

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

THIRD SECTION

CASE OF NICHOLAS v. CYPRUS

(Application no. 63246/10)

JUDGMENT

STRASBOURG

9 January 2018

FINAL

09/04/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Nicholas v. Cyprus,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 12 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 63246/10) 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 and British national, Mr Charalambos Nicholas ("the applicant"), on 21 October 2010.

2. The applicant was initially represented by Mr L. Loucaides, a lawyer practising in Nicosia. On 3 August 2016 the applicant informed the Court that he was no longer being represented by Mr Loucaides. He was then, exceptionally, granted leave to represent himself (under Rule 36 of the Rules of Court). The Cypriot Government ("the Government") were represented by their Agent, Mr C. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicant complained of a breach of Article 6 § 1 of the Convention on account of the alleged lack of impartiality, on the basis of the objective test applied by the Court, in respect of one of the judges who had sat on the Supreme Court bench that had heard his appeal.

4. On 7 September 2015 the above-mentioned complaint was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court. On the same date the United Kingdom Government were informed of their right to intervene in the proceedings, in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court. They chose not to avail themselves of this right.

5. On 7 September 2017 the Government were requested, pursuant to Rule 49 § 3 (a) of the Rules of Court, to submit additional factual information concerning the code of judicial practice.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1951 and lives in Larnaca.

7. Following his dismissal from Cyprus Airways Ltd as a trainee pilot, the applicant on 26 June 1998 brought a civil action before the District Court of Nicosia for wrongful dismissal and defamation (civil action no. 7562/98). The defendant company was represented by a law firm.

8. On 29 December 2006 the court dismissed the action.

9. On 9 February 2007 the applicant lodged an appeal with the Supreme Court (appeal no. 43/07). The appeal was tried by a bench of three judges.

10. The hearing of the appeal was held on 11 March 2007. On that date the managing partner of the above-mentioned law firm, Mr P.G.P., appeared for the defendant company and addressed the Supreme Court. Up until that date, other lawyers from the firm had appeared before the appeal bench on behalf of the defendant company.

11. On 21 April 2010 the Supreme Court dismissed the appeal unanimously.

12. The applicant submitted that after the judgment of the Supreme Court was given, he discovered that the son of one of the judges sitting on the bench, Judge A.K., and the daughter of Mr P.G.P., were married and that both worked at the latter's law firm. The lawyer representing him in the domestic proceedings had not requested the exemption of the judge in question because he had not had sufficient knowledge of the relevant facts at the time. The applicant had also not instructed his lawyer to do so as he had found out about this fact only after the appeal proceedings had ended.

II. RELEVANT DOMESTIC LAW AND PRACTICE (AS SUBMITTED BY THE GOVERNMENT)

A. Exemption of judges

13. The exemption of judges is governed by the code of judicial practice (*Δικαστική Πρακτική*) which was adopted by the judges of the Supreme Court on 17 March 1988. The code was subsequently amended by decisions delivered by the judges of the Supreme Court on 21 July 1989, 18 September 2003, 30 November 2006 and 4 October 2011.

14. According to the code of judicial practice applicable at the time the applicant's case was heard (as amended by the Supreme Court's decision of 30 November 2006), a judge does not hear alone or as a member of a bench, at any level of jurisdiction, cases in which lawyers appearing before him or her were close relatives. Close relatives are defined as parents, spouses,

children, children's spouses, siblings, siblings' children and siblings' spouses. This judicial practice does not apply when the court appearance concerns minor matters (*τυπικών εμφανίσεων*).

15. The previous code of judicial practice (as amended by a Supreme Court's decision of 21 July 1989) provided that the participation of a judge in the composition of a court was not allowed, at any level of jurisdiction (with the exception of the full bench of the Supreme Court) in cases in which lawyers appearing before him or her were close relatives or were partners (*συνέταιροι*) or employers of one of his or her close relatives. An amending decision of 30 November 2006, however, removed this last stipulation.

16. Subsequent to the amending decision of 30 November 2006, the code was amended by a decision delivered by the Supreme Court on 4 October 2011 to include, in addition to close relatives, lawyers with whom a judge had a spiritual relationship (*πνευματική συγγένεια*), the relationship of father-in-law and son-in-law, and the relationship between fathers-in–law (*σχέση πεθερού-γαμπρού ή συμπεθέρου*). This is the version of the code which is currently applicable.

