EUROPEAN COURT OF HUMAN RIGHTS

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28.4.2004

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT IN THE CASE OF AZINAS v. CYPRUS

In its Grand Chamber judgment in the case of ***Azinas v. Cyprus*** (application no. 56679/00), delivered today at a public hearing in Strasbourg, the European Court of Human Rights rejected the application as **inadmissible**, by 12 votes to five. (The judgment is available in English and in French.)

1. Principal facts

The applicant, Andreas Azinas, is a Cypriot national who was born in 1927 and lives in Nicosia.

Mr Azinas worked for the Nicosia Public Service, as Governor of the Department of Co-operative Development, from the time the Republic of Cyprus was established in 1960 until his dismissal.

On 28 July 1982 the Public Service Commission brought disciplinary proceedings against him and decided to dismiss him retrospectively on the ground that on 8 April 1981 he was found guilty by Nicosia District Court of theft, breach of trust and abuse of authority. He was sentenced to 18 months' imprisonment. The applicant's appeal against both conviction and sentence was dismissed by the Supreme Court on 16 October 1981. The Public Service Commission held that the applicant had managed the Department as if its resources were his private property. The disciplinary sentence of dismissal also resulted in the forfeiture of the applicant's retirement benefits, including his pension. He appealed unsuccessfully.

2. Procedure

The application was lodged on 18 January 2000 and was declared partly admissible on 19 June 2001.

In its Chamber judgment of 20 June 2002, the Court held, by six votes to one, that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights. The Court further held, unanimously, that the question of the application of Article 41 (just satisfaction) was not ready for decision.

On 13 September 2002 the Cypriot Government requested that the case be referred to the Grand Chamber[1], and, on 6 November 2002, the panel of the Grand Chamber accepted that request. A Grand Chamber hearing was held on 4 June 2003.

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[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), ***President***,
Christos **Rozakis** (Greek),
Jean-Paul **Costa** (French),
Georg **Ress** (German),
Giovanni **Bonello** (Maltese),
Corneliu **Bîrsan** (Romanian),
Peer **Lorenzen** (Danish)
Volodymyr **Butkevych** (Ukrainian),
Nina **Vajić** (Croatian),
Matti **Pellonpää** (Finnish),
Rait **Maruste** (Estonian),
Egil **Levits** (Latvian),
Snejana **Botoucharova** (Bulgarian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Lech **Garlicki** (Polish), ***judges***,
Demetrios H. **Hadjihambis** (Cypriot)**, ad hoc *judge***,

and also Paul **Mahoney**, ***Registrar***.

4. Summary of the judgment[1]

Complaint

The applicant complained, in particular, about his dismissal and the consequent forfeiture of his pension rights. He relied on Article 1 of Protocol No. 1 (protection of property) to the Convention.

Decision of the Court

Admissibility
The Grand Chamber noted that it was not precluded from examining the Cypriot Government's plea of non-exhaustion of domestic remedies since, in accordance with Rule 55 of the Rules of Court, they had raised that plea at the admissibility stage before the Chamber.

The rule concerning the exhaustion of domestic remedies normally required that the applicant first raise at national level the complaints that were subsequently raised at international level, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. The aim of the rule on exhaustion of domestic remedies was to allow the national authorities to address the alleged violation of a right protected under the European Convention on Human Rights and, where appropriate, to provide redress before that allegation was submitted to the Court. In so far as there existed at national level a remedy to deal, at least in substance, with the alleged violation, it was that remedy which should be

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judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.
[1] This summary by the Registry does not bind the Court.

exhausted. If the complaint presented before the Court (for example, unjustified interference with the right of property) had not been put, either explicitly or in substance, to the national courts, when it could have been put in the exercise of a remedy available to the applicant, the national legal order had been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies was intended to provide.

It was not sufficient that the applicant might have, unsuccessfully, exercised another remedy which could have overturned the measure in question on other grounds not connected with the complaint of violation of a Convention right. It was the Convention complaint which had to have been aired at national level for there to have been exhaustion of the "effective remedy". It would be contrary to the subsidiary character of the Convention system if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument.

The Court noted that the Convention formed an integral part of the Cypriot legal system, where it took precedence over every contrary provision of national law. It further noted that Article 1 of Protocol No. 1 was directly applicable within the Cypriot legal system. The applicant could therefore have relied on that provision in the Supreme Court or on arguments to the same or like effect based on domestic law.

However, the applicant did not cite Article 1 of Protocol No. 1 before the Supreme Court, sitting as an appeal court. It transpired from the records of the hearings before the Supreme Court that, in both hearings, the applicant's counsel referred to the forfeiture of retirement benefits in order to show that the sentence of dismissal was disproportionately severe in the circumstances and that a lighter sentence should have been imposed instead. It was for this reason that the Supreme Court never ruled on whether the applicant's dismissal violated his property right to a pension.

The applicant did not therefore provide the Cypriot courts with the opportunity which was in principle intended to be given to States which had ratified the European Convention on Human Rights by Article 35 (admissibility criteria) of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged. Finding the Cypriot Government's objection that the relevant "effective" domestic remedy was not exhausted by Mr Azinas to be well-founded, the Court rejected the application as inadmissible. The Court further held that it was not necessary to examine the other arguments on admissibility submitted by the Cypriot Government.

Judge Wildhaber joined by Judges Rozakis and Mularoni and Judge Hadjihambis expressed concurring opinions, Judges Costa and Garlicki expressed a joint dissenting opinion and Judge Ress expressed a dissenting opinion.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.*