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

THIRD SECTION

DECISION

Application no. 38744/21
Anthousa ROUSOUNIDOU
against Cyprus

The European Court of Human Rights (Third Section), sitting on 12 December 2023 as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to the above application lodged on 29 July 2021,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Anthousa Rousounidou, is a Cypriot national, who was born in 1966 and lives in Paphos. She was represented before the Court by Mr K. Manolis, a lawyer practising in Pafos.

2. The Cypriot Government ("the Government") were represented by their Agent, Mr G. L. Savvides, the Attorney General of the Republic of Cyprus.

A. The circumstances of the case

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

4. The Attorney General brought criminal proceedings (no. 7279/17) in the District Court of Paphos for the applicant's alleged failure to ensure the disposal and/or recovery of dental waste by contracting with a licensed waste management company as required by the Law on Waste (L. 185(I)/2011).

5. On 26 February 2020 the District Court of Paphos decided that the prosecution had failed to make out a prima facie case against the applicant and accordingly dismissed the charges against her (a decision hereinafter referred to as acquittal). Specifically, the court held that it could not call the applicant to present her defence to the charge, as she was accused of conduct or an omission which of itself did not constitute an offence under the Law on Waste. As such, the court considered that the prosecution had been flawed and dismissed the case.

6. As regards legal costs, the court held as follows:

> "... the matter falls within the discretion of the court; however, the case was initiated by the Attorney General and in accordance with sections 167, 168 and 169 of the Criminal Procedure Law, as interpreted in case-law, neither the first instance courts nor the appellate court have the power to award legal costs out of public funds to a defendant who has been acquitted (see *Thoma Thasos v. Police* (2000) 2 A.A.D. 465). As a result, the court makes no award of costs in favour of the defendant."

7. On 9 March 2020 the Attorney General lodged an appeal with the Supreme Court (no. 38/2020) challenging the decision of the first instance court.

8. In her pleadings the applicant made the following claim concerning the legal costs of the procedure:

> "... (b) The appeal should be dismissed with costs against the Attorney General and/or the Republic."

9. On 17 February 2021 at the hearing of the case, concerning the issue of costs, the applicant's lawyer stated as follows:

> "... I refer to my client's pleadings and to the respondent's pleadings and I request my costs."

10. On 10 March 2021 the Supreme Court dismissed the appeal and upheld the findings of the first instance court. As regards the question of costs, the Supreme Court held:

> "It is not possible to award legal costs in favour of the defendant, as requested by her counsel (see *Thoma Thasos v. Police* (2000) 2 A.A.D. 465)."

11. The applicant paid her lawyer overall 1,000 euros (EUR) for his legal fees concerning the first instance and appeal proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Criminal Procedure Law of 1959, Cap. 155 (as amended)

12. The relevant sections of Cap. 155 (Criminal Procedure Law), as amended, provide:

Section 167 – Costs of witnesses for the defence

"A court hearing a case filed in the Assize Court may direct that the costs of such of the witnesses called for the defence as were bound to give evidence on behalf of the accused shall be paid out of public funds."

Section 168 – Payment of costs by accused

"Whenever a person is convicted of any offence, the court may order him to pay the costs of the prosecution in addition to any other sentence which may be passed upon him and in the case of public prosecutions such costs when recovered shall be paid into public funds."

Section 169 – Award of costs to accused

"If in any summary trial the accused is acquitted the court may order any person by whom in its opinion the charge was preferred, or any person whom it may consider responsible for having procured the same, to pay the accused his costs."

B. Relevant domestic case-law

13. In the case of *David Pishorn v. The Police* (criminal appeal no. 3327, 19 June 1972) the appellant, who had been acquitted at first instance, appealed against the first instance court's decision not to award him costs. The Supreme Court held that:

"It has not been submitted, either before the [lower court] or before us, that this is a case in which the costs of the appellant should be paid by any particular person by whom the charge has been preferred or who has procured the filing of such charge. As counsel for the appellant has clearly stated this is a case in which he expects payment out of public revenue.

In section 169 [of the Criminal Procedure Law]—quoted above—no mention is made about payment of costs out of public revenue; on the contrary, section 167 of the same Law provides that a Court before which any information is tried may direct that the costs of witnesses for the defence may be paid out of public revenue and the next section—168—provides for payment into public revenue of any costs of the prosecution which a person convicted of an offence, in the case of a public prosecution, may be ordered to pay. We are, therefore, inclined to the view that as section 169 is worded it does not enable an order to be made for the payment out of public revenue of the costs of a person who is acquitted in a summary trial: and the majority view in *Rodosthenous v. The Republic*, 1961 C.L.R. 382 (at p. 397), regarding the effect of section 25 of the Courts of Justice Law, 1960 (14/60) in relation to the power of the High Court (now the Supreme Court) to award costs in proceedings before it, does not, in our opinion affect the position under section 169, because in that case the sub judice issue was different.