17. Judges who are precluded from sitting, or who for personal reasons themselves deem that it is not advisable for them to participate in the trial of a particular case, are exempted from sitting in a court. The question of the composition of the Supreme Court is examined judicially by the Supreme Court only when it is raised by the parties concerned. The recusal of a judge for personal reasons is at his or her exclusive discretion (for a recapitulation of the relevant principles see, *inter alia*, the Supreme Court's judgment of 15 February 2002 in revisional appeal no. 2588 in *Despo Apostolidou v. the Republic of Cyprus, via the Educational Service Commission (no. 1)*, (2002) 3 C.L.R 80).

B. Finality of domestic judgments

18. In Cyprus, once a judgment has been delivered, signed and filed, there can be no possibility for the court which has delivered it to rehear any arguments or to change or set aside such a judgment, except in the following circumstances.

19. Firstly, under Order 25, Rule 6 of the Civil Procedural Rules (which is known as the "slip rule"), clerical mistakes in judgments or errors arising therein from any accidental "slip" or omission, may at any time (depending on the nature and the extent of the error) be corrected by the court by way of an application, written or oral, without any party having a right to appeal. The powers of a court under Order 25, Rule 6 are confined to the correction of clerical mistakes and errors arising from accidental "slips" or omissions (see *Sofoclis Neophytou as administrator of the estate of Neophytos Sofocli*

Karayiannides, deceased v. Nicos G. Leonidou, (1988) 1 C.L.R 583, judgment of 17 October 1988 in civil appeal no. 7080).

20. Secondly, Order 35, Rule 13 of the Civil Procedure Rules, as amended by the Procedural Rule (*Δ.Κ.*) of 27 November 1998, provides that when the respondent appears at the hearing of an appeal and the appellant does not, the appeal may, upon the application of the respondent, be dismissed or otherwise dealt with as the Supreme Court sees fit. An appeal dismissed on the basis of this rule, however, shall be restored/reinstated (*επαναφέρεται*) when it is shown that the non-appearance of the appellant was due to a reason outside his or her control and that consequently not reinstating the appeal would amount to depriving him or her of the right to be heard.

21. Lastly, the Supreme Court has inherent jurisdiction to correct an error or omission in a judgment, to set aside an order or judgment granted on appeal, or to reopen an appeal. This jurisdiction is, however, not absolute and is exercised exceptionally. The Supreme Court's inherent power to correct a judgment is limited to errors or omissions owing to a failure to give expression in judgment to the manifest intention of the court and thus to matters necessary to maintain its character as a court of justice *(see, inter alia, Sofoclis Neophytou,* cited above*;* see also *Stelios P. Orphanides v. Vyron Michaelides,* (1968) 1 C.L.R 295, judgment of 7 February 1968 in application in civil appeal no. 4618). The Supreme Court's inherent power to set aside an order or judgment granted on appeal or to reopen an appeal is confined to cases where the court itself considers that the administration of justice so requires in the light of facts which came to light after judgment was reserved (see, *inter alia*, *Georgios Mavrogenis v. the House of Representatives and others (no.1),* (1996) 1 C.L.R. 49, judgment of 22 January 1996 in electoral application no. 1/95; the *Republic v. Nikos Samson,* (1991) 1 C.L.R 848, judgment of 26 September 1991 in civil appeal no. 8532; and *Niovi Papaioannou and others (no. 1) v. the Republic* (1991) 3 C.L.R. 659*,* judgment of 26 November 1991 in revisional appeal no. 891). This is not the case where an applicant is seeking to reopen an appeal for the purpose of putting forward new arguments or issues which the parties failed to raise in the appeal proceedings (ibid.). Furthermore, the Supreme Court has held that there is such inherent jurisdiction when the reopening has the aim of safeguarding the right of a litigant under Article 30 § 3 (b) of the Constitution, which protects the right to present one's case before the court and to have sufficient time for its preparation (see *Markides Europa Furniture Exhibition Ltd v. Vassos Eliades Ltd*, (1984) 1 C.L.R 189, judgment of 12 April 1984 in application in civil appeal no. 6413, and *Touvlopoieia Palikythrou Gigas Ltd v. Maroulas Polydorou Ousta (no. 1),* (1994) 1 C.L.R 109; Supreme Court judgment of 18 February 1994 in civil appeal no. 8949).

