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

THIRD SECTION

DECISION

Application no. 7292/10
Socrates ZAVROS
against Cyprus

The European Court of Human Rights (Third Section), sitting on 29 March 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda, *judges,*

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 22 December 2009,

Having regard to the declaration submitted by the respondent Government on 21 July 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having regard to the additional information submitted by the Government at the Court's request concerning the remaining term of the applicant's military service and its nature, and the applicant's comments in reply,

Having deliberated, decides as follows:

THE FACTS AND PROCEDURE

1. The applicant, Mr Socrates Zavros, a Cypriot and Greek national, was born in 1987 and lives in Nicosia. He was represented before the Court by Mr A. Angelides, a lawyer practising in Nicosia. The Cypriot Government ("the Government") were initially represented by their Agent Mr P. Clerides, Attorney-General of the Republic of Cyprus, and

subsequently by Mr C. Clerides, his successor. The Greek Government, to whom a copy of the application was transmitted under Rule 44 § 1 (a) of the Rules of Court, did not exercise their right to intervene in the proceedings (Article 36 § 1).

A. The circumstances of the case

2. The applicant's father is Greek-Cypriot and his mother Greek.

3. On 15 July 2005 the applicant was enlisted in the National Guard.

4. At the material time the National Guard Law (Law 20/1964 as amended up to 2005) provided that Cypriot nationals and persons of Cypriot descent on the male side were liable for compulsory military service (sections 2 and 4). The Law defined a "citizen of the Republic" as including a person of Cypriot descent on the male side (section 2). At the time the term of compulsory military service was twenty-five months (Council of Ministers' decision no. 57.068 of 8 February 2003).

5. According to decision no. 57.677 of the Council of Ministers, adopted on 2 May 2003, pursuant to section 5 of the National Guard Law, a conscript who was not of Cypriot descent on the male side, was born in Cyprus or abroad between 16 August 1960 and 11 June 1999, and who willingly applied for Cypriot Citizenship because, at the time of his birth, his mother was a Cypriot citizen or was entitled to acquire Cypriot citizenship, was liable to only a reduced military service of six months in the National Guard.

6. On 7 December 2005 the applicant applied to the Ministry of Defence requesting to be treated on an equal footing with men born to a foreign father and a Greek-Cypriot mother by having his military service reduced from twenty-five to six months.

7. His application was dismissed on 22 December 2005 on the ground that under the applicable conscription law he was under an obligation to serve the full term of service as he was of Cypriot descent on the male side and there was no provision providing for a reduction of the term of service or any other arrangement he could benefit from in this regard.

8. The applicant brought a recourse before the Supreme Court (first-instance revisional jurisdiction; recourse no. 174/2006) seeking the annulment of the above decision. He claimed that it was in violation of the right to equal treatment of the sexes as safeguarded by Article 28 of the Constitution.

9. On 29 November 2006 the Supreme Court dismissed the recourse. It found that, on the basis of its jurisprudence, it did not have the competence to extend legislative arrangements so as to grant substantive rights outside the law. The non-existence of a legislative provision could not be remedied by judicial decision because, in such a case, the constitutional control which the Supreme Court exercised would be turned into a means of reshaping or

completing the legislation. Declaring a law to be unconstitutional would acquire meaning only if it could lead to acceptance of the claim and therefore to a resolution of the dispute. This, however, was not possible in the present case since the claim was not founded on any legislative provision.

10. The applicant filed an appeal before the Supreme Court (revisional jurisdiction - appeal no. 4/2007) which was dismissed on 30 June 2009. The Supreme Court upheld the findings of the first instance court. It held that when the court examined whether a specific legislative provision was constitutional, it did not have the competence, through the principle of equality, to extend the application of the law to areas with regard to which no provision had been made by the legislature. Thus, a finding that the legislative provision in question was unconstitutional would not benefit the applicant.

11. In the meantime, on 2 July 2007, the applicant was temporarily discharged from service so he could pursue his studies abroad. Up to that date the applicant had served twenty-three months and seventeen days. He was under an obligation to re-enlist and complete the rest of his service when he will have finished his studies.

12. Upon his discharge the applicant was given a certificate temporarily discharging him from service stating that he had 180 days left to serve. These consisted of forty-three days of his remaining compulsory military service plus 137 days accrued as disciplinary sentences following the commission of disciplinary offences. These days have to be served as military service. Although in fact 177 days in total had been imposed as disciplinary sentences, the first forty days were written off on the basis of section 5(3) of the National Guard Law, as applicable at the time.

13. On 25 February 2011 the National Guard Law, Law 19(l)/2011, entered into force replacing Law 20/1964. This law reduced the length of compulsory military service from twenty-five months to twenty-four (section 20(3)) and provided that the first fifty days of disciplinary sentences be written off (section 40(1)(b)). As a result of this new law, the Government submitted that the length of the applicant's compulsory military service was reduced to 140 days of which thirteen days were actual military service reduced by thirty days, and 127 days by reason of disciplinary offences the total of which was reduced by ten days.

