing was adjourned until 1 February 1996 owing to the withdrawal of the lawyer of some of the defendants and then until 22 February due to the appointment of a new lawyer. It continued on 19 March, 9 April and 13 May 1996, but on 12 June it was adjourned again due to the absence abroad of the lawyer of some of the defendants. It resumed on 2, 3 and 4 July 1996. On 26 September 1996 it was adjourned at the request of both lawyers until 21 October 1996 and again on 11 November 1996 due to the fact that one of the lawyers of the defendants attended another hearing before another court. The hearing continued on 11 and 12 December 1996 and 15 January 1997.

However, on 30 June 1997 the President of the District Court of Limassol and member of the Full Court which had tried the applicant's case was appointed by the Government to the Public Service Commission, a body responsible for the appointment and promotion of civil servants.

The new President of the District Court of Limassol fixed the applicant's case for directions on 2 October 1997. On that date the applicant requested that the reserved judgment be rendered. However, the President of the District Court suggested to the applicant that he should address himself to the Supreme Court.

On 6 October 1997 the applicant sent a letter to the President and members of the Supreme Court of Cyprus asking them to give directions to the District Court of Limassol to issue the reserved judgment. In support of his request, he referred to relevant case-law of the United Kingdom courts, as there was no case-law of the Supreme Court of Cyprus.

A new hearing for directions was fixed by the President of the Supreme Court of Cyprus on 6 November 1997, but no decision was taken pending the reply of the Supreme Court to the applicant's request.

On 7 November 1997 the Supreme Court, via its Chief Registrar, advised the applicant that the matter, being judicial, should be referred to the competent court.

Another hearing for directions was held on 27 November 1997. The applicant asked the President of the District Court of Limassol to give the court directions to proceed with the reserved judgment.

On 5 December 1997 the President of the District Court of Limassol ruled that he was not able to issue such a direction because, according to the general principles and the case-law, the court which was to issue a judgment should first hear and see the witnesses in order to be able to assess their testimony, especially in cases where there was a conflict of evidence. In the applicant's case there was a conflict of evidence and the court needed to assess which evidence it would accept and which it would not. The new President of the District Court of Limassol had neither seen nor heard any of the witnesses and, as a result, he could not assess the evidence which had already been given. It followed that the President was not able to issue the reserved judgment on his own or together with the second member of the Full Court which had reserved the judgment. Nor was the President able to give directions to the second member of that Full Court to issue the reserved judgment on her own even though she had heard and seen all the witnesses. In these circumstances, the President of the District Court of Limassol decided that the applicant's case should be reheard from the beginning (*de novo*) and fixed a hearing date for 11 February 1998.

The case was reheard between 11 February 1998 and 8 January 1999 and judgment reserved on 8 January 1999. The plaintiff called three witnesses and gave evidence himself. He completed his case on 21 January 1998. On 11 February 1998 plaintiff's advocate asked for an adjournment due to sudden illness. He then asked for a further adjournment because he was taken up with another hearing in a different case before another President of the District Court of Limassol. On 8 April 1998 the advocate asked for another short adjournment which was granted until 18 June 1998.

When the applicant submitted his observations to the Court on 22 March 1999, the District Court of Limassol had not yet delivered its judgment.

COMPLAINTS

The applicant complains that he has been and will be further subjected to excessive procedural delays, to a great deal of expenditure and will have to present his case twice, in violation of his right to a fair trial within a reasonable time prescribed by Article 6 § 1 of the Convention.

PROCEDURE

The application was introduced on 9 February 1998 and registered on 20 February 1998.

On 1 July 1998 the European Commission of Human Rights decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 4 January 1999, after an extension of the time-limit fixed for that purpose. The applicant replied on 22 March 1999, also after an extension of the time-limit.

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.

THE LAW

The applicant alleges that he has been and will further be subjected to excessive procedural delays, to a great deal of expenditure and that he will have to present his case twice, in violation of his right to a fair trial within a reasonable time, prescribed by Article 6 § 1 of the Convention, which 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 ... ."

He alleges, in the first place, that the length of the proceedings has exceeded a "reasonable time". Secondly, the decision of the District Court of Limassol to rehear the case deprived him of a fair hearing.

1. The Government claim that the applicant failed to exhaust domestic remedies because he should have appealed to the Supreme Court of Cyprus against the decision of the District Court of Limassol to hear the case *de novo* after the appointment of the President of that Court to a governmental post.

The applicant maintains that even if he had appealed to the Supreme Court, that Court had no power to order an ex judge or the other judge who had heard the case to deliver judgment. No provision in the Cyprus Constitution, the Civil Procedure Rules or any other Cypriot Law gives the Supreme Court such a power in the exercise of its appellate jurisdiction. The Supreme Court could do no more than confirm the decision of the District Court of Limassol. Reversing that decision and ordering the ex judge to deliver judgment would have been contrary to the principle of separation of powers enshrined in the Cyprus Constitution. Lastly, the applicant recalls that the Civil Procedure Rules only provide for appeals against interlocutory orders and judgments and not against decisions of District Courts for hearings *de novo.*

The Court recalls that Article 35 § 1 of the Convention only requires the exhaustion of those remedies which are available and sufficient and relate to the breaches alleged. Moreover, an applicant who has availed himself of a remedy capable of redressing the situation giving rise to the alleged violation, directly and not merely indirectly, is not bound to have recourse to other remedies which would have been available to him but the effectiveness of which is questionable (see the judgment of Manoussakis and Others v. Greece of 26 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1359, § 33).