> ... we are of the opinion that even if the trial Judge was empowered to award costs payable out of public revenue, it would not in the light of the circumstances of the present case—(where the Appellant was charged before the District Court after being involved in a traffic collision and it was eventually held that it had not been established that he had acted negligently)—have been proper for us to interfere with the decision not to award costs."

14. In *Thasos Thoma v. Police* (criminal appeal no. 6713, 25 September 2000) the Supreme Court held that in accordance with sections 167, 168 and 169 of Cap. 155, as interpreted by case-law, neither the first instance courts nor the appeal court had the power to award legal costs out of public funds to a defendant who had been acquitted.

15. In *Attorney General v. M.D. Cyprus Soya Ltd* (criminal appeal no. 308/15, judgment of 11 May 2017) the Supreme Court held that it had no reason to depart from the general principle that no order for costs could be made in favour of a defendant who had been acquitted. According to the court, this was to protect the State's duty to institute criminal proceedings in relation to offences.

COMPLAINT

16. The applicant complained under Article 6 § 1 of the Convention that the domestic courts' inability to award her legal costs, even though she had been acquitted, had breached her right to a fair trial and of access to a court.

THE LAW

17. The applicant alleged that her right to a fair trial and her right of access to a court had been breached as a result of the domestic courts' inability to grant her costs despite her acquittal, contrary to Article 6 § 1 of the Convention, which in its relevant part reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

A. The parties' submissions

1. The Government

18. The Government raised various preliminary objections.

19. First, they contested the applicability of Article 6 of the Convention. While the proceedings against the applicant had been criminal in nature, the issue of legal costs and expenses had not related to a criminal charge against the applicant. Article 6 had not been applicable under its criminal limb. As to the question of whether there was a remaining civil limb in the proceedings closely connected to their criminal limb, the Government submitted that the

applicant did not have a right to be awarded the costs of private representation. According to the Government, neither domestic statute law nor case-law gave the courts the power to award costs out of public funds in the event that a person charged with a criminal offence was subsequently acquitted. This was so irrespective of the outcome of the proceedings, which was therefore not decisive for the applicant's claim. The Government contended that section 167 of the Criminal Procedure Law made reference to the payment of defence witnesses' costs out of public funds, but that power was discretionary and limited to defence witnesses. Similarly, the Government contended that section 168 of the same law referred to payment of costs by the accused. In addition, the Government argued that even though section 169 of the Criminal Procedure Law referred to payment of costs to the accused in a summary trial, that did not cover payment of costs out of public funds. The Government referred in this connection to the domestic case-law concerning section 169 of the Criminal Procedure Law (see paragraphs 13-15 above). The Government further submitted that legal costs in favour of the respondent to an appeal could be covered only where the Attorney General had appealed against a judgment of the Assize Court and not against a judgment of the District Court, as had been the situation in the present case. As a result, the Government argued that Article 6 had not been applicable under its civil limb either.

20. Second, they raised various preliminary objections concerning the applicant's alleged failure to exhaust domestic remedies. In this respect the Government argued that the applicant had not brought a complaint in the domestic courts that her right to a fair trial had been breached (or would be breached) if she were not awarded legal costs, or if the domestic courts did not have the power to award legal costs by virtue of established case-law. In addition, the Government argued that it had also been open to the applicant to seek legal aid had she not had the means to pay her lawyer's fees. Moreover, the Government claimed that the applicant could have filed a civil action for malicious prosecution under the Civil Wrongs Act and could have recovered her costs that way.

2. The applicant

21. The applicant contested the Government's arguments. As regards the objection concerning the applicability of Article 6, she argued that section 169 of the Criminal Procedure Law empowered the domestic courts to award costs in favour of a defendant who had been acquitted. She further argued that her acquittal had been upheld on appeal but that she had not been entitled to reimbursement of the costs and expenses of privately funded legal representation under domestic law. She argued that as a result there had been an interference by the State with her right to a fair trial within the meaning of Article 6. While she accepted that the issue of costs did not give rise to a criminal charge, she argued nonetheless that since the outcome of the criminal

proceedings had been the decisive factor concerning her claim for costs, this civil limb of the domestic proceedings remained closely linked to the criminal limb.

