



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

FIRST SECTION

CASE OF JOSEPHIDES v. CYPRUS

(Application no. 33761/02)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

02/06/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Josephides v. Cyprus,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr G. MALINVERNI, *judges*,
Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 November 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 33761/02) 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”) by a Cypriot national, Mr Christos Josephides (“the applicant”), on 11 September 2002.

2. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. On 15 December 2005 the Court decided to communicate to the Government the applicant's complaint under Article 6 § 1 of the Convention as to the length of the proceedings firstly, concerning the appointment of the applicant to the post of First Officer of Town Planning and secondly, concerning the post of Director of Town Planning. Furthermore, the Court decided to communicate to the Government the applicant's complaint under the same provision concerning lack of impartiality in the second set of the proceedings due to the participation of two judges on both the Supreme Court bench examining the interim appeal and the final appeal. Applying Article 29 § 3 of the Convention, the Court decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1944 and lives in Athienou.

A. Proceedings concerning the withdrawal of the proposal for the filling of the post of First Officer of Town Planning by the Public Service Commission.

5. On 8 March 1989 the applicant applied for the vacant post of First Officer of Town Planning. On 8 June 1989 the Public Service Commission (hereinafter “the Commission”), responsible for the recruitment of officers in the public service, decided to appoint the applicant to the post. However, before the decision was communicated, it was suspended and then, on 14 August 1990 the applicant was informed that the Commission had decided to withdraw the proposal for the filling of the above post.

1. Proceedings before the Supreme Court (first instance administrative jurisdiction) - recourse no. 795/90

6. The applicant filed a recourse (recourse no. 795/90) for the annulment of this decision before the Supreme Court (first instance administrative jurisdiction).

7. On 3 December 1992 the Supreme Court declared the above decision null and void. It found that the decision to withdraw the proposal for the filling of the post had been *ultra vires* since it had had the clear purpose of preventing the applicant's appointment to that post.

2. Proceedings before the Supreme Court (revisional administrative jurisdiction) - appeal no. 1720

8. The Government lodged an appeal (no. 1720) before the Supreme Court (revisional administrative jurisdiction).

9. In the meantime, the Commission in a decision dated 8 March 1993 noted that if the appeal was unsuccessful the procedure for filling of the post of First Officer of Town Planning would have to be re-examined and any possible decision of the Commission that the applicant was qualified would be binding also for the procedure for the post of Director of Town Planning.

10. On 5 October 1994 the appeal was dismissed. The Supreme Court upheld the first instance judgment.

3. Subsequent events

11. The composition of the Commission changed and the new Commission members requested the Law Office of the Republic for advice concerning the procedure to be followed in the light of the Supreme Court's judgment of 5 October 1994.

12. The Attorney-General of the Republic provided the Commission with an advisory opinion in two letters dated 22 December 1995 and 4 January 1996.

13. On 5 January 1996 the Commission, considering that it was bound both by the Supreme Court's judgment of 5 October 1994 and the advisory opinion given by the Attorney-General, appointed the applicant to the post of First Officer of Town Planning retrospectively as from 1 July 1990. This was in spite of the fact that in its decision it noted that it disagreed with the former Commission that the applicant had the required qualifications for the post. In the relevant letter dated 9 January 1996 the applicant was informed that he would be compensated for the period from 1 July 1990 until the date he took over his new duties for the difference between the salaries. Following a successful recourse before the Supreme Court, the date of commencement of his new appointment was set as 1 July 1989. The applicant claimed that only one third of the due salaries had been paid to him.

14. On 16 February 1996 the applicant's appointment was published in the Official Gazette of the Republic.

B. Proceedings concerning the appointment of the applicant to the post of First Officer of Town Planning

1. Proceedings before the Supreme Court (first instance administrative jurisdiction) - recourse nos. 348/96, 349/96 and 365/96

15. In 1996 the Cyprus Association of Town and Country planning and two other candidates for the post of First Officer of Town Planning filed three recourses (nos. 348/96, 349/96 and 365/96) before the Supreme Court (first instance administrative jurisdiction) against the Government, through the Commission, seeking the annulment of the applicant's appointment. The recourses were filed on 25 April 1996, 30 April 1996 and 20 November 1996 respectively. The applicant took part in the proceedings as an interested party.

16. The Government filed their opposition on 23 October 1996 and the applicant on 20 November 1996.

17. On 16 December 1996 the Supreme Court joined all the above recourses. Furthermore, on that date, the Supreme Court ordered the reinstatement of recourse 348/96 which it had dismissed earlier. The proceedings were then fixed for instructions for 25 February 1997.

18. The applicants in the recourses filed their written addresses on 25 February 1997, the Government on 29 May 1997 and the applicant on 7 July 1997. The applicants in the recourses filed their reply on 6 October 1997.

19. On 15 December 1997 the applicant raised a preliminary objection that the recourses had not been lodged within the prescribed time-limit. The court fixed the objection for a hearing for 4 February 1998. The hearing

took place on that date and on 24 February 1998, the Supreme Court rejected his objection by an interim judgment.