In the present case, the Court considers that, for the reasons set forth by the applicant, he could not reasonably have expected an appeal to the Supreme Court to give him the result he sought, namely to have his case heard within a reasonable time. In this respect, the Court notes that when the applicant sent a letter to the President and members of the Supreme Court of Cyprus, asking them to give directions to the District Court of Limassol to deliver the reserved judgment and invoking the "enormous delay" that a rehearing of the case would entail, the Supreme Court advised him that the matter, being judicial, should be referred to

the competent court. In so doing, the Supreme Court left it entirely to the District Court to decide on the course of future proceedings.

The Court has, therefore, no reason to believe that an appeal against the decision of the District Court to rehear the case could have led the Supreme Court to take a different stand on the matter. Consequently, the Government's preliminary objection must be dismissed.

2. As to the merits of the case and the complaint regarding the length of the proceedings, the Government argue that it transpires from the parties' conflicting evidence before the District Court, that in the absence of any written agreement between the parties expressly specifying the applicant's right to the payments he claimed, that court had to establish the truth of the matter - whether agreements had been made, the circumstances under which they had been made, their terms and the amounts due thereunder. The delay in hearing the action *de novo,* when weighed against the necessity of hearing witnesses and assessing their veracity, was not unreasonable or unjustified in the circumstances. On 11 February 1998, the date initially set for the rehearing, the case was adjourned at the request of the applicant's lawyer. Although the District Court was ready to hear the matter on 18 March 1998, the hearing was again postponed until 8 April 1998 because the lawyer had other engagements. Again, on that date, the District Court was obliged, due to the lawyer's request, to adjourn the examination of the case until 18 June 1998. The hearing started on that date and continued on 19, 26 and 30 June, 3, 6 and 21 July and 17 September 1998, by which time the testimonies of the applicant and his two witnesses had been completed and that of the defendant had started. On 18 September 1998, the hearing was adjourned until 12 October 1998 at the request of the lawyers of both parties.

As regards the first hearing of the case, it was set for 17 October 1995. After a number of adjournments at the behest of the parties, and more than ten hearings, on 28 February 1997 the court heard the final addresses of all parties concerned. Judgment was reserved. Bearing in mind the volume of strongly contested evidence adduced, the Government contend that there was no unreasonable delay in the completion of the case which can be attributed to the District Court.

The applicant submits that the Government knew or should have known, before appointing the judge to a new post, that cases were pending before him and judgments were reserved. His action was filed on 19 July 1994 and was completed on 28 February 1997. It took the District Court twelve months to hear a total of six witnesses. The failure to deliver judgment before the retirement of the judge remains inexplicable. The judge was appointed to the public service on 30 June 1997, but the case was not reheard until 11 February 1998. Nothing complex or difficult was involved that could account for the overall delay and long adjournments until January 1999.

The Court notes that the period to be taken into consideration began on 19 July 1994, when the applicant filed an action with the District Court of Limassol against four defendants claiming, inter alia, arrears of salaries, payment for services rendered and damages for unfair dismissal. The case was still pending at first instance, as of 13 May 1999 when the Court last heard from the applicant.

In the light of the parties' observations, the Court considers that this part of the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

3. Finally, the applicant submits that his right to a fair hearing under Article 6 § 1 of the Convention was violated because, after proceedings which had already lasted four years at first instance, his case had to be reheard and, as a result, he was subjected to further delays and expenditure. He maintains that it was not fair to oblige him to go through the process of a second hearing over the same matter just because the Government failed to take the necessary steps to ensure that judgment was delivered in time. There is a greater risk of the memory of witnesses fading as time goes by, and of witnesses being challenged over the slightest contradiction on record compared with what they said at the first hearing. At the second hearing the defendant benefited from a full knowledge of the evidence, a considerable advantage which he himself had not had during the first hearing.

The Court recalls that the fairness of civil proceedings must be examined on the basis of the proceedings as a whole (see, *mutatis mutandis,* no. 45012/98, Falkauskas and Kamantauskas v. Lithuania, Dec. 2.3.1999 and no 49098/99, Gaidjurgis v. Lithuania, Dec. 7.9.1999, *unpublished*). The Court notes that the proceedings in the present case have not yet been concluded. Accordingly, it would be premature for the Court to deal with the applicant's complaints under Article 6 until the domestic courts have determined his "civil rights" and before which he can still pursue these Convention claims. The Court concludes that the applicant cannot at this stage claim to be a victim of a violation of the above provision.

It follows that this aspect of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits, the applicant's complaint relating to the length of the proceedings ;

DECLARES INADMISSIBLE the remainder of the application.

S Dollé
Registrar

N. Bratza
President