22. In the case of *the Educational Service Commission v. Zena Poulli,* (2001) 3 C.L.R 1060*,* the Supreme Court, sitting as a full bench, on 19 November 2001 granted an application to set aside an appeal judgment of the Supreme Court delivered by a bench of five judges in the judicial review proceedings in respect of the same case on the grounds that the interested parties had not been notified either of the appeal or the counter-appeal (in compliance with the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court 1964, as amended) that had been lodged in the proceedings. The court ordered that the appeal and counter-appeal be reheard and that notice be given to all interested parties. The court ruled that it had inherent jurisdiction to set aside an order or judgment which was given following a procedure of which an interested party had not been notified. Any other conclusion would have led to a deprivation of the right to be heard.

23. Subsequently, in its judgment of 15 October 2015, in the case of *Ioannis Adamou and (1) Aggela Ioannou, (2) Demetris Kalogerou and the Republic, via the Civil Service Committee and others* (appeals nos. 54/2014, 61/2014, 64/2014, 66/2014, 67/2014, 69/2014, 70/2014) the Supreme Court reopened and reconsidered a case on the basis of its inherent jurisdiction as it had not examined a preliminary objection and the corresponding grounds for appeal that had been raised before it concerning one of the appeals. The court stated that it considered it correct to reopen the case so that the matter raised would not remain open indefinitely. It relied on the approach adopted in the case of *Educational Service Commission v. Zena Poulli* (see paragraph 22 above) and also referred to its inherent power to remedy errors in the judicial process when this was necessary in order for the court to maintain its character as a court of justice (referring to the case of *Sofoclis Neophytou*, see paragraph 19 above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained under Article 6 § 1 of the Convention that there had been a lack of impartiality, on the basis of the objective test applied by the Court, of one of the Supreme Court judges who had heard his appeal, Judge A.K., by reason of his relationship with the lawyer of the defendant company in the domestic proceedings. Specifically, Judge A.K's son and the daughter of the lawyer representing the defendant company had been married and had both been working at the firm of the defendant company's lawyer.

25. Article 6 § 1 of the Convention in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

26. The Government contested that argument.

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

27. The Government submitted that the applicant had failed to exhaust the domestic remedies. They first noted that according to the judicial practice at the time the applicant's appeal had been tried, a judge had been exempted from trying a case, whether alone or as a member of a bench, in the event that he or she and a lawyer appearing before him or her were close relatives. However, this had not included the relationship between "in-laws" (see paragraph 14 above); consequently, Judge A.K. had not been under an obligation to recuse himself from the case. It is true that he could have chosen to do so if he had considered for personal reasons that it would not be appropriate for him to sit on the bench. His recusal for personal reasons, however, had been exclusively his own decision (see, *inter alia*, to the case of *Despo Apostolidou*, see paragraph 17 above).

28. When a judge did not step down from trying a case, it was open to the parties to raise an objection in respect of non-impartiality, seeking the exemption of the judge in question. In fact the possible exemption of a judge could only be examined judicially when it was raised by one of the parties concerned (see paragraph 17 above). If the applicant had raised an objection, the Supreme Court would have been given the opportunity to decide on the matter. In this respect, the Government pointed out that there was abundant domestic case-law relating to the principles governing the principle of impartiality. The Government expressed serious doubts as to whether the lawyer representing the applicant at the appeal stage had not been aware of the relationship between Judge A.K. and the lawyer of the defendant company. Such relationships were well known in the small society of Nicosia, especially among people in the legal profession. The Government could not be held responsible for the applicant's lawyer's failure to inform his client of the situation and for not seeking the exemption of Judge A.K. It was the Government's understanding that this was the reason the applicant had appointed a different lawyer to represent him before the Court.

