



A judge's son's employment link with a law firm raised objective doubts about the judge's impartiality in a defamation case

In today's Chamber judgment¹ in the case of [Koulias v. Cyprus](#) (application no. 48781/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the applicant's complaint that one of the Supreme Court judges in proceedings against him for defamation was not impartial as the judge's son worked for the law firm whose founding partner represented the appellant in the case.

The Court found in particular that while judges did not automatically have to disqualify themselves in such circumstances, blood ties of that sort had to be disclosed at the outset of proceedings.

However, the applicant had only found out about the link between the judge's son and the law firm representing the claimant in the defamation proceedings after he had lost his appeal. An appearance of partiality had been created and doubts by the applicant regarding the judge's lack of bias had been objectively justified.

Principal facts

The applicant, Zacharias Koulias, is a Cypriot national who was born in 1950 and lives in Larnaca (Cyprus).

In May 2006 the applicant, a member of Parliament, took part in a radio programme where he made various remarks about another politician, C.Th., a former minister and high-ranking member of a political party.

The politician began defamation proceedings focusing in particular on two of the applicant's remarks: that the politician had received money from a Turkish company and had said on television that there was "no pseudo-state" in the northern part of Cyprus, referring to the "Turkish Republic of Northern Cyprus". The first-instance court rejected the claim, but, on appeal, on 24 January 2012, a three-judge panel of the Supreme Court found the remarks defamatory.

The applicant subsequently learnt that the son of the Supreme Court bench's presiding judge, Judge G.C., worked at the same firm as the lawyer, who was also the founding partner of the firm, who had taken over the politician's case during the Supreme Court proceedings.

On 10 February 2012 a newspaper published an article on the case, in which the applicant's lawyer stated that either the judge or the lawyer in question should have revealed the connection between them, as it raised the issue as to whether Judge G.C. should have been excluded. On 14 February 2012 the Supreme Court issued a statement which said, among other things, that the participation of the judge in question had been "fully in accordance with the relevant judicial practice in force over the years".

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.

Complaints, procedure and composition of the Court

The applicant complained under Article 6 § 1 (right to a fair trial) of the Convention of a lack of impartiality on the part of the presiding Supreme Court judge on account of his relationship with the appellant's lawyer, whether examined under the Strasbourg Court's objective or subjective test.

The applicant also complained of a breach of his rights protected by Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 23 July 2012.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Dmitry **Dedov** (Russia),
Alena **Poláčková** (Slovakia),
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),
Lorraine **Schembri Orland** (Malta),

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

Decision of the Court

Article 6 § 1

The Court first noted that according to its general case-law principles the personal impartiality of a judge had to be presumed until there was proof to the contrary. In this case, nothing indicated any actual prejudice or bias on the part of Judge G.C. towards the applicant.

The Court therefore examined the applicant's complaint under the objective impartiality test, having to decide whether his misgivings were objectively justified.

It referred to the principles set out in [Nicholas v. Cyprus](#) concerning situations in which a judge has a blood tie with an employee of a law firm representing a party in any given proceedings. Such a tie did not *per se* disqualify a judge, but it was a situation or affiliation that could give rise to misgivings as to the judge's impartiality.

Whether such misgivings were objectively justified depended on the circumstances of the specific case. The factors to be taken into account included whether the judge's relative had been involved in the case in question, the position of the 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 on the part of the relative.

The Court went on to note that Cyprus, as a small country, had smaller firms and a smaller number of judges than larger jurisdictions so such a situation was likely to arise more often. It had also held 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.

However, given the importance of appearances, any situation which could cause a suggestion or appearance of bias had to be disclosed at the outset of proceedings and an assessment had to be made to determine whether disqualification was necessary. That was an important procedural safeguard to provide adequate guarantees for objective and subjective impartiality.

No such disclosure was made in the applicant's case and he had only discovered the employment connection after his appeal had been decided. He had thus been faced with a situation in which Judge G.C.'s son worked in the law firm which had taken over representation of the appellant before the hearing of the appeal and whose founding/managing partner, the son's employer had, as in *Nicholas*, appeared at the appeal hearing.

The applicant did not know whether the son had actually been involved in the case and whether he had a financial interest connected to its outcome. An appearance of partiality had thus been created. The Court therefore found that the applicant's doubts about the impartiality of Judge G.C. had been objectively justified and that domestic law and practice had not provided sufficient procedural safeguards.

The Court noted that the code of judicial practice had subsequently been amended and that such an employment connection now constituted grounds for the withdrawal of a judge in cases such as the applicant's which are not heard by a full bench.

The Court concluded that there had been a violation of Article 6 § 1 of the Convention.

Article 10

The Court noted that in the Supreme Court defamation appeal proceedings the applicant's lawyer had agreed to limit the scope of the case to that of whether the applicant's statements had been defamatory, withdrawing the defence of fair comment.

By that decision the applicant had clearly narrowed the Supreme Court's examination and had not placed all the Article 10 arguments he had made in Strasbourg before the Supreme Court. Furthermore, given that he had successfully raised the defence of fair comment at first instance, it could not be said that the proceedings before the Supreme Court had offered him no prospects of success.

The Court concluded by agreeing with an objection by the Government that the applicant had not used the relevant "effective" domestic remedy. It consequently rejected the complaint under Article 10 for non-exhaustion of domestic remedies.

Just satisfaction (Article 41)

The Court held that Cyprus was to pay the applicant 9,600 euros (EUR) in respect of non-pecuniary damage and EUR 19.20 in respect of costs and expenses.

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.