

Accomplice testimony in property-corruption case did not compromise trial

In today's **Chamber judgment**¹ in the case of [Souroullas Kay and Zannettos v. Cyprus](#) (application no. 1618/18) the European Court of Human Rights held that there had been:

by 5 votes to 2, **no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights, and

by 5 votes to 2, **no violation of Article 6 §§ 1 and 3 (b) (right to adequate time and facilities for preparation of defence)**

The case concerned Mr Souroullas's conviction for money laundering and Mr Zannettos's for extortion in connection with a land deal. A key part of the evidence had been the testimony of N.L., a property entrepreneur and owner of ALKI Larnaca, a football club. N.L. had been given immunity from prosecution after he had given statements implicating, among others, the applicants.

The Court found in particular that the trial had not been compromised by the inclusion of N.L.'s evidence as the national courts had been cautious in treating that evidence, and there had been other corroboration available too.

As regards the applicants' demand to examine the prosecution's copy of N.L.'s hard disks to prove collusion, the Court was satisfied that the national courts had heard the argument on the matter and had denied the request with reasoned decisions. The applicants' arguments in this connection were entirely hypothetical.

Principal facts

The applicants, Gregoris Souroullas Kay and Venizelos Zannettos, are Cypriot nationals who were born in 1966 and 1947 respectively and live in Larnaca (Cyprus).

In 2013 an inquiry was set up into a suspicious land deal in Dromolaxia, near Larnaca Airport. The authorities suspected that the original owner, a Turkish Cypriot, had had no right to sell the land, and worried that the pension fund of CYTA, a State-owned telecommunications provider, had made a bad investment.

A police investigation followed, leading to a search of the offices of the private company that had bought the land and the home of its director, N.L. He was a property entrepreneur and chairman of ALKI Larnaca, a financially troubled football club associated with the AKEL political party. The police seized computer hard drives during the searches. N.L. was charged with bribery on 10 September 2013.

Two days later, N.L. contacted investigators and stated he would cooperate and be a prosecution witness. In the following two months he made four written statements overall to the effect that bribes had been given as part of a conspiracy to sell the land to CYTA's pension fund at an inflated price; he admitted his own guilt; he implicated seven other people and one company, including the applicants; he stated that Mr Souroullas had laundered bribe money paid to a representative of the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

CYTA trade union; and that Mr Zannettos, the financial director of the AKEL party, had threatened to block the deal unless N.L. had paid off personal loans taken out by former executives of ALKI FC in order to shore up the club's finances.

The applicants, along with the other accused, were arrested. Mr Souroullas was charged with conspiracy to commit extortion, extortion, and money laundering, and Mr Zannettos with extortion. On the investigator's recommendation, the Attorney General decided not to prosecute N.L.

They were committed for trial before the Larnaca Assize Court and N.L. was granted immunity from prosecution.

In the course of the trial, N.L. gave testimony over five full days. The prosecution presented evidence found on N.L.'s hard drives linked to a company, Polleson Holdings Ltd. (of who Mr Souroullas was the sole authorised signatory), which supported the accusation that the conspirators had prepared documents that would cover for the bribe and that Mr Souroullas had therefore been aware of the illicit origin of the money that he had parked in Polleson's account. The applicants' counsel asked the court to be given access to prosecution's disk image (a forensic copy of a hard disk), a request that was refused.

On 22 December 2014 the Larnaca Assize Court convicted Mr Souroullas of money laundering and Mr Zannettos of extortion. It sentenced them to six and a half and three and a half years' imprisonment, respectively. It accepted N.L.'s testimony as he had "answered with exemplary consistency and detail ... with the demeanour of someone who was clearly telling the truth".

The Supreme Court subsequently reviewed the conviction. It did not overturn the Assize Court's findings as regards the evidence given by N.L. It held that the refusal of access to the prosecution's disk image had not disadvantaged the defence since the defence had had its own copy of the image, which contained all the documents used in the trial

Complaints, procedure and composition of the Court.

Relying on Article 6 §§ 1 and 3 (b) (right to a fair trial/right to adequate time and facilities for preparation of defence) of the European Convention, the applicants complained in particular of their convictions having been based solely on the testimony of an accomplice who had been granted immunity, and of lack of access to data regarding the prosecution's disk image to establish collusion between the prosecution and N.L.

The application was lodged with the European Court of Human Rights on 3 January 2018.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (), *President*,
Jolien **Schukking** (the Netherlands),
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court reiterated that there are no rules on how evidence should be assessed under Article 6 § 1. It could intervene only where a national court had assessed evidence arbitrarily or manifestly unreasonably. There was no specific prohibition on a court's relying on incriminating testimony given by an accomplice. However, as this could risk making a trial unfair, the Court assessed fairness of the criminal proceedings as a whole, including such testimony.

In this case, the applicants had failed to show that there had been any deal between N.L. and the prosecution. The trial court had understood and taken account of the issues with using such testimony. The applicants had known the identity of N.L. and the arrangements made, and had been able to cross-examine N.L. The Court noted the Cypriot courts' findings that there had been other supporting evidence which had contributed to the convictions. It also noted that the Assize Court examined carefully and explained precisely why it accepted N.L.'s testimony. Furthermore the Supreme Court had subsequently reviewed the conviction.

The trial had not been compromised by N.L.'s testimony, and so therefore the Court had found no violation of Article 6 § 1.

Article 6 § 3 (b) taken with Article 6 § 1

A failure to disclose to the defence material evidence which could have enabled the accused to exonerate him or herself or have his or her sentence reduced would constitute a violation of the right guaranteed in Article 6 of the Convention. However, there had to be reasons for requests for material, which could be assessed by the national courts.

The Court ruled that the data that had been sought by the applicants at trial – access to the prosecution's disk image – constituted in principle evidence. It noted that the national courts had dismissed the applicants' request with reasoned decisions, having examined the applicants' arguments. The contents of the hard drive had been available to the defence. The Court found that obtaining the prosecution's disk image would not in itself have been of any assistance to the defence and that, in any event, the applicants' arguments in this connection were entirely hypothetical.

There had therefore been no violation of Article 6 § 3 (b).

Separate opinions

Judges Serghides and Zünd expressed a joint dissenting opinion. Judge Serghides also expressed a solo dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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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.