



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

FIRST SECTION

CASE OF TALIADOROU and STYLIANOU v. CYPRUS

(Applications nos. 39627/05 and 39631/05)

JUDGMENT

STRASBOURG

16 October 2008

FINAL

16/01/2009

This judgment may be subject to editorial revision.

In the case of Taliadorou and Stylianou v. Cyprus,

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

Christos Rozakis, *President*,

Nina Vajić,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

Effie Papadopoulou, *ad hoc judge*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 25 September 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 39627/05 and 39631/05) 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 two Cypriot nationals, Mr Charalambos Taliadorou and Mr Theodoros Stylianou (“the applicants”), on 18 October 2005.

2. The applicants were represented by Mr C. Melas, a lawyer practising in Limassol, Cyprus. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicants alleged, *inter alia*, that the denial of compensation for moral damage they had sustained, was incompatible with Articles 6, 8 and 13 of the Convention. They further argued that the reversal of a moral damages award was in breach of their right under Article 6 § 2 to be treated as innocent following their acquittal by a court of law.

4. By a decision of 6 July 2006 the Court gave notice of the complaints concerning Articles 6, 8 and 13 of the Convention to the Government. It also decided, under Article 29 § 3 of the Convention, to examine the merits of the application at the same time as its admissibility. The Chamber decided to join the two applications (Rule 42 § 1).

5. Mr Loukis Loucaides, the judge elected in respect of Cyprus, withdrew from sitting in the case (Rule 28) and the Government accordingly appointed Ms Effie Papadopoulou to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1940 and 1946 respectively and live in Limassol, Cyprus.

7. The applicants were, at the material time, senior officers in the Cypriot Police Force in which they served until retirement. They both served continuously with an interruption of one year and nine months under the conditions set out below.

8. On an unspecified date in 1992, criminal proceedings were initiated against them in relation to their alleged involvement in the ill-treatment and torture of suspects. The prosecuting authorities failed to prove a *prima facie* case against them and they were acquitted on 23 July 1993. The court considered that the testimony of the principal prosecution witnesses - the victim and one of his relatives who had been arrested with him- "had been so obviously unreliable that no reasonable court could rely on it and convict the accused". It also considered that the prosecution had committed a series of improprieties which had tainted the evidence to such an extent that the case against the applicants should be discontinued in the interests of the proper administration of justice.

9. Subsequently, on 3 September 1993, the Ministerial Council appointed an Independent Investigating Commission (IIC) to examine this matter further. The Commission's findings were delivered on 3 November 1995. It found that the applicants, together with nine other police officers, had engaged in torture practices against certain suspects in order to obtain confessions. On the basis of the Commission's findings, on 7 March 1996, the Ministerial Council terminated the applicants' employment with the Police Force for the protection of public interest. One other police officer was also dismissed by virtue of the same decision, while five junior officers who were also found to have been involved in acts of torture and ill-treatment of prisoners were not dismissed. The applicants' dismissal was widely reported in the national press.

10. The applicants challenged the legality of the said decision before the Supreme Court, exercising its administrative judicial review jurisdiction.

11. The Supreme Court delivered its judgment in a plenary session on 26 November 1997. It unanimously annulled the decision of the Ministerial Council which was found to have violated the constitutional rights of the applicants. In particular, it found that their right not to be tried twice for the same offence had been breached and that their right to be presumed innocent, especially in the light of their acquittal, had been prejudiced. It further found that the applicants had effectively been dismissed without trial or disciplinary proceedings and, as such, they had been deprived of any

opportunity to defend themselves. Moreover, the decision of the Ministerial Council was found to be *ultra vires*.

12. On 28 November 1997, the applicants requested reinstatement to their former posts. On 5 December 1997 they returned to duty.

13. Subsequently, the applicants brought an action under Article 146.6 of the Constitution before the District Court of Nicosia requesting fair and equitable compensation.

14. Judgment was delivered on 30 April 2000 by the District Court, which refused the applicants' request for exemplary damages. Concerning their request for payment of the difference in their monthly salaries, corresponding to the period in which their service had been interrupted, the court observed that the applicants had received a higher amount upon their dismissal than the requested difference in salaries. This amount had been held by the first applicant throughout the period following his return to duty and until his retirement and it was still held by the second applicant. As regards the first applicant, the amount he had received upon his dismissal had been deducted from the amount to which he was entitled by virtue of his retirement and the difference had been paid to him. The request was accordingly refused.

