CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37371/97
by Charalambos NICHOLAS
against Cyprus

The European Court of Human Rights (Third Section), sitting on 14 March 2000 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J.-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *judges*,
and Mrs S. Dollé, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 19 June 1997 and registered on 13 August 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant is a British national, born in 1951 and living in London.

He is represented before the Court by Mr N.S. Ahluwalia, a lawyer practising in London.

A. Particular circumstances of the case

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

I. Recourse No. 633/95 before the Supreme Court

On 12 July 1995 the applicant applied to the Supreme Court of Cyprus for a declaration that Cyprus Airways and the Government, the major shareholder of that company, had breached the Constitution in refusing to employ him and employing others instead (recourse No. 633/95).

On 10 April 1997 the applicant asked the Chief Registrar of the Supreme Court whether legal aid was available for actions alleging infringement of constitutional rights, such as recourse No. 633/95. On the same date the Chief Registrar informed the applicant that "legal aid is not available for civil cases".

The applicant represented himself in the proceedings.

On 19 September 1997 the Supreme Court rejected the applicant's recourse as inadmissible. The court found that Cyprus Airways was in every respect a private company. As a result, its decisions did not fall within the ambit of Article 146 of the Constitution. The refusal to employ the applicant was, therefore, wrongly challenged by means of a recourse to the Supreme Court.

II. Case No. 5807/95 before the Nicosia District Court

In 1993 the applicant instituted proceedings before the Supreme Court seeking the annulment of the Ministry of Labour's decision to issue work permits to six foreign pilots employed by EuroCypria Airlines, a subsidiary of Cyprus Airways (case No. 701/93). On 19 April 1995 the Supreme Court found in favour of the applicant.

Relying on the above decision, the applicant instituted proceedings before the Nicosia District Court for damages against the Government (case No. 5807/95). He was represented by counsel who acted on a "no fee" basis. On 26 June 1998 the court rejected the action.

The applicant's counsel lodged an appeal. The proceedings are still pending.

III. Case No. 1676/94 before the Larnaca District Court

On 29 August 1993 the newspaper *Alithia* published a letter by EuroCypria Airlines worded as follows:

> "With reference to your article in connection with Charalambos Nicholas, we confirm once again that our intention is to 'Cypriotise' [give priority to Cypriot employees] as soon as possible. Within the bounds of safety and operations of the company, for us to achieve this aim, the recruitment of suitable, qualified pilots is an absolute necessity. … We have offered employment without exception to each and every qualified suitable Cypriot pilot who has applied and today we employ eight such pilots … . The recruitment of *ab initio* Cypriot pilots has already commenced and we will continue this policy until all the foreigners in our company are replaced. With regard to Mr Nicholas's specific case, the reasons he was not selected are known to both himself and the Government agencies concerned through correspondence dating from 1991. As for the rest it is against our policy to discuss individual cases in the press".

On 11 May 1994 the applicant instituted proceedings for defamation against EuroCypria Airlines before the Larnaca District Court (Case No. 1676/94). He alleged that it transpired from the publication in question that

(a) he was an unqualified and inexperienced pilot and not suitable to fly aircrafts,

(b) he was so incompetent and/or had such disadvantages as a person and as a professional so as to jeopardise the safety of the flights and the operation of the company, or any other airline company,

(c) he was not selected for employment, not because there were other persons more qualified than him, but because he was totally useless and/or incompetent and/or an ignorant professional pilot and

(d) he was generally a dangerous and suspicious person and could not be trusted.

The applicant applied for damages and an injunction preventing the defendants from continuing to publish defamatory statements. The applicant was represented by counsel.

A hearing was fixed for 16 February 1996. On that date the applicant failed to appear and the court dismissed the action.

On 21 May 1996 the applicant's counsel asked for the reinstatement of the action. On 27 June 1996 the action was reinstated. A hearing was fixed for 27 November 1996. It was adjourned on several occasions.

On 27 August 1997 the applicant informed his lawyer, Mr K, that he did not exclude the possibility of engaging the services of another lawyer. On 1 September 1997 Mr K informed the applicant that he was no longer able to represent him. The lawyer invited the applicant to collect the file so he could prepare his case himself. He stated that "no fees (were) expected to be paid by (the applicant)".