20. On 6 March 1998 the applicant filed an appeal challenging this interim judgment (appeal no. 2594). The Chamber was composed of five judges, namely, President Nikitas and Judges Constantinides, Nicolaides, Kallis and Gavrielides. The applicant submitted that the latter judge had been his colleague at the Law Office of the Republic and that their relations had been cold for reasons unknown to the applicant.

21. On 13 April 1998, at the hearing of the main recourse, the applicant's representative invited the Supreme Court to adjourn the first instance proceedings pending the outcome of the appeal concerning the interim judgment in order to avoid a conflict. The court considered that it would be more correct to fix the main recourse for trial once the appeal against the interim judgment was decided on. It therefore requested that the recourses be put before the court for the purpose of fixing a hearing after the determination of the appeal.

22. On 22 December 1999 the Supreme Court dismissed the appeal. In its judgment the Supreme Court only dealt with the question of whether a right of appeal existed against an interim decision. In this respect it noted that in line with the well-established jurisprudence such a right existed only in relation to interim decisions which were determinative of the rights or obligations of the litigants. Otherwise, interim decisions which were not determinative of the rights or obligations of the litigants, as long as they could affect the result, could be reviewed in the context of an appeal against the final first instance judgment. It then found that the interim decision challenged by the applicant fell in the latter category and dismissed the arguments advanced by the applicant to the contrary. The Supreme Court's judgment was confined to this question.

23. On 28 February 2000 the Supreme Court (first instance) fixed the recourses for directions for 23 March 2000.

24. On 19 May 2000 the applicants in the recourses filed their reply and the case was fixed for 13 October 2000 for any oral addresses. On the latter date the relevant administrative files were deposited before the court and the hearing of the oral addresses was adjourned until 23 October 2000 in view of the fact that the lawyer of the applicants in the recourse had been injured.

25. On 23 October 2000 the Supreme Court heard the parties' oral addresses and reserved its judgment.

26. On 31 January 2001 the Supreme Court annulled the decision of the Commission to appoint the applicant. It found that the newly composed Commission had wrongly considered that it had been bound to follow the Attorney-General's advisory opinion (see paragraphs 13 and 14 above) and had misinterpreted the *ratio decidendi* of the Supreme Court's judgment of 5 October 1994 (see paragraph 11 above) and its legal effects. In particular, it was clear that the Commission had acted contrary to its judgment

concerning the applicant's qualification because it had considered that it had been bound to appoint the applicant. The Commission, however, had not been obliged to follow the decision by the former Commission, which had remained an internal decision, and no such obligation could be derived from the Supreme Court's judgment. It had been open to the newly composed Commission to hold a new inquiry with respect to the qualifications of the applicant for the purpose of deciding whether the applicant was qualified for the relevant post.

27. The applicant submitted that he had then been informed that he had lost his post and that he had been offered a temporary employment contract instead.

2. Proceedings before the Supreme Court (revisional administrative jurisdiction) – appeal nos. 3190 and 3194

28. On 13 February 2001 the applicant and the Cypriot Government lodged appeals (nos. 3190 and 3194) against the above judgment before the Supreme Court (revisional administrative jurisdiction).

29. In his appeal the applicant challenged the first instance judgment and the interim decision of 24 February 1998 dismissing his preliminary objection.

30. On 5 April 2001 the appeals were set for pre-trial directions for 11 June 2001 before Judges Pikis, Artemides, Nicolaides, Iliades and Gavrielides.

31. The parties filed their written address outlines: the appellant Government on 6 July 2001, the applicant on 24 July 2001 and the respondents on 3 August 2001.

32. The appeals were then fixed for hearing for 2 November 2001 before Judges Pikis, Artemides, Nicolaou, Kallis and Kronides. According to the applicant, on that date Judge Kallis withdrew from the Chamber. He submitted that no explanations were given in this respect. As a result the hearing of the appeals was adjourned.

33. On 10 December 2001 the appeals were fixed for hearing for 1 February 2002 before Judges Artemides, Constantinides, Iliades, Gavrielides and Hadjihambis. The applicant submitted that just before the pleadings he had orally requested the exclusion of Judges Constantinides and Gavrielides from the Chamber since they had been part of the Supreme Court bench that had delivered the judgment of 22 December 1999 in interim appeal no. 2594 while the lawyer of the other parties had requested the exclusion of Judge Hadjihambis. The Supreme Court rejected these objections.

34. On 12 March 2002 the Supreme Court delivered its judgment by which it dismissed the appeals by majority (Judges Artemides, Constantinides, Iliades and Gavrielides). Judge Gavrielides pronounced the judgment. The Supreme Court upheld the interim judgment of 24 February

1998 (see paragraph 20 above) that the recourses had been lodged within the required time-limit. Furthermore, it upheld the findings of the first instance court in this respect finding that the newly composed Commission had not been bound by the conclusions or the decisions of the former Commission concerning the applicant's qualifications. Finally, it noted that it was not for the court to decide whether the applicant had the required qualifications but for the Commission.