15. However, 7,500 Cypriot pounds (CYP), plus 8 per cent interest as from the date that the action was lodged, was awarded in compensation for moral damage. The court pointed out that, as observed by the Supreme Court in the case of *Frangoulides v. The Republic* (1982) 1 C.L.R. 462, an award of damages under Article 146.6 of the Constitution was not subject to the common-law rule for quantifying damages aimed at *restitutio in integrum*, but was governed by the principles of equity. It considered that the applicants had suffered injury to their psychological and moral integrity which was directly caused by the annulled decision. In particular, the following was noted:

“Within this framework of criteria (established in the domestic case-law), I do not see any good reason why the court should rule, in a case similar to the present one, where, by the exclusive behaviour of the administration (Ministerial Council) the plaintiffs have been expelled from their positions with characterisations that have definitely affected them psychologically as they themselves have maintained, that they should not be entitled to certain compensation for that injury to their psychological integrity. I consider such injury as damage emanating directly from the annulled administrative decision”.

16. Moreover, it was acknowledged that the decision had serious defamatory effects for them. As such, the relevant award was seen as required by equity to redress the unlawful act of the administration.

17. The applicants lodged an appeal with the Supreme Court and contended that the award of damages was manifestly insufficient. The Attorney-General lodged a cross-appeal requesting the annulment of the first-instance District Court judgment.

18. The Supreme Court delivered its judgment on 25 April 2005 by which it upheld the first-instance court's decision not to award exemplary damages and reversed the award of moral damages. The court noted that Article 146 (6) of the Constitution entitles a person who sustained injury, as a result of a decision, act or omission by the administration that had been declared null and void, pursuant to Article 146 (4), the right to claim damages or any other remedy from a civil court which may grant fair and equitable compensation. An award of compensation could only be made where the sustained injury had been caused by the annulled act. The administration's duty to comply with the annulment of such an act would require the suppression of all consequences of the annulled act and reinstatement of the *status quo ante*. Such reinstatement should be complete and address all damaging consequences of the annulled act. The court further noted that "damage" would constitute the loss or injury sustained by a plaintiff as a result of the act on which the cause of action was based. The cause of action provided for in Article 146 (6) of the Constitution was a cause *sui generis* and was governed by rules of determination of compensation that were different from those provided for in the common law (*Frangoulides v. The Republic* (1982) 1 C.L.R. 462). The court referred to the case of *Egglezakis and others v. The Attorney General of the Republic* ((1992) 1 S.C.J. 697), in which the issue as to whether the term "damage" set out in Article 146 (6) was restricted to pecuniary damage or extended to psychological and emotional injury had been left open. The court then stated the following:

"Such moral damage did not constitute a direct consequence of the annulled administrative act and that, therefore, such an award was not covered by the provisions of Article 146 (6) of the Constitution".

II. RELEVANT DOMESTIC LAW

19. Article 146 of the Constitution of the Republic of Cyprus provides as follows:

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.

3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

4. Upon such a recourse the Court may, by its decision-

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned.

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared there under that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.”

20. In *Frangoulides v. The Republic* (1982) 1 C.L.R. 462 at p. 470, Mr Justice Pikis, as he then was, observed the following:

“The cause of action conferred by Article 146.6 of the Constitution, is a cause *sui generis*, in the sense that it bears no relationship to a common law action for damages, or, in fact, to any other cause of action known to the law (*Costas Tsakkistos v. The Attorney-General* (1969) 1 C.L.R. 355). It is a right to be evaluated in the context of Article 146 and the system of review of administrative action created thereby. It is ancillary to judicial review, as a measure necessary for its effectiveness. Primarily it entitles the injured party to recover damage not remediable by proper administrative action. If the proper administrative action is not taken, the remedy is to go to the administrative court again. If notwithstanding this step the injured party is left to shoulder damages, then he has a right to recover them from the Republic. The right to damages under Article 146 is distinctly independent from any other cause of action, as the Supreme Court held in *Attorney-General v. Andreas Marcoulides and another* (1966) 1 C.L.R. 242. Not only its juridical basis but also the manner of quantifying damages is different from a common law action. The Supreme Court emphasised the equitable character of the relief as well as the damages recoverable, stressing that they are not strictly compensatory. Consequently, it is legitimate for the Court to have regard, not only to the extent of the material damage suffered, but also to the conduct of the parties and the degree to which the successful party contributed to the production of the wrongful administrative act. In the case of *Marcoulides, supra*, the Supreme Court derived guidance, *inter alia*, from French case law, establishing that the conduct of the parties and their blameworthiness, if any, is of crucial importance to the determination of the quantum of the damages.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. Alleged violation of Article 6 § 2 of the Convention

21. The applicants complained that their right to be presumed innocent after the declaration of their acquittal by the Assize Court had been breached. They alleged a violation of Article 6 § 2 of the Convention, which reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”.