14. The applicant submitted that he had only 139 days remaining, not 140, as according to his calculations, the remaining days of normal military service were twelve and not thirteen.

15. In the meantime, the applicant has successfully been applying yearly for a suspension of his service. The most recent decision addressed to him by a letter dated 2 September 2015 suspends his enlistment until 31 August 2016.

16. According to the letters sent by the Nicosia Enlistment Office before the expiry of the periods of suspension of his enlistment, calling upon the applicant to re-enlist, if the applicant did not fulfil his obligations he risked being charged with the offence of insubordination which was punishable with imprisonment up to three years or a fine not exceeding EUR 6,000 or both (section 67 of the National Guard Law, Law 19(I)/2011).

B. Additional relevant domestic law at the time of the applicant's enlistment

17. Section 109(1) and (2) of the Civil Registry Law (Law 141(I)/2000) provide, *inter alia*, that any person born in Cyprus or abroad on or after 16 August 1960 is a citizen of the Republic, if at the time of his/her birth either of his/her parents was a citizen of the Republic, or if at the time of his/her birth his/her parents were not living, either of them would have been entitled to become a citizen of the Republic had he/she not died. At the time however, there was an exception in section 109(3) which provided that the subsections (1) and (2) did not apply in the case of a person born in Cyprus or abroad between 16 August 1960 and 11 June 1999, if that person would have acquired the citizenship of the Republic because, at the time of his birth, his mother was, or was entitled to acquire the citizenship of the Republic.

COMPLAINTS

18. The applicant complained about discriminatory treatment on the grounds of sex under Article 1 of Protocol No. 12 and under Article 14 taken in conjunction with Article 6 of the Convention. He further complained under Article 6 of the Convention that he has been deprived of his right to a court and did not have a fair trial. Lastly, the applicant complained under Article 13 of the Convention and Article 1 of Protocol No. 1 taken alone and in conjunction with his complaint under Article 14.

THE LAW

A. Complaint under Article 1 of Protocol No. 12

19. On 16 May 2011 the applicant's complaint under Article 1 of Protocol No. 12 was communicated to the Government.

20. After the failure of attempts to reach a friendly settlement, by a letter of 21 July 2015 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

21. The declaration provided as follows (footnotes omitted):

> "1. The Government notes that the efforts with a view to securing a friendly settlement of the case have been unsuccessful.
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> 2. The Government wishes to clarify to the Court that the law applicable at, the material time (National Guard Law 20/1964) provided that Cypriot nationals and persons of Cypriot descent on the male side were liable to compulsory military service by virtue of sections 2 and 4 of the above law. However, according to Council of Ministers decision no. 57.677 Cypriot nationals who were born in Cyprus or abroad between 16 August 1960 and 11 June 1999 and who became Cypriot nationals due to the fact that their mother was a Cypriot national or had the right to become a Cypriot national, served a reduced military service for a period of six months only. This legal framework created a situation whereby Cypriot nationals who were born between 16 August 1960 and 11 June 1999 and who became Cypriot nationals due to the fact that their father was a Cypriot national had to serve full term of military service (25 months) whereas, Cypriot nationals born in the same period and who became Cypriot nationals due to the fact that their mother was a Cypriot national, had to serve a reduced military service for a period of six months.
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> 3. The applicant was born between 16 August 1960 and 11 June 1999 and became a Cypriot national due to the fact that his father was a Cypriot national. The said applicant had to serve the full term of military service. However, men born between 16 August 1960 and 11 June 1999 who became Cypriot nationals due to the fact that their mother was a Cypriot national, served a reduced military service of six months.
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> 4. In light of the above situation the Government wishes to express - by way of a unilateral declaration - its acknowledgement that the special circumstances of the present case disclose discrimination on grounds of sex in violation of Article 1 of Protocol No. 12 bearing in mind that at the material time the applicant (a Cypriot national) whose father was of Cypriot nationality and mother not of Cypriot nationality, had to serve a full term of military service of 25 months, whereas Cypriot nationals whose mother was of Cypriot nationality and their father was not of Cypriot nationality had to serve a military service of six months only.
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> 5. Consequently, in these circumstances and having regard the particular facts of the present case the Government is prepared to pay the applicant the amount of EUR 4000 (four thousand Euros) covering pecuniary and non-pecuniary damage. In its view, this amount would constitute adequate redress and sufficient compensation for the impugned violation and thus an acceptable sum as to quantum in the present case. Regarding costs and expenses the Government is prepared to pay the applicant the amount of EUR 7500 (seven thousand five hundred Euros) for costs and expenses incurred at domestic level and at the ECHR proceedings The above amount will be free from any taxes that may be applicable. It will be payable within three months from the date of notification of the decision pursuant to Article 37 § I (c) of the Convention. This payment will constitute the final settlement of the case. In the event of failure to pay this sum within the said three-month period, the Government undertakes to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the

default period plus three percentage points. This payment will constitute the final settlement of the case.