29. In this connection, the Government also stressed that the other judges on the bench had not been under an obligation to inform the applicant of the said relationship. Indeed, it would be cumbersome for the administration of justice to have to inform the parties to a dispute of any hypothetical conflict or alleged bias – no matter how unfounded – in order to give them the opportunity to raise it before the court (especially where judicial practice did not provide for the exemption of the judge in question and the judge himself did not consider it to be in the interests of justice for him to recuse himself).

30. Secondly, the Government submitted that it had been open to the applicant to lodge an application for the reopening of the appeal proceedings in the light of the new information that he had received about Judge A.K. Although the relevant domestic law and procedural rules did not explicitly provide for the possibility of a judgment being set aside on appeal and the rehearing of that appeal on the grounds of the alleged non-impartiality of a court, in its case-law the Supreme Court had accepted that it had inherent jurisdiction to set aside an appeal and order a rehearing for reasons pertaining to the rules of natural justice and/or the right of a person to be heard and/or when it was necessary in order for the court in question to maintain its character as a court of justice (see paragraphs 21-23 above). Admittedly, with the exception of the case of *Ioannis Adamou* (see paragraph 23 above), the relevant domestic case-law concerned situations in which one of the parties to an appeal or other interested parties had not been provided with an opportunity to be heard because the notice of appeal and/or notice of the hearing of the appeal had not been served on them (see paragraphs 21-22 above). Raising the issue of impartiality in respect of facts of which an applicant had learned only after the delivery of the appeal judgment was a novel issue but the Supreme Court could arguably have assumed jurisdiction to examine the matter, as it had done in other cases. In such an event, the Supreme Court would have been provided with the opportunity to build on its previous case-law and consider whether it could have assumed jurisdiction, set aside its judgment and ordered a fresh hearing.

31. Relying on the case of *Kane v. Cyprus* ((dec.), no. 33655/06, 13 September 2011), the Government pointed out that, according to the Court's case-law, the existence of mere doubts as to the prospects of success of a particular remedy which was not obviously futile was not a valid reason for failing to exhaust the domestic remedies; where there was doubt as to the prospects of success in a particular case, it should be submitted to the domestic courts for resolution. This was particularly so in a common-law system since, given that the courts extended and developed principles through case-law, it was generally incumbent on an aggrieved individual to allow the domestic courts the opportunity to develop existing rights by way of interpretation (ibid.).

(ii) The applicant

32. The applicant submitted that the Government had made arbitrary presumptions concerning the case. First of all, their position that the applicant's lawyer at the time must have known of the relationship between Judge A.K. and the defendant company's lawyer given the smallness of Nicosia society had been completely unfounded. The Government had in fact transferred the burden of finding out about the relationship onto the applicant, even though it had already been known to the judges on the bench. Secondly, the Government's assumptions concerning the reasons for which the applicant had appointed a different lawyer to represent him before the Court were arbitrary and irrelevant. The applicant had chosen Mr Loucaides due to the fact that he had been a former judge of the Court; at the time, the applicant had thus felt that he would be in a better position to represent him. The applicant pointed out that the other two judges on the bench had also known of the relationship between Judge A.K. and the defendant company's lawyer. They had failed, however to inform him. If the applicant had been informed of the relationship, he could have raised an objection before the Supreme Court. The fact that judicial practice regarding recusal on the grounds of close familial relationship did not categorise "in-laws" as being in such a relationship did not justify Judge A.K's failure to reveal his relationship and recuse himself from the proceedings.

33. Lastly, the applicant submitted that there was no third level of jurisdiction in Cyprus at which to raise his objection and that the remedy put forward by the Government concerning the reopening of the appeal proceedings was an extraordinary procedure which did not constitute a remedy for Convention purposes. He had not therefore been required to exhaust it.

(b) The Court's assessment

34. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against a State to first use the remedies provided by the national legal system, thus allowing States the opportunity to put matters right through their own legal systems before being required to answer for their acts before an international body. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged; there is no obligation to have recourse to remedies which are inadequate or ineffective (see, among many authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-71, 25 March 2014, with further references).

35. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one and was available in theory and in practice at the relevant time – that is to say that it was

accessible and was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (ibid., § 77). However, 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 of the requirement (ibid.).