1. Admissibility

22. The Court notes that this complaint 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. Pursuant to Article 29 § 3 of the Convention, the Court will now consider the merits of this complaint.

2. Merits

23. The Government accepted that Article 6 § 2 was applicable in the present case. However, they maintained that the presumption had been fully respected as the judgment of the Supreme Court that reversed the District Court's award of moral damages had made no suggestion, explicit or otherwise, that the applicants had been guilty of the offences in respect of which they had previously been acquitted or, indeed, of any other offence.

24. The Court reiterates in the first place that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair trial that is required by paragraph 1. The presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law (see, among other authorities, *Deweert v. Belgium*, judgment of 27 February 1980, § 56, Series A no. 35; *Minelli v. Switzerland*, 25 March 1983, §§ 27 and 37, Series A no. 62; and *Alenet de Ribemont v. France*, 10 February 1995, §§ 35-36, Series A no. 308).

25. However, the scope of Article 6 § 2 is not limited to criminal proceedings that are pending (see *Alenet de Ribemont v. France*, cited above, § 35). It may also be applicable where the criminal proceedings

proper have terminated in an acquittal and other courts issue decisions voicing the continued existence of suspicion regarding the accused's innocence or otherwise casting doubt on the correctness of the acquittal (see *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII).

26. The Court notes that the second set of proceedings before the domestic courts was brought by the applicants, who claimed compensation in respect of an annulled administrative decision which had imputed to them responsibility for acts of torture and ordered their dismissal. The administrative decision had been annulled by the Supreme Court because, *inter alia*, it violated the presumption of innocence as guaranteed in the Constitution and Article 6 § 2 of the Convention. Given that the second set of proceedings concerned the claim for compensation as a remedy for an act that ran counter to the guarantee of Article 6 § 2, the Court agrees with the parties that this provision is applicable (see also *Panteleyenko v. Ukraine*, no. 11901/02, § 68, 29 June 2006). It reiterates in this connection that one of the functions of Article 6 § 2 is to protect an acquitted person's reputation from statements or acts that follow an acquittal which would seem to undermine it.

27. However, the Court notes that the Supreme Court did not make any express or implied indication which undermined the applicants' innocence and acquittal. Although it did reverse the moral damages award made by the District Court, the Supreme Court did not link that reversal to any suspicion that the applicants had in fact been guilty of the offences of which they had been acquitted, but instead based itself conclusively on the issue of causation. Moreover, the Court notes that the issue concerning the extent to which the Supreme Court's decision failed to protect the applicants' reputation will be examined under Article 8 of the Convention.

28. Accordingly, the Court finds that there has been no violation of Article 6 § 2 of the Convention.

B. Other complaints under Article 6 of the Convention

29. The applicants complained about the fairness of the domestic proceedings under Article 6 of the Convention on the various counts set out below.

30. Article 6 of the Convention provides, in so far as relevant, that:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] tribunal.”

1. The Supreme Court's reasoning

31. The applicants contended that the Supreme Court's judgment of 25 April 2005 had been inadequately reasoned.

32. The Court reiterates that according to its established case-law, reflecting a principle related to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see the *Ruiz Torija v. Spain and Hiro Balani v. Spain*, 9 December 1994, §§ 27, 29, Series A nos. 303-A and 303-B; *Higgins and Others v. France*, 19 February 1998, § 42, *Reports of Judgments and Decisions* 1998-I). Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument of the parties involved (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288).

33. The Court observes that the Supreme Court did address the essential issues submitted to its jurisdiction. It therefore determined that the claim for pecuniary damage should fail since the applicants had already received the amounts to which they were entitled by virtue of their dismissal and gave a proposition of law as to why the claim for non-pecuniary damage could not be sustained. Thus, the Court concludes that this requirement was satisfied in the particular circumstances of the instant case and that the proceedings in issue were not rendered unfair on the ground invoked by the applicants. As to the sufficiency of the examination of the applicants' claim concerning the injury they sustained to their moral and psychological integrity and reputation, the Court considers that this is an issue falling within the scope of Article 8 of the Convention and will examine it separately under that provision.