After Mr K's withdrawal the applicant sent a number of faxes to the court's registry asking for the case to be adjourned. On 20 November 1997 Mr E, in whose chambers Mr K used to work, appeared before the court on behalf of the applicant and asked for an adjournment. The court adjourned the hearing of the case until 27 February 1998.

On 27 February 1998 none of the parties appeared and the court dismissed the action.

On 1 July 1999 Mr E wrote a letter to the applicant's representatives before the Court to the effect that his firm had agreed to represent the applicant "on a no fee basis", that Mr K had

withdrawn from the case because he had been appointed a judge and that the case "had a very good chance of success if handled properly".

B. Relevant domestic law

The law on defamation in Cyprus is found in sections 17 to 24 of the Civil Wrongs Law. The following principles transpire from the case-law:

> "In accordance with the principles of legal interpretation applied in England, expressions used in (the Civil Wrongs Law) shall be presumed so far as they are consistent with their context and except as may be otherwise expressly provided to be used with the meaning attaching to them in English Law and shall be construed in accordance therewith. … Time and again it was said that the gist of the torts of libel and slander is the publication of words conveying a defamatory imputation. A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession or to injure his financial credit. The standard of opinion is that of right-thinking persons generally." (Supreme Court of Cyprus in *Paniccos Agathangelou v. S. Mousoulides and Sons*, (1980) 1 CLR pp. 272 and 277)

> "The meaning of words in a libel case is not a matter of construction as a lawyer construes a contract. It is a matter of the impression an ordinary person gets on a first reading not on a later analysis." (*Lewis v. Daily Telegraph Ltd.* (1963) 2 All E.R. p. 151)

> "An innuendo properly so called which is an allegation that words were used in a defamatory sense other than their ordinary meaning and which provides a separate cause of action must be supported by extrinsic facts or matters and cannot be found only on interpretation, because if the words bear the interpretation imputed to them they are defamatory in their natural and ordinary meaning." (*Grubb v. Bristol United Press Ltd.* (1962) 2 All E.R. p. 380)

According to a letter addressed to the applicant by the Cyprus High Commission on 9 June 1997, the Law Office of the Republic confirmed that "legal aid (was) not available in civil cases. Despite the fact that Article 30.3(d) of (the) Constitution provides that every person has the right to have free legal assistance where the interests of justice so require and as provided by law, such a law has not as yet been introduced".

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that his right of access to court was violated. He contends that, due to the total absence of legal aid in Cyprus, he could not obtain legal representation for the proceedings complained of, although his opponents were represented by teams of expert lawyers. Moreover, the proceedings were conducted in Greek, a language which the applicant does not master in full, since he has received all his secondary education in the United Kingdom.

PROCEDURE

The application was introduced on 19 June 1997 and registered on 13 August 1997.

On 3 December 1997 the European Commission of Human Rights decided to communicate the application to the respondent Government. The Government's written observations were submitted on 20 February 1998. The applicant replied on 19 June 1998, after an extension of the time-limit.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol. The President of the Court assigned the case to the Third Section.

On 9 March 1999 the Court (Third Section) decided to ask the parties to submit supplementary observations. The Government's supplementary observations were submitted on 19 April 1999. The applicant's supplementary observations were submitted on 9 July 1999, after the expiry of the relevant time-limit. On 24 August 1999 the President of the Third Section decided to admit the applicant's supplementary observations.

On 16 September 1999 and 1 October 1999 the Government and the applicant respectively submitted observations in reply

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention that, because of his inability to obtain free legal representation for the institution of civil proceedings in Cyprus, his right of access to court was violated.

The Court recalls that Article 6 § 1 of the Convention guarantees the right of access to court for the determination of one's civil rights (see the Airey v. Ireland judgment of 9 October 1979, Series A no. 32).

It also notes that the applicant complaint concerns three sets of proceedings - recourse No. 633/95 and actions Nos. 5807/95 and 1676/94 - which should be examined separately.