35. Following the above judgment annulling the Commission's decision to appoint the applicant to the post of First Officer of Town Planning, the Commission held a new procedure for the filling of the post and decided that the applicant did not have the required qualifications and therefore debarred him from competing for the post.

36. The applicant submitted that he had been informed that the wife of one of his brothers had sent a letter dated 25 January 1996 to Judge Gavrielides demanding the payment of rents concerning an apartment in Nicosia for which that judge had the keys and made personal use of following the departure of the tenant. The judge never replied to the letter and stopped using the apartment. The applicant also stated that the judge had some personal economic interests in the Town Planning Department and thus did not want the applicant to hold such a key post. He claimed that in another judgment adopted by the full bench of the Supreme Court in a different case Judge Gavrielides had not participated on the grounds that he had been a former colleague of the plaintiff.

C. Proceedings concerning the post of Director of Town Planning

37. On 11 September 1992 the post of Director of Town Planning was published and the applicant submitted an application. The required qualifications were the same as those of the First Officer of Town Planning.

38. On 21 April 1993 the Commission, whose composition had in the meanwhile changed (see paragraph 11 above), decided to exclude the applicant as non-qualified. By decision dated 14 July 1993 the Commission appointed another candidate to the post.

1. Proceedings before the Supreme Court (first instance administrative jurisdiction) - recourse no. 816/93

39. The applicant filed a recourse (no. 816/93) on an unspecified date in 1993 before the Supreme Court challenging this appointment.

40. On 14 March 2000 the Supreme Court declared the decision appointing the respondent as null and void. The court found that the Commission had been bound to consider the applicant as qualified for the post of Director in view of its decision of 8 March 1993 (see paragraph 9 above). By deciding to appoint the applicant to the post of First Officer of Town Planning, the Commission had reversed its decision that he had not

been qualified and had decided at the same time that he had had the qualifications for the post of Director as well.

2. Proceedings before the Supreme Court (revisional administrative jurisdiction) - appeal no. 3033

41. The respondent then lodged an appeal (no. 3033) before the Supreme Court.

42. On 2 October 2002 the Supreme Court delivered its judgment dismissing the appeal. The court noted that it disagreed with the meaning given by the majority of Supreme Court in its judgment of 12 March 2002 (see paragraph 34 above) of the judgment of the Supreme Court in its judgment of 5 October 1994 (see paragraph 10 above). Upholding the findings of the first instance court, it found that the Commission had bound itself to consider the applicant as qualified for the post of Director. In particular the Supreme Court observed that it respected the opposite view of the full court in its judgment of 12 March 2002 with regard to the significance of the decision by the Supreme Court in its judgment of 5 October 1994. In particular they noted the following:

“We do not question the power which is recognised by the case law in the appointing body to re-investigate when a reason is established. This power, however, comes within the ambit of the principle of good faith and is not of unlimited scope. It depends on the circumstances. Our disagreement with the decision ... centres on the consideration and appraisal of the circumstances which form the foundation of the interpretation of the previous decision of the Full Court ... and not on a more general principle of jurisprudence”.

43. The Supreme Court observed that the judgment of the full court of 12 March 2002 delivered in appeal no. 3190 concerning the procedure for the post of First Officer of Town Planning did not bind it as regards its judgment in relation to the procedure for the post of Director of Town Planning since it had examined its connection with the former judgment with reference to a prior time, on the basis of its understanding of the full court's judgment of 5 October 1994. The difference in the result, however undesirable, had been nevertheless unavoidable.

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. Article 30 (2) of the Cypriot Constitution provides as follows, in so far as relevant:

“In the determination of his civil rights and obligations ..., every person is entitled to a ... hearing within a reasonable time by an independent, impartial and competent court...”.

45. In the case of *A. Constantinides and Alithia Publishing Company v. T. Papadopoulos* (Supreme Court judgment of 22 June 1999,

civil appeal no. 9903) the appellants claimed, *inter alia*, that the first instance court should have dismissed the action because there had been a violation of the “reasonable time” requirement as safeguarded by Article 30 (2) of the Constitution. The Supreme Court after examining the minutes of the proceedings found that the appellants' complaint in this respect had been unfair and unfounded. The court concluded that the delay in the trying of the action had been primarily due to the appellants' applications for the adjournment of the case. Furthermore, the Rules of Civil Procedure contained detailed provisions which a litigant could rely upon if he or she sought to have expeditious proceedings. Finally, the court noted the following:

“The breadth of application and the consequences of violation, in a specific case, of the provisions of Article 30 (2) of the Constitution were examined in number of decisions of the Supreme Court, to which the advocates referred. In the case of *Victoros v. Christodoulou*, (1992) 1 A.A.D. 512 the Supreme Court quashed the judgment at first instance because it had been issued 5 years and 3 months after the completion of the hearing, without any justification by the trial court. For this reason the Court of Appeal also judged that the delay was detrimental to the rights of the parties and consequently there was a violation of the provisions of Article 30 (2) of the Constitution. Of course, in the case we are examining nothing of this kind has occurred. In a recent decision of the Court of Appeal in the *civil appeal no. 9520 Nikos Shacolas and Federal bank of Lebanon (S.A.L.)*, of 7.7.98, extensive mention is made of the most recent jurisprudence of the Supreme Court, with particular reference to the case of *The Police v. Akis Fantis and others* (1994) 2 A.A.D. 160 and *The Republic v. Alan Ford and another (no.2)* (1995) 2 A.A.D. 232.

The appellants' advocate alleged that as a result of the delay observed in the hearing of the case his clients suffered damage because in the meantime, on 19.11.93, the judgment of the Court of Appeal was published in the case of *United Journalists DIAS Ltd and others v. Stavros Nathanael* (1993) 1 A.A.D. 893, in which the damages awarded in cases of slander and libel were increased. Independently of what we have already stated, the above suggestion of the appellants' advocate is erroneous in law. The right of the claimant to damages arising from a civil wrong is created at the perpetration of the wrong. The calculation of the damages is made, according to settled jurisprudence, on the day of the trial, when consideration is given to all the factors which have intervened and affect the calculation of the damages which, whatever they are, go back to the time when the right arose. Theoretically the damages can also be reduced according to the jurisprudence of the Supreme Court”.

46. In the case of *A. Sofokleous v. C. Taveloudi and A. Taveloudi* (civil appeal no. 11266) the appellant, before the hearing of the appeal had begun, filed an interim application requesting the exclusion of one of the judges sitting on the bench. The appellant claimed that the judge in question had participated in another appeal against another interim decision in the context of the same recourse. The Supreme Court by interim judgment of 27 June 2003 found that the application was unfounded and that the mere participation of the judge in question in a previous appeal procedure with a bench of a different composition did not exempt him from the present procedure. The issues in question were completely different and concerned

interim procedures. The substance of the recourse which would be the subject matter of the hearing had not yet been examined. The Supreme Court therefore dismissed the appellant's objection.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS TO THE LENGTH OF THE PROCEEDINGS

47. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by an independent and impartial tribunal established by law”.

48. In this respect the applicant argued that all the proceedings had been fundamentally linked and that for the purposes of examining the reasonableness of their length they should be taken together.

A. Admissibility

49. At the outset, the Court notes that although all sets of proceedings involved the applicant they concerned different recourses against different administrative acts and were examined separately by the Supreme Court. Accordingly, it cannot accept the applicant's argument in this respect and will proceed to examine each set of proceedings individually.

1. Proceedings concerning the withdrawal of the proposal for the filling of the post of First Officer of Town Planning by the Public Service Commission

50. The Court observes that these proceedings ended on 5 October 1994 when the Supreme Court's judgment on appeal was delivered (see paragraph 10 above).

51. It follows that this part of the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

2. *Proceedings concerning the appointment of the applicant to the post of First Officer of Town Planning and proceedings concerning the post of Director of Town Planning*

(a) **Applicability of Article 6**

52. Referring to the Court's jurisprudence (*Pellegrin v. France* [GC], no. 28541/95, ECHR 1999-VIII) the Government submitted that Article 6 § 1 of the Convention was not applicable to the proceedings in question. They emphasised that the posts for which the applicant had been a candidate were high in the hierarchy of the public service and entailed duties and responsibilities which involved both direct and indirect participation in the exercise of powers conferred by public law concerning the formulation of state policies and safeguarding the state's general interests.

53. The applicant contested the Government's submissions in this respect. He submitted that the posts in question did not come within the ambit of *Pellegrin* (cited above). He therefore argued that Article 6 § 1 was applicable.

54. The Court notes that in its recent judgment in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, 19 April 2007), it found that the functional criterion, adopted in the *Pellegrin* judgment (cited above), did not simplify the analysis of the applicability of Article 6 in proceedings to which a civil servant was a party or brought about a greater degree of certainty in this area as intended (§ 55). For these reasons the Court decided to further develop the functional criterion set out in *Pellegrin* and adopted the following approach:

“62. To recapitulate, in order for the respondent State to be able to rely before the Court on the applicant's status as a civil servant in excluding the protection embodied in Article 6, two conditions must be fulfilled. Firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on objective grounds in the State's interest. The mere fact that the applicant is in a sector or department which participates in the exercise of power conferred by public law is not in itself decisive. In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in the *Pellegrin* judgment, a “special bond of trust and loyalty” between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of relationship between the particular civil servant and the State in question. There will, in effect, be a presumption that Article 6 applies. It will be for the respondent Government to demonstrate, first, that a civil-servant applicant does not have a right of access to a court under national law and, second, that the exclusion of the rights under Article 6 for the civil servant is justified (*Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, 19 April 2007)”.