36. In the present case, although domestic law provides for the possibility of raising an objection to a judge's participation in a case, there is nothing to show *in concreto* that the applicant or the lawyer representing him before the Supreme Court were actually aware of the connection between A.K. and the defendant company's lawyer at the time that the appeal was pending (see, *mutatis mutandis*, *Dorozhko and Pozhaskiy v. Estonia*, nos. 14659/04 and 16855/04, §§ 48-49, 24 April 2008 and *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 51, Series A no. 204).

37. As regards the Government's claim that the applicant should have lodged an application for the reopening of the appeal in the light of facts which came to light after the judgment had been given, the Court reiterates its extensive case-law to the effect that an application for a retrial or the reopening of the appeal proceedings or for a similar extraordinary remedy cannot, as a general rule, be taken into account for the purposes of applying Article 35 § 1 of the Convention (see, amongst many authorities, *Korzeniak v. Poland*, no.56134/08, § 39, 10 January 2017; *Kudeshkina v. Russia*, no. 29492/05, § 90, 26 February 2009; *Rizi v. Albania* (dec), no. 49201/06, §44, 8 November 2011; *Kolu v. Finland* (dec.), no. 56463/10, 3 May 2011; *Vainio v. Finland* (dec.), no. 62123/09, 3 May 2011; and *Tucka v. the United Kingdom* (dec.), no. 34586/10, § 15, 18 January 2011; all with further references). The Court has departed from this rule on extraordinary remedies only in exceptional cases (see *Sobczyk v. Poland* (dec.), no. 73446/10, §§ 47-57, 25 August 2015; *Passila v. Finland*, (dec.), no. 20586/02, 3 November 2005; *Nikula v. Finland*, (dec.), no. 31611/96, 30 November 2000; *Kiiskinen and Kovalainen* v. *Finland* (dec.), no. 26323/95, 1 June 1999; see also the Commission's decision in *K.S. and K.S. AG v. Switzerland*, no. 19117/91, 12 January 1994, Decisions and Reports (DR) 76 B, p. 70).

38. Similarly, remedies which have no precise time-limits, thus creating uncertainty and rendering nugatory the six-month rule contained in Article 35 § 1 of the Convention, are not effective remedies within the meaning of Article 35 § 1 (see, for example, *Rizi*, § 44, and *Tucka*, §§ 15–17, both cited above). In particular, the Court observes that it has consistently rejected applications in which the applicants have submitted their complaints within six months of the decisions rejecting their requests for the reopening of the proceedings on the ground that such decisions could

not be considered to constitute "final decisions" for the purpose of Article 35 § 1 of the Convention (ibid).

39. The Court notes that if the applicant had lodged an application requesting the reopening of his appeal, any reopening of the appeal proceedings would have been at the discretion of the Supreme Court, acting within its inherent jurisdiction. This is exercised in exceptional circumstances and on a case-to-case basis. There is no indication on the basis of the domestic case-law that the alleged non-impartiality of a judge could be regarded as a ground for reopening and re-examining an appeal (compare *Korzeniak v. Poland*, cited above, and *Toziczka v. Poland*, no. 29995/08, § 27, 24 July 2012; contrast *Nikula*, and *Kiiskinen and Kovalainen*, both cited above). Furthermore, it appears that there is no time-limit for lodging such an application. It has not been established, therefore, that under domestic law such an application could constitute an effective remedy within the meaning of Article 35 § 1 of the Convention.

40. Given these circumstances, the Court considers that the applicant was not required to exhaust this remedy.

41. It follows that the Government's objection regarding non-exhaustion must be dismissed.

2. Other grounds of inadmissibility

42. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

43. The applicant, relying on *Micallef v. Malta* ([GC], no. 17056/06, § 99, ECHR 2009), noted that it was sufficient in any given case that doubts existed as to impartiality in order for the objective test to be satisfied. In his case there had been justifiable misgivings as to the impartiality of the judge in question and even the entire bench, diminishing public confidence in the judicial system.