2. Insofar as the applicant complains of a violation of Article 6 § 1 of the Convention in recourse No. 633/95, the Government argue that this provision does not apply to the proceedings in question. The applicant considers that it does.

The Court recalls that, according to the case-law of the Convention organs, a court that rejects a claim on procedural grounds is not determining a dispute on civil rights and obligations (see, mutatis mutandis, application No. 10865/84, Dec. 12.5.86, D.R. 47, p. 188). The Court notes that the Supreme Court rejected recourse No. 633/95 on procedural grounds because the applicant had used an administrative law remedy to attack a decision of a private company. It follows that the proceedings in question did not involve a determination of the applicant's civil rights and obligations within the meaning of Article 6 § 1 of the Convention.

As a result, the Court considers that this part of the application is incompatible *ratione materiae* with the provisions of the Convention under Article 35 § 3 thereof and must be rejected as inadmissible under Article 35 § 4.

3. In so far as the applicant complains of a violation of Article 6 § 1 of the Convention in action No. 5807/95, the Government point out that the applicant was represented by counsel of his own choice in the proceedings in question. The applicant accepts that he was represented by a lawyer on a “no fee" basis.

The Court takes note of the above and considers that, in these circumstances, the applicant cannot claim to be a victim of a violation of Article 6 § 1 of the Convention, within the meaning of Article 34 thereof. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4.

4. In so far as the applicant complains of a violation of Article 6 § 1 of the Convention in action No. 1676/94, the Government argue that the natural and ordinary meaning of the words used in the letter published in *Alithia* was such that an ordinary person without special knowledge would clearly not have attributed a libellous meaning to them. Moreover, no case of innuendo could reasonably be made. Given all the above, the Government argue that it was clear that the applicant did not have a cause of action. The applicant did not have any prospect of being awarded exemplary damages and courts in Cyprus do not issue injunctions in defamation cases.

In any event, the Government point out that the applicant never requested legal aid. They consider that it has not been established that the applicant lacked adequate means to hire the services of a lawyer, especially since his was a low scale action. Nor has the applicant shown that he could not find a lawyer other than Mr K who would represent him on a “no fee” basis. Moreover, the Government consider that the applicant could have handled the case himself. Legal representation is not compulsory in Cyprus. Counsel had prepared the case well before the applicant took over. The applicant had had ample time to prepare for the hearing. If he really had linguistic difficulties, he could have asked the court to appoint an interpreter.

The applicant claims that the initial prospects of success of his action were high because the letter was defamatory, it referred to him and it had been published. He did not apply for legal aid because he knew that there was no possibility under Cypriot law of getting it. The applicant ran out of funds and this made Mr E quit the proceedings. It was impossible for the applicant to represent himself because defamation proceedings are very complex for a layman, who moreover has linguistic difficulties.

The Court recalls that, although Article 6 § 1 of the Convention does not guarantee a right to free legal aid in all civil cases, the unavailability of legal aid may under certain circumstances give rise to a violation of the right of access to court and to a fair hearing (see the Airey v. Ireland judgment of 9 October 1979, Series A no. 32). The complexity of the proceedings is a factor to be taken into consideration. Moreover, a refusal of legal aid does not constitute a denial of access to a court when the proceedings have no prospects of success and the cost of funding the litigation is disproportionate to any likely damages to be awarded (applications Nos. 27346/95 and 28406/95, Stewart-Brady v. the United Kingdom, Dec. 2.7.97, D.R. 90-A, p. 45).

The Court notes that until 20 November 1997 the applicant was represented by counsel who had prepared all the necessary written submissions. Although the applicant had managed to ensure legal representation on a “no fee” basis on several occasions, he has not shown that after Mr K’s withdrawal he tried to make any similar arrangements. Finally, the applicant’s action was rejected because nobody appeared to defend it on 27 February 1998. Under Cypriot law it was open to the applicant to appear himself. There is nothing to indicate that the dismissal of the action was caused by the unavailability of legal aid.

In these circumstances, the Court considers that the applicant cannot claim to be a victim of a violation of Article 6 § 1 of the Convention, within the meaning of Article 34 thereof. As a result, the Court considers that this part of the application is also incompatible *ratione personae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 and 4.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

N. Bratza
President