55. Turning to the facts of the present case, the Court notes that the applicant had access to a court under national law. Accordingly, on the basis of the test developed in the case of *Vilho Eskelinen and Others* (cited above, § 63) the Court finds that Article 6 is applicable to the present case and dismisses the Government's plea in this respect.

(b) Exhaustion of domestic remedies

56. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention and consequently, that the applicant's complaints under this head should be declared inadmissible. In particular, they stated that the applicant had not complained about the length of the proceedings before the Supreme Court, both at first instance and on appeal. In connection to the latter they emphasised that the applicant should have included the question of a violation of Article 6 § 1 of the Convention and Article 30 (2) of the Constitution in his grounds of appeal and therefore, given an opportunity to the Supreme Court to address his complaint in this respect. The Supreme Court did not examine constitutional matters *ex proprio motu*. The Government pointed out that the Supreme Court, as an appeal court, had the power to set aside judgments, to order a retrial or deliver any judgment it considered appropriate. This was applicable whether it sat as an appeal court in an administrative recourse or a civil case. In this respect the Government relied on the Supreme Court's judgment in the case of *A. Constantinides and Alithia Publishing Company v. T. Papadopoulos* in which the Supreme Court duly examined the appellants' complaints about the length of the proceedings (see paragraph 45 above).

57. The applicant disputed the Government's submissions and submitted that he had exhausted the available domestic remedies.

58. The Court recalls that, according to its established case-law, the purpose of the domestic remedies rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11–12, § 27; and *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, pp. 87–88, § 38). Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003).

59. The Court notes that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 69).

60. Finally, the Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning procedural delay is whether or not there is a possibility for the applicant to be provided with direct and speedy redress, rather than the indirect protection of the rights guaranteed under Article 6 (see, *mutatis mutandis*, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 195, ECHR 2006; and *Sürmeli v. Germany* [GC], no. 75529/01, § 101, 8 June 2006). In particular, a remedy shall be “effective” if it can be used either to expedite the proceedings at issue or to provide the litigant with adequate redress for delays which have already occurred (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, §§ 157-159, ECHR 2000-XI; *Mifsud v. France* (dec.), [GC], no. 57220/00, § 17, ECHR 2002-VIII; and *Sürmeli*, cited above, § 99).

61. In the present case, the Court notes that the case relied on by the Government demonstrates that, at least on appeal, a party to the proceedings can raise a complaint concerning the length of the proceedings and a violation of his rights in this respect and that the Supreme Court will examine and decide on the issue in its final judgment. However, firstly, it is obvious that this remedy cannot expedite the determination of an applicant's case. Secondly, this case does not indicate whether and if so, how an applicant could in reality obtain compensatory relief in respect of his or her length complaint by raising this complaint in the context of his appeal. In particular, in the case cited by the Government the Supreme Court did not find a violation of this right and its judgment does not clearly indicate, in the event of the finding of a violation, that this remedy could provide an applicant with adequate redress for delays that had already occurred. The Government did not supply any example from domestic practice showing that, by using the means in question, it was possible for the applicant to obtain such a relief (see *Kudła*, cited above, § 159). They merely made a general reference to the Supreme Court's powers as an appeal court.

62. Bearing in mind the above, the Court considers that the case cited by the Government does not suffice to show the existence of settled domestic case-law that would prove the effectiveness of the remedy.

63. Accordingly, the Court concludes that, in the absence of convincing submissions from the Government, this part of the application cannot be rejected for failure to exhaust domestic remedies. The Court thus dismisses the Government's objection on this point.

64. Finally, the Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

65. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

66. The Court further recalls that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial system in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74 ECHR 1999-II; and *Frydlender*, § 45, cited above).

1. Proceedings concerning the appointment of the applicant to the post of First Officer of Town Planning

67. The Court notes that the three relevant recourses which were subsequently joined were filed on 25 April, 30 April and 20 November 1996 before the Supreme Court (first instance administrative jurisdiction). The applicant took part in the proceedings as an interested party (see paragraph 15 above). The parties, however, have not indicated on which date the applicant joined the proceedings. In view of this, the Court, for practical reasons, will take the date the first recourse was lodged as the starting point for the assessment of the length of the proceedings. Consequently, the period to be taken into consideration began on 25 April 1996 and ended on 12 March 2002 with the Supreme Court's dismissal (revisional administrative jurisdiction) of the appeals (see paragraph 34 above). It thus lasted five years, ten months and eighteen days over two levels of jurisdiction.

68. The Government submitted that they did not have the court record of the proceedings but maintained that the length of the proceedings had been compatible with the “reasonable time” requirement of Article 6 § 1 of the Convention. In this connection they noted that the proceedings comprised of three administrative recourses which had been joined together and that within the relevant period interim proceedings had also taken place both at first instance and on appeal.