44. Judge A.K. had in fact heard a case involving his "in-law" – his son's father-in-law and his son's employer. Judge A.K. had been (through the marriage of his son) a personal friend of P.G.P., who had been the leading opposing counsel in the case. In Cypriot society as a whole, a person's "in-laws" were considered as members of that person's extended family; traditionally, a very close bond existed between two merged

families, and they would typically often meet both privately and socially. The applicant argued that domestic judicial practice should be amended to reflect this reality. Furthermore, P.G.P. had been the managing partner of the law firm employing Judge A.K.'s son and daughter-in-law. Judge A.K.'s son's salary had depended on P.G.P. It appeared that Judge A.K's son ranked eighth and his daughter in-law ninth in seniority in the firm. Any other lawyers who had also appeared on behalf of the firm had acted under P.G.P.'s instructions. The applicant thus argued that any lay person who had full knowledge of the facts would have legitimate reasons to fear a lack of impartiality on the part of the bench and doubt the fairness of any ruling that it might give.

(b) The Government

45. The Government submitted that in the particular circumstances of the present case it had not been shown that the applicant's fears as to lack of impartiality on the part of one of the judges on the bench had been objectively justified.

46. Firstly, the relationship in question had not been of such a nature and degree as to indicate a lack of impartiality on the part of the Supreme Court having regard to, *inter alia*, the judicial practice applicable at the material time which did not include the relationship in question as grounds for exemption. Relying on *Micallef*, (cited above, § 99) the Government pointed out that the Court took into account domestic rules regulating the recusal of judges when making its own assessments as to objective impartiality. They noted that in today's Cypriot society the relationship between "in-laws" themselves and/or the way in which such a relationship was perceived in terms of custom was not of such a closeness or degree as to indicate lack of impartiality on the part of the appeal bench. It probably would have been different in terms of Cypriot custom if the relationship in question had concerned a judge and his or her son-in-law or daughter-in-law. They emphasised in this respect that the bench had been composed of three judges and not just one judge.

47. Secondly, the mere fact that at the time in question Judge A.K.'s son had been working as a lawyer at the firm representing the defendant company and had been married to the daughter of the firm's managing director (who had also been working as a lawyer in the same firm) did not raise any objective fears that the judge had had any interest in the outcome of the proceedings. Indeed, the Government firmly rejected the applicant's submissions in this connection. The Government distinguished the present case from that of (i) *Pescador Valero v. Spain*, (no. 62435/00, § 27, ECHR 2003-VII), in which the judge himself had been working as an associate professor at the university (one of the parties to the proceedings) and (ii) *Tocono and Profesorii Prometeişti v. Moldova*, (no. 32263/03, § 31, 26 June 2007), where the judge in question had threatened the school

authorities – including the head teacher and teachers who had expelled his son – with retaliation.

48. Thirdly, P.G.P. had only appeared before the bench for the first time at the hearing of the appeal, and one should not lose sight of the fact that the law firm had comprised twenty-eight lawyers and that other lawyers had appeared for the defendant company in the proceedings.

2. The Court's assessment

(a) General principles

49. The Court reiterates that impartiality normally denotes the absence of prejudice or bias, and that its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is to say whether the judge held any personal prejudice or bias in a given case, and (ii) according to an objective test – that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015, with further references).

50. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the Court's case-law. The personal impartiality of a judge must be presumed until there is proof to the contrary. As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (ibid., § 74).

51. In the vast majority of cases raising impartiality issues the Court has focused on the objective test. However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test). Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (ibid., § 75).

52. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (ibid., § 76).

53. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings or the exercise of different functions within the judicial process by the same person (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 121, ECHR 2005-XIII). It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Morice,* cited above, § 77).

54. In this connection, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (*Micallef*, cited above, § 98).

55. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. The Court will take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether the applicant's fears can be held to be objectively justified (ibid., § 99).

(b) Application of the above principles to the present case

56. At the outset the Court notes that the applicant did not question Judge A.K.'s subjective impartiality. The case will therefore be examined only from the standpoint of the objective impartiality test.

57. The applicant's fears of a lack of impartiality on the part of Judge A.K., who sat on the three-judge Supreme Court bench deciding on the applicant's appeal are based on two grounds: firstly, on the fact that the son of Judge A.K. and the daughter of P.G.P. (who had represented the defendant company at the appeal hearing) were married (that is to say there was an "in-law" relationship between Judge A.K. and P.G.P.). Secondly, the couple worked in the law firm of which P.G.P. was a managing partner.