6. It is recalled that the National Guard Law in force at the material time was replaced in 2011 by Law 19(l)/2011. By virtue of sections 2 and 18 (1) of the 2011 law those who acquire Cypriot nationality or are allowed to acquire Cypriot nationality (by virtue of the Civil Registry Law) irrespective of whether their father or mother was of Cypriot descent are liable to military service. However, according to section 21 (1) (c) (ii) those who were born between 16 August 1960 and 11 June 1999 and who acquire Cypriot nationality due to the fact that their mother had or was allowed to have a Cypriot nationality serve a reduced military service of six months. On the contrary, Cypriot nationals who were born between 16 August 1960 and 11 June 1999 and who became Cypriot nationals due to the fact that their father was of Cypriot descent had to serve full term of military service in accordance with sections 2 and 18 (1) of the 2001 law. Therefore, the discrimination based on sex for Cypriot nationals born in the above period which existed by virtue of the previous National Guard Law in conjunction with the above Council of Ministers decision continued to exist in the National Guard Law of 2011.

7. For the purposes of preventing future violations similar to the present application and within a certain margin of appreciation states enjoy in deciding on the measures to be taken to eliminate discriminatory provisions, the National Guard Law was amended by Law 2(1)/2015 which entered into force on 16 January 2015. The amendment law abolished subparagraph (c) (ii) of paragraph 1 of Section 21 of the National Guard Law. The abolition applies for those military service ranks (στρατολογικές κλάσεις) that will be called to serve the full term of military service after the law entered into force. Therefore, as of 16 January 2015 Cypriot nationals who were born between 16 August 1960 and 11 June 1999 are called to serve the full term of military service irrespective of whether they acquired the Cypriot nationality due to the fact that their father was a Cypriot national or their mother. Consequently, the discrimination based on sex in relation to the obligation to serve full or reduced military service for Cypriot nationals born in the above period ceased to exist.

8. Going beyond the parameters of the present application, but nevertheless interwoven with the historical background of the discriminatory treatment, the Civil Registry Law was also amended by Law 16(l)/2015 for the purposes of establishing uniformity respecting the acquisition of Cypriot nationality. The amendment law abolished paragraph 3 of section 109 of the Civil Registry Law, which introduced an exception to the general rule - stipulated in paragraphs 1 and 2 of the same section - that a person born in Cyprus or abroad on or after 16 August 1960 acquires Cypriot nationality automatically if one of his/her parents are Cypriot nationals or are allowed to acquire Cypriot nationality. The exception introduced in paragraph 3 of section 109 of the Civil Registry Law (which is now abolished by Law 16(1)/2015) was that those who were born in Cyprus or abroad between 16 August 1960 and 11 June 1999 and whose mother acquired Cypriot nationality or was allowed to acquire Cypriot nationality, do not become Cypriot nationals automatically. Rather, if they wish to become Cypriot nationals they should apply for the Cypriot nationality to the relevant authority. Therefore, as of 20 February 2015, date in which the law amending the Civil Registry law entered into force, those who were born between 16 August 1960 and 11 June 1999 acquire the Cypriot nationality automatically irrespective of whether their mother was a Cypriot national or their father Consequently, the discrimination based on sex in relation to acquiring the Cypriot nationality for those born in the above period ceased to exist.

> 9. In light of the above, the Government would suggest that the circumstances of the present case allow your Court to reach the conclusion that there exists 'any other reason', as referred to in Article 37 § 1 (c) of the Convention, justifying your Court to discontinue the examination of the application, and that, moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine,* which would require the further examination of the case by virtue of that provision. Accordingly, the Government invites your Court to strike the application out of its list of cases."

22. By a letter of 28 September 2015, the applicant indicated that he was not satisfied with the terms of the unilateral declaration. He repeated this position in his subsequent comments.

23. First of all, the declaration was limited to the complaint under Article 1 of Protocol No. 12 and did not deal with the rest of his complaints.