69. The applicant argued that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention.

70. The Court notes that while the total length of proceedings does not appear on the face of it to be excessive, there was considerable delay at first instance. The proceedings at this stage lasted approximately four years and nine months. Within this period the Supreme Court dealt with an interim application at first instance and on appeal. Although the interim proceedings at first instance were prompt (approximately two months), at the appeal stage they lasted about one year and nine months. The main recourse was adjourned during this period (see paragraph 21 above). Admittedly, interim proceedings and the use of interim procedural possibilities do result in certain acceptable delay in the proceedings. Nonetheless, the Court cannot ignore the excessive delay that occurred during the examination of the interim appeal and which contributed significantly to the prolongation of the main proceedings. In this connection, the Court notes that there is no indication that the issue raised was of particular legal complexity. The Government did not supply any explanation for this delay. Furthermore, the Court has not identified any periods of inactivity or adjournments that took place in the proceedings for which the applicant should be held responsible.

71. This being so and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

2. Proceedings concerning the post of Director of Town Planning

72. The Court notes that the parties have not indicated the exact date on which the initial recourse was lodged by the applicant before the Supreme Court (first instance administrative jurisdiction). On the basis of the information available to the Court the applicant filed the recourses sometime in 1993 and the proceedings ended on 2 October 2002 with the Supreme Court's dismissal (revisional administrative jurisdiction) of the appeal (see paragraph 42 above). Therefore, the Court's assessment of the duration of the proceedings can only be approximate. On the basis of the given information the period to be taken into consideration lasted more or less nine years over two levels of jurisdiction.

73. The Government submitted that they did not have the court record of the proceedings and did not make any comments concerning the applicant's complaint about the length of these proceedings.

74. The applicant argued that the delays in the proceedings had been attributable to the domestic courts and that the overall length of proceedings had been excessive.

75. The Court observes that the principal delay in the proceedings was at first instance, the proceedings at this stage lasting about seven years. In the Court's opinion, the time taken by the Supreme Court in examining the recourse at first instance, appears to be exceptionally long especially bearing in mind that the recourse does not appear to have involved any

particular factual or legal complexity. In this respect, the Court notes that the Government have not provided the Court with any explanations concerning the delay or with a court record of the proceedings which would enable the Court to identify the reasons for this delay.

76. This being so and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS

77. The applicant raised a number of complaints under Article 6 § 1 concerning the fairness of the proceedings. In particular the applicant complained about the following:

(a) The applicant complained about the manner in which the formation of the Chamber in appeal (nos. 3190 and 3194) had been changed without explanations, resulting in the participation of Judges Constantinides and Gavrielides who had been part of the bench who had taken the appeal judgment concerning the interim decision on the applicant's preliminary objections (see paragraphs 20 and 32-34 above). In this respect, he complained that the latter judge in particular, should not have been, in view of the circumstances (see paragraphs 20 and 36 above), on the bench that had examined his case. However, the Supreme Court had dismissed his request to exclude the above judges from the bench (see paragraph 33 above).

(b) The applicant complained that the judgments taken in respect of appeals nos. 3190 and 3194 on 12 March 2002 and appeal no. 3033 on 2 October 2002 had been contradictory as regards his qualifications for the relevant posts.

A. Complaints concerning lack of impartiality

78. The Government argued that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they submitted that the applicant had failed to file an application in the relevant appeal proceedings requesting the exclusion of these judges which would have afforded the Supreme Court the opportunity to examine and decide on the matter. They relied on the case of *A. Sofokleous v. C. Taveloudi and A. Taveloudi* in this respect (see paragraph 46 above).

79. As to the substance of the applicant's complaints the Government submitted that they were manifestly ill-founded. Firstly, they noted that the issue determined by the bench in the interim appeal had been a preliminary issue that had not touched upon the substance of the appeal. Therefore in

their view the applicant's allegation of a lack of impartiality of the relevant judges was not objectively justified. Secondly, as regards Judge Gavrielides they noted that no proof had been submitted by the applicant showing personal bias or interest in the case or that this judge had arranged to participate in the bench for personal reasons or otherwise. The applicant's assertions were unsubstantiated and related to alleged display of hostility or ill-will towards him outside the proceedings.

80. In reply the applicant emphasised that he had requested the exclusion of the both judges just before the pleadings while the lawyer of the other parties had requested the exclusion of one of the other judges (see paragraph 33 above). The court had examined the oral requests and then rejected them. The oral requests had been admissible; the court had not dismissed them on the basis that they had not been submitted in writing as the Government suggested. The applicant therefore argued that the Government's objection in this respect should be dismissed.

81. With regard to the substance of his complaint the applicant submitted that in the circumstances the participation of the two judges in both the interim appeal proceedings and the main appeal proceedings was contrary to requirement of impartiality guaranteed under Article 6 of the Convention, at least from an objective standpoint. In this connection, he maintained that the interim appeal formed an integral part of the whole proceedings. Furthermore, he argued that Judge Gavrielides should have excluded himself on additional personal grounds.