58. The Court has to decide whether these misgivings were objectively justified, given the circumstances of the case.

59. In this regard, the Court reiterates that in proceedings originating in an individual application the Court has to confine itself, as far as possible, to an examination of the concrete case before it (see, for example, *Poppe v. the Netherlands*, no. 32271/04, § 23, 24 March 2009, and *Dorozhko and*

Pozhaskiy § 53, cited above). Moreover, the Court reiterates that the Contracting States are under an obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, impartiality being unquestionably one of the foremost of those requirements. The Court's task is to determine whether the Contracting States have achieved the result called for by the Convention (ibid.).

60. To the extent that the applicant's fear of impartiality on the part of Judge A.K. stemmed from the "in-law" relationship between that judge and P.G.P., the Court notes that they have a family tie through the marriage of their children. The Court considers that this tie in itself sufficed to objectively justify the applicant's fears as to Judge A.K.'s impartiality. It is noted in this respect that under domestic law a judge has the possibility to withdraw from a case for personal reasons, even without having been challenged (see paragraphs 17 and 27 above).

61. It is worth noting that the code of judicial practice was subsequently amended to stipulate that such a relationship constituted grounds for the withdrawal of a judge from a case (see paragraph 16 above).

62. As regards the second ground invoked by the applicant (see paragraph 57 above), the Court finds that when a judge has blood ties with an employee of a law firm representing a party in any given proceedings, this does not in and of itself disqualify the judge (see *Ramljak v. Croatia*, no. 5856/13, § 29, 27 June 2017). An automatic disqualification on the basis of such ties, as was provided in the judicial code prior to the applicant's case, is not necessarily required (see paragraph 15 above). It is, however, a situation or affiliation that could give rise to misgivings as to the judge's impartiality. Whether such misgivings are objectively justified would very much depend on the circumstances of the specific case, and a number of factors should be taken into account in this regard. These should include, *inter alia*, whether the judge's relative has been involved in the case in question, the position of the judge's relative in the firm, the size of the firm, its internal organisational structure, the financial importance of the case for the law firm, and any possible financial interest or potential benefit (and the extent thereof) on the part of the relative.

63. It cannot be overlooked that Cyprus is a small country, with smaller firms and a smaller number of judges than larger jurisdictions; therefore, this situation is likely to arise more often (see, *mutandis mutandis, Biagioli v. San Marino* (dec.), no. 8162/13, § 80, 8 July 2014, and *Micallef,* cited above, § 102; compare *Ramljak*, cited above, § 39). The Court has observed in its case-law that complaints alleging bias should not be capable of paralysing a defendant State's legal system and that in small jurisdictions, excessively strict standards in respect of such motions could unduly hamper the administration of justice (*A.K. v. Liechtenstein*, no. 38191/12, § 82, 9 July 2015).

64. Given the importance of appearances, however, when such a situation (which can give rise to a suggestion or appearance of bias) arises, that situation should be disclosed at the outset of the proceedings and an assessment should be made, taking into account the various factors involved in order to determine whether disqualification is actually necessitated in the case. This is an important procedural safeguard which is necessary in order to provide adequate guarantees in respect of both objective and subjective impartiality.

65. In the present case, no such disclosure took place and the applicant discovered the employment connection only after a judgment had been given in respect of his appeal. He was thus faced with a situation in which the son of Judge A.K. and his daughter in-law worked in the law firm which had represented the defendant company and whose managing partner, their employer, had appeared at the appeal hearing. The applicant did not know whether they had actually been involved in the case (compare *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 168, 26 July 2011, and *Bellizzi v. Malta* (dec.), no. 8162/13, § 61, 21 June 2011) and whether they had a financial interest connected to its outcome. An appearance of partiality was thus created. The Court therefore finds that the applicant's doubts regarding the impartiality of Judge A.K. on this ground were also objectively justified and that the domestic law and practice did not provide sufficient procedural safeguards in this respect.

66. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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."

68. The applicant did not submit a claim for just satisfaction.

69. The Court therefore makes no award in this regard and finds no exceptional circumstances which would warrant a different conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 76-78, 30 March 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 9 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President