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Meeting: 1459th meeting (March 2023) (DH)

Item reference: Action Report (05/01/2023)

Communication from Cyprus concerning the case of Kamenos v. Cyprus (Application No. 147/07)

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Réunion : 1459^e réunion (mars 2023) (DH)

Référence du point : Bilan d'action (05/01/2023)

Communication du Chypre concernant l'affaire Kamenos c. Chypre (requête n° 147/07) (**anglais uniquement**)

ACTION REPORT

KAMENOS v. CYPRUS

Application no. 147/07

Judgment final on 31/01/2018

DGI

05 JAN. 2023

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. CASE DESCRIPTION

This case concerns the proceedings before the Supreme Council of Judicature (the "SCJ") leading to the applicant's dismissal in 2006 from his position as a judge and president at the Industrial Disputes Court. The European Court found that although the SCJ did its best to avoid a procedure that was prosecutory in nature, the fact remained that the Supreme Court itself framed the charges against the applicant and then, sitting as the SCJ, conducted the disciplinary proceedings. In the context of those proceedings the SCJ decided on and dismissed the applicant's objection concerning the charge sheet (para. 107 of the judgment). In such a situation, the European Court noted that confusion between the functions of bringing the charges and those determining the issues in the case could prompt objectively justified fears as to the SCJ's impartiality (para. 108). It therefore found that on the facts of the case and considering the functional defect, the impartiality of the SCJ was capable of appearing open to doubt. The applicant's fears in that regard were considered as objectively justified (para. 109) (violation of Article 6§1).

II. INDIVIDUAL MEASURES

In its judgment, the European Court emphasized that the finding of a violation of Article 6§1 of the Convention did not concern the outcome of the disciplinary proceedings and therefore was not a finding as to whether or not the applicant should have been dismissed for misconduct (para. 111 of the judgment). Moreover, during the disciplinary proceedings the applicant received all the benefits that came with his post; he was considered as having retired from the date of his dismissal, 19 September 2006; and he

was paid a retirement lump sum and started receiving his pension (para. 33 of the judgment).

The European Court awarded the applicant 7,800 euros in respect of non-pecuniary damage and 10,000 euros in respect of costs and expenses which was paid to the applicant. The European Court however refused the applicant's claim for pecuniary damage amounting to the annual salary and retirement benefits he would have been entitled to if he had served as President of the Industrial Disputes Court until retirement at the age of sixty-three, considering that there was no causal link between the breach of Article 6§1 and the alleged pecuniary damage (para. 128 of the judgment). However, following the judgment of the European Court, in 2019, the applicant filed a civil action against the Republic of Cyprus for loss of income due to wrongful dismissal (civil action no. 1869/19). The action is pending before the Nicosia District Court.

The applicant has not resorted to the Supreme Court or the SCJ requesting the annulment of his disciplinary conviction and/or re-opening of the disciplinary proceedings.

No other individual measures are necessary.

III. GENERAL MEASURES

On 25 May 2022 the Supreme Court issued *Procedural Rules concerning the Exercise of the SCJ's Disciplinary Authority (29/2022)*. The 29/2022 Procedural Rules were published in the official gazette of the Republic on 3 June 2022. These rules repeal and replace the Procedural Rules of 2000 applicable at the time of the applicant's dismissal (on the 2000 Procedural Rules see paragraph 41 of the judgment).

According to the new procedural rules of 2022, (a) the decision as to whether a judge is to be disciplinary prosecuted or not rests with the investigating judge¹ (and not the Supreme Court); (b) in case the investigating judge decides that a prosecution is warranted, he/she draws up the charge sheet² (and not the Supreme Court); (c) the

¹ In case the investigating judge is a Supreme Court judge, he/she is recused from the composition of the SCJ, Regulation 6(i).

² Regulation 6(vi).

Attorney General, or an officer representing the Attorney General, presents the case before the SCJ.³

The new procedural rules therefore remedied the functional defect identified by the European Court given that there is no longer any confusion between the functions of bringing charges (they now rest with the investigating judge and not the Supreme Court) and those conducting the disciplinary proceedings and determining the issues (the SCJ). The new procedural rules provide sufficient safeguards for similar proceedings and will prevent similar violations in the future.

IV. DISSEMINATION

The judgment has been disseminated by the Human Rights Sector of the Law Office of the Republic to the Supreme Court for distribution to lower courts, the Ministry of Justice and Public Order, the Cyprus Bar Association, the Parliamentary Committee for Human Rights and the Parliamentary Committee for Legal Affairs. The dissemination was accompanied by letters setting out a summary of the judgment and explaining the reasoning for the Court's finding of violation.

V. CONCLUSION

In view of the above, the Republic of Cyprus has fully complied with its obligations under Article 46 paragraph 1 of the Convention and the Government invites the Committee of Ministers to close the examination of the case.



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Nicosia, 5 January 2023.

³ Regulation 10