34. Accordingly, this part of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. Alleged ultra vires nature of the decision by the Ministerial Council

35. The applicants argued that the Ministerial Council's decision had exceeded the powers delegated to it by law and had been arbitrary. The Court observes in this connection that this complaint formed part of the proceedings leading to the Supreme Court's judgment of 26 November 1997. It was held therein that the decision requiring their dismissal had been reached by exceeding and abusing the powers of the Ministerial Council and it was subsequently annulled. Thus, the applicants may not be regarded as "victims" of a breach of their rights in this respect.

36. It follows that this complaint must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

3. *Alleged violation of the applicants' right to defend themselves prior to their dismissal*

37. The applicants complained that their right to defend themselves in the proceedings leading to the decision of the Ministerial Council ordering their dismissal had been violated. They relied on Article 6 § 3 of the Convention which provides, in so far as relevant, as follows:

“Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

38. The Court observes that the relevant proceedings were not criminal in nature and thus Article 6 § 3 is not applicable. The substance of the applicants' complaint falls to be examined under Article 6 § 1 of the Convention.

39. In this connection the Court notes that a violation of this right of the applicants had been acknowledged by the Supreme Court in its judgment of 26 November 1997 and the applicants had been reinstated to their posts. Thus, the applicants may not be regarded as “victims” of a breach of their rights in this respect.

40. Accordingly, this complaint must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

41. The applicants complained about the judgment of the Supreme Court that had reversed the award of moral damages by the lower court. It was the view of the applicants that the relevant award had been made in relation to the distress and other pain and suffering they had sustained owing to their dismissal from the police force by a decision that had accused them of having committed acts of torture. They considered that the decision to reverse the award had failed to acknowledge such harm, in disregard of their right to protection of their moral and psychological integrity and of their reputation.

42. The Court observes that the applicants did not specify on which provision of the Convention their complaint was based. The Court reiterates that once a case has been duly referred to it, it is entitled to examine every question of law arising in the course of the proceedings and concerning facts submitted to its examination in the light of the Convention and the Protocols as a whole (see, *inter alia*, *Guerra and Others v. Italy*, judgment of

19 February 1998, *Reports* 1998-I, p. 223, § 44, and *Handyside v. the United Kingdom*, 7 December 1976, § 41, Series A no. 24).

43. Having regard to the circumstances of the case, the Court communicated the complaint to the respondent Government and will proceed to examine it under Article 8 of the Convention, which provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

44. The Court notes that the parties did not dispute the applicability of Article 8, nor the admissibility of the complaint.

45. The Court considers that Article 8 is applicable to the applicants' complaint in that it concerned the protection of their moral and psychological integrity and of their reputation, all of which fall within the scope of Article 8 of the Convention (see, *inter alia*, *X and Y v. the Netherlands*, 26 March 1985, § 22, Series A no. 91; *Raninen v. Finland*, 16 December 1997, § 63, *Reports* 1997-VIII; *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). Specifically in respect of the protection of an individual's reputation, the Court notes that it has been acknowledged as an interest guaranteed by Article 8 of the Convention (see, *inter alia*, *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; *White v. Sweden*, no. 42435/02, § 19, 19 September 2006; *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; and *Abeberry v. France* (dec.) no. 58729/00, 21 September 2004).

46. It considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible. Pursuant to Article 29 § 3 of the Convention, the Court will now consider the merits of this complaint.

B. Merits

1. The parties' submissions

(a) The Government's submissions

47. The Government contested the applicants' position and maintained that the reversal of the award of moral damages was not incompatible with the respondent State's obligations under Article 8. They maintained that the Supreme Court had determined that in this particular case the moral injury sustained by the applicants did not constitute a direct consequence of the annulled unlawful act and, as such, was not covered by the provisions of Article 146.6 of the Cypriot Constitution. Lastly, they noted that the interpretation of domestic law as well as findings of fact fell within the relevant margin of appreciation accorded to States and that this Court could not substitute its own assessment and interpretation for such findings, as if it were a fourth-instance court.

(b) The applicants' submissions

48. The applicants maintained that the reversal of the award of damages in respect of their dismissal from the Police Force because they had allegedly committed acts of torture, and despite their acquittal of the same charges by a court of law, was plainly incompatible with the respondent State's obligations under Article 8 of the Convention. The reversal of the award had undermined the protection of their moral and psychological integrity and reputation, being encompassed in the protection guaranteed by Article 8.