24. Secondly, although the Government had acknowledged a violation of this provision, the violation of the applicant's rights continued. The Government contented themselves by deleting the discriminatory provision of the law. The applicant, as well as any man in his situation, was now in a worse position, as full-term military service was imposed on all. In this respect he submitted that he should have only served six months. If this had been the case he would have accrued only eighteen days as disciplinary penalties. Furthermore, no attempt had been made to safeguard the rights of the applicant or any of the men who had enlisted under and had been affected by the discriminatory regime. Nor had the Government made any attempt to put things right. In particular, the applicant was still liable to serve a total of an additional 139 days of service. Although he had been temporarily discharged so he could pursue his studies, the obligation to serve these days remained. If he did not serve this period he risked being charged with the offence of subordination which was punishable with imprisonment up to three years or a fine not exceeding EUR 6,000 or both (see paragraph 16 above). The applicant vigorously argued that the Government should have written off this period in view of the fact that he had served a longer term than he should have. Instead, they had completely omitted to mention or comment on this in their declaration.

25. Thirdly, the applicant expressed the view that the award offered by the Government was inadequate on all counts. With regard to pecuniary and non-pecuniary damage the applicant submitted that he had been wrongfully deprived of his liberty and had suffered forced labour for a period of nineteen months. This had put his studies and/or career on hold and therefore had affected his rights to promotion and even retirement benefits. Nor did the amount proposed compensate the anguish he had suffered and continued suffering. In his view, a fair award would have been EUR 200 per day for the nineteen-month period. Moreover, the sum of EUR 7,500 was wholly inadequate to cover his legal fees. He had incurred costs amounting to EUR 6,174.94 before the domestic courts and the amount of EUR 3,216.77 had been paid to the Government. In so far as the proceedings before the Court were concerned, the applicant had initially

submitted that he had agreed on a EUR 5,950 fee with his lawyer. He claimed a higher amount in subsequent unsolicited observations. Finally, the applicant considered that the present case was an exceptional one in which exemplary and punitive damages needed to be awarded.

26. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

27. It also reiterates that in certain circumstances, it may strike out an application or part thereof under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

28. To this end, the Court will examine the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

29. In considering whether it would be appropriate to strike out this part of the present application on the basis of the unilateral declaration, the Court makes the following observations.

30. Firstly, the Court recalls that only the complaint under Article 1 of Protocol No. 12 was communicated to the Government. This explains why the Government's declaration does not address the remaining complaints.

31. Secondly, the Government have accepted that at the time of the applicant's enlistment and, until recently, the relevant provisions of the domestic law taken in conjunction with the Council of Minister's decision no. 57.677 were discriminatory. They have also conceded that as a result there has been a violation of Article 1 of Protocol No. 12.

32. Thirdly, the Government have amended the relevant domestic laws and practice and have removed the discrimination which was at the root of the applicant's complaint. Consequently, as of 16 January 2015, Cypriot nationals who were born between 16 August 1960 and 11 June 1999, are liable to serve the full term of military service irrespective of whether they have acquired Cypriot nationality through their mother or their father. The applicant's argument is that the Government could only have redressed the situation by reducing the military service to six months. This is misconceived. The applicant cannot claim that discrimination against him still persists when in fact the matter was resolved not by reducing the service to six months, as he demanded, but by doing away, in the Law as

amended, with the concession granted to some who have, in special circumstances, served less than the normal period of service of twenty-five months. No issue therefore arises in respect of the twelve or thirteen remaining days - the exact number makes no difference – that he is still required to serve.

33. Fourthly, in so far as the applicant complains about the remaining time he is required to serve due to disciplinary penalties, the Court observes that this is quite distinct from the question that arises in the case under the Convention concerning the discriminatory provisions in domestic law and practice. These additional 127 days were imposed as penalties. They had accrued as a result of the applicant committing disciplinary offences during his military service. Consequently, even if the present case were to proceed to judgment, this matter would not be relevant to the Court's examination of a breach of Article 1 of Protocol No. 12.

34. Fifthly, the Government have undertaken to provide redress to the applicant by paying him damages for pecuniary and non-pecuniary damage as well as costs and expenses. The Court considers, taking into account the circumstances of the case and the relevant documents in the case-file, that the sums proposed are reasonable and in keeping with the Court's criteria governing awards under Article 41.

35. Lastly, the Court reiterates that it has consistently rejected claims for punitive damages (see, *inter alia, Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 223, ECHR 2009 and *Efendiyeva v. Azerbaijan*, no. 31556/03, § 23, 25 October 2007; both with further references).

36. Therefore, in light of the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c).

37. Moreover, in light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

38. The Court considers that these amounts should be paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

39. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, this part of the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

40. In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the above complaint.

B. Remaining complaints

41. The applicant complained under Article 6 of the Convention that he had been deprived of his right to a court and had not had a fair trial. He further complained about discriminatory treatment on the grounds of sex under Article 14 taken in conjunction with the above provision. Lastly, the applicant complained under Article 13 of the Convention and Article 1 of Protocol No. 1 taken alone and in conjunction with his complaint under Article 14.

42. Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

43. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 12 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 28 April 2016.

Stephen Phillips
Registrar

Luis López Guerra
President