22. As regards the Government's objection for failure to exhaust domestic remedies she argued that in domestic legal procedure costs should be requested at the completion of the trial and given that she had been acquitted there had not been any means of obtaining redress in respect of her costs. In any event, the domestic courts would be bound by the established case-law and, when her lawyer had asked for her costs, the Supreme Court judges did not comment on the request. She further submitted that she had been able to pay her lawyer's fees for both cases and she had therefore not needed to apply for legal aid. Lastly, she submitted that the fact that the prosecution had failed to make out a prima facie case against her had not necessarily meant that she had been maliciously prosecuted.

B. The Court's assessment

23. The Court will begin its assessment by examining the Government's objection to the admissibility on the grounds of incompatibility *ratione materiae* under Article 6 § 1 of the Convention.

24. The applicant's complaint relates to the determination, following her acquittal in a summary trial, of the issue of costs in criminal proceedings. The parties agree that the issue of costs and expenses in this case did not relate to a criminal charge against the applicant (see paragraphs 19 and 21 above). The Court too, considers, that the issue of costs does not fall under the notion of a "criminal charge" within the autonomous meaning of Article 6 § 1. It remains to be seen however, whether the issue of the determination of the legal costs in the present case fell within the scope of Article 6 § 1 of the Convention under its civil limb as the applicant suggests (see, *mutatis mutandis*, *Mamič v. Slovenia (no. 2)*, no. 75778/01, §§ 27-30, ECHR 2006-X (extracts) where that issue was addressed in the context of a complaint about the length of proceedings and *Topolovčan v. Croatia* (dec.), 67405/10, § 19, 11 December 2012 concerning allegedly erroneous dismissal of the applicant's claim for costs and expenses incurred in criminal proceedings).

25. The Court reiterates that the Convention does not give a person who has been charged with a criminal offence but subsequently acquitted a right either to the reimbursement of the costs incurred in the course of criminal proceedings against him or her, however necessary those costs might have been, or to compensation for lawful restrictions on his or her liberty during the process. Such a right can be derived neither from Article 6 § 2 nor from any other provision of the Convention or its Protocols. It follows that the question whether such a right can be said in any particular case to exist must be answered solely with reference to domestic law. In this connection, in deciding whether a "right", civil, or otherwise, could arguably be said to be

recognised by domestic law, the Court must have regard to the wording of the relevant legal provisions and to the way in which these provisions are interpreted by the domestic courts (see *Masson and Van Zon v. the Netherlands*, 28 September 1995, § 49, Series A no. 327-A and *Lutz v. Germany*, 25 August 1987, § 59, Series A no. 123).

26. The Court considers that the pertinent legal provision for the purposes of the present assessment is section 169 of the Criminal Procedure Law which provides that if in a summary trial the accused is acquitted, the court "may" order any "person" to pay the accused his legal costs. Section 167 of the law makes reference to the payment of defence witnesses' costs and is as such not related to the present case which concerns the costs of the applicant's legal representation by a privately hired lawyer. Section 168 of the same law refers to payment of costs by the accused and is as such not pertinent either.

27. The word "may" in section 169 of the Criminal Procedure Law reflects the discretion afforded to the Cypriot courts on the matter of awarding costs following the acquittal of a person in a summary trial. The Court reiterates that it is primarily for the national authorities, in particular the courts, to resolve problems of interpretation of domestic legislation. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention. Thus, where the superior national courts have analysed in a comprehensive and convincing manner the precise nature of the impugned restriction of access to a court, on the basis of the relevant Convention case-law and principles drawn therefrom, the Court would need strong reasons to differ from the conclusion reached by those courts by substituting its own views for theirs on a question of interpretation of domestic law and by finding, contrary to their view, that there was arguably a right recognised by domestic law (see *Grzęda v. Poland* [GC], no. 43572/18, § 259, 15 March 2022). The Court cannot ignore the domestic courts' consistent interpretation of the domestic law to the effect that it excludes the possibility of ordering the payment, out of public revenue, of the costs of a person who is acquitted in a summary trial (see paragraphs 13-15 above). The same approach was followed in the applicant's case (see paragraphs 6 and 10 above). The Court sees no reason to depart from the domestic courts' interpretation. It appears that the legislature gave the domestic courts discretion to decide on the issue of costs, without imposing a duty on the State to reimburse an acquitted person their legal costs, or explicitly recognising a right of accused persons to have their legal costs reimbursed out of public revenue (compare, *Masson and Van Zon,* cited above, §§ 50-51 and *Topolovčan,* cited above, § 21).

28. In the light of the domestic legal framework, the Court is not satisfied that the applicant had a "right" to recover costs from public funds, within the meaning of Article 6 § 1 of the Convention.

29. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4.

30. In view of this conclusion, it is not necessary for the Court to examine the remaining objections raised by the Government.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 25 January 2024.

Milan Blaško
Registrar

Pere Pastor Vilanova
President