2. The Court's assessment

49. The Court reiterates that, although the object of Article 8 is essentially to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private and family life and may include the requirement that the State set up a system for the effective protection of an individual's right to privacy with implementation in cases of unlawful interferences falling within its scope. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, ECHR 2007-...).

50. The Court considers that it is more appropriate to analyse the case as one concerning the State's positive obligations to guarantee effective respect for private life by its legislative, executive and judicial authorities. It notes in this connection that the applicants complained that the domestic authorities had denied them reparation for the injury they had sustained to their moral and psychological integrity and reputation by holding that such injury was not causally linked to an unlawful administrative act. The applicants further claimed that in effect the domestic authorities had created a lacuna in the national jurisdiction by holding that moral damages could not be awarded as compensation for an unlawful administrative act.

51. The Court recalls that the applicants, senior police officers, were accused, in the report of an IIC, of involvement in torturing suspects. The findings of the IIC received considerable publicity and led to the applicants' dismissal from the police force. The applicants contested their dismissal before the Supreme Court which found that the dismissal had violated their rights guaranteed by the Cypriot Constitution. They then lodged an action requesting compensation and were awarded by the District Court damages for the injury they had sustained to their psychological and moral integrity and reputation. The Supreme Court reversed this award and found that the moral injury that the applicants sustained was not causally linked to the decision ordering their dismissal.

52. The Court reiterates that Article 8 of the Convention requires the State to guarantee to its citizens an effective right to privacy. The Court has, on a number of occasions, ruled that "private life" is a broad term not susceptible to exhaustive definition (see *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I). Article 8 protects the moral integrity of an individual (see *X and Y v. the Netherlands*, 26 March 1985, §§ 22-27, Series A no. 91), including the right to live privately, away from unwanted attention. It secures to an individual a sphere within which he or she can freely pursue the development and fulfilment of his or her personality.

53. However, the notion of "private life" is not restricted to an "inner circle" in which an individual may live his own personal life as he chooses. Respect for private life also comprises, to a certain degree, the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). Furthermore, it includes activities of a professional or business nature since it is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing themselves as well as their relationships with the outside world (see *Niemietz*, cited above).

54. The Court has previously held that an interference affecting an individual's ability to engage in professional activities and creating serious difficulties for him in terms of earning his living might have, in certain circumstances, repercussions on the enjoyment of his private life (see, *mutatis mutandis*, *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and

59330/00, § 48, ECHR 2004-VIII). Moreover, the Court reiterates that an administrative dismissal may, in certain circumstances, constitute an interference with the rights guaranteed by Article 8 of the Convention. This would be the case where, for instance, it is imposed for reasons and by means that contravene the essence of the right to privacy (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI).

55. The Court further reiterates that Article 8 of the Convention requires not only that the State should refrain from action that would unjustifiably interfere with an individual's right to privacy but also that it should set up a system for its effective protection and implementation in cases of unlawful interference falling within its scope. This could require the adoption of measures designed to secure respect for private life, including both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific measures (see *Tysiāc v. Poland*, no. 5410/03, § 110, ECHR 2007-...; *X and Y v. the Netherlands*, cited above, § 23). Such a system should afford the possibility of an effective proportionality assessment of instances of restriction of an individual's rights (see *Dickson v. the United Kingdom* [GC], cited above, § 84).

56. The Court notes the applicants' position that, as a result of the circumstances surrounding their dismissal, they had suffered severe embarrassment. It accepts that they had been burdened with the status of "torturers" which affected the enjoyment of their "private life" by effectively prejudicing their moral integrity and reputation. The Court also accepts that Article 8 cannot be relied on in order to complain of the damage to an individual's reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence. It notes however that the applicants had been acquitted of the offences with which they had been charged and that the domestic court found that there had been no case for the defence to answer.

57. The Court observes that the District Court had found that significant injury had been caused to the applicants' moral and psychological integrity by the impugned administrative act, which also had severe defamatory consequences for the applicants. The Supreme Court did not explicitly depart from or overrule the finding made by the District Court as to the damage that had been sustained by the applicants. Having examined its previous case-law on the question which, in its view, had left this issue open, it observed that the moral damage sustained by the applicants did not emanate from the annulled decision and that, as such, the claimed award was not covered by the domestic law provision under which the applicants' claim had been introduced. No reason was provided for this conclusion.