82. At the outset the Court notes that the Government do not contest that the applicant made an oral request for the exclusion of the two judges. In fact they make no comment in this respect. They merely argue that the applicant did not file an application, that is, a written request and rely on a case in which such an application was filed (see paragraphs 46 and 78 above). The Court observes that although the case cited demonstrates that it is open a party in proceedings to file a written application seeking the exclusion of judge it does not provide authority that such requests can be only made in writing. The Government do not make reference to any rule or other jurisprudence in this regard. Furthermore, the Court notes that the Government have not provided a record of the proceedings and therefore there is no transcript of the procedure that took place concerning the objections. This cannot be held against the applicant.

83. In these circumstances and bearing in mind the principles pertaining to the domestic remedies rule contained in Article 35 § 1 of the Convention (see paragraphs 58-60 above) the Court considers that the Government have failed to show that these complaints should be rejected for failure to exhaust domestic remedies. The Court thus dismisses the Government's objection on this point.

84. Notwithstanding the above, the Court considers that the applicant's complaints under this head are manifestly ill-founded for the reasons elaborated below.

85. As regards the applicant's first complaint the Court notes that in spite of changes in the composition of the bench at the pre-hearing stage of the appeal, there were no changes at the stage of the hearing and examination of the appeal. Furthermore, the mere fact that the bench that examined the appeal against the first instance judgment (appeal no. 3190) included two judges that had also been part of the bench that had decided the interim appeal (appeal no. 2594), does not in the Court's view, in the circumstances of the present case, constitute a ground for requiring their exclusion from deciding on the merits of the case. In particular the Court observes that the issues the judges examined when considering the interim appeal in relation to the preliminary objection were not the same as those which were examined and decided by the final judgment. The question that was examined by the Supreme Court at the interim appeal proceedings was whether an appeal could be lodged against the relevant interim decision. The interim appeal was rejected on the basis that the interim decision was not determinative of the rights or obligations of the litigants and that the interim decision could be considered in the context of an appeal against the first instance judgment. The Supreme Court's judgment was confined to this question; it did not consider the matter raised by the applicants as to whether the recourses had been out of time (see paragraph 21 above). This question was considered by the Supreme Court in the main appeal proceedings (see paragraph 34 above).

86. Secondly, as to the applicant's complaint regarding bias on the part of Judge Gavrielides, the Court notes that this is unsubstantiated. The documents and information submitted by the applicant do not indicate that this judge had any preconceived ideas or personal convictions about the case. Accordingly, in the Court's opinion the applicant has failed to substantiate his allegations and to lay the basis of an arguable claim of a breach of Article 6 § 1 in this respect.

87. Accordingly, it follows that the applicant's complaints under this head must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaints about the Supreme Court's judgments

88. The applicant complained that the judgments of the Supreme Court (revisional administrative jurisdiction) in the recourses concerning the appointment of the applicant to the post of First Officer of Town Planning and his candidature for the post of Director of Town Planning (see paragraphs 34, 42 and 43 above) were contradictory as regards his qualifications for the relevant posts. In his view, the most recent judgment

of 12 October 2002 was binding on the Government who as a result had to consider him as qualified for both posts and proceed with the necessary appointment and promotion.

89. The Court reiterates that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, from the decisions of domestic courts. It is the role of the latter to interpret and apply the relevant rules of national procedural and substantive law. Furthermore, 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, among other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

90. In the present case the applicant is in essence requesting the Court to review the findings of the Supreme Court in the two sets of proceedings and in particular to review the findings of the judgment with which he disagrees vis-à-vis the judgment which he considers to be correct. In this connection the Court notes that the mere fact that the applicant is dissatisfied with the outcome of the proceedings concerning his appointment to the post of First Officer of Town Planning cannot in itself raise an issue under Article 6 of the Convention. Furthermore, although the Supreme Court bench in its judgment of 2 October 2002 concerning the post of Director of Town Planning disagreed with the meaning given by the majority of the Supreme Court in its judgment of 12 March 2002 concerning the post of First Officer of Town Planning of the judgment of the Supreme Court of 5 October 1994, this disagreement did not extend to nor affected the cases decided by the judgment of 12 March 2002 (see paragraph 42 above). Moreover, it held that the latter judgment did not bind it as regards its judgment in relation to the procedure for the post of Director of Town Planning (see paragraph 43 above).

91. In respect to the above, the Court further notes that the Supreme Court's judgment of 2 October 2002 was taken in the context of different proceedings concerning another post and was confined to the issue of whether the applicant should have been considered as qualified for the post and not as to whether he should have been appointed to that post.

92. This being so, the Court finds that there is no indication of arbitrariness stemming from the differing outcomes of the proceedings which could raise an issue under Article 6. It follows this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

93. The applicant complained under Article 13 of the Convention about a lack of an effective remedy in respect of the two contradictory judgments given by the Supreme Court on 12 March 2002 and on 2 October 2002 on

the same issue (see paragraphs 34, 42 and 43 above). In this regard, he pointed out that the Commission had followed the first judgment by annulling his appointment of First Officer of Town Planning and totally ignored the second one by not appointing him as Director of Town Planning.

94. Furthermore the applicant complained that the conduct of the Commission and the Government authorities and the multiple recourses which concluded in contradicting judgments constituted an abuse of power, of which he was a victim, contrary to Article 14 of the Convention. Lastly, he complained of a violation of Article 1 Protocol No. 1 in that the Government had not paid him the remainder of the money that had been due to him as part of the salaries that had been promised to him (see paragraph 13 above) and that he had been deprived of a permanent public post and therefore, of all earnings that would have resulted from such a post and related promotions.

95. Firstly, the Court notes that the applicant's complaint under Article 13 of the Convention, concerns his complaint under Article 6 § 1 about the alleged contradictory judgments of the Supreme Court. In light of the Court's conclusions above and consequently the absence of an arguable claim under Article 6 § 1 in this respect, Article 13 is not engaged (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). Accordingly, the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

96. Secondly, as regards the applicant's complaint under Article 14 the Court observes that is not clearly formulated and relates to abuse of power by the authorities. The Court further notes that no reference was made by the applicant to discriminatory treatment. Even if this claim concerning abuse of power could be taken to have discriminatory effects the applicant does not in any way substantiate his complaint under this head. Consequently, this complaint is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

97. Thirdly, as regards the first part of the applicant's complaint under Article 1 of Protocol No. 1 the Court notes that the applicant did not raise this complaint before the domestic courts. He has thus not exhausted domestic remedies in this respect in accordance with Article 35 § 1 of the Convention.

98. Finally, regarding the second part of the applicant's complaint under Article 1 of Protocol No. 1, the Court notes that in so far as the applicant can be taken to complain about the annulment of his appointment to the post of First Officer of Town planning, the Court observes that Article 1 of Protocol No. 1 applies only to a person's existing possessions. Thus, future income cannot be considered to constitute "possessions" unless it has

already been earned or is definitely payable (see, *inter alia*, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 64, ECHR 2007-...; *Denimark v. the United Kingdom*, no. 37660/97, decision of 26 September 2000; and *Ian Edgar [Liverpool] Ltd. v. the United Kingdom*, no. 37683/97, decision of 25 January 2000) which was not the situation in the present case. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4. In so far as the applicant is complaining about the post of Director of Town Planning the Court observes that the applicant was never appointed to that post and therefore his complaint in this respect is about a speculative loss of income that is based on the assumption that he ought to have been appointed. Consequently, this complaint is manifestly ill-founded within the meaning of Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

100. In sum, the applicant claimed the amount of CYP 1,231,000 in respect of pecuniary damage. This amount included, *inter alia*, damages in the form of salaries, salary arrears for the post of First Officer of Town Planning, salary supplements linked to the above post and the post of Director of Town Planning, damages for the loss of opportunity to have and serve in the above posts and pension from 21 January 2004. As regards pension, the applicant claimed that he could accept monthly payments as an alternative to a lump sum. Finally, the applicant claimed the sum of CYP 50,000 in respect of non-pecuniary damage.

101. The Government contested these claims.

102. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 12,000 euros under that head plus any tax that may be chargeable on that amount.

B. Costs and expenses

103. The applicant also claimed CYP 14,000 for the costs and expenses incurred before the domestic courts and before the Court. This sum included (a) CYP 8,000 for the costs and expenses incurred before the domestic courts in a total of twenty-two recourses; a sum based on the applicant's own estimation; (b) CYP 5,000 in respect of costs and expenses incurred by him for work he personally carried out both for the procedures before the domestic courts and before this Court; and (c) CYP 1,000 for various other expenses. The applicant submitted that he did not have any bills or receipts in this connection.

104. The Government contested these claims.

105. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In so far as the costs before the domestic courts are concerned, the Court notes that the duration of the proceedings can increase a litigant's legal expenses, a point which should be taken into account when assessing an applicant's claim under this head (see *Capuano v. Italy*, judgment of 25 June 1987, Series A no. 119, p. 15, § 37).

106. The Court notes that the applicant's claim in respect of the costs incurred in the domestic proceedings is based on his own calculations and is in respect of far more proceedings than those examined in the present application. Furthermore, the applicant has not submitted any evidence in support of his claims for costs and expenses. It therefore rejects this part of the applicant's claim. However, in the circumstances, it considers reasonable to award the applicant the sum of EUR 500 for the proceedings before the Court plus any tax that may be chargeable on that amount.

C. Default interest

107. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the length of the proceedings in respect of the applicant's appointment to the post of First Officer of Town Planning and in respect of the post of

Director of Town Planning admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings concerning the applicant's appointment to the post of First Officer of Town Planning;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the proceedings concerning the post of Director of Town Planning;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Section Registrar

Christos ROZAKIS
President