58. In view of the above, the Court finds that the Supreme Court denied the applicants equitable relief in respect of damage caused by an unlawful

administrative act, without sufficient explanation. The Court reiterates the importance of protecting an individual's moral and psychological integrity and reputation, as guaranteed by Article 8 of the Convention. The effective protection of such interests requires an established framework in the domestic legal system that enables a proportionality assessment of instances in which an individual's corresponding rights are restricted. While the Court's role is not to interpret the Constitutional provision under which the applicants sought compensation for the injury to their integrity and reputation, the Court finds that the Supreme Court failed to provide an adequate explanation for the reversal of the award of moral damages. The Court considers that the absence of a comprehensive assessment as regards a matter affecting the applicants' rights guaranteed by Article 8 of the Convention was not consonant with an acceptable margin of appreciation.

59. In view of the above, the Court concludes that there has been a violation of the respondent State's procedural obligations under Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

60. The applicants complained that there had been a violation of the right to an effective remedy under Article 13 of the Convention, which provides as follows:

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

61. The Government disputed this argument.

62. The Court considers that this complaint is closely linked to the complaint examined above under Article 8 of the Convention and must therefore likewise be declared admissible. However, having regard to its decision under Article 8 of the Convention, the Court considers that it is not necessary to examine separately whether the complaint also entails a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

63. The applicants complained that they had suffered discrimination in the light of the difference in treatment afforded by the authorities to five police officers who were accused of the same offences by the relevant Independent Investigating Commission but who were not ultimately dismissed. They relied in this connection on Article 14 of the Convention which provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

64. The Court reiterates that it is an important feature of the rule of exhaustion of domestic remedies, set out in Article 35 § 1 of the Convention, that any allegations that are submitted before it must have previously been raised before the national authorities. It finds that the applicants did not show in their application that they had complied with this requirement of the Convention, as they had not made any such allegations in the domestic proceedings.

65. Accordingly, this part of the application must be rejected for non-compliance with the rule of exhaustion of domestic remedies pursuant to Article 35 § 1 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7

66. The applicants complained that the work of the Investigating Commission appointed by the Ministerial Council had amounted in substance to a second trial examining the offences of which they had been acquitted by a court of law. In this respect they relied on Article 4 of Protocol No. 7 which provides, in so far as relevant, as follows:

“1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.”

67. The Court reiterates that Article 4 of Protocol No. 7 enshrines the *non bis in idem* rule and prohibits a defendant from being tried or punished in criminal proceedings, under the jurisdiction of the same State, for an offence of which he has already been finally convicted. The Court considers that this provision is not applicable to the facts of the present case, since the relevant procedure followed was not criminal in nature (see *Storbråten v. Norway* (dec.), no. 12277/04, ECHR 2007-... (extracts), and *Mjelde v. Norway* (dec.) 11143/04, 1 February 2007). But even assuming that there is merit in the applicants' argument, the Court reiterates that a violation of their rights in this respect was expressly acknowledged by the Supreme Court. Moreover, the contested decision of the Ministerial Council was annulled and the applicants were reinstated to their posts. As such the applicants cannot be regarded as “victims” of a violation of their rights in this respect.

68. In the light of the above considerations, the Court finds that the applicants' complaint must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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. Pecuniary and non-pecuniary damage

70. The applicants made no claim for compensation in respect of pecuniary and non-pecuniary damage.

71. Accordingly, the Court makes no award in this respect.

B. Costs and expenses

72. The applicants sought CYP 3,000 for costs and expenses incurred within the domestic legal system in respect of the second set of proceedings. They provided the Court with an invoice concerning the first set of proceedings.

73. The Government contested the applicants' claim for costs and expenses.

74. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, and *Smith and Grady v. the United Kingdom* (just satisfaction), nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). This may include domestic legal costs actually and necessarily incurred to prevent or redress the breach of the Convention (see, for example, *I.J.L., G.M.R. and A.K.P. v. the United Kingdom (Article 41)*, nos. 29522/95, 30056/96 and 30574/96, § 18, 25 September 2001).

75. In the present case, the Court notes that the applicants merely submitted an invoice referring to a lump sum with no indication of the rate charged or the time spent by the lawyers, or any details concerning court and out-of-court expenses. As such, the claim in respect of the domestic proceedings has not been fully substantiated. With regard to the Strasbourg proceedings the applicants made no claim. Having regard to the above-

mentioned criteria, the Court considers it reasonable to award the sum of EUR 2,000, inclusive of VAT, for the domestic costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 2, Article 8 and Article 13 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 2 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that it is not necessary to examine separately the applicants' complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President